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# 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.

1           **§341-2 Definitions.** As used in this chapter, unless the  
2 context otherwise requires:

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

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

7           "Director" means the director of the office of  
8 environmental quality control.

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

11           "University" means the University of Hawaii.

12           **§341-3 Office of environmental quality control;**

13 **environmental center; environmental council.** (a) There is  
14 created an office of environmental quality control that shall be  
15 headed by a single executive to be known as the director of the  
16 office of environmental quality control who shall be appointed  
17 by the governor as provided in section 26-34. This office shall  
18 implement this chapter and shall be placed within the department  
19 of health for administrative purposes. The office shall perform  
20 [~~its~~] the duties prescribed to it under chapter 343 [~~and shall~~  
21 ~~serve the governor in an advisory capacity on all matters~~  
22 ~~relating to environmental 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]~~ nine members. ~~[Except for the director,~~  
5 ~~members]~~ The council shall include at least one member from each  
6 county and no more than five at-large members. The director  
7 shall not serve as a member of the council. Members of the  
8 environmental council shall be appointed by the governor as  
9 provided in section 26-34~~[-]~~; provided that three members shall  
10 be appointed from a list of persons nominated by the speaker of  
11 the house of representatives and three members shall be  
12 appointed from a list of persons nominated by the senate  
13 president. The council shall be attached to the ~~[department of~~  
14 ~~health]~~ office for administrative purposes. ~~[Except for the~~  
15 ~~director, the]~~ The term of each member shall be four years;  
16 provided that, of the members initially appointed, ~~[five]~~ three  
17 members shall serve for four years, ~~[five]~~ three members shall  
18 serve for three years, and the remaining ~~[four]~~ three members  
19 shall serve for two years. Vacancies shall be filled for the  
20 remainder of any unexpired term in the same manner as original  
21 appointments. ~~[The director shall be an ex officio voting~~  
22 ~~member of the council.]~~ The council chairperson shall be elected

1 by the council from among the [~~appointed~~] members of the  
2 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 council on any matters  
10 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 the council, private industry,  
16 governmental agencies, non-governmental organizations,  
17 state residents, and other interested persons in  
18 fulfilling the requirements of this subsection,  
19 conduct annual statewide workshops and publish an  
20 annual state environmental review guidebook or  
21 supplement to assist persons in complying with this  
22 chapter, chapter 343, and rules adopted thereunder;

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

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

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

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

11 (D) Any other information that may facilitate the  
12 efficient implementation of this chapter, chapter  
13 343, and 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 governmental agency and public participation in the  
17 review process, the office shall create and maintain an  
18 electronic communication system, such as a website, to ensure  
19 best practices of environmental review, as determined by the  
20 director.

21 **§341-A Annual report.** No later than January 31 of each  
22 year, at the direction of the council, the director shall

1 prepare a report that analyzes the effectiveness of the State's  
2 environmental review system during the prior year. The report  
3 shall include an assessment of a sample of environmental  
4 assessments and environmental impact statements for completed  
5 projects.

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

9 **§341-6 [Functions] Duties of the environmental council.**

10 (a) The council shall [serve]:

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

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

20 (3) Meet at the call of the council chairperson or by a  
21 quorum of council members.



1        (b) The council may make recommendations concerning  
2        [~~ecology and~~] environmental quality to the [~~director and shall~~  
3        ~~meet at the call of the council chairperson or the director upon~~  
4        ~~notifying the council chairperson.~~] governor.

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

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

1       (e) The council shall adopt rules, pursuant to chapter 91,  
2 necessary for the purposes of implementing this chapter and  
3 chapter 343.

4       **§341-B Environmental review special fund; use of funds.**

5       (a) There is established in the state treasury the  
6 environmental review special fund, into which shall be  
7 deposited:

8       (1) All filing fees and other administrative fees  
9       collected by the office;

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

11       (3) Moneys appropriated to the special fund by the  
12       legislature.

