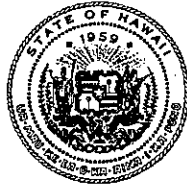


SB 723



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

IN REPLY REFER TO:

February 3, 2011

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

SENATE BILL NO. 723

COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION /
COMMITTEE ON JUDICIARY AND LABOR

TITLE: RELATING TO ENVIRONMENTAL IMPACT STATEMENTS.

DESCRIPTION: Extends the sunset date for EIS exceptions for secondary actions from July 1, 2011, to July 1, 2015. Act 87 exempts from the purview of Chapter 343, HRS, the environmental review law, primary actions that require a ministerial permit, that involve secondary actions relating to infrastructure development within public right-of-ways that have no significant effect on the environment.

POSITION: The Department of Transportation (DOT) supports this bill.

Chapter 343, Hawaii Revised Statutes, requires that before the DOT approves an applicant's request to construct utility, drainage, driveway, or roadway improvements within the state highway right-of-way (ROW), the DOT first needs to determine whether an environmental assessment (EA) is required. Pursuant to recent court rulings, to determine whether an EA is required for an applicant action, the DOT must consider secondary environmental impacts. To comply with Chapter 343, when an applicant requests DOT approval to construct infrastructure within the highway ROW to serve proposed development of private property, the DOT needs to consider environmental impacts from proposed development of private property.

The DOT does not have jurisdiction to regulate private property. Requiring the DOT to evaluate environmental impacts from development of private property has caused delay and financial hardship for applicants without public benefit. The DOT does not have information or expertise to assess the secondary impacts to the environment arising from the multitude of private actions which require "use" of the State highway ROW. The DOT has sought assistance and recommendations from the Office of Environmental Quality Control (OEQC) regarding environmental compliance. This has significantly increased the time required for DOT to review and process applications affecting the highway ROW.

We support the extension of the sunset date from July 1, 2011 to July 1, 2015.



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

SENATE COMMITTEE ON ENERGY AND ENVIRONMENT
SB723, RELATING TO ENVIRONMENTAL IMPACT STATEMENTS

Testimony of Loretta J. Fuddy, A.C.S.W., M.P.H.
Acting Director of Health

February 3, 2011

- 1 **Department's Position:** The Office of Environmental Quality Control supports SB723.
- 2 **Fiscal Implications:** The clear process provided by Act 87, which SB723 proposes to extend, saves
3 time and money for proponents of small, environmentally insignificant projects from the requirements of
4 Chapter 343, Hawaii Revised Statutes. It also saves staff time and effort at the permitting agencies who
5 have to process Chapter 343, HRS, environmental studies.
- 6 **Purpose and Justification:** SB723 extends the sunset date of Act 87 from July 1, 2011 to July 1, 2015.
7 Act 87 "exempts" action that requires a permit or approval that is not subject to a discretionary consent
8 and that involves a secondary action that is ancillary and limited to the installation, improvement,
9 renovation, construction, or development of infrastructure within an existing public right-of-way or
10 highway. The extension of the sunset date of Act 87, provides assistance and clear guidance to agency
11 staff, with respect to projects in the right-of-way corridors without second-guessing whether a project
12 needs to prepare an environmental assessment or environmental impact statement.
- 13 Thank you for the opportunity to testify.

NAIOP

COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION
HAWAII CHAPTER

February 1, 2011

The Hon. Mike Gabbard, Chair, and
Members of the Senate Committee on
Energy and the Environment
State Capitol, Room 225
Honolulu, Hawaii 96813

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

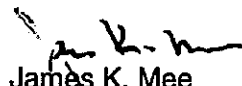
Dear Chair Gabbard and Members of the Committee:

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 *Superferry* 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



**Testimony to the Senate Committee on Energy and Environment
Thursday, February 3, 2011; 3:30 p.m.
Conference Room 225**

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

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

The Chamber of Commerce of Hawaii **strongly supports** S.B. No. 723, 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. 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 S.B. No. 723 to address the immediate problems caused by the Courts interpretation of Chapter 343 HRS. Our preference is for the longer sunset period.

Thank you for this opportunity to express our views.



February 3, 2011

Working together for Kapolei

Senator Mike Gabbard, Chair
Committee on Energy and Environment

State Capitol, Room 225
3:30 PM hearing
415 South Beretania Street
Honolulu, Hawaii 96813

Senator Gabbard:

Subject: **Senate Bills No. SB 723 Relating to Environmental Impact Statements**

By way of introduction, my name is Attilio Leonardi, Jr., President of the Kapolei Chamber of Commerce. The Chamber works on behalf of its members and the entire business community to improve the regional and state economic climate, as well as help Kapolei businesses to establish themselves, grow and thrive.

The Kapolei Chamber of Commerce of Hawaii strongly supports S.B. No. 107, as it proposes to extend the sunset date to July 1, 2013 for EIS exceptions for secondary actions authorized under Act 87 SLH, 2009. Act 87 is scheduled to sunset on June 30, 2011. S.B. No. 723 proposes to extend the sunset to July 1, 2015.

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.

