

JAN 20 2010

A BILL FOR AN ACT

RELATING TO ENVIRONMENTAL PROTECTION.

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

1 PART I.

2 SECTION 1. Chapter 341, Hawaii Revised Statutes, is
3 amended to read as follows:

4 "[+] CHAPTER 341 ["]

5 ENVIRONMENTAL QUALITY CONTROL

6 [+]§341-1[+] Findings and purpose. The legislature finds
7 that the quality of the environment is as important to the
8 welfare of the people of Hawaii as is the economy of the State.
9 The legislature further finds that the determination of an
10 optimum balance between economic development and environmental
11 quality deserves the most thoughtful consideration, and that the
12 maintenance of the optimum quality of the environment deserves
13 the most intensive care.

14 The purpose of this chapter is to stimulate, expand, and
15 coordinate efforts to determine and maintain the optimum quality
16 of the environment of the State.

17 §341-2 Definitions. As used in this chapter, unless the
18 context otherwise requires:



1 "Center" means the University of Hawaii environmental
2 center established in section [†]304A-1551[†].

3 "Council" means the environmental council established in
4 section 341-3(c).

5 "Director" means the director of the office of
6 environmental quality control.

7 "Office" means the office of environmental quality control
8 established in section 341-3(a).

9 "University" means the University of Hawaii.

10 **§341-3 Office of environmental quality control;**
11 **environmental center; environmental council.** (a) There is
12 created an office of environmental quality control that shall be
13 headed by a single executive to be known as the director of the
14 office of environmental quality control who shall be appointed
15 by the governor as provided in section 26-34. This office shall
16 implement this chapter and shall be placed within the department
17 of [~~health~~] land and natural resources for administrative
18 purposes. The office shall perform [~~its~~] the duties prescribed
19 to it under chapter 343 [~~and shall serve the governor in an~~
20 ~~advisory capacity on all matters relating to environmental~~
21 ~~quality control~~].



1 (b) The environmental center within the University of
2 Hawaii shall be as established under section ~~[+]304A-1551[+]~~.

3 (c) There is created an environmental council not to
4 exceed ~~[fifteen]~~ seven members. ~~[Except for the director,~~
5 ~~members]~~ The council shall include one member from each county
6 and no more than three at-large members. The director may not
7 serve as a member of the council. Members of the environmental
8 council shall be appointed by the governor as provided in
9 section 26-34; provided that two of the seven members shall be
10 appointed from a list of persons nominated by the speaker of the
11 house of representatives and two members shall be appointed from
12 a list of persons nominated by the senate president. The
13 council shall be attached to the ~~[department of health]~~ office
14 for administrative purposes. ~~[Except for the director, the]~~ The
15 term of each member shall be four years; provided that, of the
16 members initially appointed, ~~[five]~~ three members shall serve
17 for four years, ~~[five]~~ two members shall serve for three years,
18 and the remaining ~~[four]~~ two members shall serve for two years.
19 Vacancies shall be filled for the remainder of any unexpired
20 term in the same manner as original appointments. ~~[The director~~
21 ~~shall be an ex officio voting member of the council.]~~ The



1 council chairperson shall be elected by the council from among
2 the [appointed] members of the council.

3 Members shall be appointed to [~~assure~~] ensure a broad and
4 balanced representation of educational, business, and
5 environmentally pertinent disciplines and professions [~~, such as~~
6 ~~the natural and social sciences, the humanities, architecture,~~
7 ~~engineering, environmental consulting, public health, and~~
8 ~~planning; educational and research institutions with~~
9 ~~environmental competence; agriculture, real estate, visitor~~
10 ~~industry, construction, media, and voluntary community and~~
11 ~~environmental groups~~]. The members of the council shall serve
12 without compensation but shall be reimbursed for expenses,
13 including travel expenses, incurred in the discharge of their
14 duties.

15 **§341-4 Powers and duties of the director.** (a) The
16 director shall have [~~such~~] powers delegated by the governor as
17 are necessary to coordinate and, when requested by the governor,
18 to direct, pursuant to chapter 91, all state governmental
19 agencies in matters concerning environmental quality.

20 (b) To further the objective of subsection (a), the
21 director shall:



- 1 (1) ~~[Direct]~~ Through the council, direct the attention of
2 ~~[the university community]~~ state agencies and the
3 residents of the State ~~[in general]~~ to ~~[ecological~~
4 and] environmental problems ~~[through]~~, in cooperation
5 with the center ~~[and the council, respectively, and~~
6 ~~through public education programs]~~;
- 7 (2) Conduct research or arrange for ~~[the conduct of]~~
8 research through contractual relations with the
9 center, state agencies, or other persons with
10 competence in ~~[the field of ecology and]~~ environmental
11 quality;
- 12 (3) ~~[Encourage]~~ Through the council, encourage public
13 acceptance of proposed legislative and administrative
14 actions concerning ~~[ecology and]~~ environmental
15 quality, and receive notice of any private or public
16 complaints concerning ~~[ecology and]~~ environmental
17 quality ~~[through the council]~~;
- 18 (4) Recommend to the council programs for long-range
19 implementation of environmental quality control;
- 20 (5) Submit ~~[direct]~~ to the council for its review and
21 recommendation to the governor ~~[and to the legislature~~
22 ~~such]~~ legislative bills and administrative policies,



- 1 objectives, and actions, as are necessary to preserve
2 and enhance the environmental quality of the State;
- 3 (6) Conduct regular outreach and training for state and
4 county agencies on the environmental review process
5 and conduct other public educational programs; [and]
- 6 (7) Offer advice and assistance to private industry,
7 governmental agencies, non-governmental organizations,
8 state residents, or other persons upon request[-];
- 9 (8) Obtain advice from the environmental council on any
10 matters concerning environmental quality;
- 11 (9) Perform budgeting and hiring in a manner that ensures
12 adequate funding and staff support for the council to
13 carry out its duties under this chapter and chapter
14 343; and
- 15 (10) With the cooperation of private industry, governmental
16 agencies, non-governmental organizations, state
17 residents, and other interested persons in fulfilling
18 the requirements of this subsection, conduct annual
19 statewide workshops and publish an annual state
20 environmental review guidebook or supplement to assist
21 persons in complying with this chapter, chapter 343,
22 and administrative rules adopted thereunder; provided



