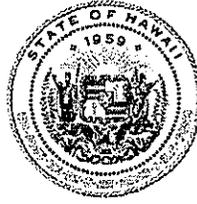


SB 2957

LINDA LINGLE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI  
FIRST DEPUTY

KEN C. KAWAHARA  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAIPOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**Testimony of  
LAURA H. THIELEN  
Chairperson**

**Before the Senate Committees on  
ENERGY AND ENVIRONMENT  
and  
WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS**

**Thursday, February 18, 2010  
2:45 pm  
State Capitol, Conference Room 225**

**In consideration of  
SENATE BILL 2957  
RELATING TO THE ENVIRONMENT**

The purpose of Senate Bill 2957 is to provide an exemption to Chapter 343, Hawaii Revised Statutes, for qualified actions that protect, preserve or enhance the environment. The Department of Land and Natural Resources (Department) opposes this measure in its current form, and provides an alternative means to more effectively achieve the intent of this bill.

The Department, as well as its many public and private partners, annually spend substantial amounts of money and staff time preparing environmental assessments for conservation projects on lands set aside for conservation including fencing for control of feral animals, field stations and work camps, and dip tanks for fire control. The Department supports efforts to streamline the process of implementing these environmentally friendly projects so that funding can be focused on implementation of on-the-ground management. However, it appears this bill, rather than reducing the burden on conservation projects, actually may increase it by creating a duplicate and administratively complex and unclear process.

A more preferred approach would be to create a new exemption class in Chapter 343, Hawaii Revised Statutes, for conservation projects available to both public and private entities to streamline the process. Draft language is attached for your consideration.

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## A BILL FOR AN ACT

RELATING TO THE ENVIRONMENT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

SECTION 1. Chapter 343, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§343- Exemption; protection of native species, habitat, and ecosystems. Notwithstanding section 343-5(a), actions approved by the department of land and natural resources that protect, preserve, or enhance native species, native habitat, or native ecosystem function, because they will probably have minimal or no significant effects on the environment, are declared exempt from the preparation of an assessment; examples may include but are not limited to invasive species control using approved methods in accordance with state and federal law, installation of barriers to control non-native animals, dip tanks for fire control, related helicopter landing zones and field camps, and attendant equipment such as weather ports and radio repeaters.

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

INTRODUCED BY: \_\_\_\_\_

William P. Kenoi  
Mayor



BJ Leithead Todd  
Director

Margaret K. Masunaga  
Deputy

## County of Hawai'i

### PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720  
Phone (808) 961-8288 • Fax (808) 961-8742

February 16, 2010

The Honorable Mike Gabbard, Chair  
and Members of the Committee on Energy & Environment  
The Honorable Clayton Hee, Chair  
and Members of the Committee on Water, Land, Agriculture, & Hawaiian Affairs  
State Senate  
Hawai'i State Capitol  
415 South Beretania Street  
Honolulu, Hawai'i 96813

**Re: Testimony in Opposition to Senate Bill 2957, Relating to the Environment**  
**Hearing: Thursday, February 18, 2010; 2:45 p.m.**  
**B.J. Leithead Todd, Director, Hawaii County Planning Department**

Dear Chair Gabbard, Chair Hee and Members:

The Planning Department **opposes** this bill as drafted. While the department supports creating an exemption for those actions that protect, preserve or enhance the environment, land and natural resources it would make more sense for the Environmental Council of OEQC come up with an exemption list that would include the type of actions envisioned in this bill. An example of the type of action that could be covered in an exemption list would be things like conversion of gang cesspools to either septic systems or connection to a sewer system or removal of invasive species in order to protect an native eco-system.

We ask that this bill be filed or amended to give the authority to expand the exemption lists.

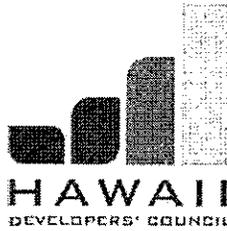
Thank you for the opportunity to testify.

Very truly yours,

A handwritten signature in black ink that reads "BJ Leithead Todd".

BJ LEITHEAD TODD  
Planning Director

cc: Mayor William P. Kenoi  
Mr. Kevin Dayton, Executive Assistant



February 17, 2010

The Honorable Mike Gabbard, Chair  
Committee on Energy and Environment  
The Honorable Clayton Hee, Chair  
Committee on Water, Land, Agriculture, and Hawaiian Affairs  
State Senate  
State Capitol, Room 225  
Honolulu, Hawaii 96813

Dear Chairs Gabbard and Hee and Members:

**Subject: Senate Bill No. SB 2957 Relating to the Environment**

My name is Lance Wilhelm, President of the Hawaii Developers' Council (HDC). We represent over 200 members and associates in development-related industries. The mission of Hawaii Developers' Council (HDC) is to educate developers and the public regarding land, construction and development issues through public forums, seminars and publications. It is also the goal of HDC to promote high ethics and community responsibility in real estate development and related trades and professions.

