



HB1657

RELATING TO NOTICE TO THE PUBLIC IN THE ENVIRONMENTAL REVIEW PROCESS

House Committee on Energy & Environmental Protection

House Committee on Water & Land

February 9, 2016

10:59 a.m.

Room 325

The Office of Hawaiian Affairs (OHA) **STRONGLY SUPPORTS** HB1657, which is a bill in OHA's 2016 Legislative Package. This bill seeks to more fully realize the benefits of public participation in the environmental review process, by requiring the posting of signage at sites affected by projects undergoing environmental review.

In the environmental review context, public review and input can provide critical information on the full range and extent of potential environmental and cultural impacts; moreover, opportunities for public input promote transparency and accountability in actions affecting the environment and the community. Unfortunately, existing public notice requirements may not maximize the full benefits of public participation. Administrative rules only require early consultation with agencies and "those citizen groups and individuals" who are "reasonably believe[d] to be affected," at "the earliest practicable time" -- with no other standards or procedures for ensuring meaningful public input.¹ Later notice requirements, which are triggered after the drafting of an environmental assessment or environmental impact statement preparation notice, only require publication of such documents in the little-read *The Environmental Notice*. **Moreover, current notice requirements do not necessarily inform or specifically target members of the local community surrounding a proposed action site, even though such community members may be particularly knowledgeable of, and disproportionately affected by, the potential environmental and cultural impacts of an action.**

As a result, the full range of impacts may not be considered for certain actions undergoing environmental review, undermining the purpose of our environmental review laws, and increasing both the risk of costly project delays as well as community distrust in government stewardship of our lands and resources.

HB1657 seeks to facilitate more meaningful public participation in the environmental review process, by requiring agencies to ensure that a "notice of preparation" is posted at an early stage and in a noticeable place at any site that may be directly impacted by an action. The posting of such notice will: (1) facilitate public engagement early on in the environmental review process, by those with particular

¹ Haw. Admin. R. § 11-200-9.

knowledge of an affected site and its natural and cultural resources; (2) minimize the risk of unnecessary or inadvertent degradation of Hawai'i's natural and cultural sites and resources; (3) minimize the risk of conflict and potentially costly delays; and (4) improve transparency and the public's trust in government processes and decision-making.

OHA notes that the requirements of this measure would not apply to "rights and duties that matured . . . and proceedings that were begun" before its effective date of July 1, 2019. In other words, current projects will not be required to restart their environmental review proceedings as a result of this measure. In addition, the delayed effective date will provide the Environmental Council with sufficient time to promulgate administrative rules or develop other guidance on the implementation of this measure, should it so choose.

Therefore, OHA strongly urges the Committees to **PASS** HB1657. Mahalo nui loa for the opportunity to testify.

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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COMMISSION ON WATER RESOURCE MANAGEMENT

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AQUATIC RESOURCES
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CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committees on
ENERGY & ENVIRONMENTAL PROTECTION
and
WATER AND LAND**

**Tuesday, February 09, 2016
10:59 AM
State Capitol Conference Room 325**

**In consideration of
HOUSE BILL 1657
RELATING TO NOTICE TO THE PUBLIC IN THE ENVIRONMENTAL REVIEW
PROCESS**

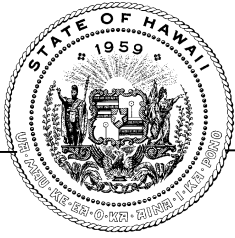
House Bill 1657 proposes to increase public participation at the earliest possible point in an environmental review process by requiring that proposing agencies post a “notice of preparation” at the location of a site-specific proposed action by the initiating agency or applicant, informing members of the public of the proposed action. **The Department of Land and Natural Resources (Department) appreciates the intent of this bill but opposes it because its implementation is impractical and is unlikely to increase public participation for most of the Department’s projects.**

The Department manages 1.3 million acres of state lands within the main Hawaiian Islands, state waters out to three miles from shore, and the Papahānaumokuākea Marine National Monument, which is only accessible by permit. Much of the Department’s lands and waters are remote and inaccessible, and so it is not feasible to place signs in these areas where the public is unlikely to view them. Such would be the case when environmental review is initiated for offshore fish attractant devices and artificial reefs, or where a natural area reserve project is proposed deep in the state forest.

The Department believes that its current public notification process allows for ample public notification and review. We typically solicit comments from the public and other government agencies early in the scoping process, in advance of the official document being published by the

Office of Environmental Quality and Control (OEQC). The Department also issues news releases announcing its proposed projects. Interested members of the public can receive these notices regularly, free-of-charge, by signing up on our website (<http://dlnr.hawaii.gov/online-services/>). . Additionally, when a project is submitted to OEQC for formal public comment, maps are included that show where the proposed project is located.

Thank you for your consideration of this testimony.



