

SB 1207

RELATING TO TRANSPORTATION.

Amends chapter 266, Hawaii Revised Statutes, to exempt the Department of Transportation, Harbors Division, from the permit and site plan approvals requirements relating to submerged lands within the conservation district.

NEIL ABERCROMBIE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 13, 2013
1:16 p.m.
State Capitol, Room 224

S.B. 1207
RELATING TO TRANSPORTATION

Senate Committee(s) on Transportation and International Affairs
& Water and Land

The Department of Transportation (DOT) strongly supports this administration bill to amend Chapter 266, Hawaii Revised Statutes, to provide an exemption from the permit and site plan approvals requirements relating to submerged lands within the conservation district. The bill proposes to exempt submerged lands within the State's commercial harbors system from the provisions of Chapter 183C, Hawaii Revised Statutes, relating to permits and site plan approvals. This exemption will enable the Harbors Division to more efficiently implement needed projects to meet the growing needs of the maritime industry.

Sufficient oversight already exists for submerged lands within the State's commercial harbors system for the preservation of the ecosystem, flora and fauna as the DOT will continue to be subject to the requirements of Chapter 343, Hawaii Revised Statutes, as well as the permit requirements by the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, and oversight by the State Department of Health for federal programs such as the Clean Water Act. We believe this proposal eliminates the delay for obtaining permit and site plan approvals that through other review processes are in place to address environmental concerns and the public interest. This proposal will allow the DOT Harbors Division to more timely and efficiently implement harbor projects.

Thank you for the opportunity to provide testimony.



Testimony of
GLENN M. OKIMOTO
DIRECTOR

Deputy Directors
JADE BUTAY
FORD N. FUCHIGAMI
RANDY GRUNE
JADINE URASAKI

IN REPLY REFER TO:
(808) 586-2165



SB1207
RELATING TO TRANSPORTATION
Senate Committee on Transportation and International Affairs
Senate Committee on Water and Land

February 13, 2013

1:16 p.m.

Room 224

The Office of Hawaiian Affairs (OHA) **OPPOSES SB1207**, which would remove an important layer of review and planning to mitigate or prevent significant avoidable impacts to marine resources within or adjacent to our commercial harbors.

Although OHA recognizes the importance of maintaining and rehabilitating the State's commercial harbor systems in a timely manner, the guidelines contained in Chapter 183C are crucial for protecting Hawai'i's conservation lands, including state submerged lands that are part of the "ceded" lands corpus to which Native Hawaiians have never relinquished their claims. Such guidelines include site plans and other substantive requirements that may mitigate or avoid unnecessary impacts to state submerged lands and the resources they contain, by a state agency that has the specific necessary expertise and constitutional responsibilities to conserve Hawai'i's natural resources, and protect our cultural practices.¹

OHA notes that this bill does not appear to repeal other relevant review and regulatory mechanisms, including chapter 343, Hawai'i Revised Statutes, Clean Water Act provisions administered by the Department of Health, as well as section 10 of the federal Rivers and Harbors Act. However, these mechanisms standing alone do not allow for an agency with specific expertise on natural resources to ensure that significant impacts to our marine resources are considered and mitigated to the extent possible. Nor do these measures ensure substantive regulatory consideration of impacts to cultural rights and practices that are otherwise protected under the Hawai'i State Constitution.²

For example, environmental impact statements under Chapter 343 do not require any mitigation measures, nor the adoption of alternatives that may be less harmful to our natural or cultural resources. Both the State Department of Health and the United States Army Corps of Engineers (USACE) further lack the necessary expertise to evaluate and specifically mitigate impacts to these local resources. Thus, given that USACE regulations do require the mitigation of impacts to ecological functions or socioeconomic services from dredge-and-fill activities, the consultation and review by a state agency with specific natural resource expertise may in fact facilitate USACE permitting under section 10 of the

¹ HAW. CONST. ART. XI SEC. 1.; HAW. CONST. ART. XII SEC. 7.

² Id.

Rivers and Harbors Act, and would not inhibit this process in any way. Moreover, USACE and the federal Clean Water Act regulations administered by the Department of Health are not subject to the state constitutional requirements that recognize and affirmatively protect Native Hawaiian rights, including ocean-related traditional and customary gathering practices.

Therefore, OHA urges the Committees to **HOLD** SB1207. Mahalo for the opportunity to testify on this important matter.



