



Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803
808.537.9019 hawaii.chapter@sierraclub.org

HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION
February 5, 2008, 9:00 A.M.

(Testimony is 1 pages long)

TESTIMONY COMMENTING ON HB 389

Chair Morita and members of the committee:

The Sierra Club, Hawai'i Chapter, with 5500 dues paying members statewide, supports the intent of HB 389, requiring an environmental assessment for any development on lands with an average slope 20% or greater. We believe this amendment would provide valuable information for the decision making process and, hopefully, lead to greater protection for environmental concerns.

The Sierra Club observes, however, that the legislature recently allocated funding for a comprehensive two-year review of Chapter 343. To the extent this expenditure has been made, the Sierra Club, therefore, suggests no changes be made to Chapter 343 until the results of this study are completed and the recommendations can be reviewed. This prevents the possibility of piecemeal changes that fail to alleviate the perceived problems with Chapter 343.

Thank you for the opportunity to testify.



HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO

GENTRY PACIFIC DESIGN CENTER, STE. 215A • 560 N. NIMITZ HIGHWAY, #50 • HONOLULU, HAWAII 96817
(808) 524-2249 • FAX (808) 524-6893

NOLAN MORIWAKI

President
Bricklayers & Ceramic Tile Setters
Local 1 & Plasterers/Cement
Masons Local 630

February 4, 2009

JOSEPH O'DONNELL

Vice President
Iron Workers Local 625

DAMIEN T. K. KIM

Financial Secretary
International Brotherhood of
Electrical Workers Local 1186

Honorable Representative Hermina M. Morita, Chair
Honorable Representative Denny Coffman, Vice Chair
Members of the House Committee on Energy & Environmental Protection
Hawaii State Capital
415 South Beretania Street
Honolulu, HI 96813

ARTHUR TOLENTINO

Treasurer
Sheet Metal Workers I.A. Local 283

RE: **IN OPPOSITION OF HB 389**
RELATING TO THE ENVIRONMENTAL IMPACT STATEMENT LAW
Hearing: Thurs., Feb. 5, 2009, 9:00 a.m., Conf. Room 325

MALCOLM K. AHLO

Sergeant-At-Arms
Carpenters, Linoleum, & Soft Tile
Local 1256

Dear Chair Morita, Vice Chair Coffman and the House Committee on
Energy & Environmental Protection:

REGINALD CASTANARES

Trustee
Plumbers & Fitters Local 675

For the Record my name is Buzz Hong the Executive Director for
the Hawaii Building & Construction Trades Council, AFL-CIO. Our
Council is comprised of 16-construction unions and a membership
of 26,000 statewide.

THADDEUS TOMEI

Elevator Constructors Local 126

JOSEPH BAZEMORE

Drywall, Tapers, & Finishers
Local 1944

The Council **OPPOSES** the passage of **HB389** that requires an
environmental assessment for any development on lands with an
average slope of 20% or greater.

RICHARD TAGGERE

*Stainless, Architectural Metal &
Glassworkers Local Union 1889*

Thank you for the opportunity to submit this testimony in
opposition of HB 389.

AUGHHN CHONG

*Roofers, Waterproofers & Allied
Workers United Union of Roofers*
Local 221

Sincerely,

MARY AYCOCK

Millwrights, Ironship Builders
Local 627

W. Hong dg

William "Buzz" Hong
Executive Director

YNN KINNEY

*Island Council 50
Painters & Allied Trades*
Local 1781

WBH/dg

ALANI MAHOE

Operating Engineers Local 3

EDONARD SEBRESOS

*International Assoc. of
Cement & Frost Insulators*
Allied Workers Local 132

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LAND USE RESEARCH
FOUNDATION OF HAWAII
700 Bishop Street, Ste. 1928
Honolulu, Hawaii 96813
Phone 521-4717
Fax 536-0132

February 4, 2009

**House Committee on Energy and Environmental Protection
Hearing Date: February 5, 2009 at 9:00 AM in CR 325**

**Testimony in Opposition to HB 389: Relating to
The Environmental Impact Statement Law
(Requires an EA for developments on average 20% slope)**

Honorable Chair Hermina M. Morita, Vice-Chair Denny Coffman
and Energy and environmental protection Committee Members:

Dear Chair Morita, Vice-Chair Coffman, and EEP Committee Members:

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 Hawai'i's significant natural and cultural resources and public health and safety.

LURF appreciates the opportunity to provide our testimony **in opposition** to HB 389, which would require an environmental assessment (EA) for any development proposed on lands with an average slope of twenty per cent or greater.

LURF's Position.

