
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

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that the quality of the environment is as important to the

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welfare of the people of Hawaii as is the economy of the State.

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The legislature further finds that the determination of an

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optimum balance between economic development and environmental

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quality deserves the most thoughtful consideration, and that the

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maintenance of the optimum quality of the environment deserves

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the most intensive care.

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The purpose of this chapter is to stimulate, expand, and

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coordinate efforts to determine and maintain the optimum quality

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of the environment of the State.

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§341-2 **Definitions.** As used in this chapter, unless the

18

context otherwise requires:



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

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

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

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

9 "University" means the University of Hawaii.

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

21 (b) The environmental center within the University of
22 Hawaii shall be as established under section [†]304A-1551[†].



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



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

13 §341-4 Powers and duties of the director. (a) The
14 director shall have [~~such~~] powers delegated by the governor as
15 [~~are~~] necessary to coordinate and, when requested by the
16 governor, to direct, pursuant to chapter 91, all state
17 governmental agencies in matters concerning environmental
18 quality.

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

21 (1) [~~Direct~~] Through the council, direct the attention of
22 [~~the university community~~] state agencies and the



1 residents of the State [~~in general~~] to [~~ecological~~
2 ~~and~~] environmental problems [~~through~~], in cooperation
3 with the center [~~and the council, respectively, and~~
4 ~~through public education programs~~];

5 (2) Conduct research or arrange for [~~the conduct of~~]
6 research through contractual relations with the
7 center, state agencies, or other persons with
8 competence in [~~the field of ecology and~~] environmental
9 quality;

10 (3) [~~Encourage~~] Through the council, encourage public
11 acceptance of proposed legislative and administrative
12 actions concerning [~~ecology and~~] environmental
13 quality, and receive notice of any private or public
14 complaints concerning [~~ecology and~~] environmental
15 quality [~~through the council~~];

16 (4) Recommend to the council programs for long-range
17 implementation of environmental quality control;

18 (5) Submit [~~direct~~] to the council for its review and
19 recommendation to the governor [~~and to the legislature~~
20 ~~such~~] legislative bills and administrative policies,
21 objectives, and actions, as are necessary to preserve
22 and enhance the environmental quality of the State;



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



1 (A) Assistance in the preparation, processing, and
2 review of environmental review documents;

3 (B) Review of relevant court decisions affecting this
4 chapter, chapter 343, and rules adopted
5 thereunder;

6 (C) Review of amendments to this chapter, chapter
7 343, other relevant laws, and rules adopted
8 thereunder; and

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

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

19 §341-A Annual report. No later than January 31 of each
20 year, at the direction of the council, the director shall submit
21 a report to the governor and the legislature that analyzes the
22 effectiveness of the State's environmental review system during



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

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

7 §341-6 [~~Functions~~] Duties of the environmental council.

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

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

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

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

20 [~~The council may make recommendations concerning ecology~~
21 ~~and environmental quality to the director and shall meet at the~~



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

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

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

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



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

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

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

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

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

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

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

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

19 §341-C Fees. With the concurrence of the council, the
20 director shall adopt rules, pursuant to chapter 91, that
21 establish reasonable fees for filing, publication, and other



1 administrative services of the office or council pursuant to
2 this chapter and chapter 343."

3 PART II

4 SECTION 2. Chapter 343, Hawaii Revised Statutes, is
5 amended by adding two new sections to be appropriately
6 designated and to read as follows:

7 "§343-A Significance criteria. (a) In determining
8 whether a proposed action may have a significant adverse
9 environmental effect, an agency shall consider:

- 10 (1) Every phase of the proposed action;
11 (2) Any expected primary and secondary effects of the
12 proposed action; and
13 (3) The overall and cumulative effects of the proposed
14 action, including short-term and long-term effects.

15 (b) A proposed action shall be determined to have a
16 significant effect on the environment if it:

- 17 (1) Involves an irrevocable commitment to the loss or
18 destruction of any natural or cultural resource;
19 (2) Curtails the range of beneficial uses of the
20 environment;
21 (3) Conflicts with the State's long-term environmental
22 policies, guidelines, or goals, as expressed in



- 1 chapter 344, and any revisions or amendments thereto,
- 2 court decisions, or executive orders;
- 3 (4) Substantially adversely affects the economic welfare,
- 4 social welfare, or cultural practices of the community
- 5 or State;
- 6 (5) Substantially adversely affects public health;
- 7 (6) Involves substantial adverse secondary impacts, such
- 8 as population changes or effects on public facilities;
- 9 (7) Involves a substantial degradation of environmental
- 10 quality;
- 11 (8) Is individually limited but cumulatively has
- 12 considerable adverse effect upon the environment or
- 13 involves a commitment to related or future actions;
- 14 (9) Substantially adversely affects a rare, threatened, or
- 15 endangered species or its habitat;
- 16 (10) Detrimentially affects air or water quality or ambient
- 17 noise levels;
- 18 (11) Affects or is likely to cause present or future damage
- 19 by being located in an environmentally sensitive area,
- 20 such as a flood plain, tsunami zone, beach, erosion-
- 21 prone area, geologically hazardous land, estuary,
- 22 fresh water, or coastal waters;



