

NEAL ABERCROMBIE
GOVERNOR OF HAWAII



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HOUSE COMMITTEE ON FINANCE

SB 723 SD1, HD1, RELATING TO ENVIRONMENTAL IMPACT STATEMENTS

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

April 1, 2011

1 **Office's Position:** The Office of Environmental Quality Control (OEQC) respectfully requests
2 that your esteemed committee amend SB723, SD1, HD1 with respect to Act 87, to reflect the
3 contents of HB424, SD1 which contains similar content.

4 **Fiscal Implications:** There are no direct fiscal impacts to the OEQC or the State budget.

5 **Purpose and Justification:** A very similar version of this SB723 was heard in the Senate
6 Committee on Energy and Environment yesterday, March 31, 2011. That version, HB424, SD1,
7 requires OEQC to submit a report of findings and recommendations, including proposed
8 legislation, to the Legislature no later than twenty days before the convening of the Regular
9 Session of 2012.

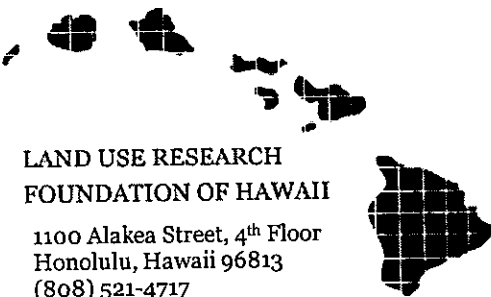
10 Act 87 of 2009 was enacted to alleviate concerns about insignificant environmental
11 impacts of ancillary "secondary action" in the right-of-way when the "primary action" is not
12 subject to discretionary consent or public hearing, and exempt such actions from unnecessarily
13 preparing environmental assessments or impact statements.

14 In spite of Act 87, OEQC continues to receive inquires from agencies about the need for
15 environmental assessments or environmental impact statements for projects in the right-of-way.

1 The OEQC would like to encourage state and county agencies to evaluate projects and actions
2 and in cases where there is an unambiguous expectation of insignificant environmental impacts,
3 to either utilize Act 87 or to utilize their existing exemption lists to clear Chapter 343, HRS
4 requirements. Furthermore, while staffing and resources are limited, the OEQC is available for
5 Chapter 343 consultation and welcomes agency inquiries.

6 The amendments proposed by HB424, SD1 would allow OEQC time to consider the best
7 resolution to ancillary secondary impacts of projects in the right-of-way that do not trigger
8 Chapter 343, HRS. The OEQC therefore encourages your committee to amend the measure
9 before you to reflect the language contained within HB424, SD1.

10 Thank you for the opportunity to testify.



LAND USE RESEARCH
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April 1, 2011

Representative Marcus R. Oshiro, Chair and Marilyn B. Lee, Vice Chair
House Committee on Finance

Support and Requested Amendment to SB 723, SD1, HD1 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.)

Friday, April 1, 2011 at 2:00 p.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, SD1, HD1**, 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 request and amendment which would make Act 87 permanent**, as it has been shown to be a fair, reasonable and workable process.

SB 723, SD1, HD1. Act 87 accepts 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 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. Although **LURF supports SB 723, SD1, HD1**, which extends Act 87 to 2015, however, **LURF also supports a permanent extension of Act 87**. 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. The extension of Act 87 will also help private parties and agencies avoid preparing EAs that are not necessary.

We respectfully request your **favorable consideration of SB 723, SD1, HD1 and LURF's recommended amendment to make Act 87 permanent.**

Thank you for the opportunity to testify on this matter.

**Testimony to the House Committee on Finance
Friday, April 1, 2011; 2:00 p.m.
Conference Room 308
Agenda #1**

**RE: SENATE BILL NO. 723 SD1 HD1 RELATING TO ENVIRONMENTAL
IMPACT STATEMENTS**

Chair Oshiro, Vice Chair Lee and Members of the Committee:

The Chamber of Commerce of Hawaii **strongly supports** S.B. No. 723 SD1 HD1, as it proposes to extend the sunset date of Act 87 from July 1, 2011, to July 1, 2015.

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.

We strongly support the approval of S.B. No. 723 to address the immediate problems caused by the Courts interpretation of Chapter 343 HRS.

Thank you for this opportunity to express our views.



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April 1, 2011

The Honorable Marcus R. Oshiro, Chair
House Committee on Finance
State Capitol, Room 308
Honolulu, Hawaii 96813

RE: S.B. 723, S.D. 1, H.D. 1, Relating to Environmental Impact Statements

HEARING: Friday, April 1, 2011, at 2:00 p.m.

Aloha Chair Oshiro, Vice Chair Lee, 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, S.D. 1, H.D. 1, which extends the sunset date of Act 87, Session Laws of Hawai'i 2009, from July 1, 2011, to July 1, 2015.

Act 87 exempts from the Environmental Impact Statement ("EIS") law under chapter 343, Hawaii Revised Statutes, certain primary actions not subject to discretionary consent and involving ancillary secondary actions limited to infrastructure work in public rights-of-way or highways.

Based on the court decisions, infrastructure and improvements that touch a state or county road now requires an Environmental Assessment ("EA")/EIS. The consequences of these decisions were that minor improvements, regardless of their environmental impact, were 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.



Testimony before the House Committee on Finance

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

April 1, 2011, Agenda #1

Senate Bill 723 SD1 HD1
Relating to Environmental Impact Statements

Chair Oshiro, Vice Chair Lee 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 SB 723, SD1, HD1 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 submit testimony on this matter.