

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

IN REPLY REFER TO:

April 6, 2009

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

HOUSE BILL NO. 640, HD 1, SD 1

COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS

House Bill 640, HD 1, SD 1 exempts from the purview of Chapter 343, HRS, the environmental review law, primary actions that require a ministerial permit, that involve secondary actions relating to infrastructure development within public right-of-ways that have no significant effect on the environment.

**The Department of Transportation (DOT) supports this bill.**

Chapter 343, Hawaii Revised Statutes, requires that before the DOT approves an applicant's request to construct utility, drainage, driveway, or roadway improvements within the state highway right-of-way (ROW), the DOT first needs to determine whether an environmental assessment (EA) is required. Pursuant to recent court rulings, to determine whether an EA is required for an applicant action, the DOT must consider secondary environmental impacts. To comply with Chapter 343, when an applicant requests DOT approval to construct infrastructure within the highway ROW to serve proposed development of private property, the DOT needs to consider environmental impacts from proposed development of private property.

The DOT does not have jurisdiction to regulate private property. Requiring the DOT to evaluate environmental impacts from development of private property has caused delay and financial hardship for applicants without public benefit. The DOT does not have information or expertise to assess the secondary impacts to the environment arising from the multitude of private actions which require "use" of the State highway ROW. The DOT has sought assistance and recommendations from the Office of Environmental Quality Control (OEQC) regarding environmental compliance. This has significantly increased the time required for DOT to review and process applications affecting the highway ROW.

We request rewording HB 640, HD 1, SD 1, as shown on the attached page. With this proposed amendment, under the proposed Chapter 343 exemption, the agency with jurisdiction for a public highway ROW would only need to evaluate proposed actions and impacts within the highway ROW. With this proposed amendment, Chapter 343 would still fully apply to agency actions and to discretionary approvals for private development which requires use of a public highway ROW.

## PROPOSED DOT AMENDMENT OF §343- (a)

Chapter 343, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

"§343- Exception to applicability of chapter. (a) Notwithstanding any other law to the contrary, any primary action that only requires a permit or approval from an approving agency that is not subject to the discretionary consent of the approving agency and that involves a secondary action limited to the installation, improvement, renovation, construction, or development of infrastructure within an existing public right-of-way or highway shall be exempt from this chapter; [provided that, if the infrastructure:

- 1.— ~~Is not within an existing public right-of-way or highway; or~~
- 2.— ~~May have a significant effect on the environment,~~

~~then this section shall not apply.]~~

provided that this section shall not apply if

1. No installation, improvement, renovation, construction or development of infrastructure is proposed within a public highway right-of-way; or
2. The proposed installation, improvement, renovation, construction or development of infrastructure in the public highway right-of-way will have a significant effect on a public highway right-of-way.

(b) As used in this section:

"Infrastructure" includes but is not limited to waterlines and water facilities, wastewater lines and wastewater facilities, gas lines and gas facilities, drainage facilities, electrical, communications, telephone, and cable television utilities, and highway, roadway, and driveway improvements.

"Primary action" refers to any action outside of the highway or public right-of-way that is on private property.

"Secondary action" refers to any infrastructure within the highway or public right-of-way. ""

Linda Lingle  
GOVERNOR



KAREN SEDDON  
EXECUTIVE DIRECTOR

**STATE OF HAWAII**

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM  
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION  
677 QUEEN STREET, SUITE 300  
Honolulu, Hawaii 96813  
FAX: (808) 587-0600

IN REPLY REFER TO

**Statement of  
Karen Seddon**  
Hawaii Housing Finance and Development Corporation  
Before the

**SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS**

April 6, 2009, 10:00 a.m.  
Room 016, State Capitol

In consideration of  
**H.B. 640, H.D. 1, S.D. 1**  
**RELATING TO ENVIRONMENTAL IMPACT STATEMENTS.**

The HHFDC supports the intent of H.B. 640, H.D. 1, S.D. 1, which proposes to exclude from the purview of Chapter 343, Hawaii Revised Statutes (HRS) certain specified infrastructure improvement actions within a public right-of-way. This bill is needed because of the recent court decisions where any action that involved the use of a state or county road right of way was a "trigger" for the environmental assessment (EA) or environmental impact statement (EIS). Because access improvements, easements, drainage, waterline, or similar improvements, are now viewed as a use of state or county lands when it touches a state or county road right-of-way, the entire project is then required to prepare an EA for the entire project. Requiring the preparation of a Chapter 343, HRS document for projects with insignificant environmental impacts is not appropriate. If the legislative intent was that an EA/EIS would be required any time a project touches a public road, then the law should be changed to require an EA/EIS for all projects because all projects, at some point, connect to a public road.

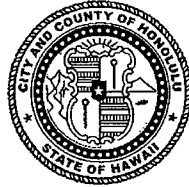
H.B. 640, H.D. 1, S.D. 1 should be viewed as a short-term or interim fix as we understand that there is a comprehensive review of Chapter 343, HRS that is being conducted by representatives from the University of Hawaii's Richardson School of Law, School of Urban and Regional Planning, and the Environmental Center. The comprehensive review will allow for an objective review of Chapter 343, HRS with all of its amendments since it was initially passed in 1974.

Thank you for the opportunity to provide written comments on this bill.