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

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

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



- 1        (2) Curtails the range of beneficial uses of the  
2        environment;
- 3        (3) Conflicts with the State's long-term environmental  
4        policies, guidelines, or goals, as expressed in  
5        chapter 344, and any revisions or amendments thereto,  
6        court decisions, or executive orders;
- 7        (4) Substantially adversely affects the economic welfare,  
8        social welfare, or cultural practices of the community  
9        or state;
- 10       (5) Substantially adversely affects public health;
- 11       (6) Involves substantial adverse secondary impacts, such  
12       as population changes or effects on public facilities;
- 13       (7) Involves a substantial degradation of environmental  
14       quality;
- 15       (8) Is individually limited but cumulatively has  
16       considerable adverse effect upon the environment or  
17       involves a commitment to related or future actions;
- 18       (9) Substantially adversely affects a rare, threatened, or  
19       endangered species or its habitat;
- 20       (10) Detrimentially affects air or water quality or ambient  
21       noise levels;

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

6        (12) Substantially adversely affects scenic vistas and  
7                    viewplanes identified in county or state plans or  
8                    studies;

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

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

16       (c) The director of the office shall provide guidance to  
17                   agencies on the application of this section.

18       **§343-B Record of decision; mitigation disclosure.**    (a) At  
19                   the time of the acceptance or nonacceptance of a final  
20                   statement, the accepting authority or agency shall prepare a  
21                   public record of decision that:

22       (1) States its decision;

- 1        (2) Identifies all alternatives considered by the  
2        accepting authority or agency in reaching its  
3        decision, including:
- 4        (A) Alternatives that were considered to be  
5        environmentally preferable; and
- 6        (B) Preferences among those alternatives based upon  
7        relevant factors, including economic and  
8        technical considerations and agency statutory  
9        mission; and
- 10       (3) States whether all practicable means to avoid or  
11       minimize environmental harm from the alternative  
12       selected have been adopted and, if not, why they were  
13       not adopted.
- 14       (b) After completion of the record of decision, as  
15       required by subsection (a), the approving agency shall ensure  
16       that the applicant or agency submits to the office a written  
17       report of no more than twenty pages in length, which shall be  
18       published in the bulletin, after five years of the record of  
19       decision and again after ten years, which shall provide:
- 20       (1) A list of any permits or approvals described in the  
21       environmental assessment or statement and the current  
22       status of those permits or approvals;

1       (2) A summary of the actual mitigation measures imposed by  
2       the permits or approvals; and

3       (3) A summary of the results of any monitoring of the  
4       mitigation measures imposed by the agency or agencies  
5       involved in providing the permits or approvals."

6       SECTION 3. 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.~~] chapter 343."

8           SECTION 4. 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       "Bulletin" means the publication required under section  
15 343-3(d).

16       "Council" means the environmental council.

17       "Cumulative effect" means the impact on the environment  
18 that results from the incremental impact of the action when  
19 added to other past, present, and reasonably foreseeable future  
20 actions regardless of what agency, whether county, state, or  
21 federal, or person undertakes those actions; the cumulative

1 effect can result from individually minor but collectively  
2 significant actions taking place over a period of time.

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

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

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

13 (1) Environmental effects of a proposed action[~~, effects~~];

14 (2) Effects of a proposed action on the economic welfare,  
15 social welfare, and cultural practices of the  
16 community and State[~~, effects~~];

17 (3) Effects of the economic activities arising out of the  
18 proposed action[~~, measures~~];

19 (4) Measures proposed to minimize adverse any effects[~~,~~];  
20 and [~~alternatives~~]

21 (5) Alternatives to the proposed action and their  
22 [~~environmental~~] effects.

1           The initial statement filed for public review shall be  
2 referred to as the draft statement and shall be distinguished  
3 from the final statement, which is the document that has  
4 incorporated the public's comments and the responses to those  
5 comments. The final statement is the document that shall be  
6 evaluated for acceptability by the respective accepting  
7 authority.

