

HB 424,

SD1

NEAL ABERCROMBIE
GOVERNOR OF HAWAII



GARY L. HOOSER
DIRECTOR

STATE OF HAWAII
OFFICE OF ENVIRONMENTAL QUALITY CONTROL
235 S BERETANIA ST. SUITE 702
HONOLULU, HAWAII 96813
Tel. (808) 586-4185
Fax. (808) 586-4186
Email: oeqc@doh.hawaii.gov

SENATE COMMITTEE ON ENERGY AND ENVIRONMENT

HB 424 SD1, RELATING TO ENVIRONMENTAL IMPACT STATEMENTS

Testimony of Gary Hooser
Director of the Office of Environmental Quality Control

March 31, 2011

1 **Office's Position:** The Office of Environmental Quality Control (OEQC) supports HB424, SD1.

2 **Fiscal Implications:** There are no immediate fiscal impacts to the office of OEQC or the State
3 budget.

4 **Purpose and Justification:** Act 87 of 2009 was enacted to alleviate concerns about
5 insignificant environmental impacts of ancillary "secondary action" in the right-of-way when the
6 "primary action" is not subject to discretionary consent or public hearing, and exempt such
7 actions from unnecessarily preparing environmental assessments or impact statements. The
8 sunset date of Act 87 has been extended from July 1, 2011 to July 31, 2013.

9 HB424, SD1, requires OEQC to submit a report of findings and recommendations,
10 including proposed legislation, to the Legislature no later than twenty days before the convening
11 of the Regular Session of 2012.

12 We encourage state and county agencies, in situations where there are clearly no
13 significant environmental impacts to be more confident in the provisions provided in Act 87 or
14 utilize existing exemption lists to clear Chapter 343, HRS requirements. The OEQC is available

1 for consultation however Act 87 and existing exemption lists are available so that agencies may
2 move forward without delay or consultation in situations that fall within those parameters.

3 Thank you for the opportunity to testify.



**Testimony to the Senate Committee on Energy and Environment
Thursday, March 31, 2011; 3:00 p.m.
Conference Room 225
Hawaii State Capitol**

**RE: HOUSE BILL NO. 424 SD1 RELATING TO ENVIRONMENTAL IMPACT
STATEMENTS**

Chair Gabbard, Vice Chair English, and Members of the Committee:

The Chamber of Commerce of Hawaii **strongly supports** H.B. No. 424 SD1, 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 SD1 to address the immediate problems caused by the Courts interpretation of Chapter 343 HRS. Our preference is for a longer sunset period that was included in the Senate version.

Thank you for this opportunity to express our views.



**Hawai'i
Association of
REALTORS®**
www.hawaiirealtors.com

The REALTOR® Building
1136 12th Avenue, Suite 220
Honolulu, Hawaii 96816

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

March 31, 2011

The Honorable Mike Gabbard, Chair
Senate Committee on Energy and Environment
State Capitol, Room 225
Honolulu, Hawaii 96813

RE: H.B. 424, S.D. 1, Relating to Environmental Impact Statements

HEARING: Thursday, March 31, 2011, at 3:00 p.m.

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

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. HAR **supports** H.B. 424, S.D. 1, which extends the sunset date for EIS exceptions for secondary actions from July 1, 2011, to July 1, 2013.

Based on the court decisions, infrastructure and improvements that touch a state or county road now requires an Environmental Assessment ("EA")/Environmental Impact Study ("EIS"). The consequence of these decisions was 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.

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

Mahalo for the opportunity to testify.





LAND USE RESEARCH
FOUNDATION OF HAWAII

1100 Alakea Street, 4th Floor
Honolulu, Hawaii 96813
(808) 521-4717
www.lurf.org



March 31, 2011

Senator Mike Gabbard, Chair and Senator Will Espero, Vice Chair
Senate Committee on Transportation and International Affairs

Support and Requested Amendments to HB 424, SD1, 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 and requires report to State Department of Health Office of Environmental Quality Control (OEQC).

Friday, March 31, 2011 at 3:00 p.m. in CR 225

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.

While LURF **supports** Section 1 of **HB 424, SD1** which extends the sunset date of Act 87, Session Laws of Hawaii 2009 (Act 87), from July 1, 2011, to July 1, 2013, **and remove Section 2 of the bill, because it is unnecessary and could be burdensome. LURF also respectfully requests making Act 87 permanent**, as it has proven to be a fair, reasonable and workable process.

With all of the staffing shortage and budget challenges at the Office of Environmental Quality Control ("OEQC"), LURF **questions the necessity for Section 2** of HB 424, SD1, which requires OEQC to report findings and recommendations, including proposed legislation, to the legislature prior to the 2012 session regarding the effectiveness of Act 87. From 2007 to 2009, LURF worked closely with OEQC, the State Department of Transportation (DOT) and stakeholders in crafting language that led to the adoption of Act 87 in 2009. On February 24, 2009, OEQC testified in strong support before the House Water, Land & Ocean Resources Committee and said "the requirement of an environmental assessment because of the public right-of-way issue has created undue costs and delays to [these] minor projects." OEQC went on to say that "the proposed amendments will allow OEQC to fully direct its resources on reviewing projects that are likely to create more substantive impacts to the state's fragile environment." See OEQC, February 29, 2009 testimony attached.