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813  
TELEPHONE: (808) 768-8000 • FAX: (808) 768-8041  
DEPT. WEB SITE: www.honoluluodpp.org • CITY WEB SITE: www.honolulu.gov

MUFI HANNEMANN  
MAYOR



DAVID K. TANOUE  
DIRECTOR  
ROBERT M. SUMITOMO  
DEPUTY DIRECTOR

April 6, 2009

The Honorable Brian T. Taniguchi, Chair  
and Members of the Committee on Judiciary and  
Government Operations  
The Senate  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Taniguchi and Members:

**Subject: HOUSE BILL 640, HD1, SD1  
Relating to Environmental Impact Statements**

The Department of Planning and Permitting (DPP) **supports** House Bill 640, HD1, SD1 which provides a clear statement that routine infrastructure work occurring within a public right-of-way shall not be considered a "trigger" for purposes of HRS Chapter 343 requirements.

This kind of clarification will be very meaningful for accepting agencies. It will help agencies avoid the unnecessary preparation and processing of environmental assessments for projects which fundamentally have virtually no potential adverse environmental impacts.

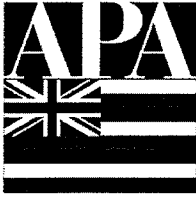
We strongly recommend that House Bill 640, HD1, SD1 be approved. Thank you for this opportunity to comment.

Very truly yours,

A handwritten signature in black ink, appearing to read "David K. Tanoue", is written over a horizontal line.

David K. Tanoue, Director  
Department of Planning and Permitting

DKT: jmf  
hb640hd1sd1-jpt.doc



*hawai'i chapter*  
*of the*  
*american planning*  
*association*  
*p.o. box 557*  
*honolulu*  
*hawai'i*  
*96809*  
*www.hawaiiapa.org*

*founded in 1962, the  
hawai'i chapter has over  
300 members, including  
planning officials, public  
and private sector planners,  
and community advocates,  
on the major islands  
across the state*

*e mālama pono i ka 'āina;  
nānā mai ke ola  
take good care of the land;  
it grants you life*

April 2, 2009

Senator Brian T. Taniguchi, Chair  
Senator Dwight Y. Takamine, Vice-Chair  
Committee on Judiciary and Government Operations  
State of Hawai'i

**RE: H.B. 640, H.D.1, S.D.1, Relating to Environmental Impact Statements**

**Hearing: Monday, April 6, 2009, 10:00 A.M., Conference Room 016**

The APA Hawai'i Chapter has approximately 300 members. Our membership is composed of individuals from the private and public planning sectors, interest groups, and landowners, including decision-makers, administrators, lawyers, architects, developers, university professors, students and other interested persons. We are also part of the American Planning Association, which has a national membership of over 44,000. Our motto is "Making great communities happen."

APA Hawai'i strongly supports passage of H.B.640, H.D.1, S.D.1 because it will prevent unnecessary delays and costs for projects that involve the installation, improvement, renovation, construction or development of new or existing infrastructure within a public right-of-way (ROW) or highway. This bill clarifies that such projects do not constitute a proposed use of state or county lands as defined in Chapter 343, HRS, the State's EA/EIS law.

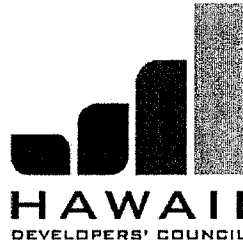
H.B.640, H.D.1, S.D.1 if passed provides immediate and necessary relief for all applicants (including small businesses, schools, nonprofits, families and others) who currently must be involved in the Chapter 343 process because their projects require a driveway and/or waterline connection to a public ROW. These diverse parties have one thing in common: they all currently face firsthand the high costs (in the range of \$25,000 for preparation of an EA), long delays (approximately 6 months), and significant effort required to assess improvements within state or county ROWs that in reality have little or no impact on the environment. These have until recently and should again be exempt from the Chapter 343 process. A major consequence if H.B.640, H.D.1, S.D.1 is not passed is the negative impact on Hawaii's economy at a time when we can least afford it. Another consequence is the heavy burden placed on state and county agencies, as well as the public, who must review these needless environmental documents.

Our businesses, schools, community organizations, and small landowners cannot wait any longer for completion of a comprehensive review of Chapter 343, HRS. Passage of H.B.640, H.D.1, S.D.1 will not hinder the ongoing study of Chapter 343 by the University of Hawaii, which we understand will not be completed until 2010. Crafting the same exemption proposed by H.B.640, H.D.1, S.D.1 through the rule revision process, which normally takes up to a year, will also further delay the necessary relief. The rule revision process is not the only method to establish exemptions. The Legislature can assume leadership and take initiative through passage of this bill.

In conclusion, APA Hawaii strongly urges Senate adoption of H.B.640, H.D.1, S.D.1. Thank you for the opportunity to offer our comments.

Respectfully,

Ralph E. Portmore, AICP  
Chapter President



April 6, 2009

Senator Brian Taniguchi, Chair  
COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS  
State Capitol, Room 016  
415 South Beretania Street  
Honolulu, Hawaii 96813

Senator Taniguchi:

Subject: **House Bill No. HB 640, HD 1, SD 1 Relating to Environmental Impact Statements**

My name is Shane Peters, 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.

The HDC strongly supports H.B. No. 640, HD1, SD1 as it proposes to exclude the installation and development of infrastructure and utilities within a public right-of-way or highway as the use of state or county lands for purposes of requiring an environmental assessment.

The legislation is needed because of the recent court decisions where any action that involved the use of a state or county road right of way was a "trigger" for the EA/EIS. Because an access improvement, easement, drainage, waterline, etc., is now viewed as a use of state or county lands when it touches (over, under, across) a state or county road right of way, the entire project is then required to prepare and environmental assessment for the entire project.

Requiring the preparation of a 343 HRS document for projects with insignificant environmental impacts makes a mockery of the EA/EIS process. If the legislative intent was that an EA/EIS would be required any time the project touches a public road, then the law should be changed to require an EA/EIS for all projects because all projects, at some point, connect to a public road.

