



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

DAVID Y. IGE
GOVERNOR

MIKE MCCARTNEY
DIRECTOR

CHUNG I. CHANG
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Statement of
MIKE MCCARTNEY
Director

Department of Business, Economic Development, and Tourism
before the
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

Wednesday, March 3, 2021
2:00 PM
State Capitol, Conference Room 325

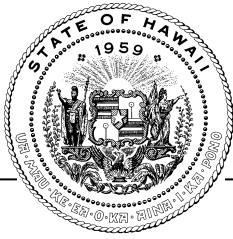
In consideration of
HB 901, HD1
RELATING TO ENVIRONMENTAL IMPACT STATEMENTS.

Chair Nakashima, Vice Chair Matayoshi, and members of the Committee.

The Department of Business, Economic Development and Tourism (DBEDT) **strongly supports** Administration Bill, HB 901 HD 1.

The Department of Business, Economic Development and Tourism (DBEDT) strongly supports Administration Bill, HB 901, HD1. This bill would amend Hawaii Revised Statutes (HRS) § 343-5.5 to delete reference to discretionary permits in allowing infrastructure improvements within a highway or public right-of-way to be exempt from environmental assessment requirements. If approved, the bill would streamline the environmental review process by exempting all development projects from the need to prepare an Environmental Assessment ("EA") or an Environmental Impact Statement ("EIS") for relatively minor improvements within or to a highway or public right-of-way.

Thank you for the opportunity to testify on this measure.



OFFICE OF PLANNING STATE OF HAWAII

DAVID Y. IGE
GOVERNOR

MARY ALICE EVANS
DIRECTOR
OFFICE OF PLANNING

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Statement of
MARY ALICE EVANS
Director, Office of Planning
before the
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS
Wednesday, March 3, 2021
2:00 PM
Via Videoconference

in consideration of
HB 901, HD 1
RELATING TO ENVIRONMENTAL IMPACT STATEMENTS.

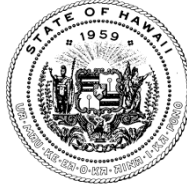
Chair Nakashima, Vice Chair Matayoshi, and Members of the House Committee on Judiciary and Hawaiian Affairs:

The Office of Planning **strongly supports** Administration Bill, HB 901, HD 1, which would amend Hawaii Revised Statutes (HRS) § 343-5.5 to delete reference to discretionary permits in allowing infrastructure improvements within a highway or public right-of-way to be exempt from environmental assessment requirements. The bill would exempt development projects involving discretionary approvals from the need to prepare an Environmental Assessment (“EA”) or an Environmental Impact Statement (“EIS”) if the only trigger is a minor infrastructure improvement such as a water line or sewer line connection or driveway improvements to a highway or public right-of-way. The bill was amended by changing the effective date to July 1, 2050.

This bill streamlines the environmental review process by deleting the reference to discretionary consents and allowing the infrastructure exemption for all development projects. There is no impact on public review since discretionary permits are already required to undergo public hearings. The bill would also reduce the time to process projects which otherwise would not require the preparation of an EA or EIS.

Thank you for this opportunity to testify.

DAVID Y. IGE
GOVERNOR



TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
LYNN A.S. ARAKI-REGAN
DEREK J. CHOW
ROSS M. HIGASHI
EDWIN H. SNIFFEN

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

March 3, 2021
2:00 P.M.
State Capitol, Teleconference

H. B. 901, H.D. 1
RELATING TO ENVIRONMENTAL IMPACT STATEMENTS

House Committee on Judiciary and Hawaiian Affairs

The Department of Transportation **supports** H.B. 901, H.D. 1 which amends Chapter 343, Hawaii Revised Statutes, to exempt secondary actions from the need to obtain an Environmental Impact Statement (EIS) when the secondary action is limited to installation, renovation, construction, or development of infrastructure within the existing public right-of-way or highway. An exemption would streamline the development approval process, save time, and the costs in preparing an EIS.

