

JAN 26 2009

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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 facility or  
15 improvement, to prepare and fund the environmental assessment on  
16 behalf of the agency, if the state or county facility or  
17 improvement is necessary to accommodate the person's operations.



- 1           (1) For environmental assessments for which a finding of  
2           no significant impact is anticipated:
- 3           (A) A draft environmental assessment shall be made  
4           available for public review and comment for a  
5           period of thirty days;
- 6           (B) The office shall inform the public of the  
7           availability of the draft environmental  
8           assessment for public review and comment pursuant  
9           to section 343-3;
- 10          (C) The agency or proposed user designated by the  
11          agency shall respond in writing to comments  
12          received during the review and prepare a final  
13          environmental assessment to determine whether an  
14          environmental impact statement shall be required;
- 15          (D) A statement shall be required if the agency finds  
16          that the proposed action may have a significant  
17          effect on the environment; and
- 18          (E) The agency shall file notice of [~~such~~] its  
19          determination under subparagraph (D) with the  
20          office. When a conflict of interest may exist  
21          because the proposing agency and the agency  
22          making the determination are the same, the office



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

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



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

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

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

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

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



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

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

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



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

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

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



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

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

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

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



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

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

21           SECTION 2. Statutory material to be repealed is bracketed  
22 and stricken. New statutory material is underscored.





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

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INTRODUCED BY:

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**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.