1 (12) Substantially adversely affects scenic vistas and
2 viewplanes identified in county or state plans or
3 studies;

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

6 (14) Increases the scope or intensity of hazards to the
7 public, such as increased coastal inundation,
8 flooding, or erosion that may occur as a result of
9 climate change anticipated during the lifetime of the
10 project.

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

13 §343-B Record of decision; mitigation disclosure. (a) At
14 the time of the acceptance or nonacceptance of a final
15 statement, the accepting authority or agency shall prepare a
16 public record of decision that:

17 (1) States its decision;

18 (2) Identifies all alternatives considered by the
19 accepting authority or agency in reaching its
20 decision, including:

21 (A) Alternatives that were considered to be
22 environmentally preferable; and



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

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

9 (b) After completion of the record of decision, as
10 required by subsection (a), the approving agency shall ensure
11 that the applicant or agency submits to the office a written
12 report of no more than twenty pages in length, which shall be
13 published in the bulletin, five years after the record of
14 decision and again after ten years, which shall provide:

15 (1) A list of any permits or approvals described in the
16 environmental assessment or statement and the current
17 status of those permits or approvals;

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

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



1 SECTION 3. Section 183-44, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

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

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

13 (2) "Repairs and maintenance" of fishponds means any work
14 performed relative to the walls, floor, or other
15 traditional natural feature of the fishpond and its
16 appurtenances, the purposes of which are to maintain
17 the fishpond in its natural state and safeguard it
18 from damage from environmental and natural forces.

19 Repairs, strengthening, reinforcement, and maintenance and
20 emergency repair of fishponds shall not be construed as actions
21 [~~proposing any use~~] requiring an environmental assessment or



1 an environmental impact statement within the context of [section
2 ~~343-5.] chapter 343."~~

3 SECTION 4. Section 343-2, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§343-2 Definitions. As used in this chapter unless the
6 context otherwise requires:

7 "Acceptance" means a formal determination that the document
8 required to be filed pursuant to section 343-5 fulfills the
9 definition of an environmental impact statement, adequately
10 describes identifiable environmental impacts, and satisfactorily
11 responds to comments received during the review of the
12 statement.

13 "Action" means any program or project to be initiated by
14 any agency or applicant[-] that:

- 15 (1) Is directly undertaken by any agency;
16 (2) Is supported in whole or in part by contracts, grants,
17 subsidies, or loans from one or more agencies; or
18 (3) Involves the issuance to a person of a discretionary
19 approval, such as a permit by one or more agencies.

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



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

4 "Applicant" means any person who, pursuant to statute,
5 ordinance, or rule, officially requests approval for a proposed
6 action.

7 "Approval" means a discretionary [~~consent~~] approval
8 required from an agency prior to actual implementation of an
9 action.

10 "Bulletin" means the publication required under section
11 343-3(d).

12 "Council" means the environmental council.

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

20 "Discretionary [~~consent~~] approval" means [a] an approval,
21 consent, sanction, or recommendation from an agency for which



1 judgment and free will may be exercised by the issuing agency,
2 as distinguished from a ministerial [~~consent-~~] approval.

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

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

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

19 The initial statement filed for public review shall be
20 referred to as the draft statement and shall be distinguished
21 from the final statement, which is the document that has
22 incorporated the public's comments and the responses to those



1 comments. The final statement is the document that shall be
2 evaluated for acceptability by the respective accepting
3 authority.

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

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

18 [~~"Helicopter facility" means any area of land or water~~
19 ~~which is used, or intended for use for the landing or takeoff of~~
20 ~~helicopters; and any appurtenant areas which are used, or~~
21 ~~intended for use for helicopter related activities or rights of~~
22 ~~way.]~~



1 "Ministerial approval" means a governmental decision
2 involving only the use of fixed standards or objective
3 measurements.

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

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

10 "Person" includes any individual, partnership, firm,
11 association, trust, estate, private corporation, or other legal
12 entity other than an agency.

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

15 ~~["Power generating facility" means:~~

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

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



1 "Program" means a systemic, connected, or concerted
2 applicant or discretionary agency action to implement a specific
3 policy, plan, or master plan.

