

**HB 640 HD1**



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

March 19, 2009

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

HOUSE BILL NO. 640, HD 1

COMMITTEE ON ENERGY AND ENVIRONMENT

COMMITTEE ON TRANSPORTATION, INTERNATIONAL AND  
INTERGOVERNMENTAL AFFAIRS

House Bill 640, HD 1 exempts from the purview of Chapter 343, HRS, the environmental review law, secondary actions relating to infrastructure development within public rights-of-way that have no significant effect on the environment where the primary action does not require a discretionary approval.

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

Under Chapter 343, Hawaii Revised Statutes, before the DOT approves an applicant's request to use the state highway right-of-way (ROW), we first need to determine whether an environmental assessment (EA) is required. Pursuant to recent court rulings, the DOT must also consider secondary impacts of the overall action before we determine whether an EA is required. These court rulings apply to every phase of actions which propose both development of private property and use of state or county lands - - including applications to install infrastructure within a public highway ROW.

Requiring the DOT to evaluate secondary impacts which we do not have jurisdiction to regulate causes financial hardship for applicants without any significant public benefit. The Department does not have information or expertise to assess the secondary impacts related to the multitude of private actions which require use of the State highway ROW. We have had to seek Office of Environmental Quality Control (OEQC) assistance and recommendations regarding environmental compliance. This has significantly increased the time required for DOT to review and process applications affecting the highway ROW.

We request the following rewording of HB 640, HD 1 to clarify that Chapter 343 would not apply to approval of infrastructure within a public highway ROW to serve proposed development which does not require any discretionary agency approval. With this proposed amendment, Chapter 343 would still fully apply to agency actions and to discretionary approvals for actions requiring the use of state or county land as part of development outside a public highway ROW.

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.

(b) As used in this section, "infrastructure" includes....

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 ENERGY AND ENVIRONMENT  
SENATE COMMITTEE ON TRANSPORTATION, INTERNATIONAL AND  
INTERGOVERNMENTAL AFFAIRS**

March 19, 2009, 2:45 p.m.  
Room 225, State Capitol

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

The HHFDC supports the intent of H.B. 640, H.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 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.

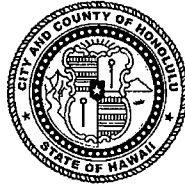
H.B. 640, H.D. 1 should be viewed as a short-term or interim fix as we understand that there is a comprehensive review of Chapter 343, HRS that is being conducted by representatives from the University of Hawaii's Richardson School of Law, School of Urban and Regional Planning, and the Environmental 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.honolulu.dpp.org](http://www.honolulu.dpp.org) • CITY WEB SITE: [www.honolulu.gov](http://www.honolulu.gov)

MUFI HANNEMANN  
MAYOR



DAVID K. TANOUE  
DIRECTOR  
ROBERT M. SUMITOMO  
DEPUTY DIRECTOR

March 19, 2009

The Honorable Mike Gabbard, Chair  
and Members of the Committee on Energy  
and Environment

The Honorable J. Kalani English, Chair  
and Members of the Committee on Transportation,  
International and Intergovernmental Affairs  
State Senate  
State Capitol  
Honolulu, Hawaii 96813

Dear Chairs Gabbard, English and Members:

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

The Department of Planning and Permitting (DPP) **supports** House Bill 640, HD1, which provides a clear statement that any 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 of environmental assessments for projects which otherwise have no adverse environmental impacts.

We strongly recommend that House Bill 640, HD1 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  
hb640hd1-jpt.doc



UNIVERSITY  
of HAWAII®  
MĀNOA

RL:2247

HB 640 HD1  
RELATING TO ENVIRONMENTAL IMPACT STATEMENTS

Senate Committee on Energy and Environment  
Senate Committee on Transportation, International and Intergovernmental Affairs

Joint Public Hearing – March 19, 2009  
2:45 p.m., State Capitol, Conference Room 225

By  
Peter Rappa, Environmental Center  
Karl Kim, Urban and Regional Planning  
Denise Antolini, Environmental Law Program

HB 640 HD1 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. We are testifying as individual faculty and our views do not represent an official position of the University of Hawaii.