HD 1 of the bill exempts 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.

SD 1 added definitions for "Primary and Secondary actions" to further clarify the intent of the proposed amendments to Chapter 343 HRS.

The current language does not address the problem when agencies have different interpretations of ministerial and discretionary permits. Chapter 343-2 provides the following definition for "Discretionary consent" means a consent, sanction, or recommendation from an agency for which judgment and free will may be exercised by the issuing agency, as distinguished from a ministerial consent. Because of the court decision the city and county of Honolulu will not process any permit until the applicant gets approval from DOT for work in the right of way. With no ministerial permit from the County, the project will be forced to do a 343 document because of how DOT interprets discretionary and ministerial permits.

Rather than debate that issue, perhaps if the exemption focused on the action or activity rather than whether an agencies determines it to be ministerial or not will get us beyond the ministerial or discretionary approvals. As such, we suggest the following clarification be used in Section 1 of the bill:

**"§343- Exception to applicability of chapter.** (a) Notwithstanding any other law to the contrary, any action or activity to install, improve, renovate, construct or develop any infrastructure within that government road right-of-way, including but not limited to waterlines and water facilities, wastewater lines and wastewater facilities, gas lines and gas facilities, drainage facilities, electrical communication, telephone and cable television utilities, and highway, roadway, and driveway improvements, shall be exempt from the purposes of this chapter. If such infrastructure or improvements are undertaken to serve an action outside the public right-of-way or highway that could have significant cumulative, direct or indirect effects on the environment and requires discretionary consent, this section shall not apply."

H.B. No. 640, HD1, SD1 should be viewed as a short-term or interim fix as we understand that there is a comprehensive review of Chapter 343 HRS that is being conducted by representatives from the University of Hawaii's Richardson School of Law, School of Urban and Regional Planning, and the Environmental Center. The comprehensive review will allow for an objective review of Chapter 343 HRS with all of its amendments since it was initially passed in 1974.

Although not part of this legislation, we would hope that the group responsible for the comprehensive review of Chapter 343 HRS be expanded to include representatives from the business community who are and will be directly impacted by the legislation.

Again, we strongly support the approval of H.B. No. 640, HD1, SD1 with our proposed amendments to address the immediate problems caused by the Courts interpretation of Chapter 343 HRS.

Thank you for this opportunity to express our views.

**BIA-HAWAII**  
BUILDING INDUSTRY ASSOCIATION

April 6, 2009

Senator Brian Taniguchi, Chair  
COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS  
State Capitol, Room 016  
415 South Beretania Street  
Honolulu, Hawaii 96813

Senator Taniguchi:

Subject: **House Bill No. HB 640, HD 1, SD 1 Relating to Environmental Impact Statements**

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 strongly supports H.B. No. 640, HD1, SD1 as it proposes to exclude the installation and development of infrastructure and utilities within a public right-of-way or highway as the use of state or county lands for purposes of requiring an environmental assessment.

The legislation is needed because of the recent court decisions where any action that involved the use of a state or county road right of way was a "trigger" for the EA/EIS. Because an access improvement, easement, drainage, waterline, etc., is now viewed as a use of state or county lands when it touches (over, under, across) a state or county road right of way, the entire project is then required to prepare and environmental assessment for the entire project.

Requiring the preparation of a 343 HRS document for projects with insignificant environmental impacts makes a mockery of the EA/EIS process. If the legislative intent was that an EA/EIS would be required any time the project touches a public road, then the law should be changed to require an EA/EIS for all projects because all projects, at some point, connect to a public road.

HD 1 of the bill exempts 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.

SD 1 added definitions for "Primary and Secondary actions" to further clarify the intent of the proposed amendments to Chapter 343 HRS.

The current language does not address the problem when agencies have different interpretations of ministerial and discretionary permits. Chapter 343-2 provides the following definition for "Discretionary consent" means a consent, sanction, or recommendation from an agency for which judgment and free will may be exercised by the issuing agency, as distinguished from a



ministerial consent. Because of the court decision the city and county of Honolulu will not process any permit until the applicant gets approval from DOT for work in the right of way. With no ministerial permit from the County, the project will be forced to do a 343 document because of how DOT interprets discretionary and ministerial permits.

Rather than debate that issue, perhaps if the exemption focused on the action or activity rather than whether an agencies determines it to be ministerial or not will get us beyond the ministerial or discretionary approvals. As such, we suggest the following clarification be used in Section 1 of the bill:

**"§343- Exception to applicability of chapter.** (a) Notwithstanding any other law to the contrary, any action or activity to install, improve, renovate, construct or develop any infrastructure within that government road right-of-way, including but not limited to waterlines and water facilities, wastewater lines and wastewater facilities, gas lines and gas facilities, drainage facilities, electrical communication, telephone and cable television utilities, and highway, roadway, and driveway improvements, shall be exempt from the purposes of this chapter. If such infrastructure or improvements are undertaken to serve an action outside the public right-of-way or highway that could have significant cumulative, direct or indirect effects on the environment and requires discretionary consent, this section shall not apply."

H.B. No. 640, HD1, SD1 should be viewed as a short-term or interim fix as we understand that there is a comprehensive review of Chapter 343 HRS that is being conducted by representatives from the University of Hawaii's Richardson School of Law, School of Urban and Regional Planning, and the Environmental Center. The comprehensive review will allow for an objective review of Chapter 343 HRS with all of its amendments since it was initially passed in 1974.