1 that workshops, guidebooks, and supplements shall
2 include:

3 (A) Assistance for the preparation, processing, and
4 review of environmental review documents;

5 (B) Review of relevant court decisions affecting this
6 chapter, chapter 343, and administrative rules
7 adopted thereunder;

8 (C) Review of amendments to this chapter, chapter
9 343, other relevant laws, and administrative
10 rules adopted thereunder; and

11 (D) Any other information that may facilitate the
12 efficient implementation of this chapter, chapter
13 343, and administrative rules adopted thereunder.

14 (c) ~~[The director shall adopt rules pursuant to chapter 91~~
15 ~~necessary for the purposes of implementing this chapter.]~~ To
16 facilitate agency and public participation in the review
17 process, the office shall create and maintain an electronic
18 communication system, such as a website, to meet best practices
19 of environmental review, as determined by the director.

20 §341-A Annual report. No later than January 31 of each
21 year, at the direction of the council, the director shall
22 prepare a report that analyzes the effectiveness of the State's



1 environmental review system during the prior year. The report
2 shall include an assessment of a sample of environmental
3 assessments and environmental impact statements for completed
4 projects.

5 At the request of the director or the council, state and
6 county agencies shall provide information to assist in the
7 preparation of the annual report.

8 **§341-6 [~~Functions~~] Duties of the environmental council.**

9 (a) The council shall [~~serve~~]:

10 (1) Serve the governor in an advisory capacity on all
11 matters relating to environmental quality;

12 (2) Serve as a liaison between the [~~director~~] governor and
13 the general public by soliciting information,
14 opinions, complaints, recommendations, and advice
15 concerning [~~ecology and~~] environmental quality through
16 public hearings or any other means and by publicizing
17 [~~such~~] these matters as requested by the [~~director~~
18 pursuant to section 341-4(b)(3).] governor; and

19 (3) Meet at the call of the council chairperson or the
20 governor upon notice to the council chairperson.

21 (b) The council may make recommendations concerning
22 [~~ecology and~~] environmental quality to the [~~director and shall~~



1 ~~meet at the call of the council chairperson or the director upon~~
2 ~~notifying the council chairperson.]~~ governor.

3 (c) The council shall monitor the progress of state,
4 county, and federal agencies in achieving the State's
5 environmental goals and policies ~~[and]~~. No later than January
6 31 of each year, the council, with the assistance of the
7 director, shall make an annual report with recommendations for
8 improvement to the governor, the legislature, and the public ~~[no~~
9 ~~later than January 31 of each year]~~. ~~[All]~~ At the request of
10 the council, state and county agencies shall ~~[cooperate with the~~
11 ~~council and]~~ provide information to assist in the preparation of
12 ~~[such a]~~ the report ~~[by responding to requests for information~~
13 ~~made by the council]~~. The council may combine its annual report
14 with the annual report prepared by the director pursuant to
15 section 341-A.

16 (d) The council may delegate to any person ~~[such]~~ the
17 power or authority vested in the council as it deems reasonable
18 and proper for the effective administration of this section and
19 chapter 343, except the power to make, amend, or repeal rules.

20 (e) The council shall adopt rules, pursuant to chapter 91,
21 necessary for the purposes of implementing this chapter and
22 chapter 343.



1 §341-B Environmental review special fund; use of funds.

2 (a) There is established in the state treasury the
3 environmental review special fund, into which shall be
4 deposited:

5 (1) All filing fees and other administrative fees
6 collected by the office;

7 (2) All accrued interest from the special fund; and

8 (3) Moneys appropriated to the special fund by the
9 legislature.

10 (b) Moneys in the environmental review special fund shall
11 be supplemental to, and not a replacement for, the office budget
12 base and be used to:

13 (1) Fund the activities of the office and the council in
14 fulfillment of their duties pursuant to this chapter
15 and chapter 343, including administrative and office
16 expenses; and

17 (2) Support outreach, training, education, and research
18 programs pursuant to section 341-4.

19 §341-C Fees. The director shall adopt rules, pursuant to
20 chapter 91, that establish reasonable fees for filing,
21 publication, and other administrative services of the office or
22 council pursuant to this chapter and chapter 343."



1 SECTION 2. All rules, policies, procedures, orders,
2 guidelines, and other material adopted, issued, or developed by
3 the office of environmental quality control or the environmental
4 council within the department of health to implement provisions
5 of the Hawaii Revised Statutes shall remain in full force and
6 effect until amended or repealed by the office of environmental
7 quality control or the environmental council within the
8 department of land and natural resources.

9 SECTION 3. All appropriations, records, equipment,
10 machines, files, supplies, contracts, books, papers, documents,
11 maps, and other personal property heretofore made, used,
12 acquired, or held by the office of environmental quality control
13 or the environmental council within the department of health
14 relating to the functions transferred to the department of land
15 and natural resources shall be transferred with the functions to
16 which they relate.

17 SECTION 4. All rights, powers, functions, and duties of
18 the office of environmental quality control or the environmental
19 council within the department of health are transferred to the
20 office of environmental quality control or the environmental
21 council within the department of land and natural resources.



1 All officers and employees whose functions are transferred
2 by this Act shall be transferred with their functions and shall
3 continue to perform their regular duties upon their transfer,
4 subject to the state personnel laws and this Act.