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

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

1       ~~["Helicopter facility" means any area of land or water~~  
2 ~~which is used, or intended for use for the landing or takeoff of~~  
3 ~~helicopters; and any appurtenant areas which are used, or~~  
4 ~~intended for use for helicopter related activities or rights-of-~~  
5 ~~way.]~~

6       "Ministerial approval" means a governmental decision  
7 involving only the use of fixed standards or objective  
8 measurements.

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

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

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

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

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

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

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

8           "Program" means a systemic, connected, or concerted  
9           applicant or discretionary agency action to implement a specific  
10          policy, plan, or master plan.

11          "Programmatic" means a comprehensive environmental review  
12          of a program, policy, plan, or master plan.

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

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

19          "Secondary effects" or "indirect effect" means effects that  
20          are caused by an action and are later in time or farther removed  
21          in distance, but are still reasonably foreseeable. Indirect  
22          effects may include growth inducing effects and other effects

1 related to induced changes in the pattern of land use,  
2 population density, or growth rate, and related effects on air,  
3 water, and other natural systems including ecosystems.

4 "Significant adverse environmental effect" means a  
5 significant effect that is harmful, undesirable, or in direct  
6 conflict with the environmental values expressed in section  
7 343-A or chapter 344.

8 "Significant effect" means the sum of effects on the  
9 quality of the environment [~~, including actions that irrevocably~~  
10 ~~commit a natural resource, curtail the range of beneficial uses~~  
11 ~~of the environment, are contrary to the State's environmental~~  
12 ~~policies or long-term environmental goals as established by law,~~  
13 ~~or adversely affect the economic welfare, social welfare, or~~  
14 ~~cultural practices of the community and State.], as set forth in~~

15 section 343-A.

16 "Tiering" means the incorporation by reference in a  
17 project-specific environmental assessment or environmental  
18 impact statement to a previously conducted programmatic  
19 environmental assessment or environmental impact statement for  
20 the purposes of showing the connections between the project-  
21 specific document and the earlier programmatic review, avoiding  
22 unnecessary duplication, and concentrating the analysis on the

1 project-specific issues that were not previously reviewed in  
2 detail at the programmatic level.

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

5 SECTION 5. Section 343-3, Hawaii Revised Statutes is  
6 amended to read as follows:

7 "**§343-3 Public participation, records, and notice.** (a)

8 All statements, environmental assessments, and other documents  
9 prepared under this chapter shall be made available for  
10 inspection by the public ~~[during established office hours.]~~ at  
11 minimum through the electronic communication system maintained  
12 by the office and, if specifically requested due to lack of  
13 electronic access, also through printed copies available through  
14 the office.

15 (b) The office shall inform the public of notices filed by  
16 agencies of the availability of environmental assessments for  
17 review and comments, of determinations that statements are  
18 required or not required, of the availability of statements for  
19 review and comments, and of the acceptance or nonacceptance of  
20 statements.

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

- 1 (1) A public comment process or public hearing if a state  
2 or federal agency provides for the public comment  
3 process or public hearing to process a habitat  
4 conservation plan, safe harbor agreement, or  
5 incidental take license pursuant to chapter 195D or  
6 the federal Endangered Species Act;
- 7 (2) A proposed habitat conservation plan or proposed safe  
8 harbor agreement, and availability for inspection of  
9 the proposed agreement, plan, and application to enter  
10 into a planning process for the preparation and  
11 implementation of the habitat conservation plan for  
12 public review and comment;
- 13 (3) A proposed incidental take license as part of a  
14 habitat conservation plan or safe harbor agreement;  
15 and
- 16 (4) An application for the registration of land by  
17 accretion pursuant to section 501-33 or 669-1(e) for  
18 any land accreted along the ocean.
- 19 (d) The office shall inform the public by the publication  
20 of a periodic bulletin to be available to persons requesting  
21 this information. The bulletin shall be available through the  
22 office, [and] public libraries[-], and in electronic format.