The issue of whether the installation and development of infrastructure and utilities within a public right-of-way requires review under chapter 343 HRS is current and in some quarters controversial. As you know, the Legislative Reference Bureau has contracted with the University of Hawaii to conduct a study of the State's environmental review process. The research is being carried out by lead investigator Karl Kim, Department of Urban and Regional Planning, associate investigators Denise Antolini, Environmental Law Program and Peter Rappa, Environmental Center. In conducting this research, we are interviewing those most involved in the state environmental impact statement process (EIS) including federal, state and county agencies personnel, consultants, nongovernmental organizations (NGO), University faculty and others. Based on our interviews with many of the stakeholders, we think the solution to this problem may lie in fixing the exemption process and the lists created rather than putting specific exemptions in the law.

Many suggestions for changes to chapter 343 HRS have been identified in our study including changes to the law, rules and/or interpretation of existing rules that impact the question of infrastructure. We have not collected sufficient data nor have we had sufficient discussions with all the stakeholders, many which are here testifying today, to make an informed recommendation for change. We will however be addressing this issue in our report and will have specific recommendations because it has been brought to our attention by many of the more than 90 people we have interviewed to date.

We will be recommending a comprehensive revision to chapter 343 HRS as the results of the study in our report to the Legislative Reference Bureau and Legislature next year as required by Act 1

2008. We ask that the provisions of this bill be deferred until then. Any changes to chapter 343 HRS passed during this legislative session will have a detrimental effect on our study. We may also be making recommendations for changes to the law that will necessitate the repeal of this bill at a later date should it become law.

Thank you for the opportunity to comment on this bill.

**BIA-HAWAII**  
BUILDING INDUSTRY ASSOCIATION

March 19 2009

Senator Mike Gabbard, Chair  
Committee on Energy and Environment  
Senator J. Kalani English, Chair  
Transportation, International and Intergovernmental Affairs  
State Capitol, Room 225  
Honolulu, Hawaii 96813

Subject: **House Bill No. HB 640, HD1 “Relating to Environmental Impact Statements”**

Chairs Gabbard and English and Members of the Committees on Energy and Environment and Transportation, International and Intergovernmental Affairs:

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 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.

H.B. No. 640, HD1 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.

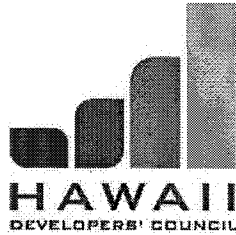


Again, we strongly support the approval of H.B. No. 640 to address the immediate problems caused by the Courts interpretation of Chapter 343 HRS.

Thank you for this opportunity to express our views.

A handwritten signature in cursive script that reads "Karen L. Nakamura".

Chief Executive Officer  
BIA-Hawaii



March 19, 2009

Senator Mike Gabbard, Chair  
COMMITTEE ON ENERGY AND ENVIRONMENT  
Senator J. Kalani English, Chair  
COMMITTEE ON TRANSPORTATION, INTERNATIONAL AND INTERGOVERNMENTAL AFFAIRS  
State Capitol, Room 225  
415 South Beretania Street  
Honolulu, Hawaii 96813

Senators Gabbard and English:

Subject: **House Bill No. HB 640, HD 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, 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 an 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.

The current language does not address the problem when agencies have different interpretations of ministerial and discretionary permits. 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:

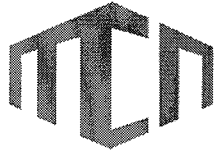
**"§343- Exception to applicability of chapter.** (a) Notwithstanding any other law to the contrary, any action or activity to install, improve, renovate, construct or develop any infrastructure within that government road right-of-way, including but not limited to waterlines and water facilities, wastewater 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 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 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.



# MAUI CONTRACTORS ASSOCIATION

March 17, 2009

Senator Mike Gabbard, Chair  
COMMITTEE ON ENERGY AND ENVIRONMENT  
Senator J. Kalani English, Chair  
COMMITTEE ON TRANSPORTATION, INTERNATIONAL AND INTERGOVERNMENTAL  
AFFAIRS  
State Capitol, Room 225  
415 South Beretania Street  
Honolulu, Hawaii 96813

Aloha Senators Gabbard and English:

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

My name is David Goode, President of the Maui Contractors Association (MCA). We represent over 200 members and associates in construction business in Maui County.

The MCA strongly supports H.B. No. 640, as proposed to exclude from an Environmental Assessment (EA) basic work in the public right of way.