**HDC is opposed to S.B. No. 2957 as presently drafted.**

The bill proposes to amend Chapter 343 HRS to create an exemption from the preparation of an environmental assessment for a "Qualified Action." Qualified actions are those actions that will have minimal or no significant negative effects on the environment and is intended to protect, preserve, and enhance the environment, land, and natural resources.

Currently pursuant to Act 1, 2008 SLH, Chapter 343 HRS is being reviewed by a team from the University of Hawaii.

Chapter 343 HRS establishes a process to identify impacts and develop mitigation measures for agency or applicant actions that are being considered by agencies in rendering their "discretionary" decisions. There is a distinction between actions that have significant negative effects and those that have no significant effects. The proposed amendment would add another category for actions that have no significant negative

effects on the environment and is intended to protect, preserve, and enhance the environment, land, and natural resources.

We believe that the proposed amendment should be limited to all projects that have no significant negative effects on the environment. To add a further distinction that actions are exempt only if they have no significant negative effects on the environment and are intended to protect, preserve, and enhance the environment, land, and natural resources appears to favor the end use as opposed to whether the action has a significant environmental effect or not.

We cannot support the bill as presently drafted.

Thank you for the opportunity to share our views with you.

**BIA-HAWAII**  
BUILDING INDUSTRY ASSOCIATION

February 18, 2010

The Honorable Mike Gabbard, Chair  
Committee on Energy and Environment  
The Honorable Clayton Hee, Chair  
Committee on Water, Land, Agriculture, and Hawaiian Affairs  
State Senate  
State Capitol, Room 225  
Honolulu, Hawaii 96813

Dear Chairs Gabbard and Hee and Members:

**Subject: Senate Bill No. SB 2957 Relating to the Environment**

I am Karen Nakamura, Chief Executive Officer of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

**BIA-HAWAII is opposed to S.B. No. 2957 as presently drafted.**

The bill proposes to amend Chapter 343 HRS to create an exemption from the preparation of an environmental assessment for a "Qualified Action." Qualified actions are those actions that will have minimal or no significant negative effects on the environment and is intended to protect, preserve, and enhance the environment, land, and natural resources.

Currently pursuant to Act 1, 2008 SLH, Chapter 343 HRS is being reviewed by a team from the University of Hawaii.

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intended to protect, preserve, and enhance the environment, land, and natural resources appears to favor the end use as opposed to whether the action has a significant environmental effect or not.

We cannot support the bill as presently drafted.

Thank you for the opportunity to share our views with you.

**Committee on Energy and Environment and  
Committee on Water, Land, Agriculture, and Hawaiian Affairs  
Hearing**

**Thursday, February 18, 2010 2:45 p.m.  
Conference Room 225**

**Senator Mike Gabbard, Chair and  
Senator Clayton Hee, Chair**



**Testimony on SB 2957 Relating to the Environment**

Dear Chairs Gabbard, Hee and Members of the Committees:

My testimony is in support of the concept and to suggest an alternative to the current bill SB2957. My name is Lynn McCrory and I am the President of PAHIO Development, Inc. We are a locally owned and operated time share development company on the island of Kauai. I was a member of the Reinventing Government Task Force, and this was one of the concepts coming from the Task Force.

This bill provides an exemption for projects that protect, preserve, and enhance the environment, land, or natural resources, under certain conditions. The concept is clear, but the process that is proposed appears to create an even more cumbersome and expensive process for the use of time as well as dollars to enact. The recommendation from the Task Force was to provide an "exemption" to Chapter 343 for examples such as installation of predator fencing or removal of rocks for safety issues.

We would support a simple exemption definition being added to Chapter 343 that would allow the Department of Land & Natural Resources and the private sector to perform tasks that would achieve the objective. We do not believe that the process proposed in this bill will do anything other than increase the time and work beyond what it takes to complete an Environmental Assessment. This will then not be ambiguous to anyone who cares deeply for our environment. I humbly ask for your consideration to amend SB2957 to be a simplified Chapter 343 exemption section. Mahalo!

Me ke aloha pumehana  
With warm aloha,

PAHIO DEVELOPMENT, INC.