1       (e) At the earliest practicable time, applicants and the  
2 relevant agencies shall:

3       (1) Provide notice to the public and to state and county  
4 agencies that an action is subject to review under  
5 this chapter; and

6       (2) Encourage and facilitate public involvement throughout  
7 the environmental review process, as provided for in  
8 this chapter, chapter 341, and the relevant rules."

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

11       "~~§343-5 [Applicability and] Agency and applicant~~

12 ~~requirements. [(a) Except as otherwise provided, an~~  
13 ~~environmental assessment shall be required for actions that:~~

14       ~~(1) Propose the use of state or county lands or the use of~~  
15 ~~state or county funds, other than funds to be used for~~  
16 ~~feasibility or planning studies for possible future~~  
17 ~~programs or projects that the agency has not approved,~~  
18 ~~adopted, or funded, or funds to be used for the~~  
19 ~~acquisition of unimproved real property; provided that~~  
20 ~~the agency shall consider environmental factors and~~  
21 ~~available alternatives in its feasibility or planning~~  
22 ~~studies; provided further that an environmental~~

- 1 ~~assessment for proposed uses under section~~  
2 ~~205-2(d)(11) or 205-4.5(a)(13) shall only be required~~  
3 ~~pursuant to section 205-5(b);~~
- 4 ~~(2) Propose any use within any land classified as a~~  
5 ~~conservation district by the state land use commission~~  
6 ~~under chapter 205;~~
- 7 ~~(3) Propose any use within a shoreline area as defined in~~  
8 ~~section 205A-41;~~
- 9 ~~(4) Propose any use within any historic site as designated~~  
10 ~~in the National Register or Hawaii Register, as~~  
11 ~~provided for in the Historic Preservation Act of 1966,~~  
12 ~~Public Law 89-665, or chapter 6E;~~
- 13 ~~(5) Propose any use within the Waikiki area of Oahu, the~~  
14 ~~boundaries of which are delineated in the land use~~  
15 ~~ordinance as amended, establishing the "Waikiki~~  
16 ~~Special District";~~
- 17 ~~(6) Propose any amendments to existing county general~~  
18 ~~plans where the amendment would result in designations~~  
19 ~~other than agriculture, conservation, or preservation,~~  
20 ~~except actions proposing any new county general plan~~  
21 ~~or amendments to any existing county general plan~~  
22 ~~initiated by a county;~~

- 1       ~~(7) Propose any reclassification of any land classified as~~  
2       ~~a conservation district by the state land use~~  
3       ~~commission under chapter 205;~~
- 4       ~~(8) Propose the construction of new or the expansion or~~  
5       ~~modification of existing helicopter facilities within~~  
6       ~~the State, that by way of their activities, may~~  
7       ~~affect:~~
- 8       ~~(A) Any land classified as a conservation district by~~  
9       ~~the state land use commission under chapter 205;~~
- 10       ~~(B) A shoreline area as defined in section 205A-41;~~  
11       ~~or~~
- 12       ~~(C) Any historic site as designated in the National~~  
13       ~~Register or Hawaii Register, as provided for in~~  
14       ~~the Historic Preservation Act of 1966, Public Law~~  
15       ~~89-665, or chapter 6E; or until the statewide~~  
16       ~~historic places inventory is completed, any~~  
17       ~~historic site that is found by a field~~  
18       ~~reconnaissance of the area affected by the~~  
19       ~~helicopter facility and is under consideration~~  
20       ~~for placement on the National Register or the~~  
21       ~~Hawaii Register of Historic Places; and~~
- 22       ~~(9) Propose any:~~

1           ~~(A) Wastewater treatment unit, except an individual~~  
2           ~~wastewater system or a wastewater treatment unit~~  
3           ~~servicing fewer than fifty single family dwellings~~  
4           ~~or the equivalent;~~

5           ~~(B) Waste to energy facility;~~

6           ~~(C) Landfill;~~

7           ~~(D) Oil refinery; or~~

8           ~~(E) Power generating facility.]~~

9           (a) Except as otherwise provided, an environmental  
10 assessment shall be required for actions that involve:

11           (1) A major use of state or county lands or funds; or

12           (2) The issuance to a person of a major discretionary  
13 approval, such as a zoning approval or a permit by one  
14 or more agencies.