Although not part of this legislation, we would hope that the group responsible for the comprehensive review of Chapter 343 HRS be expanded to include representatives from the business community who are and will be directly impacted by the legislation.

Again, we strongly support the approval of H.B. No. 640, HD1, SD1 with our proposed amendments to address the immediate problems caused by the Courts interpretation of Chapter 343 HRS.

Thank you for this opportunity to express our views.



Chief Executive Officer  
BIA-Hawaii

Ron Terry, Ph.D.  
10 Hina Street  
Hilo HI 96720

April 6, 2009

**Subject: Testimony in Support of House Bill No. 640, HD1 SD1, Monday, 06 April 2009 10:00 a.m. - Conference Room 211016, Presented to Senate Committee on Judiciary and Government Operations**

Dear Chair Taniguchi, Vice Chair Takamine, and members of the JGO Committee,

I am an environmental impact scientist based on the Big Island. My company, Geometrician Associates, has performed more than 150 environmental reviews including Environmental Impact Statements, Environmental Assessments, and various permit documents throughout the State of Hawai'i over the last 20 years. I taught Environmental Impact Assessment at the University of Hawai'i for ten years, and I have been appointed by the Governor and the Board of Regents to several State boards, partly because of my expertise in environmental analysis. My projects include the Saddle Road, the Puainako Street Extension, the South Hilo Landfill Vertical Expansion, water well projects on O'ahu, Kaua'i and the Big Island, and many, many others.

Based on my years of deep experience in EIS practice, and despite the fact that the law as it stands provides my company with additional contracts, I strongly support HB 640, HD1 SD1. At least 50 individuals or companies have contacted me to prepare EAs for extremely minor projects that do not merit this scale of review. Many of them are simply driveways to existing lots or very minor subdivisions. For some, the requirement for an EA, which can involve up to six months of work and by law must include components such as biological surveys and cultural impact statements, are simply too expensive to allow them to complete their projects. In several cases, the businesses had no choice but to prepare an EA. For example, a paint store on an existing lot in a commercial district with all proper zoning and permits was required by DOT to prepare an EA merely to connect an electrical line to an existing pole in the DOT right of way. When I first heard about the requirement, I was sure it was an error, as I had never seen a client in such a situation. I was informed by DOT that this was a new interpretation of Chapter 343 by their Attorney General, and that EAs would be required in all such cases. I performed the EA at a discount, but it still cost the client time and money. No substantive comments were received, and it wasted a great deal of agency time as well. Fixing Chapter 343 will simply take us back to the time, two years ago, when extremely minor actions were exempt from the need for an EA.

I recognize the fact that the UH Environmental Center is currently conducting a comprehensive review of Chapter 343 for presentation to the Legislature at the beginning of the 2010 session and in fact am participating in that review and have shared my thoughts on this subject. The fix is needed sooner, because everyday citizens and businesses are suffering from burdensome requirements that benefit no one. I respectfully request your **favorable consideration of HB 640 HD1 SD1.**

*Ron Terry*

**Committee on Judiciary and Government Operations  
Hearing**

**Monday, April 06, 2009, 10:00 a.m.  
Conference Room 016**

**Senator Brian T. Taniguchi, Chair**



**Testimony on HB640, HD1, SD1 Relating to Environmental Impact Statements**

Dear Chair Taniguchi and Members of the Committee:

My testimony is in SUPPORT of HB640, HD1, SD1. 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 the Kauai member of the Board of Land & Natural Resources for eight years.

HB640, HD1, SD1 provides the changes needed to clarify the section of HRS Chapter 343 relating to requirements for completion of an environmental assessment (EA) for the development of infrastructure and utilities as to the use of state or county lands. This is a short term fix resulting from a court decision for two projects on Kauai that removed multiple conditions placed by the Planning Commission. At one point or another, a project will touch state or county land whether it is the connection to utilities or roadways. For some projects, it may be nothing more than a driveway connection to a highway. There should not be an EA completed for what should be an administrative decision by the government agency or a public utility. An EA should be required where there are potentially serious issues that should be explored and mitigated.

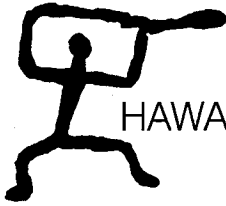
There is currently a comprehensive review of HRS Chapter 343 being completed by the University of Hawaii's Richardson School of Law. This review should provide for any changes to HRS Chapter 343 in a future Legislative session. I humbly ask for your consideration for SUPPORT of HB640, HD1, SD1. Mahalo!

Me ke aloha pumehana  
With warm aloha,

PAHIO DEVELOPMENT, INC.

A handwritten signature in black ink that reads "Lynn P. McCrory". The signature is written in a cursive, flowing style.

Lynn P. McCrory  
President



# HAWAII LEEWARD PLANNING CONFERENCE

P.O. BOX 2159 • KAMUELA, HAWAII 96743-2159

03 April 2009

Testimony in Support of  
House Bill No. 640, HD1 SD1

Monday, 06 April 2009

10:00 a.m. - Conference Room 211016

Presented to

Senate Committee on Judiciary and Government Operations

Aloha Chair Taniguchi, Vice Chair Takamine, and members of the JGO Committee,

I am Jacqui Hoover, President of Hawaii Leeward Planning Conference (HLPC) a member-based organization that in its thirty-five year history, has consistently advocated for sound planning decisions to promote long-term benefits for Hawaii. In keeping with that tradition, we respectfully submit this testimony in strong support of HB 640, HD1 SD1.