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. Many of our members have been affected by these decisions by not getting building permits for projects on existing entitled land that includes something as straightforward as rebuilding a driveway or a sidewalk on State highways.

We further support the Hawaii Developer's Council proposed change to the bill remove any ambiguity as to how the Department of Transportation considers working in the right of way a "discretionary" permit:

**"§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."

Again, we strongly support the approval of H.B. No. 640, HD1 with the proposed amendments to address the immediate problems caused by the Courts interpretation of Chapter 343 HRS. We also look forward to participating in UH's review of Chapter 343.

Mahalo for the opportunity to share our views and experiences.



## Hawaii Chapter AMERICAN PUBLIC WORKS ASSOCIATION

### Chapter Office

501 Sumner Street, Suite 620  
Honolulu, HI 96817

Telephone  
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(808) 521-7148

### 2009 Officers

**President**  
Corey Mataunika, P.E.  
SSPM International, Inc

**Vice-President**  
John Lamer, P.E.  
City & County of Honolulu  
Dept of Design & Construction

**Treasurer**  
Lance Zhai, P.E.  
State of Hawaii  
Department of Transportation

**Secretary**  
Jason Lau, P.E.  
The Lintaco Consulting Group

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Dept of Accounting and General  
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State of Hawaii  
Dept of Accounting and General  
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Hawaiian Electric Company, Inc

**Chapter Historian**  
Lester Fukuda, P.E.  
HDR/Hawaii Pacific Engineers

**Past President**  
Chandra Tanaka  
Actus Land Lease

March 16, 2009

EMAILED TESTIMONY TO: [ENETestimony@Capitol.hawaii.gov](mailto:ENETestimony@Capitol.hawaii.gov)

Hearing: Thursday, March 19, 2009; 2:45 pm, CR 225

Senate Committee on Energy and Environment  
Senate Committee on Transportation, International and Intergovernmental Affairs

Honorable Senator Mike Gabbard, and Senator Kalani English, Chairs

**Subject: HB 640, HD-1 - Relating to Environmental Impact Statements**

The American Public Works Association Hawaii Chapter represents over one hundred engineering design professionals in public and private sector. **We urge you to Support HB 640, HD-1 - Relating to Environmental Impact Statements.** This bill proposes exempt from the purview of Chapter 343, HRS – Environmental review law that involves secondary actions relating to infrastructure development with public right-of-ways. We totally support this bill that would exclude public works infrastructure projects within existing public ROW's that have little to no significant impact on the environment. Public works infrastructure projects are critical to keeping Hawaii roads and utilities up to standards and protecting Hawaii's environment.

Thank you for an opportunity to express our views regarding this bill (**LN SUPPORT**).

Sincerely,  
American Public Works Association, Hawaii Chapter

Lester H. Fukuda, P.E., FACEC



## **Hawaii Agriculture Research Center**

92-1770 Kunia Road

Kunia, Hawaii 96759

Ph: 808-621-1350/Fax: 808-621-1359

**TESTIMONY BEFORE THE SENATE COMMITTEE  
ON ENERGY AND ENVIRONMENT  
AND  
TRANSPORTATION, INTERNATIONAL AND INTERGOVERNMENTAL AFFAIRS**

**HOUSE BILL 640 HD1**

**RELATING TO ENVIRONMENTAL IMPACT STATEMENTS**

**March 19, 2009**

Chairs Gabbard and English and Members of the Committees:

**HARC strongly supports HB640 HD1 Relating to Environmental Impact Statements** which exempts certain activities that do not create any environmental impact from this review process.

While HARC is not normally affected by this particular section of state law, it has been severely impacted twice in the past year while constructing agricultural buildings appurtenant to farming operations. The situations involved tying into existing drinking water systems which happen to be under a state controlled road. The cases involve hooking up fire systems required by the county and providing a new drinking water line in one case and replacing an existing drinking water line in the other.

Having to prepare environmental assessments or working with the state Department of Transportation of request from OEQC and exemption is clearly unnecessary. HARC completely supports the proposal to avoid these bottlenecks in an already difficult and complicated process.

From recent personal experience HARC can speak of the unintended consequences, anti-business and time wasting processes that have evolved with some of the well-intended prior environmental legislation.

Thank you for this opportunity to comment.