5 No officer or employee of the State having tenure shall
6 suffer any loss of salary, seniority, prior service credit,
7 vacation, sick leave, or other employee benefit or privilege as
8 a consequence of this Act, and the officer or employee may be
9 transferred or appointed to a civil service position without the
10 necessity of examination; provided that the officer or employee
11 possesses the minimum qualifications for the position to which
12 transferred or appointed; and provided that subsequent changes
13 in status may be made pursuant to applicable civil service and
14 compensation laws.

15 An officer or employee of the State who does not have
16 tenure and who may be transferred or appointed to a civil
17 service position as a consequence of this Act shall become a
18 civil service employee without the loss of salary, seniority,
19 prior service credit, vacation, sick leave, or other employee
20 benefits or privileges and without the necessity of examination;
21 provided that the officer or employee possesses the minimum



1 qualifications for the position to which transferred or
2 appointed.

3 If an office or position held by an officer or employee
4 having tenure is abolished, the officer or employee shall not
5 thereby be separated from public employment, but shall remain in
6 the employment of the State with the same pay and classification
7 and shall be transferred to some other office or position for
8 which the officer or employee is eligible under the personnel
9 laws of the State as determined by the head of the department or
10 the governor.

11 PART II.

12 SECTION 5. Chapter 343, Hawaii Revised Statutes, is
13 amended by adding three new sections to be appropriately
14 designated and to read as follows:

15 "§343-A Significance criteria. (a) In determining
16 whether a proposed action may have a significant adverse effect
17 on the environment, an agency shall consider:

18 (1) Every phase of the proposed action;

19 (2) Expected primary and secondary effects of the proposed
20 action; and

21 (3) The overall and cumulative effects of the proposed
22 action, including short-term and long-term effects.



- 1 (b) A proposed action shall be determined to have a
2 significant effect on the environment if it:
- 3 (1) Involves an irrevocable commitment to loss or
4 destruction of any natural or cultural resource;
- 5 (2) Curtails the range of beneficial uses of the
6 environment;
- 7 (3) Conflicts with the State's long-term environmental
8 policies, guidelines, or goals, as expressed in
9 chapter 344, and any revisions thereof and amendments
10 thereto, court decisions, or executive orders;
- 11 (4) Substantially adversely affects the economic welfare,
12 social welfare, or cultural practices of the community
13 or State;
- 14 (5) Substantially adversely affects public health;
- 15 (6) Involves substantial adverse secondary impacts, such
16 as population changes or effects on public facilities;
- 17 (7) Involves a substantial degradation of environmental
18 quality;
- 19 (8) Is individually limited but cumulatively has
20 considerable adverse effect upon the environment or
21 involves a commitment to related or future actions;



1 (9) Substantially adversely affects a rare, threatened, or
2 endangered species or its habitat;

3 (10) Detrimentially affects air or water quality or ambient
4 noise levels;

5 (11) Affects or is likely to suffer present or future
6 damage by being located in an environmentally
7 sensitive area, such as a flood plain, tsunami zone,
8 beach, erosion-prone area, geologically hazardous
9 land, estuary, fresh water, or coastal waters;

10 (12) Substantially adversely affects scenic vistas and
11 viewplanes identified in county or state plans or
12 studies;

13 (13) Requires substantial energy consumption or emits
14 substantial quantities of greenhouse gases; or

15 (14) Increases the scope or intensity of hazards to the
16 public, such as increased coastal inundation,
17 flooding, or erosion that may occur as a result of
18 climate change anticipated during the lifetime of the
19 project.

20 (c) The director of the office of environmental quality
21 control shall provide guidance to agencies on the application of
22 this section.



1 §343-B Applicability. Except as otherwise provided, an
2 environmental assessment shall be required for actions that
3 require discretionary approval from an agency and that may have
4 a probable, significant, and adverse environmental effect,
5 including:

- 6 (1) Any new county general or development plans or
7 amendments to existing county general or development
8 plans; or
- 9 (2) Any reclassification of any land classified as a
10 conservation district or important agricultural lands.

11 (b) Notwithstanding any other provision, the use of land
12 solely for connection to utilities or rights-of-way shall not
13 require an environmental assessment or an environmental impact
14 statement.

15 §343-C Record of decision; mitigation. (a) At the time
16 of the acceptance or nonacceptance of a final statement, the
17 accepting authority or agency shall prepare a concise public
18 record of decision that:

- 19 (1) States its decision;
- 20 (2) Identifies all alternatives considered by the
21 accepting authority or agency in reaching its
22 decision, including:



1 (A) Alternatives that were considered to be
2 environmentally preferable; and

3 (B) Preferences among those alternatives based upon
4 relevant factors, including economic and
5 technical considerations and agency statutory
6 mission; and

7 (3) States whether all practicable means to avoid or
8 minimize environmental harm from the alternative
9 selected have been adopted and, if not, why they were
10 not adopted.

11 (b) Agencies shall provide for monitoring to ensure that
12 their decisions are carried out and that any other conditions
13 established in the environmental impact statement or during its
14 review and committed to as part of the accepting authority or
15 agency's decision are implemented by the lead agency or other
16 appropriate agency. Where applicable, a lead agency shall:

17 (1) Include conditions on grants, permits, or other
18 approvals to ensure mitigation;

19 (2) Condition the funding of actions on mitigation; and

20 (3) Upon request, inform cooperating or commenting
21 agencies on progress in carrying out mitigation

22 measures that they proposed during the environmental



1 review process and that were adopted by the accepting
2 authority or agency in making its decision.

3 (c) Results of monitoring pursuant to this section shall
4 be made available periodically to the public through the
5 bulletin."

6 SECTION 6. Section 183-44, Hawaii Revised Statutes, is
7 amended by amending subsection (b) to read as follows:

8 "(b) For the purposes of this section:

9 (1) "Emergency repairs" means that work necessary to
10 repair damages to fishponds arising from natural
11 forces or events of human creation not due to the
12 wilful neglect of the owner, of such a character that
13 the efficiency, esthetic character or health of the
14 fishpond, neighboring activities of persons, or
15 existing flora or fauna will be endangered in the
16 absence of correction of existing conditions by
17 repair, strengthening, reinforcement, or maintenance.