HLPC supports the revisions proposed by the State Department of Transportation (DOT) and the Office of Environmental Quality Control (OEQC), which amends HRS §343-5(a) to clarify that Chapter 343 requirements will not apply to primary action and/or approval of the installation and development of infrastructure and utilities with a public highway Right-of-Way (ROW) to serve proposed development which does not require any discretionary public agency approval.

Recent court decisions and government policies have resulted in numerous "unintended consequences" including and not limited to interpretations by some government agencies that an Environmental Assessment (EA) is required anytime there is such minor work touching public roadways or ROWs. As a result of such interpretations, private applicant proposals for minor work within the state or county ROW now "trigger" the preparation of an EA by the applicant. These interpretations go far beyond the original intent of HRS Chapter 343, and cause unnecessary requirements, excessive costs and delays for private parties engaged in such minor work.

To date OEQC has reviewed hundreds of such minor work projects touching public roadways or ROWs to determine whether an EA is necessary. OEQC's review process is transparent and subject to review by stakeholders such as other government agencies, environmental advocates, the construction industry and the general public. To date, none of the OEQC's reviews of such minor work projects have been challenged or questioned by the public, or any of the stakeholders. HB 640, HD1 SD1 and the revisions proposed by the DOT and OEQC would address these situations and provide an exemption for certain limited primary permits for minor work touching public roadways.

HLPC supports the revisions to this bill as proposed by the DOT and OEQC, to amend Chapter 343, Hawaii Revised Statutes, by adding a new section to read as follows: "§343- Exception to applicability of chapter. (a) Notwithstanding any other law to the contrary, any primary action that only requires a permit or approval from an approving agency that is not subject to the discretionary consent of the approving agency and that involves a secondary action limited to the installation, improvement, renovation, construction, or development of infrastructure within an existing public right-of-way or highway shall be exempt from this chapter."

AKINAKA & ASSOCIATES, LTD.  
ALSTON HUNT FLOYD & ING  
ASHFORD & WRISTON  
BANK OF HAWAII  
BAYS DEEVER LUNG ROSE & HOLMA  
BELT COLLINS HAWAII, LIMITED  
CADES SCHUTTE FLEMING & WRIGHT  
CLARK REALTY CORPORATION  
COOPER & COOPER, LLC  
D.R. HORTON, INC., SCHULER DIVISION  
DE LUZ ENTERPRISES, INC.  
DE REUS ARCHITECTS  
FERRARO CHOI & ASSOCIATES, LIMITED  
FIRST HAWAIIAN BANK  
FOREST CITY HAWAII  
FOREST SOLUTIONS, INC.  
GREENWELL FARMS, INC.  
HAWAII LAND COMPANY  
HPM BUILDING SUPPLY  
HAWAII ELECTRIC LIGHT COMPANY  
HAWAII WATER SERVICES COMPANY  
HOKULI'A  
HUALALAI RESORT  
HUNT DEVELOPMENT  
IMANAKA KUDO & FUJIMOTO  
JACOBY DEVELOPMENT, INC.  
JARDINE INVESTMENT PROPERTIES, LLC  
KAHUA RANCH, LIMITED  
KAI HAWAII, INC.  
KAMEHAMEHA INVESTMENT CORP.  
KAMEHAMEHA SCHOOLS  
KAUPULEHU DEVELOPMENTS  
KEALAKEKUA RANCH, LIMITED  
KOBAYASHI GROUP, LLC  
KOHALA RANCH DEVELOPMENT CORP.  
KTA SUPER STORES  
LANIHAU PROPERTIES, LLC  
L'ORANGE & ASSOCIATES  
M & E PACIFIC, INC.  
MARYL GROUP, INC.  
MAUNA KEA PROPERTIES, INC.  
McCANDLESS LAND & CATTLE COMPANY  
MOOERS ENTERPRISES, LLC  
THE NATURE CONSERVANCY OF HAWAII  
THE NELSON COMPANIES INCORPORATED  
NORTH HAWAII COMMUNITY HOSPITAL  
OKAHARA & ASSOCIATES, INC.  
'O'OMA BEACHSIDE VILLAGE, LLC  
PA'AHANA ENTERPRISES, LLC  
PACIFIC RESOURCE PARTNERSHIP  
PALAMANUI  
PARKER RANCH  
PBR HAWAII  
PONOHOLO RANCH, LIMITED  
QUEEN EMMA LAND COMPANY  
THE QUEEN LILI'UOKALANI TRUST  
R.M. TOWILL CORPORATION  
RIEHM OWENSBY PLANNERS ARCHITECTS  
RYAN ASSOCIATES  
SAM O. HIROTA, INC.  
THE SHOPOFF GROUP  
SUNFUELS HAWAII, LLC  
SURETY KOHALA CORPORATION  
SUTTON CONSTRUCTION, INC  
TITLE GUARANTY ESCROW SERVICES, INC.  
TSA CORPORATION  
W.H. SHIPMAN, LIMITED  
WAIMEA WATER SERVICES, INC.  
WATER RESOURCES INTERNATIONAL, INC.  
WES THOMAS ASSOCIATES  
WEST HAWAII CONCRETE  
WILSON OKAMOTO CORPORATION  
WIMBERLY ALLISON TONG & GOO

Jacqui L. Hoover  
President

P.O. BOX 2159  
KAMUELA, HAWAII 96743  
TEL: 808.885.9588

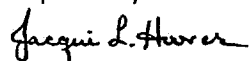
FAX: 808.885.9590  
hlpc@hawaiiintel.net

www.hawaiileewardplanning.org

HLPC believes that although a comprehensive review of Chapter 343 HRS is currently being conducted by representatives from the University of Hawaii Environmental Center, together with the William S. Richardson School of Law and the U.H. Urban Planning Department, for presentation to the Legislature at the beginning of the 2010 session, the subject legislation is needed immediately to provide clarification and address the unintended consequences of recent government policies which have erroneously expanded the situations under which an environmental assessment is required beyond those originally intended by the legislature.