HB 424, SD1. Act 87 (2009) 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. The Department of Transportation, Chamber of Commerce of Hawaii and the Hawaiian Electric Company also support this bill.

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, the term was being 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.

In 2007 and 2008, however, as a result of legal interpretations of court cases by certain state and county agencies, various state and county agencies began requiring residents to obtain EAs for minor utility connections to their existing lots. As a result, we understand that OEQC, which had assumed the responsibility of determining whether an EA was necessary, was burdened with the review of a backlog of several hundred of such minor work projects touching public roadways or ROW.

Between 2008 and 2009, OEQC, DOT and LURF worked for over a year with the public, environmental advocates, state and county agencies, and private businesses to develop appropriate legislative language to assure compliance with HRS Chapter 343. OEQC, DOT and LURF supported the adoption of Act 87 (2009), which provided an exemption for certain limited primary permits for minor work touching public roadways.

Since the enactment of Act 87, we understand that OEQC’s review process has remained transparent and subject to review by stakeholders such as other government agencies, environmental advocates, the construction industry and the general public. We also understand that none of OEQC’s determinations regarding such minor work projects have been challenged or questioned by the public or any of the stakeholders.

LURF’s Position. LURF supports Section 1 which extends Act 87, which 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 a permanent extension of Act 87, we also support the subject bill which extends Act 87 to 2013. The extension of Act 87 will help private parties and agencies avoid preparing unnecessary EAs. The importance of this measure was highlighted in 2009 by the Senate Committee Report by ENE and TIA Committees, which provided, “[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.” HB 640 (2009), Senate Standing Committee Report 986.

However, LURF respectfully **questions the necessity for Section 2**, which unnecessarily requires OEQC to spend more staff time to report on the effectiveness of Act 87. As evidenced by OEQC’s testimony in 2009 and LURF’s close working relationship in drafting the language for Act 87, it is LURF’s understanding that Act 87 is necessary and continues to work efficiently with the safeguards provided under Chapter 343, HRS. Therefore, LURF respectfully requests that the bill be amended and Section 2 be removed from HB 424, SD1.

We respectfully request your **favorable consideration of HB 424, SD1 and LURF’s recommended amendments to remove Section 2 of the bill and to make Act 87 permanent**. Thank you for the opportunity to testify on this matter.

LINDA LINGLE
Governor of Hawai'i



KATHERINE PUANA KEALOHA
Director

Telephone (808) 586-4185
Facsimile (808) 586-4186
Electronic Mail: oeqc@doh.hawaii.gov

STATE OF HAWAII
OFFICE OF ENVIRONMENTAL QUALITY CONTROL
Department of Health
235 South Beretania Street
Lelopapa A Kamehameha, Suite 702
Honolulu, Hawai'i 96813

Committee on Energy & Environmental Protection
Committee on Water, Land, & Ocean Resources
HB640, Relating to Environmental Impact Statements

Testimony of Katherine Puana Kealoha, Esq.
Director of the Office of Environmental Quality Control
February 24, 2009

Bill No. 640
Support (Y) N
Date 2/23/09
Time 1414
Cat AF (S) AX BC
Type (1) 2 WI

1 **Department's Position:** The Office of Environmental Quality Control (OEQC) strongly supports this
2 measure.

3 **Fiscal Implications:** The approval of HB640, relating to environmental impact statements, will
4 provide relief to hundreds of projects that have been delayed because of the public right-of-way issue. A
5 majority of these projects are minor and do not require environmental studies. The requirement of an
6 environmental assessment because of the public right-of-way issue has created undue costs and delays to
7 these minor projects.

8 **Purpose and Justification:** HB640, excludes the installation and development of infrastructure and
9 utilities within a public right-of-way or highway as the use of state or county lands for purposes of
10 requiring an environmental assessment. The safeguards for environmental protection, as provided under
11 Chapter 343, HRS, are adequate and the proposed amendments will allow OEQC to fully direct its
12 resources on reviewing projects that are likely to create more substantive impacts to the state's fragile
13 environment.

1 OEQC has worked diligently with the public, many environmental advocates, State and County
2 Agencies, and private businesses to come up with language that would be appropriate in order to assure
3 environmental compliance with HRS 343.

4 Thank you for considering our testimony.

Testimony before the Senate Committee on Energy and Environment

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

March 31, 2011

**House Bill 424 SD1
Relating to Environmental Impact Statements**

Chair Gabbard, Vice Chair English and Members of the Committee:

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 SD1 which extends the sunset date of Act 87, Session Laws of Hawaii to July 1, 2013. We would even support making Act 87 permanent.

Comments:

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

Thank you for the opportunity to testify on this matter.