18 (2) "Repairs and maintenance" of fishponds means any work
19 performed relative to the walls, floor, or other
20 traditional natural feature of the fishpond and its
21 appurtenances, the purposes of which are to maintain



1 the fishpond in its natural state and safeguard it
2 from damage from environmental and natural forces.
3 Repairs, strengthening, reinforcement, and maintenance and
4 emergency repair of fishponds shall not be construed as actions
5 ~~["proposing any use"]~~ requiring an environmental assessment or
6 an environmental impact statement within the context of section
7 ~~[343-5.]~~ 343-B."

8 SECTION 7. Section 343-2, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§343-2 Definitions.** As used in this chapter unless the
11 context otherwise requires:

12 "Acceptance" means a formal determination that the document
13 required to be filed pursuant to section 343-5 fulfills the
14 definition of an environmental impact statement, adequately
15 describes identifiable environmental impacts, and satisfactorily
16 responds to comments received during the review of the
17 statement.

18 "Action" means any program or project to be initiated by
19 any agency or applicant~~[-]~~ that:

- 20 (1) Is directly undertaken by any agency;
21 (2) Is supported in whole or in part by contracts, grants,
22 subsidies, or loans from one or more agencies; or



1 (3) Involves the issuance to a person of a discretionary
2 approval, such as a permit by one or more agencies.

3 The term "action" shall not include official acts of a
4 ministerial nature that involve no exercise of discretion.

5 "Agency" means any department, office, board, or commission
6 of the state or county government [~~which~~] that is a part of the
7 executive branch of that government.

8 "Applicant" means any person who, pursuant to statute,
9 ordinance, or rule, officially requests approval for a proposed
10 action.

11 "Approval" means a discretionary [~~consent~~] approval
12 required from an agency prior to actual implementation of an
13 action.

14 "Council" means the environmental council.

15 "Cumulative effects" means the impact on the environment
16 that results from the incremental impact of the action when
17 added to other past, present, and reasonably foreseeable future
18 actions regardless of what agency, whether county, state, or
19 federal, or person undertakes those actions; cumulative effects
20 can result from individually minor but collectively significant
21 actions taking place over a period of time.



1 "Discretionary [~~consent~~] approval" means [a] an approval,
2 consent, sanction, or recommendation from an agency for which
3 judgment and free will may be exercised by the issuing agency,
4 as distinguished from a ministerial [~~consent.~~] approval.

5 "Environmental assessment" means a written evaluation to
6 determine whether an action may have a significant effect.

7 "Environmental impact statement" or "statement" means an
8 informational document prepared in compliance with the rules
9 adopted under section 343-6 and [~~which~~] that discloses the
10 [~~environmental~~]:

- 11 (1) Environmental effects of a proposed action[~~, effects~~];
- 12 (2) Effects of a proposed action on the economic welfare,
13 social welfare, and cultural practices of the
14 community and State[~~, effects~~];
- 15 (3) Effects of the economic activities arising out of the
16 proposed action[~~, measures~~];
- 17 (4) Measures proposed to minimize adverse effects[~~,~~]; and
18 [~~alternatives~~]
- 19 (5) Alternatives to the action and their environmental
20 effects.

21 The initial statement filed for public review shall be
22 referred to as the draft statement and shall be distinguished



1 from the final statement, which is the document that has
2 incorporated the public's comments and the responses to those
3 comments. The final statement is the document that shall be
4 evaluated for acceptability by the respective accepting
5 authority.

6 "Environmental review" refers broadly to the entire process
7 prescribed by chapter 341 and this chapter, applicable to
8 applicants, agencies, and the public, of scoping, reviewing,
9 publishing, commenting on, finalizing, accepting, and appealing
10 required documents such as environmental assessments and
11 environmental impact statements; any variations of these
12 documents such as preparation notices, findings of no
13 significant impact, programmatic reviews, and supplemental
14 documents; any exemptions thereto; and any decisions not to
15 prepare these documents.

16 "Finding of no significant impact" means a determination
17 based on an environmental assessment that the subject action
18 will not have a significant effect and, therefore, will not
19 require the preparation of an environmental impact statement.

20 ~~["Helicopter facility" means any area of land or water~~
21 ~~which is used, or intended for use for the landing or takeoff of~~
22 ~~helicopters; and any appurtenant areas which are used, or~~



1 ~~intended for use for helicopter related activities or rights-of-~~
2 ~~way.]~~

3 "Ministerial approval" means a governmental decision
4 involving little or no personal judgment by the public official
5 and involving only the use of fixed standards or objective
6 measurements.

7 "Office" means the office of environmental quality control.

8 "Permit" means a determination, order, or other
9 documentation of approval, including the issuance of a lease,
10 license, certificate, variance, approval, or other entitlement
11 for use or permission to act, granted to any person by an agency
12 for an action.

13 "Person" includes any individual, partnership, firm,
14 association, trust, estate, private corporation, or other legal
15 entity other than an agency.

16 "Primary effect" or "direct effect" means effects that are
17 caused by the action and occur at the same time and place.

18 [~~"Power-generating facility" means:~~

19 ~~(1) A new, fossil-fueled, electricity-generating facility,~~
20 ~~where the electrical output rating of the new~~
21 ~~equipment exceeds 5.0 megawatts; or~~



1 ~~(2) An expansion in generating capacity of an existing,~~
2 ~~fossil-fueled, electricity-generating facility, where~~
3 ~~the incremental electrical output rating of the new~~
4 ~~equipment exceeds 5.0 megawatts.]~~

5 "Program" means a systemic, connected, or concerted
6 applicant or discretionary agency action to implement a specific
7 policy, plan, or master plan.

