

NEAL ABERCROMBIE
GOVERNOR OF HAWAII



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LATE TESTIMONY

HOUSE COMMITTEE ON WATER, LAND, & OCEAN RESOURCES
HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION
SB 723 SD1, RELATING TO ENVIRONMENTAL IMPACT STATEMENTS

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

March 21, 2011

- 1 **Office's Position:** The Office of Environmental Quality Control (OEQC) offers these comments
- 2 about SB 723, SD1. There is no conclusive data to show that Act 87 significantly resolved
- 3 permitting concerns for projects in the right-of-way, as identified during the 2008 legislative
- 4 session.
- 5 **Fiscal Implications:** There are no direct fiscal impacts to the OEQC or the State budget.
- 6 **Purpose and Justification:** Act 87 of 2009 was enacted to alleviate concerns about
- 7 insignificant environmental impacts of ancillary "secondary action" in the right-of-way when the
- 8 "primary action" is not subject to discretionary consent or public hearing, and exempt such
- 9 actions from unnecessarily preparing environmental assessments or impact statements. OEQC
- 10 continues to receive inquires from agencies about the need for environmental assessments or
- 11 environmental impact statements for projects in the right-of-way. The OEQC would like to
- 12 encourage state and county agencies to evaluate projects and actions and in cases where there is
- 13 an unambiguous expectation of insignificant environmental impacts, to either utilize Act 87 or to
- 14 utilize their existing exemption lists to clear Chapter 343, HRS requirements. Furthermore,

- 1 while staffing and resources are limited, the OEQC is available for Chapter 343 consultation and
- 2 welcomes agency inquiries.
- 3 Thank you for the opportunity to testify.



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March 21, 2011

Representative Denny Coffman, Acting Chair and Members
House Committee on Energy and Environmental Protection
Representative Jerry Chang, Chair and Representative Sharon Har, Vice Chair and Members
House Committee on Water Land and Ocean Resources.

Support and Requested Amendments to SB 723, SD1 Relating to Environmental Impact Statements (Extends sunset date of Act 87 to 2015, exempts public right of ways or highways from Chapter 343, Hawaii Revised Statutes.)

Monday, March 21, 2011 at 9:15 a.m. in CR 325

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 Hawaii's significant natural and cultural resources and public health and safety.

While LURF **supports SB 723, SD1** which extends the sunset date of Act 87, Session Laws of Hawaii 2009 (Act 87), from July 1, 2011, to July 1, 2015, however we **also respectfully requests making Act 87 permanent**, as it has proven to be a fair, reasonable and workable process .

SB 723, SD1. 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, 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 the Office of Environmental Quality Control (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, the State Department of Transportation (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. 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 a permanent extension of Act 87, we also support the subject bill which extends Act 87 to 2015. 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." Senate Standing Committee Report 986.

We respectfully request your **favorable consideration of SB 723, SD1 and LURF's recommended amendment to make Act 87 permanent.** Thank you for the opportunity to testify on this matter.