HLPC respectfully requests your **favorable consideration of HB 640 HD1 SD1**. Mahalo for this opportunity to express our support for HB 640.

Respectfully submitted,



Jacqui L. Hoover, President  
Hawaii Leeward Planning Conference  
P.O. Box 2159  
Kamuela, Hawaii 96743



The REALTOR® Building  
1136 12<sup>th</sup> Avenue, Suite 220  
Honolulu, Hawaii 96816

Phone: (808) 733-7060  
Fax: (808) 737-4977  
Neighbor Islands: (888) 737-9070  
Email: har@hawaii Realtors.com

---

April 5, 2009

**The Honorable Brian T. Taniguchi, Chair**  
Senate Committee on Judiciary and Government Operations  
State Capitol, Room 219  
Honolulu, Hawaii 96813

**RE: H.B. 640, H.D. 1, S.D. 1, Relating to Environmental Impact Statements**

**HEARING: April 6, 2009 at 10:00 a.m. in Room 016**

Aloha Chair Taniguchi and Members of the Committee:

I am Myoung Oh, Government Affairs Director of the Hawai'i Association of REALTORS® ("HAR"), here to testify on behalf of HAR and our 9,600 members in Hawai'i. HAR **supports the intent** of H.B. 640, H.D. 1, S.D. 1 which exempts certain infrastructure projects from the Environmental Assessment requirement, under Hawaii Revised Statutes Chapter 343.

Based on recent court decisions, infrastructure and improvement projects that touch a State or County road require an Environmental Assessment. As a result of these decisions, homeowners who make minor improvements, regardless of the minimal environmental impact the project may have, would be required to undergo an environmental assessment, causing unnecessary delays.

We believe a legislative amendment is warranted, with the understanding that the measure will only be an interim fix, pending the suggestions and review of Chapter 343, Hawai'i Revised Statutes, by representatives from the University of Hawai'i William S. Richardson School of Law, School of Urban and Regional Planning and the Environmental Center.

HAR looks forward to working with our state lawmakers in building better communities by supporting quality growth, seeking sustainable economies and housing opportunities, embracing the cultural and environmental qualities we cherish, and protecting the rights of property owners.

Mahalo for the opportunity to testify.



**SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS**  
**State Capitol, Room 016**  
**415 South Beretania Street**  
**Honolulu, Hawaii 96813**  
**April 6, 2009**

**Subject: House Bill No. HB 640, HD 1, SD 1 Relating to Environmental Impact Statements**

Chair Taniguchi, Vice Chair Takamine and members of the committee:

My name is Jim Tollefson, President of the Chamber of Commerce of Hawaii. The Chamber of Commerce of Hawaii works on behalf of its members and the entire business community to:

- Improve the state's economic climate
- Help businesses thrive

The Chamber of Commerce of Hawaii strongly supports H.B. No. 640, HD1, SD1 as it proposes to exclude the installation and development of infrastructure and utilities within a public right-of-way or highway as the use of state or county lands for purposes of requiring an environmental assessment.

The legislation is needed because of the recent court decisions where any action that involved the use of a state or county road right of way was a "trigger" for the EA/EIS. Because an access improvement, easement, drainage, waterline, etc., is now viewed as a use of state or county lands when it touches (over, under, across) a state or county road right of way, the entire project is then required to prepare and environmental assessment for the entire project.

Requiring the preparation of a 343 HRS document for projects with insignificant environmental impacts makes a mockery of the EA/EIS process. If the legislative intent was that an EA/EIS would be required any time the project touches a public road, then the law should be changed to require an EA/EIS for all projects because all projects, at some point, connect to a public road.

HD 1 of the bill exempts 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.

SD 1 added definitions for "Primary and Secondary actions" to further clarify the intent of the proposed amendments to Chapter 343 HRS.

The current language does not address the problem when agencies have different interpretations of ministerial and discretionary permits. Chapter 343-2 provides the following definition for

"Discretionary consent" means a consent, sanction, or recommendation from an agency for which judgment and free will may be exercised by the issuing agency, as distinguished from a ministerial consent. Because of the court decision the city and county of Honolulu will not process any permit until the applicant gets approval from DOT for work in the right of way. With no ministerial permit from the County, the project will be forced to do a 343 document because of how DOT interprets discretionary and ministerial permits.

Rather than debate that issue, perhaps if the exemption focused on the action or activity rather than whether an agencies determines it to be ministerial or not will get us beyond the ministerial or discretionary approvals. As such, we suggest the following clarification be used in Section 1 of the bill:

**"§343- Exception to applicability of chapter.** (a) Notwithstanding any other law to the contrary, any action or activity to install, improve, renovate, construct or develop any infrastructure within that government road right-of-way, including but not limited to waterlines and water facilities, wastewater lines and wastewater facilities, gas lines and gas facilities, drainage facilities, electrical communication, telephone and cable television utilities, and highway, roadway, and driveway improvements, shall be exempt from the purposes of this chapter. If such infrastructure or improvements are undertaken to serve an action outside the public right-of-way or highway that could have significant cumulative, direct or indirect effects on the environment and requires discretionary consent, this section shall not apply."

H.B. No. 640, HD1, SD1 should be viewed as a short-term or interim fix as we understand that there is a comprehensive review of Chapter 343 HRS that is being conducted by representatives from the University of Hawaii's Richardson School of Law, School of Urban and Regional Planning, and the Environmental Center. The comprehensive review will allow for an objective review of Chapter 343 HRS with all of its amendments since it was initially passed in 1974.

