

HB 424

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



LORETTA J. FUDDY, A.C.S.W., M.P.H.
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In reply, please refer to:
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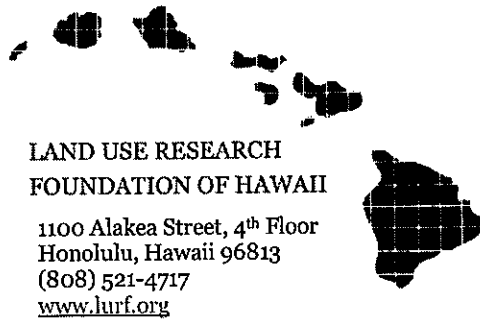
HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION
HOUSE COMMITTEE ON WATER, LAND & OCEAN RESOURCES
HB424, RELATING TO ENVIRONMENTAL IMPACT STATEMENTS

Testimony of Loretta J. Fuddy, A.C.S.W., M.P.H.
Acting Director of Health

February 3, 2011

- 1 **Department's Position:** The Office of Environmental Quality Control supports HB424.
- 2 **Fiscal Implications:** The clear process provided by Act 87, which HB424 proposes to extend, saves
- 3 time and money for proponents of small, environmentally insignificant projects from the requirements of
- 4 Chapter 343, Hawaii Revised Statutes. It also saves staff time and effort at the permitting agencies who
- 5 have to process Chapter 343, HRS, environmental studies.
- 6 **Purpose and Justification:** HB424 extends the sunset date of Act 87 from July 1, 2011 to July 1, 2013.
- 7 Act 87 "exempts" action that requires a permit or approval that is not subject to a discretionary consent
- 8 and that involves a secondary action that is ancillary and limited to the installation, improvement,
- 9 renovation, construction, or development of infrastructure within an existing public right-of-way or
- 10 highway. The extension of the sunset date of Act 87, provides assistance and clear guidance to agency
- 11 staff, with respect to projects in the right-of-way corridors without second-guessing whether a project
- 12 needs to prepare an environmental assessment or environmental impact statement.

13 Thank you for the opportunity to testify.



February 3, 2011

Representative Hermina Morita, Chair and Representative Denny Coffman, Vice Chair
Committee on Energy & Environmental Protection
Representative Jerry Chang, Chair and Representative Sharon Har, Vice Chair
Committee on Water Land and Ocean Resources

Testimony of the Land Use Research Foundation of Hawaii in Support of HB 424, Relating to Environmental Impact Statements. (Extends the sunset date for EIS exceptions for secondary actions pursuant to Act 87, Session Laws 2009, from July 1, 2011, to July 1, 2013.)

Thursday, February 3, 2011 at 9:00 a.m. in CR 325

My name is David 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 and rational land use planning, legislation and regulation.

LURF **supports HB 424** which extends the sunset date of Act 87, Session Laws of Hawaii 2009 (Act 87), from July 1, 2011, to July 1, 2013. Although LURF supports making Act 87 permanent, it also supports this bill which would repeal the sunset date of July 1, 2011 and extend Act 87 to 2013.

HB 424. Act 87 excepts from the environmental impact statement (EIS) law, certain primary actions not subject to discretionary consent and involving ancillary secondary actions limited to infrastructure in public rights-of-way (ROW) or exempt highways. Extending the sunset date of Act 87 pursuant to §343-5(a), Hawaii Revised Statutes (HRS), would 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 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 environmental assessment (EA) document has been the "use of state or county lands." In the past, prior to the passage of Act 87 in 2009, the term was interpreted to mean that an EA is required for all government projects or development projects on government lands. Also, in the past, EAs were never required for private applications to use or "touch" state or county roadways or ROW for minor work touching public roadways, 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.

Prior to the passage of Act 87, the Office of Environmental Quality Control (OEQC) had been reviewing hundreds of such minor work projects touching public roadways or ROW to determine whether an EA was necessary. OEQC's review process was, and presently remains

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. When adopted, Act 87 was supported by the State Department of Transportation (DOT) and OEQC, and addressed these situations, providing 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.

LURF's Position. The extension of Act 87 is necessary to continue to clarify that the EA requirement should not be interpreted and expanded to include minor work touching public roadways. Although LURF supports extending Act 87 permanently, it also supports HB 424, which extends Act 87 to July 1, 2013. The extension of Act 87 will help private parties and agencies avoid preparing EAs that are not necessary. The importance of this measure was highlighted in 2009 by the Senate Committee Report of ENE and TIA Committees, which 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." Senate Standing Committee Report 986.

We respectfully request your **favorable consideration of HB 424**. Thank you for the opportunity to testify on this matter.

HB 424

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Hearing on HB424
House Committee on Energy and Environmental Protection
&
Committee on Water, Land & Ocean Resources
Hearing: Feb. 3, 2011 9:00 am
Conference Room 325

Dear Chair Morita, Chair Chang, Vice-Chair Coffman, Vice-Chair Har, and Members of the Committees:

I write in **OPPOSITION** to **HB424** because there is no justification provided for the two-year extension of Act 87 (2009).

If an extension is granted, then the Legislature should require an objective analysis that the extension continues to be warranted.

Whatever the motive, the mis-interpretation in the past by some state agencies of the scope of the state's environmental review law is not a sound policy reason for continuing this kind of piecemeal change to Chapter 343.

Thank you.

Emailed to: ENEstimony@capitol.hawaii.gov