

---

---

# A BILL FOR AN ACT

RELATING TO THE ENVIRONMENTAL IMPACT STATEMENT LAW.

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

1           SECTION 1. Section 343-5, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§343-5 Applicability and requirements.** (a) Except as  
4 otherwise provided, an environmental assessment shall be  
5 required for actions that:

6           (1) Propose the use of state or county lands or the use of  
7 state or county funds, other than funds to be used for  
8 feasibility or planning studies for possible future  
9 programs or projects that the agency has not approved,  
10 adopted, or funded, or funds to be used for the  
11 acquisition of unimproved real property; provided that  
12 the agency shall consider environmental factors and  
13 available alternatives in its feasibility or planning  
14 studies; provided further that an environmental  
15 assessment for proposed uses under section [†]205-  
16 2(d)(10) [†] or [†]205-4.5(a)(13) [†] shall only be  
17 required pursuant to section 205-5(b);



- 1           (2) Propose any use within any land classified as a  
2           conservation district by the state land use commission  
3           under chapter 205;
- 4           (3) Propose any use within a shoreline area as defined in  
5           section 205A-41;
- 6           (4) Propose any use within any historic site as designated  
7           in the [~~National Register or Hawaii Register,~~]  
8           National Register of Historic Places or the Hawaii  
9           register of historic places, as provided for in the  
10          Historic Preservation Act of 1966, Public Law 89-665,  
11          or chapter 6E;
- 12          (5) Propose any use within the Waikiki area of Oahu, the  
13          boundaries of which are delineated in the land use  
14          ordinance as amended, establishing the "Waikiki  
15          Special District";
- 16          (6) Propose any amendments to existing county general  
17          plans where the amendment would result in designations  
18          other than agriculture, conservation, or preservation,  
19          except actions proposing any new county general plan  
20          or amendments to any existing county general plan  
21          initiated by a county;



1 (7) Propose any reclassification of any land classified as  
2 a conservation district by the state land use  
3 commission under chapter 205;

4 (8) Propose the construction of new or the expansion or  
5 modification of existing helicopter facilities within  
6 the State, that by way of their activities, may  
7 affect:

8 (A) Any land classified as a conservation district by  
9 the state land use commission under chapter 205;

10 (B) A shoreline area as defined in section 205A-41;  
11 or

12 (C) Any historic site as designated in the [~~National~~  
13 ~~Register or Hawaii Register,~~] National Register  
14 of Historic Places or the Hawaii register of  
15 historic places, as provided for in the Historic  
16 Preservation Act of 1966, Public Law 89-665, or  
17 chapter 6E; or until the statewide historic  
18 places inventory is completed, any historic site  
19 that is found by a field reconnaissance of the  
20 area affected by the helicopter facility and is  
21 under consideration for placement on the  
22 [~~National Register or the Hawaii Register of~~



1                   ~~Historic Places;~~] National Register of Historic  
2                   Places or the Hawaii register of historic places;  
3                   and

4           (9) Propose any:

5                   (A) Wastewater treatment unit, except an individual  
6                   wastewater system or a wastewater treatment unit  
7                   serving fewer than fifty single-family dwellings  
8                   or the equivalent;

9                   (B) Waste-to-energy facility;

10                  (C) Landfill;

11                  (D) Oil refinery; or

12                  (E) Power-generating facility.

13           (b) Whenever an agency proposes an action in subsection  
14   (a), other than feasibility or planning studies for possible  
15   future programs or projects that the agency has not approved,  
16   adopted, or funded, or other than the use of state or county  
17   funds for the acquisition of unimproved real property that is  
18   not a specific type of action declared exempt under section  
19   343-6, the agency shall prepare an environmental assessment for  
20   [~~such~~] the action at the earliest practicable time to determine  
21   whether an environmental impact statement shall be required.



- 1           (1) For environmental assessments for which a finding of  
2           no significant impact is anticipated:
- 3           (A) A draft environmental assessment shall be made  
4           available for public review and comment for a  
5           period of thirty days;
- 6           (B) The office shall inform the public of the  
7           availability of the draft environmental  
8           assessment for public review and comment pursuant  
9           to section 343-3;
- 10          (C) The agency shall respond in writing to comments  
11          received during the review and prepare a final  
12          environmental assessment to determine whether an  
13          environmental impact statement shall be required;
- 14          (D) A statement shall be required if the agency finds  
15          that the proposed action may have a significant  
16          effect on the environment; and
- 17          (E) The agency shall file notice of [~~such~~] the  
18          determination with the office. When a conflict  
19          of interest may exist because the proposing  
20          agency and the agency making the determination  
21          are the same, the office may review the agency's  
22          determination, consult the agency, and advise the



1           agency of potential conflicts, to comply with  
2           this section. The office shall publish the final  
3           determination for the public's information  
4           pursuant to section 343-3.