**Testimony to the Senate Committees on Water and Land,
and Transportation and International Affairs**

February 13, 2013

1:16 p.m.

State Capitol - Conference Room 224

RE: SENATE BILL NO. 1207 RELATING TO TRANSPORTATION

Chairs Solomon and English, Vice Chairs Shimabukuro and Dela Cruz, and members of the committees:

The Chamber of Commerce of Hawaii respectfully provides the following testimony on **S.B. 1207**. The bill proposes to amend Chapter 266, Hawaii Revised Statutes, to exempt the Department of Transportation, Harbors Division, from the permit and site plan approvals requirements relating to submerged lands within the conservation district.

The Chamber is the largest business organization in Hawaii, representing more than 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber of Commerce of Hawaii questions the need for an exemption from the Conservation District Use Application (CDUA) process for all commercial harbors.

It would appear that the Department of Transportation will continue to be subject to the requirements of chapter 343, HRS, as well as the permit requirements by the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, and oversight by the State Department of Health for federal programs such as the Clean Water Act. As such, it is unclear from the information provided why the Conservation District Use Application Process has been singled out by the Department for an exemption.

Our understanding is that all submerged lands in the State are zoned Conservation. Any use of these lands requires an approved Conservation District Use Application (CDUA) from DLNR. The CDUA establishes the "land use" of the property, and once approved, the state owned submerged lands are usually set aside through and executive order that allows the agency to manage these lands for the established land use. Once established, as long as the activities conducted on the property are consistent with the established land use, no additional CDUA is

required. The process appears to have been set up to allow government agencies the flexibility to manage their on-going uses/activities on the property once the land use has been established through the CDUA process and further documented in the set aside of the lands to the agency.

There does not appear to be a public health or public safety need for this exemption. We believe that without identifying specific public benefits from these types of exemptions, other government agencies will request a similar exemption. For example, DOT Highways and DOT Airports could provide similar rational for exempting their respective projects from the CDUA process.

Finally, if this legislation is approved, the legislature is essentially creating two different standards for harbor facilities. One for government harbors that would be exempt from the CDUA requirements and one for all other harbors (i.e. DLNR Small Boat Harbors, commercial harbors, and private harbors).

Thank you for this opportunity to **express our views.**

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

"Building Better Communities"

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W. Bruce Barrett
Castle & Cooke Homes Hawaii, Inc.

Testimony to the Senate Committees on Transportation and International Affairs and Water and Land
February 13, 2013
1:16 p.m.
State Capitol - Conference Room 224

RE: S.B. 1207, Relating to Transportation

Dear Chairs English and Solomon, Vice-Chairs Shimabukuro and Dela Cruz, and members of the committees:

My name is Gladys Marrone, Government Relations Director for the Building Industry Association of Hawaii (BIA-Hawaii), the voice of the construction industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, affiliated with the National Association of Home Builders.

BIA-Hawaii respectfully provides the following comments on S.B. 1207. The bill proposes to amend Chapter 266, Hawaii Revised Statutes, to exempt the Department of Transportation, Harbors Division, from the permit and site plan approvals requirements relating to submerged lands within the conservation district.

BIA-Hawaii questions the need for an exemption from the Conservation District Use Application (CDUA) process for all commercial harbors.

The Department of Transportation (DOT) will continue to be subject to the requirements of chapter 343, HRS, as well as the permit requirements by the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, and oversight by the State Department of Health for federal programs such as the Clean Water Act. Therefore, it is unclear from the bill why the CDUA process has been singled out by the Department for an exemption.

Our understanding is that all submerged lands in the State are zoned Conservation. Any use of these lands requires an approved CDUA from the Department of Land and Natural Resources. The CDUA establishes the "land use" of the property and, once approved, the state-owned submerged lands are usually set aside through an executive order that allows the agency to manage these lands for the established land use. Once established, as long as the activities conducted on the property are consistent with the established land use, no additional CDUA is required. The process appears to have been set up to allow government agencies the flexibility to manage their on-going uses/activities on the property once the land use has been established through the CDUA process and further documented in the set aside of the lands to the agency.

Mailing address: P.O. Box 970967, Waipahu, HI 96797 Street address: 94-487 Akoki St., Waipahu, HI 96797-0967;
Telephone: (808) 847-4666 Fax: (808) 440-1198 E-mail: info@biahawaii.org; www.biahawaii.org

There does not appear to be a public health or public safety need for this exemption. We believe that without identifying specific public benefits from these types of exemptions, other government agencies will request a similar exemption. For example, DOT Highways and DOT Airports could provide similar rationale for exempting their respective projects from the CDUA process.