OFFICE OF ENVIRONMENTAL QUALITY CONTROL

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Testimony of
SCOTT GLENN
Interim Director

before the
HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION
and the
HOUSE COMMITTEE ON WATER AND LAND

Tuesday, February 09, 2016
10:59 AM
State Capitol, Conference Room 229

in consideration of
HOUSE BILL 1657
RELATING TO NOTICE TO THE PUBLIC IN THE ENVIRONMENTAL REVIEW PROCESS

Chair Lee, Vice Chair Lowen, and Members of the House Committee on Energy and Environmental Protection; and

Chair Yamane, Vice Chair Cullen, and Members of the House Committee on Water and Land,

The Office of Environmental Quality Control (OEQC) administers Hawai'i Revised Statutes (HRS) Chapter 343, Environmental Impact Statements (EIS). The purpose of the EIS law is to "establish a system of environmental review which ensures that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations" (HRS §343-1). Additionally, the OEQC serves "the Governor in an advisory capacity on all matters relating to environmental quality control," as directed in HRS §341-3.

HB 1657 proposes to require a proposing or approving agency to ensure that a notice is posted at any site impacted by an action prior to the drafting of an environmental assessment (EA) or environmental impact statement (EIS) preparation notice (EISPN).

The OEQC respectfully offers the following comments on HB 1657 for the Committee's consideration:

- 1) HRS §343-5 prescribes the minimum occasions mandating that the public be involved in the environmental review process. For EAs, the opportunity is after publication of the draft document in the Environmental Notice. For EISs, the opportunities are during scoping for an EISPN and after publication of the draft document in the Environmental Notice.
- 2) Agencies have discretion in conducting additional outreach during environmental review. As an example, many state and county agencies, as well as applicants, conduct "pre-assessment consultation" or "pre-consultation" when initiating a Draft EA. Often, this is a

letter with a brief description of the proposed action, a map, and a request for identification of potential concerns to be addressed in the Draft EA. The letter is sent to targeted government agencies, non-profit organizations, and individuals.

- 3) What may not be achieved in pre-consultation, and which this measure seeks to address, is the involvement of individuals who live in a given area, who may not be engaged in pre-planning activities such as scoping or early consultation, and who otherwise would not contribute to the environmental review process absent direct contact.
- 4) This measure would alter the mandatory public input process by requiring a “notice of preparation” be posted for a “project-specific” proposed action. HRS 343-2 defines an “action” to mean “any program or project to be initiated by any agency or applicant.” It does not define the nature of action in relation to a physical location. This measure would add a distinction to types of “actions” based on “site-specific” without defining “site-specific.” Not every proposed action is tied to a specific site and such actions would have a different process to follow to satisfy Chapter 343, HRS. That is, non-site-specific actions would not be required to do a “notice of preparation,” not have to wait 30 days after publishing such a notice, and could conduct an EA as the current process exists.
- 5) It is unclear what these proposed amendments to Chapter 343, HRS, would mean in relation to HRS §343-7. Would the following be litigable:
 - a. Failure to prepare a “notice of preparation”?
 - b. Determination that a proposed action is or is not “site-specific”?
 - c. Sufficiency of information or conspicuousness?

This measure would present considerable implementation challenges, including increased agency staff time and resources. However, these challenges may be surmountable. For example, Hawai‘i County currently requires posting of physical signs at sites for Special Management Area (SMA) Major Permits and approvals for subdivisions and changes in zoning.

In summary, OEQC supports the intent of this bill to increase public awareness of and participation in environmental review and recommends further consideration and discussion of the measure.

Thank you for the opportunity to testify on this measure.

TO: Representative Chris Lee, Chair
House Committee on Energy & Environmental Protection, and
Representative Ryan I. Yamane, Chair
House Committee on Water & Land

FROM: Sara L. Collins, Ph.D., President
Society for Hawaiian Archaeology
sara.l.collins.sha@gmail.com

HEARING: Tuesday, February 9, 2016 at 10:59 AM in Conference Room 325

SUBJECT: Testimony in SUPPORT of HB 1657, Relating to Notice to the Public in the
Environmental Review Process

I am Dr. Sara Collins, President of the Society for Hawaiian Archaeology (SHA). We have over 150 members that include professional archaeologists and advocates of historic preservation in general. I am writing this testimony in support of HB 1657 which proposes to amend sections of Chapter 343, Hawaii Revised Statutes so as to require a proposing or approving agency to ensure that a notice is posted at any site impacted by an action prior to the drafting of an environmental assessment or environmental impact statement preparation notice.

Members of the public often feel left out of the environmental review process even when an action affects lands in their own communities. HB 1657, if adopted, would increase the public's ability to learn of and participate in the environmental review process by requiring informative signs to be placed at affected properties. The signs would explain the nature of the proposed development action(s) and provide additional information on how the public can participate in the review process. . A number of jurisdictions elsewhere have used such signage and it assists the public in understanding the nature of proposed developments. We believe that similar signs could be very beneficial in the state's environmental review process here in Hawai'i. Consequently, we respectfully ask that you pass HB 1657 unamended.

Mahalo for considering our testimony. Should you have any questions, please feel free to contact me at the above email address.



