
A BILL FOR AN ACT

RELATING TO ENVIRONMENTAL IMPACT STATEMENTS.

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

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

4 "§343- Supplemental statements. (a) An environmental
5 assessment or environmental impact statement that is accepted
6 with respect to a particular action shall satisfy the
7 requirements of this chapter, and no other environmental
8 assessment or environmental impact statement for the proposed
9 action shall be required; provided that if an agency action or
10 an applicant action has changed substantially in size, scope,
11 intensity, use, or location, and these changes are anticipated
12 to have a significant effect, then a supplemental environmental
13 assessment or environmental impact statement may be required for
14 the proposed use.

15 (b) For projects that are phased or developed over a
16 period of time, an accepted environmental assessment or
17 environmental impact statement shall be valid as long as the
18 discretionary consent for which the environmental assessment or



1 environmental impact statement was prepared is still in force,
2 and a supplemental environmental assessment or environmental
3 impact statement is not required pursuant to subsection (a).

4 (c) For applicant actions, the government agency that is
5 acting upon the application for the discretionary consent shall
6 be responsible for determining whether a supplemental
7 environmental assessment or environmental impact statement is
8 required. This determination shall be submitted to the office
9 for publication in the periodic bulletin.

10 (d) For applicant actions, the government agency that is
11 acting upon the application for the discretionary consent, in
12 its sole discretion, may waive the requirement of a supplemental
13 environmental assessment or environmental impact statement if
14 the government agency determines that additional studies and
15 reports that have already been performed provide sufficient
16 updated information to enable the government agency to make an
17 informed decision on the application for discretionary consent.

18 (e) The content of the supplemental environmental
19 assessment or environmental impact statement shall be limited to
20 the substantial changes to the proposed action and the
21 anticipated significant effects of the changes.



1 (f) The initial supplemental environmental assessment or
2 environmental impact statement filed for public review shall be
3 the draft supplemental environmental assessment or environmental
4 impact statement and shall be subject to a thirty day public
5 review period. The final supplemental environmental assessment
6 or environmental impact statement shall incorporate comments
7 received during the thirty day public review period and
8 responses thereto. A final supplemental environmental
9 assessments or environmental impact statement not acted upon
10 within thirty days of receipt by the accepting authority shall
11 be deemed accepted.

12 (g) The requirement of a supplemental environmental
13 assessment or environmental impact statement shall not
14 invalidate any existing discretionary or ministerial consent
15 that was previously issued for the applicant's action. Any
16 discretionary or ministerial consent previously received shall
17 remain valid if a supplemental environmental assessment or
18 environmental impact statement is required for a new
19 discretionary approval related to the project."

20 SECTION 2. Section 343-1, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "**§343-1 Findings and purpose.** The legislature finds that
2 the quality of humanity's environment is critical to humanity's
3 well being, that humanity's activities have broad and profound
4 effects upon the interrelations of all components of the
5 environment, and that an environmental review process will
6 integrate the review of environmental concerns with existing
7 planning processes of the State and counties and alert [~~decision~~
8 ~~makers~~] agencies considering discretionary approvals to
9 significant environmental effects [~~which~~] that may result from
10 the implementation of certain actions. The legislature further
11 finds that the process of reviewing environmental effects is
12 desirable because environmental consciousness is enhanced,
13 cooperation and coordination are encouraged, and public
14 participation during the review process benefits all parties
15 involved and society as a whole.

16 It is the purpose of this chapter to establish a public
17 disclosure system of environmental review [~~which~~] that will
18 ensure that environmental concerns are given appropriate
19 consideration in [~~decision making~~] discretionary approvals along
20 with economic and technical considerations. The environmental
21 review process is separate and distinct from the discretionary
22 approval process. The environmental review process identifies



1 potential impacts and mitigation measures; the discretionary
2 approval process evaluates mitigation measures and economic and
3 technical considerations."

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

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

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

14 [~~"Action" means any program or project to be initiated by~~
15 ~~any agency or applicant.~~]

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

19 "Agency action" means a program or project to be initiated
20 by any executive or administrative department, office, board, or
21 commission of the state or county government.



1 ["Applicant"] "Applicant action" means any program or
2 project initiated by a person who, pursuant to statute,
3 ordinance, or rule, officially requests discretionary approval
4 for a proposed action.

5 "Approval" means a discretionary consent required from an
6 agency prior to actual implementation of an action.

7 "Council" means the environmental council.