8 "Programmatic" means a comprehensive environmental review
9 of a program, policy, plan, or master plan.

10 "Project" means an activity that may cause either a direct
11 or indirect physical effect on the environment, such as
12 construction or management activities located in a defined
13 geographic area.

14 ~~["Renewable energy facility" has the same meaning as~~
15 ~~defined in section 201N-1.]~~

16 "Secondary effects" or "indirect effect" means effects that
17 are caused by an action and are later in time or farther removed
18 in distance, but are still reasonably foreseeable. Indirect
19 effects may include growth inducing effects and other effects
20 related to induced changes in the pattern of land use,
21 population density, or growth rate, and related effects on air,
22 water, and other natural systems including ecosystems.



1 "Significant effect" means the sum of effects on the
2 quality of the environment [~~, including actions that irrevocably~~
3 ~~commit a natural resource, curtail the range of beneficial uses~~
4 ~~of the environment, are contrary to the State's environmental~~
5 ~~policies or long-term environmental goals as established by law,~~
6 ~~or adversely affect the economic welfare, social welfare, or~~
7 ~~cultural practices of the community and State].~~

8 "Tiering" means the incorporation by reference in a
9 project-specific environmental assessment or environmental
10 impact statement to a previously conducted programmatic
11 environmental assessment or environmental impact statement for
12 the purposes of showing the connections between the project-
13 specific document and the earlier programmatic review, avoiding
14 unnecessary duplication, and concentrating the analysis on the
15 project-specific issues that were not previously reviewed in
16 detail at the programmatic level.

17 ~~["Wastewater treatment unit" means any plant or facility~~
18 ~~used in the treatment of wastewater.]"~~

19 SECTION 8. Section 343-3, Hawaii Revised Statutes is
20 amended to read as follows:

21 "**§343-3 Public participation, records, and notice.** (a)
22 All statements, environmental assessments, and other documents



1 prepared under this chapter shall be made available for
2 inspection by the public [~~during established office hours.~~] at
3 minimum through the electronic communication system maintained
4 by the office and, if specifically requested due to lack of
5 electronic access, also through printed copies available through
6 the office.

7 (b) The office shall inform the public of notices filed by
8 agencies of the availability of environmental assessments for
9 review and comments, of determinations that statements are
10 required or not required, of the availability of statements for
11 review and comments, and of the acceptance or nonacceptance of
12 statements.

13 (c) The office shall inform the public of:

- 14 (1) A public comment process or public hearing if a state
15 or federal agency provides for the public comment
16 process or public hearing to process a habitat
17 conservation plan, safe harbor agreement, or
18 incidental take license pursuant to the state or
19 federal Endangered Species Act;
- 20 (2) A proposed habitat conservation plan or proposed safe
21 harbor agreement, and availability for inspection of
22 the proposed agreement, plan, and application to enter



1 into a planning process for the preparation and
2 implementation of the habitat conservation plan for
3 public review and comment;

4 (3) A proposed incidental take license as part of a
5 habitat conservation plan or safe harbor agreement;
6 and

7 (4) An application for the registration of land by
8 accretion pursuant to section 501-33 or 669-1(e) for
9 any land accreted along the ocean.

10 (d) The office shall inform the public by the publication
11 of a periodic bulletin to be available to persons requesting
12 this information. The bulletin shall be available through the
13 office, ~~and~~ public libraries~~[-]~~, and in electronic format.

14 (e) At the earliest practicable time, applicants and the
15 relevant agencies shall:

16 (1) Provide notice to the public and to state and county
17 agencies that an action is subject to review under to
18 this chapter; and

19 (2) Encourage and facilitate public involvement throughout
20 the environmental review process, as provided for in
21 this chapter, chapter 341, and the relevant
22 administrative rules."



1 SECTION 9. Section 343-5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~§343-5 [Applicability and] Agency and applicant~~
4 ~~requirements. [(a) Except as otherwise provided, an~~
5 ~~environmental assessment shall be 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)(11) or 205-4.5(a)(13) shall only be required~~
17 ~~pursuant to section 205-5(b);~~

18 ~~(2) Propose any use within any land classified as a~~
19 ~~conservation district by the state land use commission~~
20 ~~under chapter 205;~~

21 ~~(3) Propose any use within a shoreline area as defined in~~
22 ~~section 205A-41;~~



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

- 1 ~~(A) Any land classified as a conservation district by~~
- 2 ~~the state land use commission under chapter 205;~~
- 3 ~~(B) A shoreline area as defined in section 205A-41;~~
- 4 ~~or~~
- 5 ~~(C) Any historic site as designated in the National~~
- 6 ~~Register or Hawaii Register, as provided for in~~
- 7 ~~the Historic Preservation Act of 1966, Public Law~~
- 8 ~~89-665, or chapter 6E; or until the statewide~~
- 9 ~~historic places inventory is completed, any~~
- 10 ~~historic site that is found by a field~~
- 11 ~~reconnaissance of the area affected by the~~
- 12 ~~helicopter facility and is under consideration~~
- 13 ~~for placement on the National Register or the~~
- 14 ~~Hawaii Register of Historic Places; and~~

15 ~~(9) Propose any:~~

16 ~~(A) Wastewater treatment unit, except an individual~~

17 ~~wastewater system or a wastewater treatment unit~~

18 ~~servicing fewer than fifty single-family dwellings~~

19 ~~or the equivalent;~~

20 ~~(B) Waste-to-energy facility;~~

21 ~~(C) Landfill;~~

22 ~~(D) Oil refinery; or~~



1 ~~(E) Power-generating facility.~~

2 ~~(b)]~~ (a) Whenever an agency proposes an action in
3 ~~[subsection (a), other than feasibility or planning studies for~~
4 ~~possible future programs or projects that the agency has not~~
5 ~~approved, adopted, or funded, or other than the use of state or~~
6 ~~county funds for the acquisition of unimproved real property~~
7 ~~that is not a specific type of action declared exempt under~~
8 ~~section 343-6,]~~ section 343-B, the agency shall prepare an
9 environmental assessment, or based upon its discretion, may
10 choose to prepare, for a program, a programmatic environmental
11 assessment, for [such] the action at the earliest practicable
12 time to determine whether an environmental impact statement
13 shall be required~~[-]~~; provided that if the agency determines,
14 through its judgment and experience, that an environmental
15 impact statement is likely to be required, the agency may choose
16 not to prepare an environmental assessment and instead shall
17 prepare an environmental impact statement, following adequate
18 notice to the public and all interested parties.