Finally, if this legislation is approved, the legislature is essentially creating two different standards for harbor facilities-- one standard for government harbors that would be exempt from the CDUA requirements and one for all other harbors (i.e. DLNR Small Boat Harbors, commercial harbors, and private harbors).

Thank you for this opportunity to express our views.



Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803
808.538.6616 hawaii.chapter@sierraclub.org

SENATE COMMITTEE ON TRANSPORTATION AND INTERNATIONAL AFFAIRS SENATE COMMITTEE ON WATER & LAND

February 13, 2011, 1:16 P.M.
(Testimony is 1 page long)

TESTIMONY IN SUPPORT OF SB 1207

Chair English, Chair Solomon, and members of the Committees:

The Sierra Club, Hawaii Chapter, with over 10,000 dues paying members and supporters statewide, respectfully *opposes* SB 1207. This measure exempts the Department of Transportation, Harbors Division, from the permit and site plan approvals required within the conservation district.

It appears this measure arises out of one incident: the expansion of a pier in Hilo Harbor to allow for cruise ships to arrive in Hilo. To the best of our knowledge, this is the first time a CDUP has ever been required for a DOT Harbor. DLNR wisely asked that some review of the impacts on our natural resources occurs before a major alteration to the Hilo Harbor proceeded.

While there are other permits the state must obtain in order to develop a pier, this appears to be the only obligation DOT has to hold a public hearing. Considering a CDUP permit is only required for a major change to a harbor, this does not appear to be an overly burdensome requirement, particularly when it ensures the public at large has an opportunity to be heard.

In short, our fragile ocean resources deserve better.

We ask this Committee to hold this bill. Mahalo for the opportunity to testify.



Working together to restore clean water, healthy coral reefs
and abundant native fish populations to the islands of Maui Nui.

Sarah McLane,
Executive Director

Robin Newbold, Chair

Dale Bonar

Irene Bowie

Rich Brunner

Jay Carpio

Maile Carpio

Linda Nakagawa Castro

Rhiannon Chandler

Mark Deakos

Lucienne De Naie

Scott Fisher

John Gorman

Wendy Harvey

Sol Kaho'ohalahala

Robin Knox

Ekolu Lindsey

Takeo Miyaguchi

Tamara Paltin

Pam Pogue

Rina Sampson

Larry Stevens

Ananda Stone

Darla White

Committee on Transportation and International Affairs

Hawaii State Senate
Committee on Water and Land

February 11, 2013

Dear Committee Members,

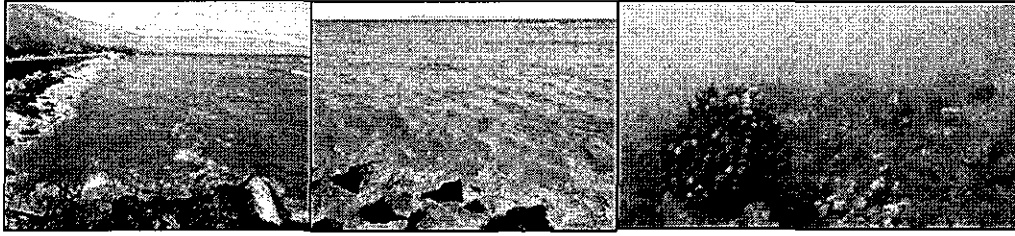
Members of the **Maui Nui Marine Resource Council** respectfully submit our **OPPOSITION** for SB 1207 entitled "RELATING TO TRANSPORTATION."

Our council consists of 28 members and numerous advisors who represent a broad spectrum of the community including commercial, recreational and subsistence fishers; ocean tourism businesses; scientists, educators and cultural practitioners. Our goals for Maui County are to have an abundance of reef fishes and clean water.

No entity or department should be exempt from conservation easement permitting, regardless if they are in "submerged lands" or on shore. The purpose of delineating conservation areas is to mitigate potential impacts. Currently our only method of fulfilling that potential mitigation is through proper permitting and site plan evaluations that follow the protections set forth by our State and Counties. Our harbors are not barren wastelands of rocky bottom. Many of our harbors contain rare species of corals and are still home to fish, sharks, and other marine life.