A handwritten signature in black ink, appearing to read "Lynn P. McCrory".

Lynn P. McCrory  
President

**SENATE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION**

Sen. Mike Gabbard, Chair  
Sen J. Kalani English, Vice Chair

**SENATE COMMITTEE ON WATER, LAND, AGRICULTURE AND HAWAIIAN AFFAIRS**

Senator Clayton Hee, Chair  
Senator Jill Tokuda, Vice Chair

2:45 PM  
Tuesday, February 9, 2010  
Conference Room 225

**Senate Bill 2957**  
**Relating to the Environment**

Testimony submitted by  
Bob Loy, Director of Environmental Programs,  
The Outdoor Circle

**This testimony is respectfully submitted in opposition to SB 2957**

SB2957 is designed to streamline the approval process for projects that purport to protect, preserve and enhance the environment, land or natural resources. While the intention is worthy of consideration, we believe that this legislation could open the door to unintended consequences that might not be raised or adequately addressed by the Environmental Council (EC) public hearing process outlined in the current draft.

Sometimes projects that appear to meet the test of protecting the environment create unacceptable environmental damage in the process. A perfect example of this possibility currently exists on the Big Island of Hawaii with a project called the Waimea Trails and Greenways. The project proposes to create a green corridor through the heart of Waimea along the Waikoloa Stream that will provide an accessible connecting pathway between residences, businesses & schools. The project has community support and the sponsors are now attempting to require the necessary easements to move forward. While this project is laudable we believe it may come at far too high of an environmental cost.

The cost would come at the expense of the popular Waimea Nature Park—Ulu La'au. The name Ulu La'au means "Garden of Trees". The park is a 10 acre parcel of State land in the heart of Waimea town, leased by Waimea Outdoor Circle for environmental research, education and restoration. It is heavily used by students and residents from the region, as well as visitors. The problem is that the Waimea Trails and Greenways project will cut through the park. If built, the trail would be required to be wide enough to be accessed by emergency vehicles such as ambulances. As a result, this well-intentioned project would cause the removal of literally hundreds of trees and the virtual decimation of the Waimea Nature Park—the "Garden of Trees."

While we agree that if SB2957 becomes law these facts would doubtlessly be presented at a public hearing held by the Environmental Council and the exemption might not be granted. However, a more formal Environmental Assessment of Environmental Impact Statement would be far more likely to comprehensively involve the public and force the kind of analysis that would result in a true accounting of the impacts of the project.

Of equal concern is the tenuous existence and uncertain future of the Environmental Council itself. Due to a variety of factors that are now being widely discussed at the legislature, the EC has not met for more than six months. Neither the EC nor the Office of Environmental Quality Control (OEQC) has the financial and other state support necessary to properly fulfill current obligations, much less create rules and implement the mandates of SB2957.

While we support the good intentions of SB2957, we urge you to reject it. Instead we ask the legislature to focus on rehabilitating the EC and OEQC and allow existing State and Federal environmental laws to determine the type of review required for projects that affect the environment of Hawaii.



The Nature Conservancy  
Hawai'i Program  
923 Nu'uuanu Avenue  
Honolulu, HI 96817

tel (808) 537-4508  
fax (808) 545-2019  
www.nature.org/hawaii

Testimony of The Nature Conservancy of Hawai'i  
(Provided by Mark Fox, Director of External Affairs)  
Supporting the Intent of S.B. 2957 Relating to the Environment  
Senate Committee on Energy and Environment  
Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs  
Thursday, February 18, 2010, 2:45PM, Room 225

The Nature Conservancy (TNC) supports the intent of H.B. 2960, particularly the goal of streamlining the environmental review process for projects that will be beneficial to the environment. However, an unintended result is that the bill may actually result in additional burdens on a conservation project manager if its provisions do not take into consideration the Department of Land & Natural Resources' (DLNR) planned updates to the Conservation District Use Application (CDUA) and Permit (CDUP) process, which is also seeking to ease regulatory burdens on beneficial projects.

Conservation work that protects, preserves, or enhances the environment, land, and natural resources is often caught up in the same time consuming and expensive environmental assessment process as projects that have negative impacts on the environment. While it is appropriate that higher protection is afforded to lands with conservation value, e.g., lands in the State Conservation land use district, it often comes at a stroke too broad that does not distinguish between constructing residential homes versus engaging in conservation work to protect native forests. Currently, many beneficial conservation actions have to go through the same expensive level of review for environmental impacts as development.