19 (1) For environmental assessments for which a finding of
20 no significant impact is anticipated:



- 1 (A) A draft environmental assessment shall be made
- 2 available for public review and comment for a
- 3 period of thirty days;
- 4 (B) The office shall inform the public of the
- 5 availability of the draft environmental
- 6 assessment for public review and comment pursuant
- 7 to section 343-3;
- 8 (C) The agency shall respond in writing to comments
- 9 received during the review and prepare a final
- 10 environmental assessment to determine whether an
- 11 environmental impact statement shall be required;
- 12 (D) A statement shall be required if the agency finds
- 13 that the proposed action may have a significant
- 14 effect on the environment; and
- 15 (E) The agency shall file notice of [~~such~~] the
- 16 determination with the office. When a conflict
- 17 of interest may exist because the proposing
- 18 agency and the agency making the determination
- 19 are the same, the office may review the agency's
- 20 determination, consult the agency, and advise the
- 21 agency of potential conflicts, to comply with
- 22 this section. The office shall publish the final



1 determination for the public's information
2 pursuant to section 343-3.

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

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

13 (2) The final authority to accept a final statement shall
14 rest with:

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

20 (B) The mayor, or the mayor's authorized
21 representative, of the respective county whenever



1 an action proposes only the use of county lands
2 or county funds.

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

10 ~~[(e)]~~ (b) Whenever an applicant proposes an action
11 specified by ~~[subsection (a)]~~ section 343-B that requires
12 approval of an agency and that is not a specific type of action
13 declared exempt under that section or section 343-6, the agency
14 initially receiving and agreeing to process the request for
15 approval shall prepare an environmental assessment, or based
16 upon its discretion, may choose to prepare, for a program, a
17 programmatic environmental assessment, of the proposed action at
18 the earliest practicable time to determine whether an
19 environmental impact statement shall be required; ~~[provided~~
20 ~~that, for an action that proposes the establishment of a~~
21 ~~renewable energy facility, a draft environmental impact~~
22 ~~statement shall be prepared at the earliest practicable time.]~~



1 provided that if the agency determines, through its judgment and
2 experience, that an environmental impact statement is likely to
3 be required, the agency may choose not to prepare an
4 environmental assessment and instead shall prepare an
5 environmental impact statement, following adequate notice to the
6 public and all interested parties. The final approving agency
7 for the request for approval is not required to be the accepting
8 authority.

9 For environmental assessments for which a finding of no
10 significant impact is anticipated:

- 11 (1) A draft environmental assessment shall be made
12 available for public review and comment for a period
13 of thirty days;
- 14 (2) The office shall inform the public of the availability
15 of the draft environmental assessment for public
16 review and comment pursuant to section 343-3; and
- 17 (3) The applicant shall respond in writing to comments
18 received during the review, and the agency shall
19 prepare a final environmental assessment to determine
20 whether an environmental impact statement shall be
21 required. A statement shall be required if the agency
22 finds that the proposed action may have a significant



1 effect on the environment. The agency shall file
2 notice of the agency's determination with the office,
3 which, in turn, shall publish the agency's
4 determination for the public's information pursuant to
5 section 343-3.

6 The draft and final statements, if required, shall be
7 prepared by the applicant, who shall file these statements with
8 the office.

9 The draft statement shall be made available for public
10 review and comment through the office for a period of forty-five
11 days. The office shall inform the public of the availability of
12 the draft statement for public review and comment pursuant to
13 section 343-3.

14 The applicant shall respond in writing to comments received
15 during the review and prepare a final statement. The office,
16 when requested by the applicant or agency, may make a
17 recommendation as to the acceptability of the final statement.

18 The authority to accept a final statement shall rest with
19 the agency initially receiving and agreeing to process the
20 request for approval. The final decision-making body or
21 approving agency for the request for approval is not required to
22 be the accepting authority. The planning department for the



1 county in which the proposed action will occur shall be a
2 permissible accepting authority for the final statement.

3 Acceptance of a required final statement shall be a
4 condition precedent to approval of the request and commencement
5 of the proposed action. Upon acceptance or nonacceptance of the
6 final statement, the agency shall file notice of such
7 determination with the office. The office, in turn, shall
8 publish the determination of acceptance or nonacceptance of the
9 final statement pursuant to section 343-3.

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

19 In any acceptance or nonacceptance, the agency shall
20 provide the applicant with the specific findings and reasons for
21 its determination. An applicant, within sixty days after
22 nonacceptance of a final statement by an agency, may appeal the



1 nonacceptance to the environmental council, which, within thirty
2 days of receipt of the appeal, shall notify the applicant of the
3 council's determination. In any affirmation or reversal of an
4 appealed nonacceptance, the council shall provide the applicant
5 and agency with specific findings and reasons for its
6 determination. The agency shall abide by the council's
7 decision.

8 ~~[(e)]~~ (c) Whenever an applicant requests approval for a
9 proposed action and there is a question as to which of two or
10 more state or county agencies with jurisdiction has the
11 responsibility of preparing the environmental assessment, the
12 office, after consultation with and assistance from the affected
13 state or county agencies, shall determine which agency shall
14 prepare the assessment.

