

LINDA LINGLE
Governor of Hawai'i



KATHERINE PUANA KEALOHA
Director

STATE OF HAWAII
OFFICE OF ENVIRONMENTAL QUALITY CONTROL

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Committee on Energy & Environmental Protection

HB545, Relating to the Environmental Impact Statement Law

Testimony of Katherine Puana Kealoha, Esq.
Director of the Office of Environmental Quality Control

February 5, 2009

- 1 **Department's Position:** The Office of Environmental Quality Control opposes this bill.
- 2 **Fiscal Implications:** While HB545 has no fiscal impact to the Office, the effect to applicants for
- 3 developments can be expensive because of the high cost of preparing an environmental study.
- 4 **Purpose and Justification:** This bill amends Section 343-5, Hawai'i Revised Statutes, by requiring a
- 5 supplemental environmental assessment or supplemental environmental impact statement after the
- 6 passage of 15 years from the date of the acceptance of the statement or the determination of a finding of
- 7 no significant impact, if the proposed action is not completed.

8 The University of Hawai'i is currently conducting an evaluation of the environmental impact

9 statement law. This study is funded by the Legislative Reference Bureau under the requirements of Act

10 1 of 2008. The matter of a shelf-life for an environmental assessment (EA) or environmental impact

11 statement (EIS) is amongst the issues being examined. Therefore, the Office of Environmental Quality

12 Control wishes to defer any amendments regarding the lifetime of an EA or EIS, pending the outcome

13 and recommendations of the UH study.

14 Thank you very much for the opportunity to testify.

LINDA LINGLE
GOVERNOR



BRENNON T. MORIOKA
DIRECTOR

Deputy Directors
MICHAEL D. FORMBY
FRANCIS PAUL KEENO
BRIAN H. SEKIGUCHI
JIRO A. SUMADA

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

IN REPLY REFER TO:

February 4, 2009

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

HOUSE BILL NO. 545, RELATING TO
THE ENVIRONMENTAL IMPACT STATEMENT LAW.

The State Department of Transportation (DOT) **opposes** House Bill No. 545, because it will add significant costs to DOT's construction budget and, as a result, it will adversely affect DOT's ability to build much needed transportation systems and infrastructures.

House Bill No. 545 would require a supplemental environmental assessment or supplemental environmental impact statement after the passage of 15 years from the date of the acceptance of the statement or the determination of a finding of no significant impact, if the proposed action is not completed.

The Office of Environmental Quality Control (OEQC) already requires that DOT undertake HRS Chapter 343 environmental analyses of our long-range, transportation master plans. DOT's master plans establish project development guidance for the upcoming 20 years. A high percentage of these planned projects will not be undertaken until the latter half of the 20-year planning period. Accordingly, this bill will create an inconsistency between the 20-year master plan EA/EIS and the proposed requirement that the EA/EIS be supplemented after 15 years.

In addition, many critical transportation projects require more than 15 years to complete. A few high-profile examples are the H-3 freeway, the Lahaina Bypass, and the Kahului Airport runway extension. This 15-year validity proposal will result in additional, interminable delays of these critical but long-term undertakings. Delays in large projects require the expansion of project budgets. Lesser projects are often sacrificed so that their limited appropriations can be used to fund these delays and resultant modifications. The net effect is that often our entire transportation program is delayed.

Based on our experience, House Bill No. 545 will significantly impact DOT's project delivery process, by requiring unnecessary, costly, and time-consuming EA/EIS supplements. Accordingly, we respectfully request that this bill be held in committee.



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. 545 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. 545 as proposed.

The proposed legislation would amend Chapter 343 HRS and require a supplemental environmental assessment or supplemental environmental impact statement after the passage of 15 years from the date of the acceptance of the statement or the determination of a finding of no significant impact, if the proposed action is not completed.

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.

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 ministerial permits would create unnecessary confusion and uncertainty in the land use entitlement and permitting process. The question should be on what specific projects or activities, currently being permitted at the ministerial level should be required to do an EA/EIS.

This bill seems to confuse the Chapter 343 document with the actual approval of the project being proposed. The EA/EIS is not the permit. It simply discloses impacts and mitigation measures of a project. This information is then considered by the agency responsible for issuance of the discretionary permit. It is up to the agency to decide if and when a time-limit on its approval is appropriate. This process should be viewed separate and apart from the 343 process.

We strongly recommend that H.B. No. 545 be held.

Thank you for the opportunity to provide comments.

BIA-HAWAII
BUILDING INDUSTRY ASSOCIATION

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. 545 Relating to Environmental Impact Statement Law

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 is in strong opposition to H.B. No. 545 as proposed.

The proposed legislation would amend Chapter 343 HRS and require a supplemental environmental assessment or supplemental environmental impact statement after the passage of 15 years from the date of the acceptance of the statement or the determination of a finding of no significant impact, if the proposed action is not completed.

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.

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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 ministerial permits would create unnecessary confusion and uncertainty in the land use entitlement and permitting process. The question should be on what specific projects or activities, currently being permitted at the ministerial level should be required to do an EA/EIS.

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We strongly recommend that H.B. No. 545 be held.