Although not part of this legislation, we would hope that the group responsible for the comprehensive review of Chapter 343 HRS be expanded to include representatives from the business community who are and will be directly impacted by the legislation.

Again, we strongly support the approval of H.B. No. 640, HD1, SD1 with our proposed amendments to address the immediate problems caused by the Courts interpretation of Chapter 343 HRS.

Thank you for this opportunity to express our views.





P.O. Box 3000  
Honolulu, HI 96802-3000

April 3, 2009

**Testimony for in support of HB640 HD1, SD1 Relating to  
Environmental Impact Statements**

Aloha Chair Taniguchi, Vice-Chair Takamine and members of the Senate Judiciary committee.

My name is Thomas Young, Senior Vice-President, Gas Operations of The Gas Company. Thank you for the opportunity to provide testimony on HB640 HD1 SD1 Relating to Environmental Impact Statements.

The Gas Company supports HB 640, HD1 SD1 which would require an environmental assessment to those enumerated actions, with the exception of the installation and development of utility infrastructure to fulfill our obligation to serve the general public within a public right-of-way or highway as the use of state or county lands. This would ensure that gas utility lines along with other utilities in the category of installation, improvement, renovation, construction or development of any infrastructure, are not deemed to be the use of state of county lands for the purposes of section 343-5, Hawaii Revised Statutes.

Thank you for allowing The Gas Company to present these comments in support of HB 640 HD1 SD1.

## **Pa`ahana Enterprises LLC**

P.O.Box 109

Kealahou, HI 96750

Fax: 323-2304

Cell: 345-0854

E-mail: melrosek001@hawaii.rr.com

05 April 2009

Testimony in Support of  
House Bill No. 640, HD1 SD1

Monday, 06 April 2009

10:00 a.m. - Conference Room 211016

Presented to

Senate Committee on Judiciary and Government Operations

Aloha Chair Taniguchi, Vice Chair Takamine, and members of the JGO Committee,

My name is Ken Melrose and I serve as Project Manager for several clients, including non-profit school entities, who have been affected by the current interpretation on the applicability of EA requirements to even the most modest of driveway and utility service extensions within State of County roadway rights of way. I respectfully submit this testimony in strong support of HB 640, HD1 SD1.

I support the revisions proposed by the State Department of Transportation (DOT) and the Office of Environmental Quality Control (OEQC), which amends HRS §343-5(a) to clarify that Chapter 343 requirements will not apply to primary action and/or approval of the installation and development of infrastructure and utilities with a public highway Right-of-Way (ROW) to serve proposed development which does not require any discretionary public agency approval.

Recent court decisions and government policies have resulted in numerous "unintended consequences" including and not limited to interpretations by some government agencies that an Environmental Assessment (EA) is required anytime there is such minor work touching public roadways or ROWs. As a result of such interpretations, private applicant proposals for minor work within the state or county ROW now "trigger" the preparation of an EA by the applicant. These interpretations go far beyond the original intent of HRS Chapter 343, and cause unnecessary requirements, excessive costs and delays for private parties engaged in such minor work.

To date OEQC has reviewed hundreds of such minor work projects touching public roadways or ROWs to determine whether an EA is necessary. OEQC's review process is transparent and subject to review by stakeholders such as other government agencies, environmental advocates, the construction industry and the general public. To date, none of the OEQC's reviews of such minor work

projects have been challenged or questioned by the public, or any of the stakeholders. HB 640, HD1 SD1 and the revisions proposed by the DOT and OEQC would address these situations and provide an exemption for certain limited primary permits for minor work touching public roadways.

I support the revisions to this bill as proposed by the DOT and OEQC, to amend Chapter 343, Hawaii Revised Statutes, by adding a new section to read as follows: "§343- Exception to applicability of chapter. (a) Notwithstanding any other law to the contrary, any primary action that only requires a permit or approval from an approving agency that is not subject to the discretionary consent of the approving agency and that involves a secondary action limited to the installation, improvement, renovation, construction, or development of infrastructure within an existing public right-of-way or highway shall be exempt from this chapter.

I believe that although a comprehensive review of Chapter 343 HRS is currently being conducted by representatives from the University of Hawaii Environmental Center, together with the William S. Richardson School of Law and the U.H. Urban Planning Department, for presentation to the Legislature at the beginning of the 2010 session, the subject legislation is needed immediately to provide clarification and address the unintended consequences of recent government policies which have erroneously expanded the situations under which an environmental assessment is required beyond those originally intended by the legislature.

I respectfully request your favorable consideration of HB 640 HD1 SD1. Mahalo for this opportunity to express my support for HB 640.

Respectfully submitted,

Ken Melrose  
Senior Project Manager

1065 Ahua Street  
Honolulu, HI 96819  
Phone: 808-833-1681 FAX: 839-4167  
Email: [info@gcahawaii.org](mailto:info@gcahawaii.org)  
Website: [www.gcahawaii.org](http://www.gcahawaii.org)



# GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

April 6, 2009

TO: THE HONORABLE SENATOR BRIAN T. TANIGUCHI, CHAIR AND  
MEMBERS OF THE COMMITTEE ON JUDICIARY AND GOVERNMENT  
OPERATIONS

SUBJECT: H.B. 640, HD1, SD1, RELATING TO ENVIRONMENTAL IMPACT  
STATEMENTS

NOTICE OF DECISION MAKING

DATE: Monday, April 6, 2009  
TIME: 10:00 a.m.  
PLACE: Conference Room 016

Dear Chairs Taniguchi and Members of the Committee:

The General Contractors Association (GCA), an organization comprised of over five hundred and sixty (560) general contractors, subcontractors, and construction related firms, **supports** to the passage of. H.B. 640, HD1, SD1, Relating To Environmental Impact Statements.