4 "Programmatic" means a comprehensive environmental review
5 of a program, policy, plan, or master plan.

6 "Project" means an activity that may cause either a direct
7 or indirect physical effect on the environment, such as
8 construction or management activities located in a defined
9 geographic area.

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

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

19 "Significant adverse environmental effect" means a
20 significant effect that is harmful, undesirable, or in direct
21 conflict with the environmental values expressed in section
22 343-A or chapter 344.



1 "Significant effect" means the sum of effects on the
2 quality of the environment [~~, including actions that irrevocably~~
3 ~~commit a natural resource, curtail the range of beneficial uses~~
4 ~~of the environment, are contrary to the State's environmental~~
5 ~~policies or long term environmental goals as established by law,~~
6 ~~or adversely affect the economic welfare, social welfare, or~~
7 ~~cultural practices of the community and State.], as set forth in
8 section 343-A.~~

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

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

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



1 "§343-3 Public participation, records, and notice. (a)
2 All statements, environmental assessments, and other documents
3 prepared under this chapter shall be made available for
4 inspection by the public [~~during established office hours.~~] at
5 minimum through the electronic communication system maintained
6 by the office and, if specifically requested due to lack of
7 electronic access, also through printed copies available through
8 the office. The office may charge reasonable fees, pursuant to
9 section 92-21, for any printed copies provided under this
10 subsection.

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

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

18 (1) A public comment process or public hearing if a state
19 or federal agency provides for the public comment
20 process or public hearing to process a habitat
21 conservation plan, safe harbor agreement, or



1 incidental take license pursuant to chapter 195D or
2 the federal Endangered Species Act;

3 (2) A proposed habitat conservation plan or proposed safe
4 harbor agreement, and availability for inspection of
5 the proposed agreement, plan, and application to enter
6 into a planning process for the preparation and
7 implementation of the habitat conservation plan for
8 public review and comment;

9 (3) A proposed incidental take license as part of a
10 habitat conservation plan or safe harbor agreement;
11 and

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

15 (d) The office shall inform the public by the publication
16 of a periodic bulletin to be available to persons requesting
17 this information. The bulletin shall be available through the
18 office, [and] public libraries[-], and in electronic format.

19 (e) At the earliest practicable time, applicants and the
20 relevant agencies shall:



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

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

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

9 "§343-5 [~~Applicability and~~] Agency and applicant

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

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



- 1 ~~205-2(d)(11) or 205-4.5(a)(13) shall only be required~~
2 ~~pursuant to section 205-5(b);~~
- 3 ~~(2) Propose any use within any land classified as a~~
4 ~~conservation district by the state land use commission~~
5 ~~under chapter 205;~~
- 6 ~~(3) Propose any use within a shoreline area as defined in~~
7 ~~section 205A-41;~~
- 8 ~~(4) Propose any use within any historic site as designated~~
9 ~~in the National Register or Hawaii Register, as~~
10 ~~provided for in the Historic Preservation Act of 1966,~~
11 ~~Public Law 89-665, or chapter 6E;~~
- 12 ~~(5) Propose any use within the Waikiki area of Oahu, the~~
13 ~~boundaries of which are delineated in the land use~~
14 ~~ordinance as amended, establishing the "Waikiki~~
15 ~~Special District";~~
- 16 ~~(6) Propose any amendments to existing county general~~
17 ~~plans where the amendment would result in designations~~
18 ~~other than agriculture, conservation, or preservation,~~
19 ~~except actions proposing any new county general plan~~
20 ~~or amendments to any existing county general plan~~
21 ~~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~~[7]~~ 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 [~~assessment7~~] 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 statements7~~] environmental
13 review documents. The council, by rule, shall establish
14 criteria and procedures for the use of previous determinations
15 and statements.

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

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

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

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

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

17 "§343-7 Limitation of actions. (a) Any judicial
18 proceeding, the subject of which is the lack of an environmental
19 assessment required under section 343-5, or the lack of a
20 supplemental environmental assessment or supplemental
21 environmental impact statement, shall be initiated within one
22 hundred twenty days of the agency's decision to carry out or



1 approve the action, or, if a proposed action is undertaken
2 without a formal determination by the agency that [a] an
3 assessment, supplement, or statement is or is not required, a
4 judicial proceeding shall be instituted within one hundred
5 twenty days after the proposed action is started. The council
6 or office, any agency responsible for approval of the action, or
7 the applicant shall be adjudged an aggrieved party for the
8 purposes of bringing judicial action under this subsection.
9 Others, by court action, may be adjudged aggrieved.

