



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

IN REPLY REFER TO:

February 28, 2011

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

HOUSE BILL NO. 424

COMMITTEE ON FINANCE

## LATE TESTIMONY

The Department of Transportation (DOT) supports this bill.

Chapter 343, Hawaii Revised Statutes, requires that before the DOT approves an applicant's request to construct utility, drainage, driveway, or roadway improvements within the state highway right-of-way (ROW), the DOT first needs to determine whether an environmental assessment (EA) is required. Pursuant to recent court rulings, to determine whether an EA is required for an applicant action, the DOT must consider secondary environmental impacts. To comply with Chapter 343, when an applicant requests DOT approval to construct infrastructure within the highway ROW to serve proposed development of private property, the DOT needs to consider environmental impacts from proposed development of private property.

The DOT does not have jurisdiction to regulate private property. Requiring the DOT to evaluate environmental impacts from development of private property has caused delay and financial hardship for applicants without public benefit. The DOT does not have information or expertise to assess the secondary impacts to the environment arising from the multitude of private actions which require "use" of the State highway ROW. The DOT has sought assistance and recommendations from the Office of Environmental Quality Control (OEQC) regarding environmental compliance. This has significantly increased the time required for DOT to review and process applications affecting the highway ROW.

We support the extension of the sunset date from July 1, 2011 to July 1, 2013.



LATE

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February 28, 2011

Representative Marcus Oshiro, Chair and Representative Marilyn Lee, Vice Chair  
House Committee on Finance

**Support and Proposed Amendments of HB 424, Relating to Environmental Impact Statements. (Extends the sunset date for EIS exceptions for secondary actions pursuant to Act 87, Session Laws 2009, from July 1, 2011, to July 1, 2013.)**

**Monday, February 28, 2011 at 10:30 a.m. in CR 308**

My name is David 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 and rational land use planning, legislation and regulation.

While LURF **supports** HB 424 which extends the sunset date of Act 87, Session Laws of Hawaii 2009 (Act 87), from July 1, 2011, to July 1, 2013, we **also respectfully request the following amendments to HB 424:**

- Making Act 87 permanent, as it has been shown to be a fair, reasonable and workable process; and
- Amending HB 424 to include the provisions of HB 792, which proposes clarifications to the current law relating to the environmental review process, environmental assessments (EA) and environmental impact statements (EIS); requires a supplemental EAs, or supplemental EIS to be provided if an action by an agency or applicant is anticipated to have a significant effect on the environment; and establishes public disclosure system of environmental review.

**HB 424.** Act 87 (2009) excepts from the environmental impact statement (EIS) law, certain primary actions not subject to discretionary consent and involving ancillary secondary actions limited to infrastructure in public rights-of-way (ROW) or exempt highways. Extending the sunset date of Act 87 pursuant to §343-5(a), Hawaii Revised Statutes (HRS), would clarify that Chapter 343 would not apply to primary actions that require a ministerial permit or approval of the installation and development of infrastructure and utilities within a public highway ROW to serve proposed development, which does not require any discretionary agency approval.

**HB 792,** proposes clarifications to the current law relating to the environmental review process and the requirements relating to EAs and EIS. We believe that the clarifications in HB 792 will provide certainty and predictability to Chapter 343 and the environmental review system, and allow responsible development of government and private projects while continuing to protect and preserve Hawaii's environment. See attached HB 792, Proposed HD1 language for consideration to be included in HB 424.

**Background.** Ever since Chapter 343 was implemented, one of the “triggers” for the preparation of an environmental assessment (EA) document has been the “use of state or county lands.” In the past, prior to the passage of Act 87 in 2009, the term was interpreted by some government agencies to mean that an EA is required for all government projects or development projects on government lands. Also, in the past, EAs were never required for private applications to use or “touch” state or county roadways or ROW for minor work touching public roadways, such as easements, drainage, connection of waterlines and sewer lines, private driveways and access improvements, utility rights of way for overhead or underground connections, etc. Thus, prior to the passage of Act 87, various agencies had been requiring residents to obtain EAs for minor utility connections to their existing lots and the Office of Environmental Quality Control (OEQC) had been reviewing hundreds of such minor work projects touching public roadways or ROW to determine whether an EA was necessary.

After Act 87 was passed, the backlog was diminished; however, EA and EIS requirements were still enforced on the projects when warranted. Also, OEQC’s review process under Act 87 remains transparent and subject to review by stakeholders such as other government agencies, environmental advocates, the construction industry and the general public. As of this date, none of OEQC’s reviews of such minor work projects have been challenged or questioned by the public or any of the stakeholders. When adopted, Act 87 was supported by the State Department of Transportation (DOT) and OEQC, and addressed these situations, providing an exemption for certain limited primary permits for minor work touching public roadways. Over the past two years, OEQC and DOT have worked with the public, environmental advocates, state and county agencies, and private businesses to develop appropriate legislative language to assure compliance with HRS Chapter 343.

**LURF’s Position.** The extension of Act 87 is necessary to continue to clarify that the EA requirement should not be interpreted and expanded to include minor work touching public roadways. Although LURF supports extending Act 87 permanently, it also supports HB 424, which extends Act 87 to July 1, 2013. The extension of Act 87 will help private parties and agencies avoid preparing EAs that are not necessary. The importance of this measure was highlighted in 2009 by the Senate Committee Report of ENE and TIA Committees, which said, “[n]otwithstanding that this 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.” Senate Standing Committee Report 986. While LURF supports HB 424 and is also in support of SB 723, which proposes to extend the sunset date of Act 87 to July 1, 2015.

As noted above, we believe amending HB 424 to add the clarifications in HB 792 will provide certainty and predictability to Chapter 343 and the environmental review system, and allow responsible development of government and private projects while continuing to protect and preserve Hawaii’s environment.

We respectfully request your **favorable consideration of HB 424 and LURF’s recommended amendments**. Thank you for the opportunity to testify on this matter.

Attachments (Uploaded separately on website)