The GCA believes that this measure will help speed up the process of construction and renovation of utilities in existing public rights of ways where there is no significant impact on the environment.

Since this exemption is limited to ministerial actions only and not any that require discretionary approval and only within existing public rights of way it should not require any environmental review.

The GCA **supports** the passage of H.B. 640, HD1, SD1, and recommends that the bill be passed.

Thank you for the opportunity to provide our views on this issue.



LAND USE RESEARCH  
FOUNDATION OF HAWAII  
700 Bishop Street, Ste. 1928  
Honolulu, Hawaii 96813  
Phone 521-4717  
Fax 536-0132

Via Capitol Website

**April 6, 2009**

**Senate Committees on Judiciary and Government Affairs  
Hearing Date: Monday, April 6, 2009 at 10:00 a.m. in CR Room 016  
Testimony in Support of **HB 640 HD1, SD1: Relating to Environmental  
Impact Statements  
(Environmental Assessment Exemptions)****

Honorable Chair Brian Taniguchi, Vice-Chair Dwight Takamine and  
Senate Committee on Judiciary and Government Affairs Committee:

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawai'i's significant natural and cultural resources and public health and safety.

LURF **supports HB 640 HD1, SD1 in its current version**, which amends HRS §343-5(a) to clarify that Chapter 343 would not apply to primary actions that require a ministerial permit, or approval of the installation and development of infrastructure and utilities within a public highway right-of-way (ROW) to serve proposed development which does not require any discretionary agency approval.

**Background.** Ever since Chapter 343 was implemented, one of the "triggers" for the preparation of an EA document has been the "use of state or county lands." In the past, this term has been interpreted to mean that an EA is required for all government projects or development projects on government lands. Also, in the past, EAs had never been required for private applications to use or "touch" state or county roadways or rights-of-way ("ROW") for minor work touching public roadways or ROWs, such as easements, drainage, connection of waterlines and sewer lines, private driveways and access improvements, utility rights of way for overhead or underground connections, etc.

Recent court decisions and government policies, however, have resulted in "unintended consequences" which include interpretations by some government agencies that an EA is "triggered" and required anytime there is such minor work touching public roadways or ROWs. As a result of such interpretations, private applicant proposals for minor work within the state or county ROW now "trigger" the preparation of an EA by the applicant. These interpretations go far beyond the original intent of HRS Chapter 343, and cause unnecessary requirements, excessive costs and delays for private parties engaged in such minor work.

Currently, OEQC has been reviewing hundreds of such minor work projects touching public roadways or ROWs to determine whether an EA is necessary. OEQC's review process is transparent and subject to review by stakeholders such as other government agencies, environmental advocates, the construction industry and the general public. As of this date, none of OEQC's reviews of such minor work projects have been challenged or questioned by the public, or any of the stakeholders. The current version of HB 640, HD1, SD1 is supported by DOT and OEQC and would address these situations and provide an exemption for certain limited primary permits for minor work touching public roadways.

Over the past year, OEQC and DOT have worked with the public, environmental advocates, State and County Agencies, and private businesses to develop appropriate legislative language to assure compliance with HRS Chapter 343.

**Amendments in SD1.** The Senate Committees on Energy and Environment (ENE) and Transportation, International and Intergovernmental Affairs (TIA) amended this bill by (1) adding definitions for "primary action" and secondary action", as recommended by the OEQC and other stakeholders; (2) changing the effective date from July 1, 2050 to July 1, 2009; and (3) making technical, nonsubstantive change for clarity. The Senate Committees on ENE and TIA recognized that the current law under chapter 343 requires an environmental assessment for minor work within the state or county right-of-way was not the intention of the Legislature when enacting Chapter 343 and that this measure, HB 640 HD1, SD1 is necessary to "clarify that certain secondary actions involving the installation, improvement, renovation, construction, and development of infrastructure within a public right-of-way or highway shall not be deemed to be the use of state or county lands for purposes of Chapter 343." SSCR 986.

**LURF's Position.** HB 640, HD1, SD1 is immediately necessary to clarify that the EA requirement should not be interpreted and expanded to include minor work touching public roadways. This bill, with the revisions suggested by DOT, serves as a valuable clarification for accepting agencies, because it provides clear direction that the described primary actions to install, improve, renovate, construct or develop infrastructure within a public right-of-way shall be exempt from this chapter and shall not be considered a "trigger" for purposes of HRS Chapter 343 requirements. Furthermore, it will help agencies avoid preparing environmental assessments that are not necessary. The importance of this measure was highlighted by the Senate Committee Report of ENE and TIA Committees who said, "[n]otwithstanding that this may be a temporary fix, obviated by the LRB's comprehensive study, your Committees find that this matter must be clarified now and cannot wait until the LRB's study is completed and its recommendations implemented through the legislative process." SSCR 986.

A comprehensive review of Chapter 343 HRS is being conducted by representatives from the University of Hawaii Environmental Center, together with the William S. Richardson School of Law and the U.H. Urban Planning Department, which will be presented to the Legislature at the beginning of the 2010 session, however, we also recognize that this legislation is immediately needed to address the unintended consequences of recent government policies which have expanded the situations under which an environmental assessment is required beyond those originally intended by the legislature.

We respectfully request your **favorable consideration of HB 640 HD1, SD1**

Thank you for the opportunity to express our **support for HB 640 HD1, SD1.**