

H.B. NO. 1164

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 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 done by the agency itself or the agency, at its sole
14 discretion, may require the person who is the proposed user of
15 the state or county facility or improvement, to prepare and fund
16 the environmental assessment on behalf of the agency. When
17 making this determination, the agency shall consider whether the

1 state or county facility or improvement is necessary to
2 accommodate the person's operations.

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

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

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

12 (C) The agency or proposed user if designated by the
13 agency shall respond in writing to comments
14 received during the review and prepare a final
15 environmental assessment to determine whether an
16 environmental impact statement shall be required;

17 (D) A statement shall be required if the agency finds
18 that the proposed action may have a significant
19 effect on the environment; and

20 (E) The agency shall file notice of such
21 determination with the office. When a conflict
22 of interest may exist because the proposing

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

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

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

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

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

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

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

19 (c) Whenever an applicant proposes an action specified by
20 subsection (a) that requires approval of an agency and that is
21 not a specific type of action declared exempt under section

1 343-6, the agency initially receiving and agreeing to process
2 the request for approval shall prepare an environmental
3 assessment of the proposed approval shall prepare an
4 environmental assessment of the proposed action at the earliest
5 practicable time to determine whether an environmental impact
6 statement shall be required; provided that, for an action that
7 proposes the establishment of a renewable energy facility, a
8 draft environmental impact statement shall be prepared at the
9 earliest practicable time. The final approving agency for the
10 request for approval is not required to be the accepting
11 authority. The preparation of the environmental assessment and
12 any required statement may be done by the agency itself or the
13 agency, at its sole discretion, may require the applicant to
14 prepare and fund the environmental assessment and any required
15 statement on behalf of the agency.

16 For environmental assessments for which a finding of no
17 significant impact is anticipated:

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

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

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

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

19 The draft statement shall be made available for public
20 review and comment through the office for a period of forty-five
21 days. The office shall inform the public of the availability of

1 the draft statement for public review and comment pursuant to
2 section 343-3.

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

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

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

21 The agency receiving the request, within thirty days of
22 receipt of the final statement, shall notify the applicant and

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

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

19 SECTION 2. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

H.B. NO. 1164

1 SECTION 3. This Act shall take effect upon approval.

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INTRODUCED BY:

Calvin H. Ay

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BY REQUEST

JAN 26 2009

Report Title:

Harbors; Environmental Assessments and Environmental Impact Statements

Description:

Authorizes an agency to transfer the responsibility for preparing and funding Environmental Assessments and Environmental Impact Statements to a user for its use of state or county lands or new improvements to be constructed with state or county funds necessary to accommodate the user's operations.

JUSTIFICATION SHEET

DEPARTMENT: Transportation

TITLE: A BILL FOR AN ACT RELATING TO ENVIRONMENTAL REVIEW.

PURPOSE: Authorizes an agency to transfer the responsibility for preparing and funding environmental assessments and environmental impact statements to a user for its use of state or county lands or new improvements to be constructed with state or county funds necessary to accommodate the user's operations.

MEANS: Amend subsections 343-5(b) and (c), Hawaii Revised Statutes (HRS).

JUSTIFICATION: Section 343-5, HRS, requires an environmental review for projects that propose the use of state or county lands or state and county funds. The current law requires that agencies prepare environmental assessments and possibly environmental impact statements for these projects. Preparation of these documents is often an expensive and time consuming undertaking.

Recently, the State was required to prepare an environmental impact statement for a large capacity interisland ferry system that involved the use of state funds for improvements at our harbors. Even though the ferry system is a private undertaking, the State was required to fund and prepare the environmental impact statement. The State was unable to require the user to bear this responsibility as the law currently does not specifically provide the State with this authority. This resulted in a situation where the State is bearing the financial responsibility of approximately \$1,400,000 to fund the cost of the environmental reviews.

This bill amends the environmental law to allow the State and the counties to require the user of state or county lands or such new improvements to be constructed with state or county funds, to prepare and fund any required environmental assessment and environmental impact statement. The amendment will allow the State and the counties to pass on the costs and responsibilities to the user and save valuable public funds for needed public programs and initiatives.

GENERAL FUND: None

OTHER FUNDS: None

PPBS PROGRAM
DESIGNATION: TRN-395

OTHER AFFECTED
AGENCIES: All state and county agencies that prepare environmental assessments and environmental impact statements.

EFFECTIVE DATE: Upon approval.