Maui has experienced firsthand what can happen when the DOT has exemptions, as evident from the recent Emergency Declaration debacle in an attempt to quickly "fix" portions of the Honoapi'ilani Highway at Ukumehame, Maui. A section of the highway, although still useable (not an emergency situation), was quickly moved and re-paved, without proper time for review of the project. DOT crews, under pressure to finish a portion of the highway in a timely manner, accidentally exposed an unknown clay layer at the coastline that filled a large area with silt for several months. The Disaster Declaration allowed the DOT to circumvent environmental protocols, leaving us with a sediment-choked reef.

Working together to restore clean water, healthy coral reefs
and abundant native fish populations to the islands of Maui Nui.



Photos of Ukumehame Dirt
Plume during construction,
2012. (Photos courtesy of
Mark Deakos, MNMRC
Councilman and E.D. for the
Hawaii Association for Marine
Education and Research)

These photos show that a mud plume leached out from a previously unknown clay layer that was exposed at the shoreline during construction and continued to erode out for weeks. As we have seen from similar siltation in the past this sediment **does not** disperse. It settles on corals, which are unable to rid themselves of the sediment and ultimately die. Sediment also gets re-suspended by large waves, wind or storms. This suspended sediment blocks sunlight from reaching the corals, which need sunlight to grow. Corals provide a resilient, protected coastline for island inhabitants and a home for reef fish and other aquatic animals, which, in turn, provide food for our people. With proper site plan review and permitting this environmental disaster could have been prevented.

Harbors should be considered the same as any other shoreline project, even more so due to the high amounts of use. Adhering to regulations does not necessarily increase project length. However, when an accident occurs, the project timeline is inevitably extended. Thus it is prudent to fully understand all of the environmental conditions and considerations ahead of a large project in order to save time and money while protecting our workers and reefs.

We strongly encourage strict environmental controls and full compliance with regulations in order to prevent such disasters in the future. We will certainly see negative impacts of this one small construction project for years to come as the corals in this area also seed reefs on West Maui, and portions of Lānaʻi and Molokaʻi.

Reefs adjacent to shoreline development experienced 25-90% loss of coral over the past decade alone. Significant declines in the health and abundance of corals and reef fish populations have been documented at eight important reefs on Maui over the last 20 years. Thus, we cannot continue to simply brush these shoreline debacles under the rug. Maintaining full compliance is crucial.

We urge you to **oppose SB 1207** and to ensure that near-shore impacts are a high priority in future planning and development decisions so that our reefs will continue to protect our shorelines, provide for the biodiversity of our islands and a sustainable source of food for our residents.

Mahalo for your consideration,

A handwritten signature in cursive script that reads "Sarah E. McLane".

Sarah E McLane
Executive Director



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**Testimony of
Kimberly K. Tiger Mills
General Public**

**Before the House Committees on
TRANSPORTATION & INTERNATIONAL AFFAIRS
and
WATER & LAND**

**Wednesday, February 13, 2013
1:16pm
State Capitol, Conference Room 224
In consideration of
SENATE BILL 1207
RELATING TO TRANSPORTATION**

My name is **Kimberly Tiger Mills**; I am a resident of Kalauao on the island of Oahu. I am also Senior Planner in the State Office of Conservation and Coastal Lands at DLNR that processes the Conservation District Use Application (CDUA) and Site Plan Approvals. However I am testifying **in my personal capacity. I oppose Senate Bill 1207.**

Regarding the Conservation District, there currently exists a system in place to efficiently dispose of projects within existing established areas such as Commercial Harbors. Further by law, my Office must process a CDUA in less than 180-days of acceptance. Harbor improvements are exempt from County SMA requirements therefore the Conservation District Use Application process may be the only local opportunity in which traditional, cultural and customary uses may be vetted.

For newly designated areas or harbor expansion within the Conservation District, DOT Harbors **should not be exempt** from the CDUA process. Submerged, unencumbered public trust lands are utilized for fishing, gathering, canoe paddling, ocean recreation and other activities. I believe there needs to be oversight for sustainable use of the natural resources. Thank you.

SB1207

Friday, February 08, 2013

6:38 AM

Subject	*Submitted testimony for SB1207 on Feb 13, 2013 13:16PM*
From	mailinglist@capitol.hawaii.gov
To	TIAWitness
Cc	tabraham08@gmail.com
Sent	Thursday, February 07, 2013 5:14 PM

SB1207

Submitted on: 2/7/2013

Testimony for TIA/WTL on Feb 13, 2013 13:16PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Troy Abraham	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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