

STAND. COM. REP. NO. 691

Honolulu, Hawaii  
March 5, 2009

RE: H.B. No. 640  
H.D. 1

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Fifth State Legislature  
Regular Session of 2009  
State of Hawaii

Sir:

Your Committees on Energy & Environmental Protection and Water, Land, & Ocean Resources, to which was referred H.B. No. 640 entitled:

"A BILL FOR AN ACT RELATING TO ENVIRONMENTAL IMPACT STATEMENTS,"

beg leave to report as follows:

The purpose of this bill is to eliminate undue delays for actions that involve the installation, improvement, renovation, construction, and development of any infrastructure (including roadway improvements, waterlines, wastewater lines and facilities, drainage facilities, and electrical, communication, and cable utilities) within a public right-of-way or highways by clarifying that such projects shall not be deemed to be the use of state or county lands, which triggers the requirement for an environmental assessment (EA) under Chapter 343, Hawaii Revised Statutes (HRS), the State's environmental review law.

The Office of Environmental Quality Control (OEQC), Hawaii Housing Finance and Development Corporation, Department of Planning and Permitting of the City and County of Honolulu, Department of Environmental Services of the City and County of Honolulu, The Chamber of Commerce of Hawaii, Hawaii Building and Construction Trades Council, AFL-CIO, Building Industry Association of Hawaii, Maui Contractors Association, Hawaii Developers' Council, Land Use Research Foundation of Hawaii Engineering Solutions, Inc., PAHIO Development, Inc., Hawaii

HB640 HD1 HSCR EEP-WLO HMS 2009-2748



Island Hardwoods LLC, and a concerned individual testified in support of this bill. The Department of Transportation and The Gas Company supported the intent of this measure. The Sierra Club-Hawaii Chapter, Hawaii Audubon Society, Hawaii's Thousand Friends, Native Hawaiian Legal Corporation, and numerous concerned individuals opposed this bill. Life of the Land provided comments.

The Department of Transportation (DOT) is a critical component in ensuring the efficient and timely processing of permits for proposed actions within right-of-ways in an environmentally responsible manner. During the 2008 legislative session, the Legislature believed that the problems experienced by applicants in processing permits for the use of public right-of-ways arose from multi-agency jurisdiction over primary actions that required secondary permits and lack of clarification regarding the process to exempt certain proposed actions from the EA requirement. Act 110, Session Laws of Hawaii 2008:

- (1) Provided that whenever an applicant requests approval for a proposed action and there is a question as to which of two or more state or county agencies with jurisdiction has the responsibility of preparing the EA, the OEQC, after consultation with and assistance from the affected agencies, is to determine which agency shall prepare the EA; and
- (2) Clarified OEQC's mandate to establish procedures whereby specific types of actions, because they will probably have minimal or no significant effect on the environment, are declared exempt from the preparation of an EA.

Notwithstanding Act 110, during the hearing on this bill, your Committees learned that DOT has been requiring EAs for secondary actions that were clearly exempt from the EA requirement. It appeared that the actions were exempt under DOT's own rules. As a result, OEQC is overwhelmed by the number of DOT requests for action reviews, which has created unnecessary delays for actions that would be exempt from the EA requirement.

Accordingly, your Committees have amended this bill by exempting from the purview of Chapter 343, HRS, primary actions requiring a ministerial permit or approval, rather than a discretionary one, that involve a secondary action for the



development of infrastructure within an existing right-of-ways that have no significant effect on the environment.

This bill has also been amended by:

- (1) Changing the effective date to July 1, 2050, to encourage further discussion;
- (2) Inserting a repeal date of July 1, 2011; and
- (3) Making technical, nonsubstantive amendments for style, clarity, and consistency.

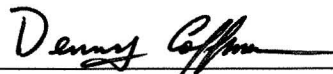
As affirmed by the records of votes of the members of your Committees on Energy & Environmental Protection and Water, Land, & Ocean Resources that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 640, as amended herein, and recommend that it pass Second Reading in the form attached hereto as H.B. No. 640, H.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on  
behalf of the members of the  
Committees on Energy &  
Environmental Protection and  
Water, Land, & Ocean Resources,



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KEN ITO, Chair



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DENNY COFFMAN, Acting Chair  
and Vice Chair



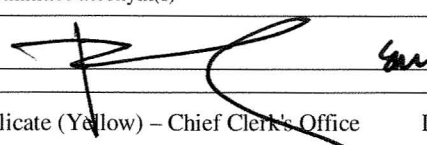
State of Hawaii  
House of Representatives  
The Twenty-fifth Legislature

Record of Votes of the Committee on Energy & Environmental Protection

Bill/Resolution No.: <b>4B 640</b>		Committee Referral: <b>EEP/WLO</b>		Date: <b>3/4/09</b>
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to: <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
<b>EEP Members</b>	<b>Ayes</b>	<b>Ayes (WR)</b>	<b>Nays</b>	<b>Excused</b>
1. MORITA, Hermina M. (C)				✓
2. COFFMAN, Denny (VC)	✓			
3. CABANILLA, Rida	✓			
4. CHANG, Jerry L.	✓			
5. CHONG, Pono	✓			
6. HAR, Sharon E.				✓
7. HERKES, Robert N.				✓
8. ITO, Ken	✓			
9. LEE, Chris				✓
10. LUKE, Sylvia				✓
11. SAGUM, Roland D., III				✓
12. CHING, Corinne W.L.		✓	↔ DC	
13. THIELEN, Cynthia			✓	
<b>TOTAL (13)</b>	<b>5</b>	<b>1</b>	<b>1</b>	<b>6</b>
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. committee acronym(s)				
Vice Chair's or designee's signature: <u><i>Denny Coffman</i></u>				
Distribution: Original (White) – Committee    Duplicate (Yellow) – Chief Clerk's Office    Duplicate (Pink) – HMSO				

State of Hawaii  
House of Representatives  
The Twenty-fifth Legislature

Record of Votes of the Committee on Water, Land, & Ocean Resources

Bill/Resolution No.: HB 640	Committee Referral: EEP/WLO	Date: 3-4-09		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to: <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
WLO Members	Ayes	Ayes (WR)	Nays	Excused
1. ITO, Ken (C)	X			
2. HAR, Sharon E. (VC)				X
3. CABANILLA, Rida	X			
4. CHANG, Jerry L.	X			
5. CHONG, Pono	X			
6. COFFMAN, Denny	X			
7. HERKES, Robert N.				✓
8. LEE, Chris				X
9. LUKE, Sylvia				X
10. MORITA, Hermina M.				X
11. SAGUM, Roland D., III				X
12. CHING, Corinne W.L.		X		
13. THIELEN, Cynthia			X	
TOTAL (13)	5	1	1	6
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. committee acronym(s)				
Vice Chair's or designee's signature: _____ 				
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