15 ~~[(e)]~~ (d) In preparing an environmental ~~[assessment,~~
16 review document, an agency or applicant may consider and, where
17 applicable and appropriate, incorporate by reference, in whole
18 or in part, previous ~~[determinations of whether a statement is~~
19 ~~required and previously accepted statements.]~~ review documents.
20 The council, by rule, shall establish criteria and procedures
21 for the use of previous determinations and statements.



1 [~~(f)~~] (e) Whenever an action is subject to both the
2 National Environmental Policy Act of 1969 (Public Law 91-190)
3 and the requirements of this chapter, the office and agencies
4 shall cooperate with federal agencies to the fullest extent
5 possible to reduce duplication between federal and state
6 requirements. Such cooperation, to the fullest extent possible,
7 shall include joint environmental impact statements with
8 concurrent public review and processing at both levels of
9 government. Where federal law has environmental impact
10 statement requirements in addition to but not in conflict with
11 this chapter, the office and agencies shall cooperate in
12 fulfilling these requirements so that one document shall comply
13 with all applicable laws.

14 (f) Upon receipt of a timely written request and good
15 cause shown, a lead agency, approving agency, or accepting
16 authority may extend, one time only, a public review and comment
17 period required under this section. The extension shall not
18 exceed fifteen days. To be considered a timely request, the
19 request for an extension shall be made before the end of the
20 public review and comment period. An extension of a public
21 review and comment period shall be communicated by the lead
22 agency in a timely manner to all interested parties.



1 (g) A statement that is accepted with respect to a
2 particular action shall satisfy the requirements of this
3 chapter, and no other statement for the proposed action, other
4 than a supplement to that statement, shall be required."

5 SECTION 10. Section 343-6, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:

7 "(a) After consultation with the affected agencies, the
8 council shall adopt, amend, or repeal necessary rules for the
9 purposes of this chapter [~~in accordance with chapter 91~~
10 ~~including, but not limited to, rules that shall:)]. Any such
11 rules may be issued as interim rules by adoption and filing with
12 the lieutenant governor and by posting the interim rules on the
13 lieutenant governor's website. Interim rules adopted pursuant
14 to this section shall be exempt from the public notice, public
15 hearing, and gubernatorial approval requirements of chapter 91
16 and the requirements of chapter 201M and shall take effect upon
17 filing with the lieutenant governor. All interim rules adopted
18 pursuant to this section shall be effective only through June
19 30, 2014. For any new or expanded programs, services, or
20 benefits that have been implemented under interim rules to
21 continue in effect beyond June 30, 2014, the environmental
22 council shall adopt rules in conformance with all the~~



1 requirements of chapter 91 and chapter 201M. Rules adopted
2 pursuant to this section shall include but not be limited to
3 rules that shall:

4 (1) Prescribe the procedures whereby a group of proposed
5 actions may be treated by a single environmental
6 assessment or statement;

7 (2) Establish procedures whereby specific types of
8 actions, because they will probably have minimal or no
9 significant effects on the environment, are declared
10 exempt from the preparation of an environmental
11 assessment; provided that the procedures shall ensure
12 that the declaration is simultaneously transmitted
13 electronically to the office and is readily available
14 as a public record in a searchable electronic
15 database;

16 (3) Prescribe procedures for the preparation of an
17 environmental assessment;

18 (4) Prescribe the contents of, and page limits for, an
19 environmental assessment;

20 (5) Prescribe procedures for informing the public of
21 determinations that a statement is either required or
22 not required, for informing the public of the



- 1 availability of draft environmental impact statements
2 for review and comments, and for informing the public
3 of the acceptance or nonacceptance of the final
4 environmental statement;
- 5 (6) Prescribe the contents of, and page limits for, an
6 environmental impact statement;
- 7 (7) Prescribe procedures for the submission, distribution,
8 review, acceptance or nonacceptance, and withdrawal of
9 an environmental impact statement;
- 10 (8) Establish criteria to determine whether an
11 environmental impact statement is acceptable or not;
12 [and]
- 13 (9) Prescribe procedures to appeal the nonacceptance of an
14 environmental impact statement to the environmental
15 council[-];
- 16 (10) Prescribe procedures, including use of electronic
17 technology for the comment and response process,
18 including procedures for issuing one comprehensive
19 response to multiple or repetitious comments that are
20 substantially similar in content;
- 21 (11) Prescribe procedures for implementing the requirement
22 for records of decision, monitoring, and mitigation;



- 1 (12) Develop guidance for the application and
- 2 interpretation of the significance criteria under
- 3 chapter 343-A;
- 4 (13) Prescribe procedures and guidance for the preparation
- 5 of programmatic environmental assessments or impact
- 6 statements and the tiering of project-specific
- 7 environmental assessments or impact statements;
- 8 (14) Prescribe:
- 9 (A) Procedures for the applicability, preparation,
- 10 acceptance, and publication of supplemental
- 11 environmental assessments and supplemental
- 12 environmental impact statements when there are
- 13 substantial changes in the proposed action or
- 14 significant new circumstances or information
- 15 relevant to environment effects and bearing on
- 16 the proposed action and its impacts;
- 17 (B) Procedures for limiting the duration of the
- 18 validity of environmental assessments and
- 19 environmental impact statements, or if an
- 20 environmental assessment led to the preparation
- 21 of an environmental impact statement, then of the
- 22 later-prepared statement, to not more than seven



1 years from the date of acceptance of the document
2 until all state and county discretionary
3 approvals are fully completed for the action; and

4 (C) Procedures for an agency or applicant to seek a
5 timely determination from the council that a
6 prior environmental assessment or environmental
7 impact statement contains sufficiently current
8 information such that a supplemental document is
9 not warranted despite the passage of the
10 prescribed time period; and

11 (15) To provide guidance to agencies and applicants about
12 the applicability of the environmental review system,
13 establish procedures whereby each state and county
14 agency shall maintain lists of:

15 (A) Specific types of discretionary approvals that
16 may have probable, significant, and adverse
17 environmental effects;

18 (B) Ministerial actions that do not require
19 environmental review; and

20 (C) Those actions that require a case-by-case
21 determination of applicability.



