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# A BILL FOR AN ACT

RELATING TO ENVIRONMENTAL IMPACT STATEMENTS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that recent court  
2 decisions have expanded the situations where an environmental  
3 assessment is required beyond the initial legislative intent.  
4 The courts have found, among other things, that any use of state  
5 or county lands or funds requires an environmental assessment to  
6 make a determination on whether an environmental impact  
7 statement is required or not. The courts have stated that an  
8 agency making such a determination must consider every phase and  
9 every expected consequence of the proposed action. Simply  
10 stated, agencies such as state and county transportation  
11 departments must now consider both the primary and secondary  
12 impacts of a project on the environment when any part of the  
13 project touches a public roadway.

14           The legislature is concerned about the unintended  
15 consequences of the recent court decisions. The courts'  
16 interpretation of chapter 343, Hawaii Revised Statutes,  
17 effectively means that the involvement of a state or county road



1 right-of-way in a project may now "trigger" the need for an  
2 environmental assessment or environmental impact statement.  
3 Accordingly, if an access improvement, easement, drainage  
4 facility, or waterline touches (over, under, across) a state or  
5 county road right-of-way, this may be considered a use of state  
6 or county lands that may subject the entire project to the  
7 chapter 343, Hawaii Revised Statutes, process as related to  
8 cumulative impacts. This interpretation causes problems for  
9 large and small landowners and businesses who may be required to  
10 comply with chapter 343, Hawaii Revised Statutes, for what has  
11 historically been viewed as relative minor utility or access  
12 concerns.

13 SECTION 2. Section 343-5, Hawaii Revised Statutes, is  
14 amended by amending subsection (a) to read as follows:

15 "(a) Except as otherwise provided, an environmental  
16 assessment shall be required for actions that:

17 (1) Propose the use of state or county lands or the use of  
18 state or county funds, other than funds to be used for  
19 feasibility or planning studies for possible future  
20 programs or projects that the agency has not approved,  
21 adopted, or funded, or funds to be used for the  
22 acquisition of unimproved real property; provided that



1 the agency shall consider environmental factors and  
2 available alternatives in its feasibility or planning  
3 studies; provided further that an environmental  
4 assessment for proposed uses under section

5 [‡]205-2(d)(10)[‡] or [‡]205-4.5(a)(13)[‡] shall only  
6 be required pursuant to section 205-5(b)[‡]. For  
7 purposes of this section, state or county lands shall  
8 not include an existing public street, road, or  
9 highway as defined in section 291-1, or any existing  
10 trail or bikeway;

11 (2) Propose any use within any land classified as a  
12 conservation district by the state land use commission  
13 under chapter 205;

14 (3) Propose any use within a shoreline area as defined in  
15 section 205A-41;

16 (4) Propose any use within any historic site as designated  
17 in the National Register or Hawaii Register, as  
18 provided for in the Historic Preservation Act of 1966,  
19 Public Law 89-665, or chapter 6E;

20 (5) Propose any use within the Waikiki area of Oahu, the  
21 boundaries of which are delineated in the land use



- 1 ordinance as amended, establishing the "Waikiki  
2 Special District";
- 3 (6) Propose any amendments to existing county general  
4 plans where the amendment would result in designations  
5 other than agriculture, conservation, or preservation,  
6 except actions proposing any new county general plan  
7 or amendments to any existing county general plan  
8 initiated by a county;
- 9 (7) Propose any reclassification of any land classified as  
10 a conservation district by the state land use  
11 commission under chapter 205;
- 12 (8) Propose the construction of new or the expansion or  
13 modification of existing helicopter facilities within  
14 the State, that by way of their activities, may  
15 affect:
- 16 (A) Any land classified as a conservation district by  
17 the state land use commission under chapter 205;
- 18 (B) A shoreline area as defined in section 205A-41;  
19 or
- 20 (C) Any historic site as designated in the National  
21 Register or Hawaii Register, as provided for in  
22 the Historic Preservation Act of 1966, Public Law



1 89-665, or chapter 6E; or until the statewide  
 2 historic places inventory is completed, any  
 3 historic site that is found by a field  
 4 reconnaissance of the area affected by the  
 5 helicopter facility and is under consideration  
 6 for placement on the National Register or the  
 7 Hawaii Register of Historic Places; and

8 (9) Propose any:

9 (A) Wastewater treatment unit, except an individual  
 10 wastewater system or a wastewater treatment unit  
 11 serving fewer than fifty single-family dwellings  
 12 or the equivalent;

13 (B) Waste-to-energy facility;

14 (C) Landfill;

15 (D) Oil refinery; or

16 (E) Power-generating facility."

17 SECTION 3. Statutory material to be repealed is bracketed  
 18 and stricken. New statutory material is underscored.

19 SECTION 4. This Act shall take effect on July 1, 2008.

20 INTRODUCED BY:

*Ron Marshall*  
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*By Request*



**Report Title:**

Environmental Impact Statements; State or County Lands

**Description:**

Clarifies that mere contact with an existing public street, road, or highway does not constitute a use of state or county lands for environmental impact assessment or statement purposes.