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February 9, 2016

LATE

Representative Chris Lee, Chair
Representative Nicole E. Lowen, Vice Chair
Committee on Energy & Environmental Protection

Representative Ryan I. Yamane, Chair
Representative Ty J.K. Cullen, Vice Chair
House Committee on Water & Land

Comments in Opposition to HB 1657 Relating to Notice to the Public in the Environmental Review Process. (Requires a proposing or approving agency to ensure that a notice is posted at any site impacted by an action prior to the drafting of an environmental assessment or environmental impact statement preparation notice.)

EEP/WAL Hearing: Tuesday, February 9, 2016, 10:59 a.m., Conf. Rm. 325

The Land Use Research Foundation of Hawaii (LURF) is 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 State and county public notice requirements for the environmental review and land use processes, however, it must **OPPOSE to HB 1657**, because it is unnecessary, unreasonably vague, impossible to enforce and will lead to future costly litigation for the public, State, counties and private parties.

HB 1657. This measure would require a proposing or approving agency to ensure that a notice is posted at any site impacted by an action prior to the drafting of an environmental assessment or environmental impact statement preparation notice. Specifically, it would require government agencies and private parties preparing an environmental assessment of environmental impact statement (9EA/EIS) to comply with the following:

- A Notice of Preparation (Notice) posted at the location of a site-specific proposed action by the initiating agency or applicant, informing members of the public of the proposed action.
- The agency/applicant shall post the Notice, in ***a conspicuous place and manner, clearly visible to the public***, at any ***particular site or sites that will be directly impacted*** by the action.
- The Notice of preparation shall be posted at the ***earliest practicable time*** prior to the preparation of an environmental assessment or environmental impact statement preparation notice for the action, and
- The Notice shall include ***information about the proposed action***.
- The Notice shall include ***information about the preparation of an environmental assessment or environmental impact statement***.
- The Notice shall include ***information about how members of the public may provide comments relating to the proposed action***.
- A copy of the notice or notices and information regarding the location or locations of the notice or notices shall be filed with the office.
- The Notice must be posted at least thirty days prior to the preparation of an EA or EIS.

LURF's Position. As stated earlier, LURF supports State and county public notice requirements for the environmental review and land use processes, however, it must **OPPOSE to HB 1657**, because, while it may be well-meaning, it is unnecessary, unreasonably vague, impossible to enforce and will lead to future costly litigation for the public, State, counties and private parties.

- SB 1657 is **unnecessary**, as current State and county laws, rules and regulations provide adequate notice of proposed actions that would require an EA/EIS; and the state and county land use process provide multiple opportunities for public review and comment on issues covered by an EA/EIS. (The City and County of Honolulu land use approval process (General Plan to zoning) includes over 20 public notices and public hearings.
- The requirements are **unreasonably vague**, each one of the requirements highlighted above is subject to different interpretations and judgments.
- This measure will be **impossible to enforce** – if the Notice is defaced, destroyed or stolen, through no fault of the agency or applicant, there could be an argument that the law has been violated; and the agency or applicant could not start the preparation of an EA./EIS.

- Costly and time-consuming litigation will be initiated on controversial projects, based on the vague requirements and if the Notice is defaced, destroyed or stolen.

LURF supports the current public notice process for environmental review and land use approvals. However, for the above reasons, LURF must **OPPOSE HB 1657**, and respectfully urges your Committees to **hold** this measure.

Thank you for the opportunity to present testimony regarding this matter.

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 08, 2016 10:15 AM
To: EEPtestimony
Cc: jching808@gmail.com
Subject: Submitted testimony for HB1657 on Feb 9, 2016 10:59AM

HB1657

Submitted on: 2/8/2016

Testimony for EEP/WAL on Feb 9, 2016 10:59AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Jonathan Ching	Individual	Support	No

Comments: Aloha Chair Lee & Chair Yamane- I strongly support HB1657 because it will ensure that members of the community, where a proposed action may occur, are reasonably apprised with notice before a draft EA is released. This may assist in mitigating potential adverse impacts early in the planning process, which can help to save valuable time and resources. In addition, many members of the public do not subscribe or monitor The Environmental Notice, where Draft EA, Final EA, EIS's, and other determinations by the Environmental Council are posted. Posting a physical sign will help to give members of the public appropriate notice and furthers the intent of Chapter 343 by including public participation in the environmental review process.

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 09, 2016 12:29 AM
To: EEPtestimony
Cc: kamakane73@yahoo.com
Subject: *Submitted testimony for HB1657 on Feb 9, 2016 10:59AM*

LATE

HB1657

Submitted on: 2/9/2016

Testimony for EEP/WAL on Feb 9, 2016 10:59AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Bob Lindsey	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 09, 2016 12:15 AM
To: EEPtestimony
Cc: kamakane73@gmail.com
Subject: *Submitted testimony for HB1657 on Fe

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HB1657

Submitted on: 2/9/2016

Testimony for EEP/WAL on Feb 9, 2016 10:59AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Kama Hopkins	Individual	Support	No

Comments:

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To: EEPtestimony
Cc: noalanio@ymail.com
Subject: *Submitted testimony for HB1657 on F

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HB1657

Submitted on: 2/9/2016

Testimony for EEP/WAL on Feb 9, 2016 10:59AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Noalani Nakasone	Individual	Support	No

Comments:

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