

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

February 3, 2011

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

HOUSE BILL NO. 424

COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION /
COMMITTEE ON JUDICIARY AND LABOR

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 support the extension of the sunset date from July 1, 2011 to July 1, 2013.

NAIOP

COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION
HAWAII CHAPTER

February 1, 2011

The Hon. Mina Morita, Chair, and
Members of the House Committee on
Energy and the Environment
The Hon. Jerry Chang, Chair, and
Members of the House Committee on
Water, Land and Ocean Resources
State Capitol, Room 325
Honolulu, Hawaii 96813

Re: Testimony in Support of House Bill No. 424 Relating to Environmental Impact
Statements

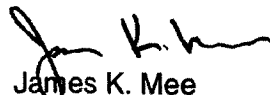
Dear Chairs Morita and Chang and Committee Members:

I am submitting this testimony on behalf of NAIOP Hawaii. We are the Hawaii chapter of NAIOP, the Commercial Real Estate Development Association, which is the leading national organization for developers, owners and related professionals in office, industrial and mixed-use real estate. The local chapter comprises property owners, managers, developers, financial institutions and real estate related professionals who are involved in the areas of commercial and industrial real estate in the State of Hawaii.

We strongly support this bill. It extends the sunset date for Act 87 of the 2009 Session Laws. Act 87 was first enacted because of substantial concerns in the real estate industry and government agencies that, in light of the *Superferry* decision, preparation of an environmental assessment or impact statement would be required for minor uses or modifications within an existing public right-of-way such as utility connections. The 2009 Legislature believed that such minor uses of public rights-of-way should not trigger the provisions of Chapter 343. We believe the same rationale is still applicable and support extension of the sunset date.

Thank you for the opportunity to testify on this measure.

Very truly yours,



James K. Mee
Chair, Legislative Affairs Committee

**Testimony to the House Committees on Energy & Environmental Protection
and Water, Land, & Ocean Resources
Thursday, February 3, 2011; 9:00 a.m.
Conference Room 325**

**RE: HOUSE BILL NO. 424 RELATING TO ENVIRONMENTAL IMPACT
STATEMENTS**

Chairs Morita and Chang, Vice Chairs Coffman and Har, and Members of the Committees:

The Chamber of Commerce of Hawaii **strongly supports** H.B. No. 424, as it proposes to extend the sunset date for EIS exceptions for secondary actions from July 1, 2011, to July 1, 2013.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the “Voice of Business” in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state’s economic climate and to foster positive action on issues of common concern.

The purpose of this Act is to delineate a clear exemption to the applicability of Chapter 343, Hawaii Revised Statutes, the state’s environmental impact statement law, when the primary action is not subject to a discretionary consent or a public hearing and the secondary action is ancillary and limited to the installation, improvement, renovation, construction, or development of infrastructure within an existing 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. 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 and cases with minor utility or access concerns is not the intent 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.

Again, we strongly support the approval of H.B. No. 424 to address the immediate problems caused by the Courts interpretation of Chapter 343 HRS. Our preference is for a longer sunset period.

Thank you for this opportunity to express our views.

BIA-HAWAII
BUILDING INDUSTRY ASSOCIATION

February 3, 2011

Representative Mina Morita, Chair
Committee on Energy & Environmental Protection
Representative Jerry Change, Chair
Committee on Water, Land and Ocean Resources
State Capitol, Room 325
415 South Beretania Street
Honolulu, Hawaii 96813

Representatives Morita and Chang and Members of the Joint Committees:

Subject: **House Bill No. HB 424 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. 424 as it proposes to extend the sunset date to July 1, 2013 for EIS exceptions for secondary actions authorized under Act 87 SLH, 2009. Act 87 is scheduled to sunset on June 30, 2011.

The purpose of this Act is to delineate a clear exemption to the applicability of Chapter 343, Hawaii Revised Statutes, the state's environmental impact statement law, when the primary action is not subject to a discretionary consent or a public hearing and the secondary action is ancillary and limited to the installation, improvement, renovation, construction, or development of infrastructure within an existing 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. 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.

Again, we strongly support the approval of H.B. No. 424 to address the immediate problems caused by the Courts interpretation of Chapter 343 HRS.

