

# NAIOP

COMMERCIAL REAL ESTATE  
DEVELOPMENT ASSOCIATION  
HAWAII CHAPTER

March 18, 2011

The Hon. Jerry Chang, Chair, and  
Members of the House Committee on  
Water, Land and Ocean Resources

The Hon. Denny Coffman, Chair, and  
Members of the House Committee on  
Energy and Environmental Protection

State Capitol, Room 438  
Honolulu, Hawaii 96813

Re: Testimony in Support of Senate Bill No. 723, S.D. 1, Relating to Environmental  
Impact Statements

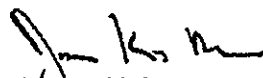
Dear Chair Chang and Coffman and Members of the Committees:

I am submitting this testimony on behalf of NAIOP Hawaii. We are the Hawaii chapter of NAIOP, the Commercial Real Estate Development Association, which is the leading national organization for developers, owners and related professionals in office, industrial and mixed-use real estate. The local chapter comprises property owners, managers, developers, financial institutions and real estate related professionals who are involved in the areas of commercial and industrial real estate in the State of Hawaii.

We strongly support this bill. It extends the sunset date for Act 87 of the 2009 Session Laws. Act 87 was first enacted because of substantial concerns in the real estate industry and government agencies that, in light of the *Superterry* decision, preparation of an environmental assessment or impact statement would be required for minor uses or modifications within an existing public right-of-way such as utility connections. The 2009 Legislature believed that such minor uses of public rights-of-way should not trigger the provisions of Chapter 343. We believe the same rationale is still applicable and support extension of the sunset date.

Thank you for the opportunity to testify on this measure.

Very truly yours,



James K. Mee  
Chair, Legislative Affairs Committee



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March 21, 2011

**The Honorable Denny Coffman, Acting Chair**  
House Committee on Energy and Environmental Protection

**The Honorable Jerry L. Chang, Chair**  
House Committee on Water, Land, and Ocean Resources  
State Capitol, Room 325  
Honolulu, Hawaii 96813

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

**HEARING: Monday, March 21, 2011, at 9:15 a.m.**

Aloha Chair Chang, Chair Coffman, and Members of the Joint Committees:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawaii Association of REALTORS® (“HAR”), the voice of real estate in Hawaii, and its 8,500 members. HAR supports S.B. 723, S.D.1, which extends the sunset date of Act 87, Session Laws of Hawaii 2009, from July 1, 2011, to July 1, 2015.

Act 87 exempts from the environmental impact statement 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 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.

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**Written Testimony before the House Committees on  
Energy & Environmental Protection and  
Water, Land & Ocean Resources**

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

**March 21, 2011**

**Senate Bill 723SD1  
Relating to Environmental Impact Statements**

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

My name is Rouen Liu and I am providing written testimony on behalf of the Hawaiian Electric Company and its subsidiaries, Hawaii Electric Light Company and Maui Electric Company.

**Position:**

We support SB723SD1 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 written testimony on this matter.



**Testimony to the House Committees on Water, Land and Ocean Resources  
& Energy and Environmental Protection  
Hawaii State Capitol  
Conference Room 325  
March 21, 2011 at 9:15 a.m.**

**SUBJECT: SENATE BILL SB 723 SD1 RELATING TO ENVIRONMENTAL IMPACT  
STATEMENTS**

Chairs Chang and Coffman, Vice Chairs Har and Members of the Committees:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). The Chamber is in strong support of SB 723 SD1, relating to Environmental Impact Statements.

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 H.B. No. 424 to address the immediate problems caused by the Courts interpretation of Chapter 343 HRS.

Thank you for this opportunity to express our views.

Douglas Meller  
2749 Rooke Avenue  
Honolulu, HI 96817

HOUSE COMMITTEE ON WATER, LAND, & OCEAN RESOURCES  
HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION  
HEARING SCHEDULED 9:15 AM ON MONDAY, MARCH 21, 2011

TESTIMONY REQUESTING AMENDMENT OF SB 723, SD 1

I used to work for the State DOT. Before I retired, I drafted Section 2 (the statutory amendment section) of Act 87, SLH 2009. Act 87 was narrowly drafted to expedite DOT processing of private applications for work within the State highway right-of-way to serve proposed development that only requires a building permit. Act 87 does nothing to expedite DOT processing of private applications for work within the State highway right-of-way to serve proposed development that requires some kind of discretionary "approval". Act 87 does not resolve which agency decisions amount to a discretionary "approval". Act 87 does not address the scale of development which might be exempted from EA requirements when the State EIS law is "triggered". Act 87 does not resolve the kolohe applications of our Supreme Court's ruling that whether Chapter 343 is "triggered" by an applicant's request for a discretionary agency "approval" to develop private property may solely depend on whether proposed development requires new infrastructure in a public highway right-of-way.

To work towards resolving these kinds of issues, I recommend amending SB 723, SD 1 by adding a new Section to read as follows:

"On or before December 15, 2011, the state office of environmental quality control shall provide the legislature with a draft bill which could be enacted to accomplish the following objectives:

1. When a private applicant requests an agency "approval" required for the proposed development of private property, whether Chapter 343 is "triggered" will depend on the nature and potential impacts of the required agency "approval" and will not depend on whether the proposed development requires construction of infrastructure within a public highway right-of-way.
2. An agency will be authorized to issue quick, enforceable, administrative rulings to resolve uncertainty or disputes about whether any specific agency "approval" is an automatic "trigger" for Chapter 343.
3. If Chapter 343 is "triggered" by a private application requesting an agency "approval" required for the proposed development of private property, whether an environmental assessment is required will be based on an evaluation of the potential impacts of the proposed development. An environmental assessment will not always be required if the scale of the proposed development exceeds arbitrary criteria such as those currently adopted as Section 11-200-8(A)(3), Hawaii Administrative Rules.

4. If Chapter 343 is “triggered” by a private application requesting an agency “approval” required for the proposed construction of infrastructure within a public highway right-of-way, whether an environmental assessment is required will depend on potential direct impacts arising from construction and operation of proposed infrastructure. Whether an environmental assessment is required will not depend on the nature, scale, or potential impacts of existing or proposed development outside the highway right-of-way.”
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## EIS RULES CITED IN THIS TESTIMONY

### **§11-200-8 Exempt Classes of Action**

- A. Chapter 343, HRS, states that a list of classes of actions shall be drawn up which, because they will probably have minimal or no significant effect on the environment, may be declared exempt by the proposing agency or approving agency from the preparation of an environmental assessment provided that agencies declaring an action exempt under this section shall obtain the advice of other outside agencies or individuals having jurisdiction or expertise as to the propriety of the exemption. Actions declared exempt from the preparation of an environmental assessment under this section are not exempt from complying with any other applicable statute or rule. The following list represents exempt classes of action:
  1. Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing;
  2. Replacement or reconstruction of existing structures and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced;
  3. Construction and location of single, new, small facilities or structures and the alteration and modification of the same and installation of new, small, equipment and facilities and the alteration and modification of same, including, but not limited to:
    - a. Single-family residences less than 3,500 square feet not in conjunction with the building of two or more such units;
    - b. Multi-unit structures designed for not more than four dwelling units if not in conjunction with the building of two or more such structures;
    - c. Stores, offices, and restaurants designed for total occupant load of twenty persons or less per structure, if not in conjunction with the building of two or more such structures; and
    - d. Water, sewage, electrical, gas, telephone, and other essential public utility services extensions to serve such structures or facilities; accessory or appurtenant structures including garages, carports, patios, swimming pools, and fences; and, acquisition of utility easements....