5           The draft and final statements, if required, shall be  
6           prepared by the agency and submitted to the office. The draft  
7           statement shall be made available for public review and comment  
8           through the office for a period of forty-five days. The office  
9           shall inform the public of the availability of the draft  
10          statement for public review and comment pursuant to section  
11          343-3. The agency shall respond in writing to comments received  
12          during the review and prepare a final statement.

13          The office, when requested by the agency, may make a  
14          recommendation as to the acceptability of the final statement.

15          (2) The final authority to accept a final statement shall  
16          rest with:

17                 (A) The governor, or the governor's authorized  
18                 representative, whenever an action proposes the  
19                 use of state lands or the use of state funds, or  
20                 whenever a state agency proposes an action within  
21                 the categories in subsection (a); or



1           (B) The mayor, or the mayor's authorized  
2           representative, of the respective county whenever  
3           an action proposes only the use of county lands  
4           or county funds.

5           Acceptance of a required final statement shall be a  
6           condition precedent to implementation of the proposed action.  
7           Upon acceptance or nonacceptance of the final statement, the  
8           governor or mayor, or the governor's or mayor's authorized  
9           representative, shall file notice of [~~such~~] the determination  
10          with the office. The office, in turn, shall publish the  
11          determination of acceptance or nonacceptance pursuant to section  
12          343-3.

13          (c) Whenever an applicant proposes an action specified by  
14          subsection (a) that requires approval of an agency and that is  
15          not a specific type of action declared exempt under section 343-  
16          6, the agency initially receiving and agreeing to process the  
17          request for approval shall prepare an environmental assessment  
18          of the proposed action at the earliest practicable time to  
19          determine whether an environmental impact statement shall be  
20          required; provided that, for an action that proposes the  
21          establishment of a renewable energy facility, a draft  
22          environmental impact statement shall be prepared at the earliest



1 practicable time. The final approving agency for the request  
2 for approval is not required to be the accepting authority.

3 For environmental assessments for which a finding of no  
4 significant impact is anticipated:

5 (1) A draft environmental assessment shall be made  
6 available for public review and comment for a period  
7 of thirty days;

8 (2) The office shall inform the public of the availability  
9 of the draft environmental assessment for public  
10 review and comment pursuant to section 343-3; and

11 (3) The applicant shall respond in writing to comments  
12 received during the review, and the agency shall  
13 prepare a final environmental assessment to determine  
14 whether an environmental impact statement shall be  
15 required. A statement shall be required if the agency  
16 finds that the proposed action may have a significant  
17 effect on the environment. The agency shall file  
18 notice of the agency's determination with the office,  
19 which, in turn, shall publish the agency's  
20 determination for the public's information pursuant to  
21 section 343-3.





1           The draft and final statements, if required, shall be  
2 prepared by the applicant, who shall file these statements with  
3 the office.

4           The draft statement shall be made available for public  
5 review and comment through the office for a period of forty-five  
6 days. The office shall inform the public of the availability of  
7 the draft statement for public review and comment pursuant to  
8 section 343-3.

9           The applicant shall respond in writing to comments received  
10 during the review and prepare a final statement. The office,  
11 when requested by the applicant or agency, may make a  
12 recommendation as to the acceptability of the final statement.

13           The authority to accept a final statement shall rest with  
14 the agency initially receiving and agreeing to process the  
15 request for approval. The final decision-making body or  
16 approving agency for the request for approval is not required to  
17 be the accepting authority. The planning department for the  
18 county in which the proposed action will occur shall be a  
19 permissible accepting authority for the final statement.

20           Acceptance of a required final statement shall be a  
21 condition precedent to approval of the request and commencement  
22 of the proposed action. Upon acceptance or nonacceptance of the



1 final statement, the agency shall file notice of [~~such~~] the  
2 determination with the office. The office, in turn, shall  
3 publish the determination of acceptance or nonacceptance of the  
4 final statement pursuant to section 343-3.

5 The agency receiving the request, within thirty days of  
6 receipt of the final statement, shall notify the applicant and  
7 the office of the acceptance or nonacceptance of the final  
8 statement. The final statement shall be deemed to be accepted  
9 if the agency fails to accept or not accept the final statement  
10 within thirty days after receipt of the final statement;  
11 provided that the thirty-day period may be extended at the  
12 request of the applicant for a period not to exceed fifteen  
13 days.

14 In any acceptance or nonacceptance, the agency shall  
15 provide the applicant with the specific findings and reasons for  
16 its determination. An applicant, within sixty days after  
17 nonacceptance of a final statement by an agency, may appeal the  
18 nonacceptance to the environmental council, which, within thirty  
19 days of receipt of the appeal, shall notify the applicant of the  
20 council's determination. In any affirmation or reversal of an  
21 appealed nonacceptance, the council shall provide the applicant  
22 and agency with specific findings and reasons for its

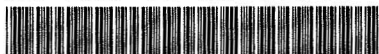


1 determination. The agency shall abide by the council's  
2 decision.