- **The Legislature should avoid making major changes in environmental laws, and should wait for the Chapter 343 Review report.** The University of Hawaii Environmental Center, together with the William S. Richardson School of Law and the U.H. Urban Planning Department are currently conducting a study and preparing a report regarding Chapter 343, which will be presented to the Legislature at the beginning of the 2010 session. The Legislature should refrain from passing laws such as HB 389, until the Chapter 343 Review report is completed.
- **HB 389 does not state any purpose or factual basis for imposing a new requirement for an EA.** The bill does not explain why an EA would be necessary on all lands with an average slope of twenty per cent or more, or

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-6041
DEPT. WEB SITE: www.honolulu.gov/dpp • CITY WEB SITE: www.honolulu.gov

MUFI HANNEMANN
MAYOR



DAVID K. TANOUE
ACTING DIRECTOR
ROBERT M. SUMITON
DEPUTY DIRECTOR

February 5, 2009

The Honorable Hermina M. Morita, Chair
and Members of the Committee on
Energy & Environmental Protection
State House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Morita and Members:

**Subject: House Bill No. 389
Relating to Environmental
Impact Statement Law**

The Department of Planning and Permitting **opposes** this bill, which calls for an environmental assessment for any development on land with an average slope of twenty percent or greater. Our objection is based on the following reasons:

1. The slope value of twenty percent may be overly broad and adversely affect a significant portion of our island.
2. Chapter 343 of the Hawaii Revised Statutes does not define the term "development" as used in the proposed bill.
3. Environmental assessments are costly and time consuming, so it will increase the cost of development, including development of affordable housing. Developers will usually pass the costs of developments to buyers, thus increasing the cost of housing for the public.
4. Environmental assessments can add years to the entitlement process, which appears contrary to efforts seeking to expedite and streamline the permitting process. The proposed bill adds another layer of regulation and would duplicate existing processes, like the subdivision process and zone changes district, which already have mechanisms for addressing development on sloped lands.

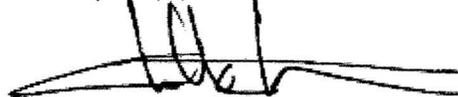
The Honorable Hermina M. Morita, Chair
and Members of the Committee on
Energy & Environmental Protection
State House of Representatives
February 5, 2009
Page 2

5. The proposed amendments are premature. Pursuant to legislation enacted just last year, the University of Hawaii at Manoa (UHM) is currently studying comprehensive revisions to the HRS Chapter 343 system. The issues addressed by House Bill 389 should be evaluated as part of that effort, and should not preclude the comprehensive proposals which may emerge from that study.

In conclusion, we respectfully recommend that HB 389 be filed.

Thank you for the opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read 'David K. Tanoue', written over a horizontal line.

David K. Tanoue, Acting Director
Department of Planning and Permitting

DKT: jmf
hb389mft.doc

HB 389
RELATING TO THE ENVIRONMENTAL IMPACT STATEMENT LAW
House Committee on Energy and Environmental Protection

Public Hearing – February 5, 2009
9:00 a.m., State Capitol, Conference Room 325

By
Peter Rappa, Environmental Center
Karl Kim, Urban and Regional Planning
Denise Antolini, Environmental Law Program

HB389 requires an environmental assessment for any development on lands with an average slope of 20% or greater. We emphasize that our testimony on this measure does not represent an official position of the University of Hawaii.

In accordance with Act 1 HB No. 2688 HD 1, Section 10, the Legislative Reference Bureau has contracted with the University of Hawaii to conduct a study of the State’s environmental review process. The research is being carried out by lead investigator Karl Kim, Department of Urban and Regional Planning, associate investigators Denise Antolini, Environmental Law Program and Peter Rappa, Environmental Center. In conducting this research, we are interviewing those most involved in the state environmental impact statement process (EIS) including federal, state and county agencies personnel, consultants, nongovernmental organizations (NGO), University faculty and others.

Many suggestions for changes to chapter 343 HRS have been identified in our study including the changes called for in this bill. We recommend that a comprehensive revision to chapter 343 HRS take place after the results of the study are presented next year as required in Act 1 2008 and that the provisions of this bill be deferred until then. Any changes to the chapter 343 HRS passed during this legislative session will affect the completeness of the study. Our recommendations may suggest changes to the law that will necessitate the repeal of this bill at a later date should it become law.

Thank you for the opportunity to comment on this bill.

2/23 4:27 PM



February 4, 2009

Representative Hermina Morita, Chair
 HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION
 State Capitol, Room 312
 415 South King Street
 Honolulu, Hawaii 96813

Dear Chair Morita:

Subject: House Bill No. 389 Relating to Environmental Impact Statement Law

My name is Dean Uchida, Vice President of the Hawaii Developers' Council (HDC). We represent over 200 members and associates in development-related industries. The mission of Hawaii Developers' Council (HDC) is to educate developers and the public regarding land, construction and development issues through public forums, seminars and publications.

It is also the goal of HDC to promote high ethics and community responsibility in real estate development and related trades and professions.

The HDC is in strong opposition to H.B. No. 389 as proposed.