Environmental review under HRS Ch. 343 for TNC's conservation work has been a significant burden:

- Each Environmental Assessment (EA) takes 6-12 months;
- Each EA takes ~1 FTE (part of 2-4 people's time);
- Each EA costs \$100,000-\$200,000;
- TNC has done 15 EAs in the last 15 years;
- Five of our nature preserves have had two EAs each;
- One nature preserve is getting its third EA for conservation work.

In addition to HRS Ch. 343 environmental review, conservation projects like predator control fences on private lands in the State Conservation land use district must also submit a Conservation District Use Application (CDUA) to the DLNR to obtain a Conservation District Use Permit (CDUP) for the project. The current Hawai'i Administrative Rules for Conservation Districts (HAR Title 13-5) require that a CDUA include an EA or an EIS (HAR §13-5-31(1)) as well as have a public hearing (HAR §13-5-40(3)). However, the DLNR is proposing significant positive amendments to these rules for conservation work on private land in the Conservation district, such as not requiring a CDUP for invasive species control, and streamlining and easing the permit requirements for predator fencing by seeking to limit the circumstances where an EA and public hearing would be required. See, <http://hawaii.gov/dlnr/chair/meeting/submittals/100211/K-OCCL-Submittals-K1.pdf>

While the DLNR's CDUA process under the proposed amendments to HAR §13-5-31(1) may ease the regulatory burden on beneficial conservation projects, the unintended consequence of S.B. 2957 may be to put some of that burden back on, at least with respect to additional process to secure an EA exemption for certain conservation work on private lands.

**We recommend that the Committees consider amending S.B. 2957 with revisions similar to those made to the House companion measure (H.B. 2960, HD1), which create a specific exemption for projects approved by the DLNR that protect native species, habitats and ecosystems and have no significant effect on the environment. Similar, though somewhat more detailed language is also attached for the Committees' consideration.**

Attachment

BOARD OF TRUSTEES

S. Haunani Apoliona Christopher J. Benjamin Zadoc W. Brown, Jr. Anne Carter Samuel A. Cooke Peter H. Ehrman Kenton T. Eldridge  
Thomas Gottlieb Peter Ho Stanley Hong Donald G. Horner J. Douglas Ing Mark L. Johnson Dr. Kenneth Kaneshiro Bert A. Kobayashi, Jr.  
Faye Watanabe Kurren Eiichiro Kuwana Duncan MacNaughton Bonnie P. McCloskey Bill D. Mills Wayne Minami  
Michael T. Pfeffer H. Monty Richards Jean E. Rolles Scott Rolles Crystal Rose Nathan E. Smith Eric Yeaman

RELATING TO THE ENVIRONMENT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

SECTION 1. Chapter 343, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§343- Exemption; protection of native species, habitat, and ecosystems. (a) Notwithstanding section 343-5(a), an environmental assessment shall not be required for any action approved by the department of land and natural resources that protects, preserves, or enhances native species, native habitat, or native ecosystem function; examples may include but are not limited to invasive species control using approved methods in accordance with state and federal law, installation of barriers to control non-native animals, dip tanks for fire control, related helicopter landing zones and field camps, and attendant equipment such as weather ports and radio repeaters. The determination to exempt such action shall be made by the department, through its relevant divisions, on a case-by-case basis considering the impact on land and aquatic resources, cultural effects, and human health and safety.

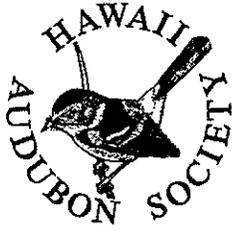
(b) Each party or agency proposing to qualify for the exemption shall submit a request for the exemption to the department of land and natural resources detailing the action proposed and describing the anticipated impacts. The department shall publish such request in the next available issue of the Environmental Notice with the office of environmental quality control for thirty days.

(c) Between thirty and sixty days from the of the date of publication in the Environmental Notice, the department shall, after considering all relevant evidence and comments, determine whether the proposed action qualifies for the exemption under subparagraph (a). The department shall provide specific findings and reasons in writing for its determination. All decisions by the department shall be made available to the public by the department upon request.

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.