Thank you for the opportunity to provide testimony.

HB-901-HD-1

Submitted on: 3/1/2021 5:28:21 PM

Testimony for JHA on 3/3/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ted Bohlen	Climate Protectors Hawaii	Oppose	No

Comments:

To: The Honorable Mark Nakashima, Chair, The Honorable Scot Matayoshi, Vice Chair, and Members of the House Committee on Judiciary and Hawaiian Affairs

From: Climate Protectors Hawaii (by Ted Bohlen)

Re: Hearing HB 901 HD1– relating to Environmental Impact Statements

Wednesday March 3, 2021, 2:00 p.m., by videoconference

Position: **Strong Opposition!**

The Climate Protectors Hawaii is **STRONGLY OPPOSED TO HB901 HD1!** The Climate Protectors Hawaii is a group focused on reversing the climate crisis. As a tropical island State, Hawaii will be among the first places harmed by the global climate crisis, with more intense storms, loss of protective coral reefs, food insecurity, and rising sea levels destroying our shorelines.

While this bill purports to streamline the development process, it would do so by terminating a longstanding and accepted practice of comprehensively analyzing major development projects in their entirety when the triggering component of the project are uses of an adjoining public Right-of-Way, such as necessary improvements to an intersection at a public highway or modification of sewer or drainage infrastructure. This is a substantial change from the practice of reviewing proposed large-scale projects, and deserves substantial consideration and attention prior to implementation. Further, the bill would have the unintended effect of improperly segmenting actions when there is a “primary action” component on private lands that triggers HRS Chapter 343 (due to needing a general plan amendment or being situated in the Conservation District, in Waikiki, or on a historic site, for example), along with a “secondary action” component involving infrastructure in a public Right-of-Way that currently also triggers review but that would be exempted from the requirements of HRS Chapter 343 pursuant to this bill. In this scenario, the primary action component would have to undergo environmental review, while the secondary action component would not. Longstanding policy and the administrative rules that govern the environmental review process (HAR Section 11-

200.1-10) have consistently prohibited the “segmenting” of projects into multiple components that are not considered comprehensively.

This bill would exempt from environmental reviews infrastructure improvements in State or county rights of way, even when the improvements are part of a major project that has pending discretionary permits and may have substantial environmental impacts. The environmental review statute is designed to provide the public information on environmental impacts of proposed actions. This bill would deprive the public of that information for certain projects that require infrastructure improvements on State or county land, and so should be deferred.

Mahalo for the opportunity to testify in **opposition** to this bill!

Climate Protectors Hawaii (by Ted Bohlen)

HB-901-HD-1

Submitted on: 3/2/2021 7:13:18 AM

Testimony for JHA on 3/3/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Isaac Moriwake	Earthjustice	Oppose	No

Comments:

Aloha Chair Nakashima, Vice Chair Matayoshi, and Committee Members,

Earthjustice strongly opposes HB 901. Initially, it is not clear from the face of the bill what issue it seeks to address, or what purpose it seeks to achieve. This makes informed and transparent discussion of this bill difficult or impossible; at minimum, it will create confusion and spawn litigation as currently written.

It **appears** that the bill may be attempting to overturn long-standing Hawaii Supreme Court precedent that use of state or county lands for infrastructure improvements, as part of a larger development project, triggers the requirement for the larger project to comply with the state EIS law, HRS chapter 343. If this is HB 901's purpose, then all the more Earthjustice objects to and opposes this bill. This precedent has been established for **more than two decades**, and reversing it would severely gut the scope of the EIS law and subvert its fundamental purposes of enabling informed government decisionmaking and public disclosure and participation.

The bill does not explain or justify the need for any reversal of established precedent. Indeed, the existing section that the bill seeks to amend (HRS section 343-5.5) was enacted years ago at the Department of Transportation's request, to address DOT's concerns about its responsibilities in the EIS process. It is not clear why this further amendment is needed, or what purpose it serves in the first place.

