



LATE TESTIMONY

LAND USE RESEARCH
FOUNDATION OF HAWAII

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March 1, 2011

Senator Clayton Hee and Senator Maile Shimabukuro, Vice Chair
Senate Committee on Judiciary and Labor

Support of and Proposed Amendments to SB 723, 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.)

Tuesday, March 1, 2011 at 9:00 a.m. in CR 308

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** which extends the sunset date of Act 87, Session Laws of Hawaii 2009 (Act 87), from July 1, 2011, to July 1, 2015, we **also respectfully request the following amendments to SB 723:**

- Making Act 87 permanent, as it has been shown to be a fair, reasonable and workable process; and
- Amending SB 723 to include the provisions of SB 685, which proposes clarifications to the current law relating to the environmental review process, environmental assessments (EA) and environmental impact statements (EIS); requires a supplemental EAs, or supplemental EIS to be provided if an action by an agency or applicant is anticipated to have a significant effect on the environment; and establishes public disclosure system of environmental review.

SB 723. 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.

SB 685, proposes clarifications to the current law relating to the environmental review process and the requirements relating to EAs and EIS. We believe that the clarifications in SB 685 will provide certainty and predictability to Chapter 343 and the environmental review system, and allow responsible development of government and private projects while continuing to protect and preserve Hawaii's environment. See attached SB 685.

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 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.

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 a permanent extension of Act 87 pursuant to SB 1547, it also supports the subject bill which extends the Act to 2015. 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 by 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.

As noted above, we believe amending SB 723 to add the clarifications in SB 685 will provide certainty and predictability to Chapter 343 and the environmental review system, and allow responsible development of government and private projects while continuing to protect and preserve Hawaii’s environment.

We respectfully request your **favorable consideration of SB 723 and LURF’s recommended amendments**. Thank you for the opportunity to testify on this matter.

Attachment: SB 685 (Uploaded separately on website)

March 1, 2011

The Honorable Clayton Hee, Chair
Senate Committee on Judiciary and Labor
State Capitol, Room 016
Honolulu, Hawaii 96813

LATE TESTIMONY

RE: S.B. 723, Relating to Environmental Impact Statements

HEARING: Tuesday, March 1, 2011, at 9:00 a.m.

Aloha Chair Hee, Vice Chair Shimabukuro, and Members of the Committee:

I am **Myoung Oh**, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® (“HAR”), the voice of real estate in Hawai'i, and its 8,500 members. **HAR supports** S.B. 723 which extends the sunset date of Act 87, Session Laws of Hawai'i 2009, which exempts from the purview of Hawai'i Revised Statutes, Chapter 343, the environmental review law, that involve secondary actions limited to infrastructure development within public right-of-ways.

Based on the court decisions, infrastructure and improvements that touch a state or county road required 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.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 01, 2011 7:25 AM
To: JDLEstimony
Cc: ashman.janet@gmail.com
Subject: Testimony for SB723 on 3/1/2011 9:00:00 AM

LATE TESTIMONY

Testimony for JDL 3/1/2011 9:00:00 AM SB723

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: Hawaii Farm Bureau Federation
Organization: Hawaii Farm Bureau Federation
Address:
Phone:
E-mail: ashman.janet@gmail.com
Submitted on: 3/1/2011

Comments:
Strong support of this measure.

LATE TESTIMONY

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 28, 2011 2:23 PM
To: JDLTestimony
Cc: jeannine@hawaii.rr.com
Subject: Testimony for SB723 on 3/1/2011 9:00:00 AM

Testimony for JDL 3/1/2011 9:00:00 AM SB723

Conference room: 016
Testifier position: oppose
Testifier will be present: No
Submitted by: Jeannine Johnson
Organization: Individual
Address:
Phone:
E-mail: jeannine@hawaii.rr.com
Submitted on: 2/28/2011

Comments:

Please be mindful that whenever all of the developers and their industry say something is so great for Hawai'i, it usually means that it's great for their businesses but bad for Hawai'i. Future generations will look upon your actions with utter dismay or thankfulness. Which one will it be?

LATE TESTIMONY

Testimony before the Senate Committee on Judiciary and Labor

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

March 1, 2011

Senate Bill 723
Relating to Environmental Impact Statements

Chair Hee, Vice Chair Shimabukuro 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 SB723 which extends the sunset date of Act 87, Session Laws of Hawaii to July 1, 2015. 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.