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



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

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

16 "(a) Notwithstanding any other law to the contrary, the
17 governor, with the assistance of the director, may negotiate
18 with any person for the development or expansion of private
19 in-state correctional facilities or public in-state turnkey
20 correctional facilities to reduce prison overcrowding; provided
21 that if an environmental assessment or environmental impact
22 statement is required for a proposed site or for the expansion



1 of an existing correctional facility under [~~section 343-5,~~]
2 chapter 343, then notwithstanding the time periods specified for
3 public review and comments under section 343-5, the governor
4 shall accept public comments for a period of sixty days
5 following public notification of either an environmental
6 assessment or an environmental impact statement."

7 PART III

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

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



1 implemented under interim rules shall not continue in effect
2 beyond June 30, 2012, unless the council shall adopt rules in
3 conformance with the requirements of chapter 91 and chapter
4 201M. Rules adopted pursuant to this section shall include but
5 not be limited to rules that shall:

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

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

18 (3) Prescribe procedures for the preparation of an
19 environmental assessment;

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



- 1 (5) Prescribe procedures for informing the public of
2 determinations that a statement is either required or
3 not required, for informing the public of the
4 availability of draft environmental impact statements
5 for review and comments, and for informing the public
6 of the acceptance or nonacceptance of the final
7 environmental statement;
- 8 (6) Prescribe the contents of, and page limits for, an
9 environmental impact statement;
- 10 (7) Prescribe procedures for the submission, distribution,
11 review, acceptance or nonacceptance, and withdrawal of
12 an environmental impact statement;
- 13 (8) Establish criteria to determine whether an
14 environmental impact statement is acceptable or not;
15 [and]
- 16 (9) Prescribe procedures to appeal the nonacceptance of an
17 environmental impact statement to the [environmental]
18 council[-];
- 19 (10) Prescribe procedures for the use of electronic
20 technology for the public comment and response
21 process, including procedures for issuing one



- 1 comprehensive response to multiple or repetitious
- 2 comments that are substantially similar in content;
- 3 (11) Prescribe procedures for implementing the requirements
- 4 for records of decision, monitoring, and mitigation;
- 5 (12) Develop guidance for the application and
- 6 interpretation of the significance criteria under
- 7 section 343-A;
- 8 (13) Prescribe procedures and guidance for the preparation
- 9 of programmatic environmental assessments or
- 10 statements and the tiering of project-specific
- 11 environmental assessments or statements;
- 12 (14) Prescribe:
- 13 (A) Procedures for the applicability, preparation,
- 14 acceptance, and publication of supplemental
- 15 environmental assessments and supplemental
- 16 environmental impact statements when there are
- 17 substantial changes in the proposed action or
- 18 significant new circumstances or information
- 19 relevant to environment effects and bearing on
- 20 the proposed action and its impacts; provided
- 21 that the supplemental documents focus on the

1 changed action, new circumstances, or new
2 information;

3 (B) Procedures for limiting the duration of the
4 validity of environmental assessments and
5 environmental impact statements, or if an
6 environmental assessment led to the preparation
7 of an environmental impact statement, then of the
8 later-prepared statement, to not more than ten
9 years from the date of acceptance of the document
10 until all state and county discretionary
11 approvals are fully completed for the action;
12 provided that the supplemental documents focus on
13 the changed action, new circumstances, or new
14 information; and

15 (C) Procedures for an agency or applicant to seek a
16 timely determination from the council that a
17 prior environmental assessment or environmental
18 impact statement contains sufficiently current
19 information and that a supplemental document is
20 not warranted despite the passage of the
21 prescribed time period; and



- 1 (15) Provide guidance to agencies and applicants about the
- 2 applicability of the environmental review, and
- 3 establish procedures whereby each state and county
- 4 agency shall maintain lists of:
 - 5 (A) Specific types of major discretionary approvals;
 - 6 (B) Ministerial actions that do not require
 - 7 environmental review; and
 - 8 (C) Actions that require a case-by-case determination
 - 9 of applicability.

10 (b) ~~[A]~~ Except for the adoption of interim rules pursuant
 11 to subsection (a), at least one public hearing shall be held in
 12 each county prior to the final adoption, amendment, or repeal of
 13 any rule."

PART IV

15 SECTION 10. Notwithstanding the original terms of
 16 appointment of the members of the environmental council, the
 17 terms of all members of the environmental council serving as of
 18 the effective date of this Act shall be extended through June
 19 30, 2012. The members shall continue in their appointment until
 20 the nine members of the environmental council are appointed or
 21 re-appointed, in accordance with section 341-3, Hawaii Revised
 22 Statutes, as amended by this Act.



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

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

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

15 SECTION 14. This Act shall take effect on July 1, 2050;
16 provided that part II shall take effect on July 1, 2050.



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.

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