Stephanie Whalen, Executive Director, Hawaii Agriculture Research Center



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

March 17, 2009

Aloha Chair Gabbard, Vice Chair English and Members of the Energy and Environmental Protection Committee:

Aloha Chair English, Vice Chair Gabbard and Members of Transportation, International and Intergovernmental Affairs:

Testimony for HB640 HD1 Relating to Environmental Impact Statements

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 Relating to Environmental Impact Statements.

The Gas Company supports HB 640, HD1 which would require an environmental assessment to those enumerated actions, with the exception of the installation and development of infrastructure and utilities 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 or 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.

Committee on Energy and Environment  
and  
Committee on Transportation, International & Intergovernmental Affairs  
Hearing

Thursday, March 19, 2009, 2:45 p.m.  
Conference Room 225

Senator Mike Gabbard, Chair  
and  
Senator J. Kalani English, Chair



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

Dear Chairs Gabbard and English and Members of the Committee:

My testimony is in SUPPORT of HB640, HD1. 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 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. 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 Committees on Energy and Environment and Transportation, International and Intergovernmental Affairs  
Thursday, March 19, 2009  
2:45 p.m.  
Conference Room 225  
State Capitol**

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

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, 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.

The current language does not address the problem when agencies have different interpretations of ministerial and discretionary permits. 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."

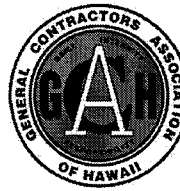
H.B. No. 640, HD1 should be viewed as a short-term or interim fix as we understand that there is a comprehensive review of Chapter 343 HRS that is being conducted by representatives from the University of Hawaii's Richardson School of Law, School of Urban and Regional Planning, and the Environmental 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 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.

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.

March 17, 2009

TO: THE HONORABLE SENATOR MIKE GABBARD, CHAIR AND MEMBERS  
OF THE COMMITTEE ON ENERGY & ENVIRONMENT

THE HONORABLE SENATOR J. KALANI ENGLISH, CHAIR AND  
MEMBERS OF THE COMMITTEE ON TRANSPORTATION,  
INTERNATIONAL AND INTERGOVERNMENTAL AFFAIRS

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

NOTICE OF HEARING

DATE: Thursday, March 19, 2009  
TIME: 2:45 p.m.  
PLACE: Conference Room 225

Dear Chairs Gabbard and English 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, 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, and recommends that the bill be passed.

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



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March, 18 2009

**The Honorable Mike Gabbard, Chair**  
Senate Committee on Energy and Environment  
**The Honorable J. Kalani English, Chair**  
Senate Committee on Transportation, International  
and Intergovernmental Affairs  
State Capitol, Room 225  
Honolulu, Hawaii 96813

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

**HEARING DATE: March 19, 2009 at 2:45 p.m.**

Aloha Chair Gabbard, Chair English and Members of the Joint 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 which exempts certain infrastructure projects from the Environmental Assessment requirement, under Hawaii Revised Statutes (HRS) 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.

HAR is concerned that the proposed language of H.B. 640, H.D. 1 should clearly define the types of projects that are exempted from the environmental assessment, and provide a definitive standard as to the nature and scope of this exemption.

We believe a legislative amendment is warranted, with the understanding that this measure will only be an interim fix pending, the suggestions and review of HRS Chapter 343 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.



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[Via Capitol Website](#)

March 19, 2009

**Senate Committees on Energy and Environment and  
Transportation, International and Intergovernmental Affairs  
Hearing Date: Thursday, March 19, 2009 at 2:45 PM in CR Room 225  
Testimony in Support of HB 640 HD1: Relating to Environmental  
Impact Statements  
(Environmental Assessment Exemptions)**

Honorable Chair Mike Gabbard, Vice Chair J. Kalani English, and Members of the Committee on Energy and Environment, Honorable Chair J. Kalani English, Vice Chair Mike Gabbard and Members of the Transportation, International and Intergovernmental 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, and 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 would not apply to primary action or approval of the installation and development of infrastructure and utilities within a public highway 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. HB 640, HD1 and the revisions proposed by DOT and OEQC 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.

**Revisions proposed by DOT and OEQC.** We support the revisions to this bill which are proposed by DOT and OEQC, which provide that Chapter 343, Hawaii Revised Statutes, be 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.

**LURF’s Position.** HB 640, HD1 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.

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.**

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