3 (d) Whenever an applicant requests approval for a proposed  
4 action and there is a question as to which of two or more state  
5 or county agencies with jurisdiction has the responsibility of  
6 preparing the environmental assessment, the office, after  
7 consultation with and assistance from the affected state or  
8 county agencies, shall determine which agency shall prepare the  
9 assessment.

10 (e) In preparing an environmental assessment, an agency  
11 may consider and, where applicable and appropriate, incorporate  
12 by reference, in whole or in part, previous determinations of  
13 whether a statement is required and previously accepted  
14 statements. The council, by rule, shall establish criteria and  
15 procedures for the use of previous determinations and  
16 statements.

17 (f) Whenever an action is subject to both the National  
18 Environmental Policy Act of 1969 (Public Law 91-190) and the  
19 requirements of this chapter, the office and agencies shall  
20 cooperate with federal agencies to the fullest extent possible  
21 to reduce duplication between federal and state requirements.  
22 Such cooperation, to the fullest extent possible, shall include



1 joint environmental impact statements with concurrent public  
2 review and processing at both levels of government. Where  
3 federal law has environmental impact statement requirements in  
4 addition to but not in conflict with this chapter, the office  
5 and agencies shall cooperate in fulfilling these requirements so  
6 that one document shall comply with all applicable laws.

7 (g) A statement that is accepted with respect to a  
8 particular action shall satisfy the requirements of this  
9 chapter, and no other statement for the proposed action shall be  
10 required.

11 (h) Notwithstanding anything in this chapter to the  
12 contrary, if an action has not been implemented or completed,  
13 within fifteen years of the date of:

14 (1) The determination of a finding of no significant  
15 impact, the agency that prepared the environmental  
16 assessment shall prepare a supplemental environmental  
17 assessment; and

18 (2) The acceptance of an environmental impact statement,  
19 the accepting authority shall require the preparation  
20 of a supplemental environmental impact statement.



1        (i) When a supplemental environmental assessment or  
2 environmental impact statement is required pursuant to  
3 subsection (h):

4        (1) The supplemental document shall comply with all the  
5 requirements of this chapter, including review and  
6 filing deadlines, and rules adopted pursuant to  
7 section 343-6 as of the date of the determination that  
8 a supplemental document is required; and

9        (2) The subsequent determination of a finding of no  
10 significant impact, acceptance of the supplemental  
11 environmental impact statement, or the declaration  
12 that the action is exempt under section 343-6 shall be  
13 a condition precedent to the implementation or  
14 completion of the proposed action."

15        SECTION 2. Section 343-6, Hawaii Revised Statutes, is  
16 amended by amending subsection (a) to read as follows:

17        "(a) After consultation with the affected agencies, the  
18 council shall adopt, amend, or repeal necessary rules for the  
19 purposes of this chapter in accordance with chapter 91  
20 including, but not limited to, rules that shall:



- 1           (1) Prescribe the procedures whereby a group of proposed  
2           actions may be treated by a single environmental  
3           assessment or statement;
- 4           (2) Establish procedures whereby specific types of  
5           actions, because they will probably have minimal or no  
6           significant effects on the environment, are declared  
7           exempt from the preparation of an environmental  
8           assessment;
- 9           (3) Prescribe procedures for the preparation of an  
10          environmental assessment;
- 11          (4) Prescribe the contents of an environmental assessment;
- 12          (5) Prescribe procedures for informing the public of  
13          determinations that a statement is either required or  
14          not required, for informing the public of the  
15          availability of draft environmental impact statements  
16          for review and comments, and for informing the public  
17          of the acceptance or nonacceptance of the final  
18          environmental statement;
- 19          (6) Prescribe the contents of an environmental impact  
20          statement;



1 (7) Prescribe procedures for the submission, distribution,  
2 review, acceptance or nonacceptance, and withdrawal of  
3 an environmental impact statement;

4 (8) Establish criteria to determine whether an  
5 environmental impact statement is acceptable or not;  
6 [and]

7 (9) Prescribe procedures and criteria, as necessary,  
8 relating to supplemental environmental assessments and  
9 environmental impact statements; and

10 [+9] (10) Prescribe procedures to appeal the nonacceptance  
11 of an environmental impact statement to the  
12 environmental council."

13 SECTION 3. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 4. This Act shall take effect upon its approval.

16

INTRODUCED BY: ~~Don~~ D.C. Feil-Agona  
Numina Dvoice  
[Signature]  
Mark Wickstrom  
Josie Vial  
Denny Gha  
[Signature]  
Erin Colby

**Report Title:**

Environmental Impact Statements; Environmental Assessments;  
Supplements

**Description:**

Requires 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.