In sum, for the reasons stated above, we oppose HB 901 and respectfully request that it be held. Please do not hesitate to contact us with any questions or for further information. Mahalo nui for this opportunity to testify.

Isaac Moriwake, Esq.

Managing Attorney, Earthjustice



P.O. Box 37158, Honolulu, Hawai`i 96837-0158
Phone: 927-0709 henry.lifeoftheland@gmail.com

COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
Rep. Mark M. Nakashima, Chair
Rep. Scot Z. Matayoshi, Vice Chair

DATE: Wednesday, March 3, 2021
TIME: 2:00 p.m.

HB 901 HD1 Relating to Environmental Impact Statements. PLEASE HOLD

Aloha Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee

Life of the Land is Hawai`i's own energy, environmental and community action group advocating for the people and `aina for 51 years. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

STATE ENVIRONMENTAL POLICY (HRS CHAPTER 344)

HRS §344-1 Purpose. The purpose of this chapter is to establish a state policy which will encourage productive and enjoyable harmony between people and their environment, promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of humanity, and enrich the understanding of the ecological systems and natural resources important to the people of Hawaii.

ENVIRONMENTAL IMPACT STATEMENT (HRS CHAPTER 343)

As originally intended, private agricultural projects on private land did not trigger the EIS law. But then the Legislature began allowing more and more types of projects to be located on agricultural land including massive residential, commercial, and resort projects.

These massive projects often triggered the State EIS law because a secondary part (a necessary precedent) of the project interacted with a county or state parcel, often a road.

The Hawai`i Supreme Court issued some critically important decisions supporting this need to evaluate environmental impacts.

Kahana Sunset Owners Association v. County of Maui, 86 Hawai`i 66, 947 P.2d 378 (1997),

Citizens for the Protection of the North Kohala Coastline v. County of Hawaii, 91 Haw.94; 979 p.2d 1120 (1999).

This bill proposes to use the covid-19 pandemic crisis to strip resident`s rights to assess how developments will impact the environment.

Please hold the bill.

Mahalo
Henry Curtis
Executive Director



SIERRA CLUB OF HAWAI'I

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

March 3, 2021

2:00 PM

In **OPPOSITION** of **HB901 HD1**: Relating to Environmental Impact Statements

Aloha Chair Nakashima, Vice Chair Matayoshi, and members of the committee,

On behalf of our 27,000 members and supporters, the Sierra Club of Hawai'i **opposes HB901**, which amends the environmental impact statement law to delete reference to discretionary permits in allowing infrastructure improvements within a highway or public right-of-way to be exempt from environmental impact assessment requirements.

Compliance with HRS Chapter 343 is as much about protecting natural and cultural resources as it is about ensuring livable communities, good urban design, satisfaction of minimum infrastructure needs, and thoughtful traffic management. HRS Chapter 343-1 states, "the legislature finds that the process of reviewing environmental effects is desirable because environmental consciousness is enhanced, cooperation and coordination are encouraged, and public participation during the review process benefits all parties involved and society as a whole." It is therefore in everyone's interest to ensure that major construction projects are well-developed.

HB901 would significantly modify the way that HRS Chapter 343 is applied to discretionary approvals by exempting development projects involving infrastructure improvements, such as a sewer line connection or driveway improvements to a highway or public right-of-way, from the need to prepare an Environmental Assessment or an Environmental Impact Statement. As a result, these secondary actions that may still have significant environmental impacts would not be given the appropriate disclosure and consideration they deserve under the EIS law.

This bill undermines the purpose and intention of EIS law to disclose impacts, inform government decision-making, and encourage public participation. Given the risks to the public from unforeseen consequences not analyzed under Chapter 343, we urge this Committee to hold HB901.

Thank you very much for this opportunity to provide testimony in **opposition to HB901 HD1**.

HB-901-HD-1

Submitted on: 3/1/2021 4:30:20 PM

Testimony for JHA on 3/3/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Andrea Quinn	Individual	Support	No

Comments:

Dear Honorable Committee Members,

Please support HB901.