Thank you for the opportunity to provide comments.



Executive Vice President & Chief Executive Officer
BIA-Hawaii



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. 545 Relating to Environmental Impact Statement Law

My name is Jim Tollefson, President of the Chamber of Commerce of Hawaii. The Chamber of Commerce of Hawaii works on behalf of its members and the entire business community to:

- Improve the state's economic climate
- Help businesses thrive

The Chamber of Commerce of Hawaii is in strong opposition to H.B. No. 545 as proposed.

The proposed legislation would amend Chapter 343 HRS and require a supplemental environmental assessment or supplemental environmental impact statement after the passage of 15 years from the date of the acceptance of the statement or the determination of a finding of no significant impact, if the proposed action is not completed.

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.

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This bill seems to confuse the Chapter 343 document with the actual approval of the project being proposed. The EA/EIS is not the permit. It simply discloses impacts and mitigation measures of a project. This information is then considered by the agency responsible for issuance of the discretionary permit. It is up to the agency to decide if and when a time-limit on its approval is appropriate. This process should be viewed separate and apart from the 343 process.

We strongly recommend that H.B. No. 545 be held.

Thank you for the opportunity to provide comments.



Hanalei Watershed Hui

B 12:46 2/4

February 4, 2009
Testimony in Support: HB545
Committee: EEP
Room 312
February 5, 2009

Aloha Committee members,

The Hanalei Watershed Hui is a Hawaii nonprofit organization that works to restore and protect the natural and cultural resources of the Hanalei Bay Watershed.

We support this legislation as it seeks to reduce impacts of development with the best available information.

We would recommend a supplemental EA or EIS be produced after a project has not been completed in ten years rather than fifteen.

Given the impacts anticipated from climate change, it seems prudent to review the information and potential impacts from development in the shorter term.

Mahalo for your consideration of our testimony.
Me ka pono,

Makaala Kaaumoana
Executive Director

E malama kumu wai ~ Protect the source
5299C Kuhio Hwy, P. O. Box 1285, Hanalei, Kaua'i, HI 96714
Telephone/Facsimile (808) 826-1985 E-mail: hanaleiriver@hawaiian.net
www.hanaleiwatershedhui.org

The Hanalei Watershed Hui is an equal opportunity employer and provider.



NA LEO POHAI

The Public Policy Affiliate of The Outdoor Circle

B 14:06 2/4

February 4, 2009

The Honorable Representative Hermina Morita
And Committee Members
Committee on Energy and Environmental Protection
Hawai'i State Capitol
Honolulu, HI 96813

RE: Support for HB545 Relating to Environmental Impact Statements

Chair Morita, Vice Chair Coffman and Members of the Committee:

Thank you for this opportunity to present testimony on HB545 on behalf of Na Leo Pohai, the public policy affiliate of The Outdoor Circle.

This legislation will force projects that trigger Environmental Impact Statements (EIS) and Environmental Assessments (EA) to be implemented or completed within a reasonable time period of the production of the EIS. The time period proposed in HB545 is 15 years.

Common sense dictates that the potential impacts of a project might change over a period of years. Yet developers and others whose projects trigger the production of an EIS have been allowed to proceed with their projects regardless of the length of time between the production of an EIS or an EA and the implementation of the project itself. This defies explanation and demands a change in law that will provide greater public assurance that a project's EIS or EA reflects potential impacts on the current environment, rather than the environment that existed years in the past.

Even the 15 year time limit proposed in HB545 might not be adequate to ensure that an EIS or EA actually reflects current circumstances and issues. The Outdoor Circle would support an even shorter time period for requiring an updated documents. What is unacceptable is maintaining the status quo. We therefore urge the passage of HB545.

Bob Loy
Director of Environmental Programs

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For the Protection of Hawaii's Native Wildlife
HAWAII AUDUBON SOCIETY

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House Committee on Energy & Environmental Protection
Rep. Hermina M. Morita, Chair & Rep. Denny Coffman, Vice Chair

Thursday, February 5, 2009; 9:00 A.M., Conference Rm. 325

Re: Testimony in Support of HB 545, Relating to the Environmental Impact Statements Law.

My name is George Massengale and I a member of the Hawaii Audubon Society, during session I also serve as their Legislative Analyst. Thank you for another opportunity to submit our testimony in support of HB545.

The Hawaii Audubon Society was founded in 1939, and has over 1,500 members statewide. The Society's primary mission is the protection of Hawaii's native wildlife and habitats. We believe that Environmental Impact Statements (EIS) play a critical role in providing wildlife and habitat protection.

We also understand that events will occur that would require the need for a supplemental statement to be prepared. We support the changes proposed by HB545 to Chapter 343 of the Hawaii Revised Statues, which would trigger preparation of a supplemental statement. **The Society strongly believes that any supplemental statement once completed and accepted should remain valid for no longer than 5 years. We view the 5 year time limit as not only as reasonable and practical limit, but a common sense one as well.**

We would strongly urge this committee to amend HB545 to include a 5 year time limit with respect to supplemental environment impact statements.

Thank you for the opportunity for me to testify here today.

Sincerely,

George Massengale, JD
Legislative Analyst