

STAND. COM. REP. NO.

986

Honolulu, Hawaii

MAR 27 2009

RE: H.B. No. 640
H.D. 1
S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Madam:

Your Committees on Energy and Environment and Transportation,
International and Intergovernmental Affairs, to which was referred
H.B. No. 640, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO ENVIRONMENTAL IMPACT
STATEMENTS,"

beg leave to report as follows:

The purpose of this measure is to amend chapter 343, Hawaii
Revised Statutes (chapter 343), to clarify that any primary action
that requires a permit or approval not subject to the
discretionary consent of the approving agency and that involves a
secondary action within an existing public right-of-way or highway
is exempt from chapter 343.

Testimony in support of this measure was submitted by one
county department and six private organizations. Testimony in
support of the measure, with suggested amendments, was submitted
by one state department and four private organizations. Testimony
supporting the intent of the measure was submitted by one state
department and one private organization. Testimony in opposition
to the measure was submitted by three individuals. Written
testimony presented to your Committees may be reviewed on the
Legislature's website.

Your Committees understand that recent court rulings and
agency interpretations have suggested that private applications
that use or "touch" state or county roadways or rights-of-way,

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such as easements, drainage facilities, connections to waterlines and sewer lines, private driveways and access improvements, and utility rights of way for overhead or underground connections, would require preparation of an environmental assessment document due to the "use of state or county lands", pursuant to section 343-5(a)(1), Hawaii Revised Statutes. As a result, private applicant proposals for minor work within the state or county right-of-way now triggers the preparation of an environmental assessment by the applicant. Your Committees find that the unintended results of these court decisions and agency interpretations have caused the Department of Transportation (DOT) and the Office of Environmental Quality Control (OEQC) to be deluged with hundreds of minor work project reviews, significantly increasing the time required for the DOT to review and process applications affecting the state highway right-of-way. This interpretation has also created unnecessary expense and delay for private applicants.

Your Committees also find that requiring an environmental assessment for minor work within the state or county right-of-way was not the intention of the Legislature when enacting chapter 343 and that this measure is necessary to clarify that certain secondary actions involving the installation, improvement, renovation, construction, and development of infrastructure within a public right-of-way or highway shall not be deemed to be the "use of state or county lands" for purposes of chapter 343.

Your Committees also acknowledge that the Legislative Reference Bureau (LRB) has contracted with the University of Hawaii to conduct a study of the State's environmental review process. The research for this study is currently being conducted, and the results of this study are to be presented to the Legislature before the next legislative session. Notwithstanding that this measure 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.

Your Committees have amended this measure by:

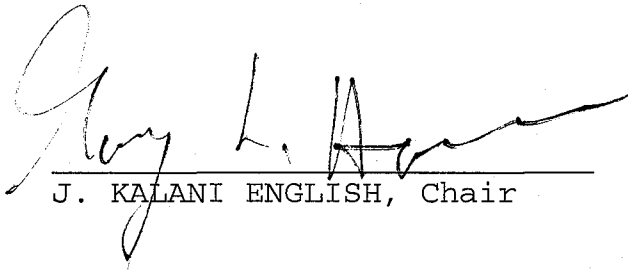
- (1) Adding definitions for "primary action" and "secondary action", which were the result of a collaboration among the OEQC and other stakeholders;

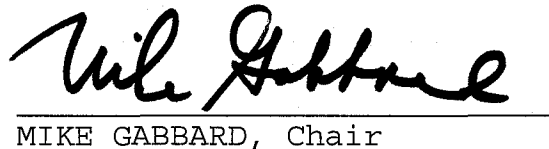


- (2) Changing the effective date from July 1, 2050, to July 1, 2009; and
- (3) Making a technical, nonsubstantive change for clarity.

As affirmed by the records of votes of the members of your Committees on Energy and Environment and Transportation, International and Intergovernmental Affairs that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 640, H.D. 1, as amended herein, and recommend that it pass Second Reading in the form attached hereto as H.B. No. 640, H.D. 1, S.D. 1, and be referred to the Committee on Judiciary and Government Operations.

Respectfully submitted on
behalf of the members of the
Committees on Energy and
Environment and Transportation,
International and
Intergovernmental Affairs,


J. KALANI ENGLISH, Chair


MIKE GABBARD, Chair



Record of Votes
Committee on Energy and Environment
ENE

*Only one measure per Record of Votes

The Senate
Twenty-Fifth Legislature
State of Hawaii

Record of Votes
Committee on Transportation, International and Intergovernmental Affairs
TIA

Bill / Resolution No.:*	Committee Referral:	Date:
HB 640, HDI	ENE/TIA, JGO	3-19-09
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____		
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313		
Members	Aye	Aye (WR)
ENGLISH, J. Kalani (C)	✓	
GABBARD, Mike (VC)	✓	
ESPERO, Will		
NISHIHARA, Clarence K.		
SLOM, Sam	✓	
TOTAL	3	—
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted		
Chair's or Designer's Signature: 		
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy		

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