1 (b) Except for the adoption of interim rules pursuant to
2 subsection (a), at least one public hearing shall be held in
3 each county prior to the final adoption, amendment, or repeal of
4 any rule."

5 SECTION 11. Section 343-7, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§343-7 Limitation of actions.** (a) Any judicial
8 proceeding, the subject of which is the lack of an environmental
9 assessment required under section 343-B or 343-5, or the lack of
10 a supplemental environmental assessment or supplemental impact
11 statement, shall be initiated within one hundred twenty days of
12 the agency's decision to carry out or approve the action, or, if
13 a proposed action is undertaken without a formal determination
14 by the agency that [a] an assessment, supplement, or statement
15 is or is not required, a judicial proceeding shall be instituted
16 within one hundred twenty days after the proposed action is
17 started. The council or office, any agency responsible for
18 approval of the action, or the applicant shall be adjudged an
19 aggrieved party for the purposes of bringing judicial action
20 under this subsection. Others, by court action, may be adjudged
21 aggrieved.



1 (b) Any judicial proceeding, the subject of which is the
2 determination that a statement is required for a proposed
3 action, shall be initiated within sixty days after the public
4 has been informed of [~~such~~] the determination pursuant to
5 section 343-3. Any judicial proceeding, the subject of which is
6 the determination that a statement is not required for a
7 proposed action, shall be initiated within thirty days after the
8 public has been informed of [~~such~~] the determination pursuant to
9 section 343-3. The council or the applicant shall be adjudged
10 an aggrieved party for the purposes of bringing judicial action
11 under this subsection. Others, by court action, may be adjudged
12 aggrieved. Affected agencies and persons that provided written
13 comment to the assessment during the designated review period
14 shall be judged aggrieved parties for the purpose of bringing
15 judicial action under this subsection; provided that the
16 contestable issues shall be limited to issues identified and
17 discussed in the written comment.

18 (c) Any judicial proceeding, the subject of which is the
19 acceptance of an environmental impact statement required under
20 section 343-B or 343-5, shall be initiated within sixty days
21 after the public has been informed pursuant to section 343-3 of
22 the acceptance of [~~such~~] the statement. The council shall be



1 adjudged an aggrieved party for the purpose of bringing judicial
2 action under this subsection. Affected agencies and persons
3 [~~who~~] that provided written comment to [~~such~~] the statement
4 during the designated review period shall be adjudged aggrieved
5 parties for the purpose of bringing judicial action under this
6 subsection; provided that the contestable issues shall be
7 limited to issues identified and discussed in the written
8 comment."

9 SECTION 12. Section 353-16.35, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) Notwithstanding any other law to the contrary, the
12 governor, with the assistance of the director, may negotiate
13 with any person for the development or expansion of private in-
14 state correctional facilities or public in-state turnkey
15 correctional facilities to reduce prison overcrowding; provided
16 that if an environmental assessment or environmental impact
17 statement is required for a proposed site or for the expansion
18 of an existing correctional facility under section 343-B or 343-
19 5, then notwithstanding the time periods specified for public
20 review and comments under section 343-5, the governor shall
21 accept public comments for a period of sixty days following



1 public notification of either an environmental assessment or an
2 environmental impact statement."

3 PART III.

4 SECTION 13. This Act does not affect rights and duties
5 that matured, penalties that were incurred, and proceedings that
6 were begun before its effective date, and does not affect the
7 rights and duties related to any environmental assessment or
8 environmental impact statement for which a draft has been
9 prepared and public notice thereof published by the office of
10 environmental quality control before the effective date of this
11 Act.

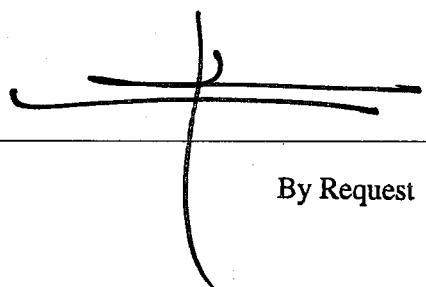
12 SECTION 14. In codifying the new sections added by section
13 1 and section 5 of this Act, the revisor of statutes shall
14 substitute appropriate section numbers for the letters used in
15 designating the new sections in this Act.

16 SECTION 15. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 16. This Act shall take effect on July 1, 2012.

19

INTRODUCED BY: _____



By Request



Report Title:

Environmental Protection

Description:

Transfers the office of environmental quality control and the environmental council from the department of health to the department of land and natural resources. Reduces the membership of the environmental council from 15 to 7. Requires the director of the office of environmental quality control to seek advice from and assist the council on environmental quality matters and to perform environmental outreach and education. Requires the office of environmental quality control to maintain an electronic communication system. Gives rulemaking authority to the environmental council. Requires the director of the office of environmental quality control to prepare an annual report assessing system effectiveness. Requires the environmental council to serve in advisory capacity to the governor. Creates the environmental review special fund. Directs the director of the office of environmental quality control to establish reasonable administrative fees for the environmental review process.

Requires an environmental review for actions that require a discretionary approval. Excludes actions solely for utility or right-of-way connections from environmental assessment requirement. Prescribes what types of activities have a significant effect on the environment. Requires agencies to prepare a record of decision and monitor mitigation measures. Allows agencies to extend notice and comment periods. Directs the environmental council to adopt rules for: (1) Determining significant effects; (2) Responding to repetitious comments; (3) Preparing programmatic and tiered reviews; (4) Prescribing conditions under which supplemental assessments and statements must be prepared; and (5) Establishing procedures for state and county agencies to maintain guidance lists of approvals that are (a) Discretionary and require review; (b) Ministerial and do not require review; and (c) Those actions to be determined on a case-by-case basis.



The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