15           (b) Whenever an agency proposes an action [~~in subsection~~

16 ~~(a), other than feasibility or planning studies for possible~~

17 ~~future programs or projects that the agency has not approved,~~

18 ~~adopted, or funded, or other than the use of state or county~~

19 ~~funds for the acquisition of unimproved real property that is~~

20 ~~not a specific type of action declared exempt under section~~

21 ~~343-6,] as described in subsection (a), the agency shall prepare~~

22 an environmental assessment, or based upon its discretion, may

1 choose to prepare, for a program, a programmatic environmental  
2 assessment, for [~~such~~] the action at the earliest practicable  
3 time to determine whether an environmental impact statement  
4 shall be required[-]; provided that if the agency determines,  
5 through its judgment and experience, that an environmental  
6 impact statement is likely to be required, the agency may choose  
7 not to prepare an environmental assessment and instead shall  
8 prepare an environmental impact statement, following adequate  
9 notice to the public and all interested parties.

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

12 (A) A draft environmental assessment shall be made  
13 available for public review and comment for a  
14 period of thirty days;

15 (B) The office shall inform the public of the  
16 availability of the draft environmental  
17 assessment for public review and comment pursuant  
18 to section 343-3;

19 (C) The agency shall respond in writing to comments  
20 received during the review and prepare a final  
21 environmental assessment to determine whether an  
22 environmental impact statement shall be required;

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

4 (E) The agency shall file notice of [~~such~~] the  
5 determination with the office. When a conflict  
6 of interest may exist because the proposing  
7 agency and the agency making the determination  
8 are the same, the office may review the agency's  
9 determination, consult the agency, and advise the  
10 agency of potential conflicts, to comply with  
11 this section. The office shall publish the final  
12 determination for the public's information  
13 pursuant to section 343-3.

14 The draft and final statements, if required, shall be  
15 prepared by the agency and submitted to the office. The draft  
16 statement shall be made available for public review and comment  
17 through the office for a period of forty-five days. The office  
18 shall inform the public of the availability of the draft  
19 statement for public review and comment pursuant to section  
20 343-3. The agency shall respond in writing to comments received  
21 during the review and prepare a final statement.

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

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

5           (A) The governor, or the governor's authorized  
6 representative, whenever an action proposes the  
7 use of state lands or the use of state funds, or  
8 whenever a state agency proposes an action  
9 ~~[within the categories in subsection (a);]~~ as  
10 described 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~~[-]~~, or when a county proposes an  
15 action as described in subsection (a).

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

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

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, or based upon its discretion, may choose to prepare,  
9 for a program, a programmatic environmental assessment, of the  
10 proposed action at the earliest practicable time to determine  
11 whether an environmental impact statement shall be required;  
12 [~~provided that, for an action that proposes the establishment of~~  
13 ~~a renewable energy facility, a draft environmental impact~~  
14 ~~statement shall be prepared at the earliest practicable time.]~~  
15 provided that if the agency determines, through its judgment and  
16 experience, that an environmental impact statement is likely to  
17 be required, the agency may choose not to prepare an  
18 environmental assessment and instead shall require an  
19 environmental impact statement, following adequate notice to the  
20 public and all interested parties. The final approving agency  
21 for the request for approval is not required to be the accepting  
22 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~~] the  
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 (d) Whenever an applicant requests approval for a proposed  
2 action and there is a question as to which of two or more state  
3 or county agencies with jurisdiction has the responsibility of  
4 preparing the environmental assessment~~[r]~~ or the statement, the  
5 office, after consultation with and assistance from the affected  
6 state or county agencies, shall determine which agency shall  
7 prepare the assessment.