(more)

(2)

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 and environmental assessment for the entire project.

Requiring the preparation of a 343 HRS document for projects with insignificant environmental impacts makes a mockery 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.

Here in Kapolei, we are in the midst of developing the new city. Already blessed with attractive residential communities and a thriving business environment, Kapolei is the site of the UH West-Oahu campus, the new state judiciary complex, and the Salvation Army Kroc Center, as well as the start-up location of the elevated fixed-rail project. We need to keep development on track to realize the potential, and the promise, of this new city on the Ewa plain.

Again, we strongly support the approval of either S.B. No. 107 or S.B. No. 723 to address the immediate problems caused by the Courts interpretation of Chapter 343 HRS. Our preference is for the longer sunset period.

Thank you for this opportunity to express the views of the Kapolei Chamber of Commerce.

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BIA-HAWAII
BUILDING INDUSTRY ASSOCIATION

February 3, 2011

Senator Mike Gabbard, Chair
Committee on Energy and Environment
State Capitol, Room 225
415 South Beretania Street
Honolulu, Hawaii 96813

Senator Gabbard:

Subject: **Senate Bill No. 723 Relating to Environmental Impact Statements**

I am Karen Nakamura, Chief Executive Officer of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-HAWAII strongly supports S.B. 723 as it proposes to extend the sunset date to July 1, 2015 for EIS exceptions for secondary actions authorized under Act 87 SLH, 2009. Act 87 is scheduled to sunset on June 30, 2011.

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 and environmental assessment for the entire project.

Requiring the preparation of a 343 HRS document for projects with insignificant environmental impacts makes a mockery 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 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.



The REALTOR® Building
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Neighbor Islands: (888) 737-9070
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February 3, 2011

The Honorable Mike Gabbard, Chair
Senate Committee on Energy & Environment
State Capitol, Room 016
Honolulu, Hawaii 96813

RE: S.B. 723 Relating to Environmental Impact Statement

HEARING: Thursday, February 3, 2011 at 3:30 p.m.

Aloha Chair Gabbard, Vice Chair English 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 in Hawai'i. HAR **supports** S.B. 723 which extends the sunset date of Act 87, Session Laws of Hawaii 2009 that exempts from the purview of HRS Chapter 343 the environmental review law, that involve secondary actions limited to infrastructure development within public right-of-ways.

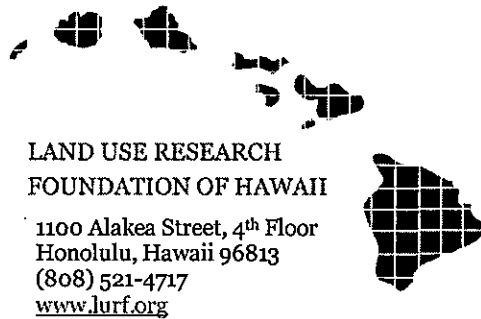
Based on the decision by the Hawai'i Supreme Court in the Koa Ridge case, infrastructure and improvements that touch a state or county road required an Environmental Assessment/Environmental Impact Study. The consequence of this decision is that minor improvements regardless of their environmental impact 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.

Moreover, 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

February 3, 2011

Senator Mike Gabbard and Senator J. Kalani English, Vice Chair
Committee on Energy and Environment

**Testimony of the Land Use Research Foundation of Hawaii in Support of 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.)**

Thursday, February 3, 2011 at 3:30 p.m. in CR 225

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.

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. Although LURF supports making Act 87 permanent as proposed in SB 1547, it also supports this bill which would repeal the sunset date of July 1, 2011, and extend the Act to July 1, 2015.

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.

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.

We respectfully request your **favorable consideration of SB 723**. Thank you for the opportunity to testify on this matter.

Testimony before the Senate Committee on Energy and Environment

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

February 3, 2011

**Senate Bill 723
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 SB723 which extends the sunset date of Act 87, Session Laws of Hawaii 2009, to July 1, 2015. We would even support making Act 87 permanent as written in SB 1547.

Comments:

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

Thank you for the opportunity to testify on this matter.

Denise Antolini
59-463 Alapi'o Road Pūpūkea, O'ahu 96712
(808) 638-5594

Hearing on SB723
Senate Committee on Energy and Environment
Hearing: Feb. 3, 2011 3:30 pm
Conference Room 225

Dear Chair Gabbard, Vice-Chair English, and Members of the Committees:

I write in **OPPOSITION** to **SB723** because there is no justification provided for the four-year extension of Act 87 (2009).

If an extension is granted, then the Legislature should require an objective analysis that the extension continues to be warranted.

Whatever the motive, the mis-interpretation in the past by some state agencies of the scope of the state's environmental review law is not a sound policy reason for continuing this kind of piecemeal change to Chapter 343.

The strong leadership of a new OEQC Director and the other bills before this Committee – SB729 and SB699 – that would strengthen OEQC and the Environmental Council should provide an adequate remedy for any misguided agency interpretation on this “ministerial v. discretionary action” issue without the need for legislative action.

Thank you.

Emailed to: ENEstimony@capitol.hawaii.gov