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

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

21          (2) The final authority to accept a final statement shall  
22          rest with:

1 (A) The governor, or the governor's authorized  
2 representative, whenever an action proposes the  
3 use of state lands or the use of state funds, or  
4 whenever a state agency proposes an action within  
5 the categories in subsection (a); or

6 (B) The mayor, or the mayor's authorized  
7 representative, of the respective county whenever  
8 an action proposes only the use of county lands  
9 or county funds.

10 Acceptance of a required final statement shall be a  
11 condition precedent to implementation of the proposed action.  
12 Upon acceptance or nonacceptance of the final statement, the  
13 governor or mayor, or the governor's or mayor's authorized  
14 representative, shall file notice of [~~such~~] the determination  
15 with the office. The office, in turn, shall publish the  
16 determination of acceptance or nonacceptance pursuant to section  
17 343-3.

18 (c) Whenever an applicant proposes an action specified by  
19 subsection (a) that requires approval of an agency and that is  
20 not a specific type of action declared exempt under section  
21 343-6, the agency initially receiving and agreeing to process  
22 the request for approval shall prepare an environmental

1 assessment of the proposed action at the earliest practicable  
2 time to determine whether an environmental impact statement  
3 shall be required; provided that, for an action that proposes  
4 the establishment of a renewable energy facility, a draft  
5 environmental impact statement shall be prepared at the earliest  
6 practicable time. The final approving agency for the request  
7 for approval is not required to be the accepting authority. The  
8 preparation of the environmental assessment and any required  
9 statement may be made by the agency itself or the agency may  
10 designate the applicant, at the applicant's expense, to prepare  
11 the environmental assessment and any required statement on  
12 behalf of the agency.

13 For environmental assessments for which a finding of no  
14 significant impact is anticipated:

- 15 (1) A draft environmental assessment shall be made  
16 available for public review and comment for a period  
17 of thirty days;
- 18 (2) The office shall inform the public of the availability  
19 of the draft environmental assessment for public  
20 review and comment pursuant to section 343-3; and
- 21 (3) The applicant shall respond in writing to comments  
22 received during the review, and the agency shall

1           prepare a final environmental assessment to determine  
2           whether an environmental impact statement shall be  
3           required. A statement shall be required if the agency  
4           finds that the proposed action may have a significant  
5           effect on the environment. The agency shall file  
6           notice of the agency's determination with the office,  
7           which, in turn, shall publish the agency's  
8           determination for the public's information pursuant to  
9           section 343-3.

10           The draft and final statements, if required, shall be  
11           prepared by the applicant, who shall file these statements with  
12           the office.

13           The draft statement shall be made available for public  
14           review and comment through the office for a period of forty-five  
15           days. The office shall inform the public of the availability of  
16           the draft statement for public review and comment pursuant to  
17           section 343-3.

18           The applicant shall respond in writing to comments received  
19           during the review and prepare a final statement. The office,  
20           when requested by the applicant or agency, may make a  
21           recommendation as to the acceptability of the final statement.

1           The authority to accept a final statement shall rest with  
2 the agency initially receiving and agreeing to process the  
3 request for approval. The final decision-making body or  
4 approving agency for the request for approval is not required to  
5 be the accepting authority. The planning department for the  
6 county in which the proposed action will occur shall be a  
7 permissible accepting authority for the final statement.

8           Acceptance of a required final statement shall be a  
9 condition precedent to approval of the request and commencement  
10 of the proposed action. Upon acceptance or nonacceptance of the  
11 final statement, the agency shall file notice of [~~such~~] the  
12 determination with the office. The office, in turn, shall  
13 publish the determination of acceptance or nonacceptance of the  
14 final statement pursuant to section 343-3.

15           The agency receiving the request, within thirty days of  
16 receipt of the final statement, shall notify the applicant and  
17 the office of the acceptance or nonacceptance of the final  
18 statement. The final statement shall be deemed to be accepted  
19 if the agency fails to accept or not accept the final statement  
20 within thirty days after receipt of the final statement;  
21 provided that the thirty-day period may be extended at the

1 request of the applicant for a period not to exceed fifteen  
2 days.

3 In any acceptance or nonacceptance, the agency shall  
4 provide the applicant with the specific findings and reasons for  
5 its determination. An applicant, within sixty days after  
6 nonacceptance of a final statement by an agency, may appeal the  
7 nonacceptance to the environmental council, which, within thirty  
8 days of receipt of the appeal, shall notify the applicant of the  
9 council's determination. In any affirmation or reversal of an  
10 appealed nonacceptance, the council shall provide the applicant  
11 and agency with specific findings and reasons for its  
12 determination. The agency shall abide by the council's  
13 decision."

14 SECTION 2. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 3. This Act shall take effect on July 1, 2050.



**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. (SD2)