8 (e) In preparing an environmental ~~[assessment,r]~~ review  
9 document, an agency or applicant may consider and, where  
10 applicable and appropriate, incorporate by reference, in whole  
11 or in part, previous ~~[determinations of whether a statement is~~  
12 ~~required and previously accepted statements.]~~ review documents.  
13 The council, by rule, shall establish criteria and procedures  
14 for the use of previous determinations and statements.

15 (f) Whenever an action is subject to both the National  
16 Environmental Policy Act of 1969 (Public Law 91-190) and the  
17 requirements of this chapter, the office and agencies shall  
18 cooperate with federal agencies to the fullest extent possible  
19 to reduce duplication between federal and state requirements.  
20 ~~[Such]~~ This cooperation, to the fullest extent possible, shall  
21 include joint environmental impact statements with concurrent  
22 public review and processing at both levels of government.

1 Where federal law has environmental impact statement  
2 requirements in addition to but not in conflict with this  
3 chapter, the office and agencies shall cooperate in fulfilling  
4 these requirements so that one document shall comply with all  
5 applicable laws.

6 (g) Upon receipt of a written request and for good cause  
7 shown, an approving agency or accepting authority shall extend  
8 the public review and comment period required under this  
9 section.

10 [~~(g)~~] (h) A statement that is accepted with respect to a  
11 particular action shall satisfy the requirements of this  
12 chapter, and no other statement for the proposed action, other  
13 than a supplement to that statement, shall be required."

14 SECTION 7. Section 343-7, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "**§343-7 Limitation of actions.** (a) Any judicial  
17 proceeding, the subject of which is the lack of an environmental  
18 assessment required under section 343-5, or the lack of a  
19 supplemental environmental assessment or supplemental impact  
20 statement, shall be initiated within one hundred twenty days of  
21 the agency's decision to carry out or approve the action, or, if  
22 a proposed action is undertaken without a formal determination

1 by the agency that [a] an assessment, supplement, or statement  
2 is or is not required, a judicial proceeding shall be instituted  
3 within one hundred twenty days after the proposed action is  
4 started. The council or office, any agency responsible for  
5 approval of the action, or the applicant shall be adjudged an  
6 aggrieved party for the purposes of bringing judicial action  
7 under this subsection. Others, by court action, may be adjudged  
8 aggrieved.

9 (b) Any judicial proceeding, the subject of which is the  
10 determination that a statement is required for a proposed  
11 action, shall be initiated within sixty days after the public  
12 has been informed of [~~such~~] the determination pursuant to  
13 section 343-3. Any judicial proceeding, the subject of which is  
14 the determination that a statement is not required for a  
15 proposed action, shall be initiated within thirty days after the  
16 public has been informed of [~~such~~] the determination pursuant to  
17 section 343-3. The council or the applicant shall be adjudged  
18 an aggrieved party for the purposes of bringing judicial action  
19 under this subsection. Others, by court action, may be adjudged  
20 aggrieved.

21 (c) Any judicial proceeding, the subject of which is the  
22 acceptance of an environmental impact statement required under

1 section 343-5, shall be initiated within sixty days after the  
2 public has been informed pursuant to section 343-3 of the  
3 acceptance of [~~such~~] the statement. The council shall be  
4 adjudged an aggrieved party for the purpose of bringing judicial  
5 action under this subsection. [~~Affected agencies and persons~~  
6 ~~who provided written comment to such statement during the~~  
7 ~~designated review period shall be adjudged aggrieved parties for~~  
8 ~~the purpose of bringing judicial action under this subsection;~~  
9 ~~provided that the contestable issues shall be limited to issues~~  
10 ~~identified and discussed in the written comment.] Others, by  
11 court action, may adjudged aggrieved."~~