*For the Protection of Hawaii's Native Wildlife*  
**HAWAII AUDUBON SOCIETY**

850 Richards Street, Suite 505, Honolulu, HI 96813-4709  
Phone/Fax: (808) 528-1432; hiaudsoc@pixi.com  
www.hawaii-audubon.com

February 17, 2010

**Committee on Energy and Environment**  
**Senator Mike Gabbard, Chair**  
**Senator J. Kalani English, Vice Chair**

**Committee on Water, Land, Agriculture, and Hawaiian Affairs**  
**Senator Clayton Hee, Chair**  
**Senator Jill Tokuda, Vice Chair**

**Thursday, February 18, 2010; 2:45 P.M., Conference Rm. 225**

**Re: SB2957 – Relating to the Environment**

**Comments**

Chair's Gabbard and Hee, and members of the Committee on Energy and Environment, and the Committee on Water, Land, Agriculture, and Hawaiian Affairs. Thank you for the opportunity to provide comments on SB2957, if enacted would provide an exemption for projects that protect, preserve, and enhance the environment, land, or natural resources, under certain conditions. It would also require the environmental council to make a determination of whether the exemption should be applicable after a public hearing.

The Hawaii Audubon Society was founded in 1939, and has over 1,500 members statewide. The Society's primary mission is the protection of Hawaii's native birds, wildlife and habitats. One of keys in protecting our Island's unique ecosystems is our environmental review process as outlined in HRH Chapter 343.

**Although the environmental review process can be burdensome, we understand the rationale of providing an exemption for projects that have little or no environmental impact. We would point out that our current environmental review process as outlined in the National Environmental Policy Act already has provisions to exempt certain projects that have deemed to have little or no impacts on the environment.**

Since there are statutory provisions that address this issue the Audubon Society would recommend that this bill be deferred.

Sincerely,

George Massengale, JD  
Legislative Analyst



# Sierra Club

## Hawai'i Chapter

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

SENATE COMMITTEE ON ENERGY AND ENVIRONMENT  
SENATE COMMITTEE ON WATER, LAND, & OCEAN RESOURCES  
February 18, 2010, 2:45 P.M.

*(Testimony is 1 page long)*

### TESTIMONY IN OPPOSITION TO SB 2957

Aloha Chair Gabbard, Chair Hee, and Members of the Committee:

The Hawai'i Chapter of the Sierra Club opposes SB 2957, which would remove a project that "protects, preserves, or enhances the environment, land, and natural resources" from state environmental review. While we support the intent of this bill, we believe this measure may have unintended consequences and is legally unnecessary.

Our current environmental review process already has a means to exempt all projects -- *not just beneficial ones* -- that have little or no impacts on the environment. The exemption process is a tried and true process that works in many states and under the federal NEPA process. We suggest giving the suggestions made by the UH team an opportunity to be vetted and worked through. This may create a better system for environmentalists and developers alike.

We remain concerned that the operative phrase in this measure may create a loophole in the environmental review process. Determining what actions "will have minimal or no significant negative effects on the environment" without the usual appeal rights may create problems. Further, the enhanced public hearing and notice requirements may create an additional (and unintended) burden.

We suggest strengthening the already-existing exemption process may be the best process for handling this perceived problem.

Thank you for the opportunity to offer this testimony.



UNIVERSITY  
of HAWAII  
MĀNOA

RL: 2260

SB 2957  
RELATING TO THE ENVIRONMENT

Senate Committee on Energy and Environment  
Committee on Water, Land, Agriculture, and Hawaiian Affairs  
Joint Public Hearing – February 18, 2010  
2:45 p.m., State Capitol, Conference Room 225

By

Peter Rappa, Environmental Center and Sea Grant College Program  
Karl Kim, Professor, Department of Urban and Regional Planning  
Denise Antolini, Professor, William S. Richardson School of Law  
Nicole Lowen, Environmental Center  
Scott Glenn, Urban and Regional Planning

SB 2957 provides an exemption for projects that protect, preserve, and enhance the environment, land, or natural resources, under certain conditions, and requires the Environmental Council to make a determination of whether the exemption should be applicable after a public hearing. Our statement on this measure does not represent an institutional position of the University of Hawaii.

We understand the intent of this legislation and agree that many projects which are now required to prepare an environmental assessment to determine if they will have significant impact on the environment should be exempt. We disagree with the approach presented in this bill. We have submitted to the Hawaii State Legislature a study of Hawaii's environmental review system on January 1, 2010, pursuant to Act 1, 2008. Based on an extensive stakeholder process, the study assessed the system's effectiveness and proposes a comprehensive set of specific recommendations for statutory amendments to chapters 341 and 343 HRS embodied in SB 2818. In the study and in SB 2818 we suggest a comprehensive approach to address problems with the applicability of chapter 343 HRS including exempt actions. Our changes, should they pass the legislature, will address the issues that SB 2957 attempts to address. We request the committees defer this bill at this time.

A copy of the report was distributed to all legislators and is available to the public on the study blog at:

<http://hawaieisstudy.blogspot.com/>

Thank you for the opportunity to testify on this legislation