The proposed legislation would amend Chapter 343 HRS and require an environmental assessment for any development on lands with an average slope of 20% or greater.

It is our understanding that when Act 246, SLH 1974 was passed and established Chapter 343 HRS, the legislation reflected an understanding that all public actions would require an environmental impact statement/assessment which is reflected in item No. 1 of the EIS/EA triggers. The legislation was intended to identify specific areas where an EIS/EA would be required for private uses.

The underlying intent was that the law would require government give systematic consideration to the environmental, social and economic consequences of proposed development projects prior to allowing construction to begin. The law also assures the public the right to participate in planning projects that may affect their community.

A land use or activity may trigger EA/EIS if it is one of the 9 listed in 343, unless the program or project is declared exempt. Any action that proposes:

1. Use of state or county lands or the use of state or county funds;
2. Use within any land classified as conservation;

3. Use within a shoreline area;
4. Use within a designated National Register or Hawaii Register historic site;
5. Use within the "Waikiki Special District";
6. Amendments to existing county general plans to urban, except for amendments to any existing county general plan initiated by a county;
7. Reclassification of any conservation lands;
8. Construction of new or modification of existing helicopter facilities that may affect:
 - a. Any land classified as a conservation;
 - b. A shoreline area; or
 - c. Any use of National or Hawaii Register historic site, or any historic site that is under consideration for placement on the National or the Hawaii Register of Historic Places; and,
9. Any of the following:
 - a. Wastewater treatment unit, except an individual wastewater system or a wastewater treatment unit serving fewer than fifty single-family dwellings or the equivalent;
 - b. Waste-to-energy facility;
 - c. Landfill;
 - d. Oil refinery; or
 - e. Power-generating facility.

Currently, Chapter 343 HRS provides for a distinction between discretionary and ministerial consents (approvals). §343-2, Definitions provides the following:

"Approval" means a discretionary consent required from an agency prior to actual implementation of an action.

"Discretionary consent" means a consent, sanction, or recommendation from an agency for which judgment and free will may be exercised by the issuing agency, as distinguished from a ministerial consent.

The distinction is between discretionary and ministerial consents indicates that the Chapter 343 HRS was never intended to be applied to ministerial consents (approvals) such as subdivisions, building permits, meter hook-ups, etc. The disclosure process outlined in Chapter 343 HRS was intended to be done in general at the zoning stage or was limited over time to specific actions or activities.

That is why the appropriate place to trigger Chapter 343 for an EA is at the first "discretionary consent" such as County Zoning or reclassification of lands by the State Land Use Commission. Then the EA is done prior to the ministerial consents such as subdivision, building permit, meter hook-ups, etc.

Since 1974, the Courts have expanded the interpretation of the law such that an action that involves any government owned road right of way would trigger Chapter 343 no matter if the action was ministerial in nature such as a utility or driveway (ingress/egress) connection. We do not believe the legislature intended the Chapter 343 requirement for ministerial type actions.

The Chapter 343 process should remain a public disclosure process that identifies impacts and mitigation measures to be considered by agencies in rendering their "discretionary" decisions. To apply this process to any use of lands of 20% slope or more regardless of the zoning or permit

required (ministerial or discretionary) would create unnecessary confusion and uncertainty in the land use entitlement and permitting process.

This proposal suggests that the Chapter 343 document and process be viewed as another layer of permitting. We do not believe that this was the intent of the law. The existing process produces a disclosure document for consideration by the agency assessing the discretionary permit.

We strongly recommend that H.B. No. 389 be held.

Thank you for the opportunity to provide comments.



KAMEHAMEHA SCHOOLS

WRITTEN TESTIMONY TO THE HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

By

Neil J. Hannahs

Director Endowment/Land Assets Division
Kamehameha Schools

Hearing Date: Thursday, February 5, 2009
9:00 a.m., House Conference Room 325

February 4, 2009

TO: Representative Hermina M. Morita, Chair
Representative Denny Coffman, Vice Chair
Members of the Committee on Energy & Environmental Protection

SUBJECT: Opposition to H.B. No. 389 – Relating to Environmental Impact Statements.

My name is Neil Hannahs, and I am Director, Land Assets Division of the Endowment Group for the Kamehameha Schools. I am providing this testimony in opposition to H.B. No. 389 relating to Environmental Impact Statements (EIS). This Bill broadens the breath and reach of this statute that has to date applied to state and local government projects and developments.

This Bill instead would require private citizens to prepare and submit EIS including the attendant hearings for public comments, a costly and time consuming effort. Further, this Bill will dramatically add to the cost for development in Hawai'i. The pragmatic impact of this Bill will be to increase the cost of housing and any commercial or industrial development as well as lengthens the time to bring any such project to completion and use. It will likely pit thousands of existing homeowners against any future upslope developers and land owners. This is unnecessary and bad public policy.

Kamehameha Schools respectfully requests that you do not pass this Bill.

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