12 SECTION 8. Section 353-16.35, Hawaii Revised Statutes, is  
13 amended by amending subsection (a) to read as follows:

14 "(a) Notwithstanding any other law to the contrary, the  
15 governor, with the assistance of the director, may negotiate  
16 with any person for the development or expansion of private  
17 in-state correctional facilities or public in-state turnkey  
18 correctional facilities to reduce prison overcrowding; provided  
19 that if an environmental assessment or environmental impact  
20 statement is required for a proposed site or for the expansion  
21 of an existing correctional facility under [~~section 343-5,~~  
22 chapter 343, then notwithstanding the time periods specified for

1 public review and comments under section 343-5, the governor  
2 shall accept public comments for a period of sixty days  
3 following public notification of either an environmental  
4 assessment or an environmental impact statement."

5 **PART III**

6 SECTION 9. Section 343-6, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 **"§343-6 Rules.** (a) After consultation with the affected  
9 agencies, the council shall adopt, amend, or repeal necessary  
10 rules for the purposes of this chapter [~~in accordance with~~  
11 ~~chapter 91 including, but not limited to, rules that shall:~~].  
12 Rules may be issued as interim rules by adoption and filing with  
13 the lieutenant governor and by posting the interim rules on the  
14 lieutenant governor's website. Interim rules adopted pursuant  
15 to this section shall be exempt from the public notice, public  
16 hearing, and gubernatorial approval requirements of chapter 91  
17 and the requirements of chapter 201M and shall take effect upon  
18 filing with the lieutenant governor. All interim rules adopted  
19 pursuant to this section shall be effective only through  
20 June 30, 2012. For any new or expanded programs, services, or  
21 benefits implemented under interim rules to continue in effect  
22 beyond June 30, 2012, the council shall adopt rules in



1 conformance with the requirements of chapter 91 and chapter  
2 201M. Rules adopted pursuant to this section shall include but  
3 not be limited to 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 for the 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 requirements  
22          for records of decision, monitoring, and mitigation;

- 1        (12) Develop guidance for the application and  
2        interpretation of the significance criteria under  
3        section 343-A;
- 4        (13) Prescribe procedures and guidance for the preparation  
5        of programmatic environmental assessments or  
6        statements and the tiering of project-specific  
7        environmental assessments or 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; provided  
17       that the supplemental documents focus on the  
18       changed action, new circumstances, or new  
19       information;
- 20       (B) Procedures for limiting the duration of the  
21       validity of environmental assessments and  
22       environmental impact statements, or if an

- 1           environmental assessment led to the preparation  
2           of an environmental impact statement, then of the  
3           later-prepared statement, to not more than ten  
4           years from the date of acceptance of the document  
5           until all state and county discretionary  
6           approvals are fully completed for the action;  
7           provided that the supplemental documents focus on  
8           the changed action, new circumstances, or new  
9           information; and
- 10          (C) Procedures for an agency or applicant to seek a  
11           timely determination from the council that a  
12           prior environmental assessment or environmental  
13           impact statement contains sufficiently current  
14           information and that a supplemental document is  
15           not warranted despite the passage of the  
16           prescribed time period; and
- 17          (15) Provide guidance to agencies and applicants about the  
18           applicability of the environmental review, and  
19           establish procedures whereby each state and county  
20           agency shall maintain lists of:
- 21          (A) Specific types of major discretionary approvals;



1 prepared and public notice thereof published by the office of  
2 environmental quality control before the effective date of this  
3 Act.

4 SECTION 12. In codifying the new sections added by  
5 section 1 and section 2 of this Act, the revisor of statutes  
6 shall substitute appropriate section numbers for the letters  
7 used in designating the new sections in this Act.

8 SECTION 13. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10 SECTION 14. This Act shall take effect on July 1, 2010;  
11 provided that part II shall take effect on July 1, 2012.

12

**Report Title:**

Environmental Protection

**Description:**

Reduces the membership of the environmental council from 15 to 9; establishes the environmental review special fund; revises the environmental assessment and environmental impact statement process to create a more streamlined, transparent, and consistent process. (SD1)

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