Thank you for this opportunity to express our views.



February 3, 2011

Working together for Kapolei

Representative Mina Morita, Chair
Committee on Energy & Environmental Protection

Representative Jerry Change, Chair
Committee on Water, Land and Ocean Resources

State Capitol, Room 325
9 AM – joint hearing
415 South Beretania Street
Honolulu, Hawaii 96813

Representatives Morita and Chang:

Subject: **House Bill No. HB 424 Relating to Environmental Impact Statements**

By way of introduction, my name is Attilio Leonardi, Jr., President of the Kapolei Chamber of Commerce. The Chamber works on behalf of its members and the entire business committee to improve the regional and state economic climate, as well as help Kapolei businesses to establish themselves, grow and thrive.

The Kapolei Chamber strongly supports H.B. No. 424, as it proposes to extend the sunset date to July 1, 2013 for EIS exceptions for secondary actions authorized under Act 87 SLH, 2009. Act 87 is scheduled to sunset on June 30, 2011.

The purpose of this Act is to delineate a clear exemption to the applicability of Chapter 343, Hawaii Revised Statutes, the state's environmental impact statement law, when the primary action is not subject to a discretionary consent or a public hearing and the secondary action is ancillary and limited to the installation, improvement, renovation, construction, or development of infrastructure within an existing public right-of-way.

(more)

(2)

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.

Here in Kapolei, we are in the midst of developing the new city. Already blessed with attractive residential communities and a thriving business environment, Kapolei is the site of the UH West-Oahu campus, the new state judiciary complex, and the Salvation Army Kroc Center, as well as the start-up location of the elevated fixed-rail project. We need to keep development on track to realize the potential, and the promise, of this new city on the Ewa plain.

Again, we at the Kapolei Chamber strongly support the approval of H.B. No. 424 to address the immediate problems caused by the Court's interpretation of Chapter 343 HRS.

Thank you for this opportunity to express the views of the Kapolei Chamber of Commerce.

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February 1, 2011

The Honorable Hermina M. Morita, Chair
House Committee on Energy & Environmental Protection

The Honorable Jerry L. Chang, Chair
House Committee on Water, Land and Ocean Resources
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 424 Relating to Environmental Impact Statement

HEARING: Thursday, February 3, 2011 at 9:00 a.m.

Aloha Chair Morita, Chair Chang and Members of the Joint Committees:

I am Myoung Oh, Government Affairs Director of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, testifying on behalf of its 8,500 members in Hawai'i. HAR **supports** H.B. 424 which extends the sunset date of Act 87, Session Laws of Hawaii 2009 that exempts from the purview of HRS Chapter 343 the environmental review law, that involve secondary actions limited to infrastructure development within public right-of-ways.

Based on the decision by the Hawai'i Supreme Court in the Koa Ridge case, infrastructure and improvements that touch a state or county road required an Environmental Assessment/Environmental Impact Study. The consequence of this decision is that minor improvements regardless of their environmental impact are required to submit an EA/EIS.

Clarification and balance to the environmental review process is important because the costs to prepare an EA/EIS are substantial regardless of whether the parcel of land is small or large. By excluding the EA/EIS requirement for government-owned rights-of-ways, the burden on homeowners who make minor improvements will be reduced, particularly where the environmental impact of the project may be minimal.

Moreover, HAR believes that the exemption should not only be extended but remain permanent.

Mahalo for the opportunity to testify.



Testimony before the House Committees on Energy and Environmental Protection and Water, Land, & Ocean Resources

**By Rouen Liu
Permit Engineer, Engineering Department
Hawaiian Electric Company, Inc.**

February 3, 2011

**House Bill 424
Relating to Environmental Impact Statements**

Chairs Morita and Chang, Vice Chairs Coffman and Har and Members of the Committees:

My name is Rouen Liu and I am testifying on behalf of the Hawaiian Electric Company and its subsidiaries, Hawaii Electric Light Company and Maui Electric Company.

Position:

We Support HB424 which extends the sunset date of Act 87, Session Laws of Hawaii 2009, to July 1, 2013. We would even support making Act 87 permanent as written in HB 1315.

Comments:

- Act 87 served to allow timely routine electrical service connections to our customers.

Thank you for the opportunity to testify on this matter.