Thank you,

Andrea Quinn

HB-901-HD-1

Submitted on: 3/1/2021 5:10:47 PM

Testimony for JHA on 3/3/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lauren Blickley	Individual	Oppose	No

Comments:

Please OPPOSE this bill. An EIS is important to maintain environmental standards and protections.

This bill would exempt from environmental review major projects with work in highway rights of way (State or county land) even if they have a pending discretionary permit.

HB-901-HD-1

Submitted on: 3/1/2021 5:25:07 PM

Testimony for JHA on 3/3/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Sherry Pollack	Individual	Oppose	No

Comments:

I strongly oppose this bill. Exemptions from environmental assessment requirements are a very bad idea. HB 901 HD1 could allow bad developments without proper EIS review. This is not pono. We are counting on you to look out for the best interests of the People of Hawaii now and for future generations. Think about your own children when voting on this measure. I ask that you oppose this bill.

HB-901-HD-1

Submitted on: 3/2/2021 9:16:07 AM

Testimony for JHA on 3/3/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Bianca Isaki	Individual	Oppose	No

Comments:

Aloha Representatives,

I am a resident of Kane`ohe and wholly oppose HB901. It will gut environmental review in many instances and at a time when our shrinking islands sorely need more and better consideration of environmental impacts. Plesae hold HB901.

Bianca Isaki

Douglas Meller
2615 Aaliamanu Place
Honolulu, HI 96813

TESTIMONY OPPOSING HB 901, HD 1
RELATING TO ENVIRONMENTAL IMPACT STATEMENTS

Wednesday, March 3, 2021, 2 pm, State Capitol Room 325
House Committee on Judiciary & Hawaiian Affairs

HB 901, HD 1 would exempt most applications for state land use district boundary amendments, state special use permits, county zoning changes, and county special management area use permits from Chapter 343, Hawaii Revised Statutes. I believe this would be a mistake.

On the other hand, Chapter 343, Hawaii Revised Statutes, is NOT “just fine” as written. Chapter 343 currently is “triggered” whenever:

- a private person submits practically any kind of state or county application;
- a discretionary agency recommendation is required by law, ordinance, or rule prior to approval of the state or county application; [County ordinances or rules commonly require discretionary agency recommendations prior to county approval of private applications for general plan amendments, zone changes, and subdivisions.]
- the state or county application concerns some phase or increment of a proposed private action; and
- another phase or increment of the proposed private action will require or involve some kind of improvement within the right-of-way of a state or county highway.

In other words, although Chapter 343 compliance may be required for permit applications for private actions which involve some trivial use of the highway right-of-way, Chapter 343 compliance may not be required for the same permit applications for the same private actions if no use of the highway right-of-way is required. In my opinion, it would be better for state law to specify which permits and approvals “trigger” Chapter 343. This will not be possible without prolonged public dialogue and compromise. In the meantime I suggest amending Chapter 343 to be “triggered” whenever:

- a private person submits a state or county application for which a public hearing or a contested case hearing is required by law, ordinance, or rule;
- a discretionary agency recommendation is required by law, ordinance or rule prior to approval of the application;
- the state or county application concerns some phase or increment of a proposed private action; and

- another phase or increment of the proposed private action will require or involve some kind of improvement within the right-of-way of a state or county highway.

I also suggest that Chapter 343 prohibit county planning departments and state regulatory agencies from “delegating” Chapter 343 compliance to agencies with jurisdiction to regulate work within the highway right-of-way. Instead, Chapter 343 should clearly require that agencies which process a private application for a proposed action outside the highway right-of-way are responsible for Chapter 343 compliance for all phases or increments of the proposed action prior to approval of an application for some phase or increment of the proposed action within the highway right-of-way.

Thank you for the opportunity to submit testimony. Unfortunately, I lack the skills to propose statutory amendments to implement my suggestions.