
A BILL FOR AN ACT

RELATING TO ENVIRONMENTAL REVIEW.

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

1 SECTION 1. Section 343-5, Hawaii Revised Statutes, is
2 amended by amending subsections (b) and (c) to read as follows:
3 "(b) Whenever an agency proposes an action in subsection
4 (a), other than feasibility or planning studies for possible
5 future programs or projects that the agency has not approved,
6 adopted, or funded, or other than the use of state or county
7 funds for the acquisition of unimproved real property that is
8 not a specific type of action declared exempt under section
9 343-6, the agency shall prepare an environmental assessment for
10 [~~such~~] the action at the earliest practicable time to determine
11 whether an environmental impact statement shall be required~~[-]~~;
12 provided that the preparation of the environmental assessment
13 may be made by the agency or the agency may designate the person
14 who is the proposed user of the state or county facility or
15 improvement to prepare and fund the environmental assessment on
16 behalf of the agency, if the state or county facility or
17 improvement is necessary to accommodate the person's operations.

- 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 or proposed user designated by the
11 agency shall respond in writing to comments
12 received during the review and prepare a final
13 environmental assessment to determine whether an
14 environmental impact statement shall be required;
- 15 (D) A statement shall be required if the agency finds
16 that the proposed action may have a significant
17 effect on the environment; and
- 18 (E) The agency shall file notice of [~~such~~] its
19 determination under subparagraph (D) with the
20 office. When a conflict of interest may exist
21 because the proposing agency and the agency
22 making the determination are the same, the office

1 may review the agency's determination, consult
2 the agency, and advise the agency of potential
3 conflicts, to comply with this section. The
4 office shall publish the final determination for
5 the public's information pursuant to section
6 343-3.

7 The draft and final environmental impact
8 statements, if required, shall be prepared by the
9 agency and submitted to the office~~[-]~~; provided that
10 the agency may require the person who is the proposed
11 user of the state or county facility or improvement to
12 prepare the statements at the person's expense. The
13 draft statement shall be made available for public
14 review and comment through the office for a period of
15 forty-five days. The office shall inform the public
16 of the availability of the draft statement for public
17 review and comment pursuant to section 343-3. The
18 agency or proposed user designated by the agency shall
19 respond in writing to comments received during the
20 review and prepare a final statement.

1 The office, when requested by the agency, may
2 make a recommendation as to the acceptability of the
3 final statement.

4 (2) The final authority to accept a final statement shall
5 rest with:

6 (A) The governor, or the governor's authorized
7 representative, whenever an action proposes the
8 use of state lands or the use of state funds, or
9 whenever a state agency proposes an action within
10 the categories in subsection (a); or

11 (B) The mayor, or the mayor's authorized
12 representative, of the respective county whenever
13 an action proposes only the use of county lands
14 or county funds.

15 Acceptance of a required final statement shall be
16 a condition precedent to implementation of the
17 proposed action. Upon acceptance or nonacceptance of
18 the final statement, the governor or mayor, or the
19 governor's or mayor's authorized representative, shall
20 file notice of [~~such~~] the determination with the
21 office. The office, in turn, shall publish the

1 determination of acceptance or nonacceptance pursuant
2 to section 343-3.

3 (c) Whenever an applicant proposes an action specified by
4 subsection (a) that requires approval of an agency and that is
5 not a specific type of action declared exempt under section
6 343-6, the agency initially receiving and agreeing to process
7 the request for approval shall prepare an environmental
8 assessment of the proposed action at the earliest practicable
9 time to determine whether an environmental impact statement
10 shall be required; provided that, for an action that proposes
11 the establishment of a renewable energy facility, a draft
12 environmental impact statement shall be prepared at the earliest
13 practicable time. The final approving agency for the request
14 for approval is not required to be the accepting authority. The
15 preparation of the environmental assessment and any required
16 statement may be made by the agency itself or the agency may
17 designate the applicant, at the applicant's expense, to prepare
18 the environmental assessment and any required statement on
19 behalf of the agency.

20 For environmental assessments for which a finding of no
21 significant impact is anticipated:

- 1 (1) A draft environmental assessment shall be made
2 available for public review and comment for a period
3 of thirty days;
- 4 (2) The office shall inform the public of the availability
5 of the draft environmental assessment for public
6 review and comment pursuant to section 343-3; and
- 7 (3) The applicant shall respond in writing to comments
8 received during the review, and the agency shall
9 prepare a final environmental assessment to determine
10 whether an environmental impact statement shall be
11 required. A statement shall be required if the agency
12 finds that the proposed action may have a significant
13 effect on the environment. The agency shall file
14 notice of the agency's determination with the office,
15 which, in turn, shall publish the agency's
16 determination for the public's information pursuant to
17 section 343-3.

18 The draft and final statements, if required, shall be
19 prepared by the applicant, who shall file these statements with
20 the office.

21 The draft statement shall be made available for public
22 review and comment through the office for a period of forty-five

1 days. The office shall inform the public of the availability of
2 the draft statement for public review and comment pursuant to
3 section 343-3.

4 The applicant shall respond in writing to comments received
5 during the review and prepare a final statement. The office,
6 when requested by the applicant or agency, may make a
7 recommendation as to the acceptability of the final statement.

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

15 Acceptance of a required final statement shall be a
16 condition precedent to approval of the request and commencement
17 of the proposed action. Upon acceptance or nonacceptance of the
18 final statement, the agency shall file notice of [~~such~~] the
19 determination with the office. The office, in turn, shall
20 publish the determination of acceptance or nonacceptance of the
21 final statement pursuant to section 343-3.

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

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

21 SECTION 2. Statutory material to be repealed is bracketed
22

1 and stricken. New statutory material is underscored.

2 SECTION 3. This Act shall take effect upon its approval.

Report Title:

Harbors; Environmental Assessments; EIS

Description:

Allows an agency to transfer the responsibility for preparing and funding environmental assessments and environmental impact statements to the user of the state or county land or new improvements to be constructed with state or county funds necessary to accommodate the user's operations. (SD1)