

JAN 27 2010

A BILL FOR AN ACT

RELATING TO THE ENVIRONMENT.

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

1 SECTION 1. Chapter 343, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§343- Exemption; protection of the environment, land,
5 and natural resources. (a) Notwithstanding section 343-5(a),
6 an environmental assessment shall not be required for any
7 qualified action that protects, preserves, or enhances the
8 environment, land, and natural resources.

9 (b) Each applicant or agency proposing to qualify for the
10 exemption shall submit an application for the exemption to the
11 council and the office, detailing the action proposed and
12 describing the anticipated impacts on the environment. Within
13 ten days of the receipt of the application, the application
14 shall be made available for public review and comments pursuant
15 to section 343-3. A public hearing on the application, presided
16 over by the council, shall be held within forty-five days of
17 receipt of the application by the council. At the hearing, the



1 council shall take testimony from the public and the applicant
2 or agency, as applicable, regarding whether the action
3 constitutes a qualified action. Additionally, the applicant or
4 agency shall respond orally to all comments received in response
5 to the application.

6 (c) If, after hearing all relevant evidence and testimony,
7 the council finds that the proposed action constitutes a
8 qualified action eligible for an exemption under this section,
9 then the council shall authorize the commencement of the
10 qualified action. If the council finds that the proposed action
11 does not constitute a qualified action eligible for an
12 exemption, the council shall provide specific findings and
13 reasons in writing for its determination. All decisions by the
14 council shall be made available to the public. Any person
15 aggrieved by a decision under this section may, within thirty
16 days from the date of the council's determination, request
17 reconsideration of the council's decision.

18 (d) Not less than thirty days after the completion of the
19 qualified action, the applicant or the agency, as applicable,
20 shall prepare and submit to the council and the office a report
21 documenting the implementation of the qualified action. The
22 report shall include detailed observations of the effect of the



1 action on the environment. The report shall be made available
2 to the public for review.

3 (e) The environmental council may adopt rules pursuant to
4 chapter 91 to implement this section.

5 (f) For purposes of this section:

6 "Qualified action" means an action that will have minimal
7 or no significant negative effects on the environment and is
8 intended to protect, preserve, and enhance the environment,
9 land, and natural resources. The determination of a qualified
10 action shall be made by the council on a case-by-case basis."

11 SECTION 2. Section 343-3, Hawaii Revised Statutes, is
12 amended by amending subsections (a), (b), and (c) to read as
13 follows:

14 "(a) All statements, environmental assessments,
15 applications for exemptions, and other documents prepared under
16 this chapter shall be made available for inspection by the
17 public during established office hours.

18 (b) The office shall inform the public of notices filed by
19 agencies of the availability of environmental assessments for
20 review and comments, of determinations that statements are
21 required or not required, of the availability of statements for
22 review and comments, [~~and~~] of the acceptance or nonacceptance of



1 statements[-], and of applications for exemptions determinations
2 of qualified actions under section 343- .

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

4 (1) A public comments process or public hearing if an
5 applicant or agency requests an exemption under
6 section 343- ;

7 ~~[(1)]~~ (2) A public comment process or public hearing if a
8 federal agency provides for the public comment process
9 or public hearing to process a habitat conservation
10 plan, safe harbor agreement, or incidental take
11 license pursuant to the federal Endangered Species
12 Act;

13 ~~[(2)]~~ (3) A proposed habitat conservation plan or proposed
14 safe harbor agreement, and availability for inspection
15 of the proposed agreement, plan, and application to
16 enter into a planning process for the preparation and
17 implementation of the habitat conservation plan for
18 public review and comment;

19 ~~[(3)]~~ (4) A proposed incidental take license as part of a
20 habitat conservation plan or safe harbor agreement;
21 and



1 [~~4~~] (5) An application for the registration of land by
2 accretion pursuant to section 501-33 or 669-1(e) for
3 any land accreted along the ocean."

4 SECTION 3. Section 343-5, Hawaii Revised Statutes, is
5 amended by amending subsections (b) and (c) to read as follows:

6 "(b) Whenever an agency proposes an action in subsection
7 (a), other than feasibility or planning studies for possible
8 future programs or projects that the agency has not approved,
9 adopted, or funded, or other than the use of state or county
10 funds for the acquisition of unimproved real property that is
11 not a specific type of action declared exempt under section 343-
12 6[7] or an action that may constitute a qualified action that
13 would be exempt under section 343- and the applicant or agency
14 obtains an exemption under that section, the agency shall
15 prepare an environmental assessment for such action at the
16 earliest practicable time to determine whether an environmental
17 impact statement shall be required.

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

20 (A) A draft environmental assessment shall be made
21 available for public review and comment for a
22 period of thirty days;



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



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

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

11 (2) The final authority to accept a final statement shall
12 rest with:

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

18 (B) The mayor, or the mayor's authorized
19 representative, of the respective county whenever
20 an action proposes only the use of county lands
21 or county funds.



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

8 (c) Whenever an applicant proposes an action specified by
9 subsection (a) that requires approval of an agency and that is
10 not a specific type of action declared exempt under section 343-
11 6343-6[7] or an action that may constitute a qualified action
12 that would be exempt under section 343- and the applicant or
13 agency obtains an exemption under that section, the agency
14 initially receiving and agreeing to process the request for
15 approval shall prepare an environmental assessment of the
16 proposed action at the earliest practicable time to determine
17 whether an environmental impact statement shall be required;
18 provided that, for an action that proposes the establishment of
19 a renewable energy facility, a draft environmental impact
20 statement shall be prepared at the earliest practicable time.
21 The final approving agency for the request for approval is not
22 required to be the accepting authority.



1 For environmental assessments for which a finding of no
2 significant impact is anticipated:

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

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

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

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



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

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

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

17 Acceptance of a required final statement shall be a
18 condition precedent to approval of the request and commencement
19 of the proposed action. Upon acceptance or nonacceptance of the
20 final statement, the agency shall file notice of such
21 determination with the office. The office, in turn, shall



1 publish the determination of acceptance or nonacceptance of the
2 final statement pursuant to section 343-3.

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

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



1 SECTION 4. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 5. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 6. This Act shall take effect upon its approval.

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Report Title:

Environmental Impact Statements; Exemptions

Description:

Provides an exemption for projects that protect, preserve, and enhance the environment, land, or natural resources, under certain conditions. Requires the environmental council to make a determination of whether the exemption should be applicable after a public hearing.

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