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

10 "Discretionary consent" means a consent, sanction, or
11 recommendation from an agency for which judgment or deliberation
12 and free will may be exercised by the issuing agency[~~, as~~
13 ~~distinguished from a ministerial consent.~~] to approve or
14 disapprove a particular activity.

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

17 "Environmental impact statement" or "statement" means an
18 informational document prepared in compliance with the rules
19 adopted under section 343-6 and which discloses the
20 environmental effects of a proposed action, effects of a
21 proposed action on the economic welfare, social welfare, and
22 cultural practices of the community and State, effects of the



1 economic activities arising out of the proposed action, measures
2 proposed to minimize adverse effects, and alternatives to the
3 action and their environmental effects.

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

11 "Exempt" means any specific type of action that does not
12 require the preparation of an environmental assessment because
13 the action will have no significant effect on the environment,
14 including but not limited to actions that are consistent with
15 existing zoning, county general plans, or development plans.

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

20 "Helicopter facility" means any area of land or water
21 [~~which~~] that is used, or intended for use for the landing or
22 takeoff of helicopters; and any appurtenant areas which are



1 used, or intended for use for helicopter related activities or
2 rights-of-way.

3 "Ministerial consent" means an agency review or permit
4 process to determine conformity with applicable statutes,
5 ordinances, rules, agency procedures, or policies that involves
6 the application of established standards, guidelines, or
7 objective measurements to the facts presented, and requires no
8 personal judgment or special discretion as to the desirability
9 or manner of carrying out the action. Ministerial consents
10 include but are not limited to consents or permits such as
11 subdivision, grading, and building.

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

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

16 "Power-generating facility" means:

- 17 (1) A new, fossil-fueled, electricity-generating facility,
18 where the electrical output rating of the new
19 equipment exceeds 5.0 megawatts; or
20 (2) An expansion in generating capacity of an existing,
21 fossil-fueled, electricity-generating facility, where



1 the incremental electrical output rating of the new
2 equipment exceeds 5.0 megawatts.

3 "Renewable energy facility" has the same meaning as defined
4 in section 201N-1.

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

14 "Supplemental statement" means an additional statement
15 prepared pursuant to section 343- to address substantial
16 changes to a proposed action that are anticipated to have a
17 significant effect.

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

20 SECTION 4. Section 343-3, Hawaii Revised Statutes, is
21 amended by amending subsection (b) to read as follows:



1 "(b) The office shall inform the public of notices filed
2 by agencies of the availability of environmental assessments for
3 review and comments, of determinations that statements and
4 supplemental statements are required or not required, of the
5 availability of statements and supplemental statements for
6 review and comments, and of the acceptance or nonacceptance of
7 statements[-] and supplemental statements."

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

10 "**§343-5 Applicability and requirements.** (a) Except as
11 otherwise provided, an environmental assessment shall be
12 required for actions that:

13 (1) Propose the use of state or county lands or the use of
14 state or county funds, other than funds to be used for
15 feasibility or planning studies for possible future
16 programs or projects that the agency has not approved,
17 adopted, or funded, or funds to be used for the
18 acquisition of unimproved real property; provided that
19 the use of government-owned rights-of-way solely for
20 utility and access connections shall not require an
21 environmental assessment or an environmental impact
22 statement; provided further that the agency shall



1 consider environmental factors and available
2 alternatives in its feasibility or planning studies;
3 provided further that an environmental assessment for
4 proposed uses under section 205-2(d)(11) or 205-
5 4.5(a)(13) shall only be required pursuant to section
6 205-5(b);

7 (2) Propose any use within any land classified as a
8 conservation district by the state land use commission
9 under chapter 205;

10 (3) Propose any use within a shoreline area as defined in
11 section 205A-41;

12 (4) Propose any use within any historic site as designated
13 in the National Register or Hawaii Register, as
14 provided for in the Historic Preservation Act of 1966,
15 Public Law 89-665, or chapter 6E;

16 (5) Propose any use within the Waikiki area of Oahu, the
17 boundaries of which are delineated in the land use
18 ordinance as amended, establishing the "Waikiki
19 Special District";

20 (6) Propose any amendments to existing county general
21 plans where the amendment would result in designations
22 other than agriculture, conservation, or preservation,



1 except actions proposing any new county general plan
2 or amendments to any existing county general plan
3 initiated by a county;

4 (7) Propose any reclassification of any land classified as
5 a conservation district by the state land use
6 commission under chapter 205;

7 (8) Propose the construction of new or the expansion or
8 modification of existing helicopter facilities within
9 the State, that by way of their activities, may
10 affect:

11 (A) Any land classified as a conservation district by
12 the state land use commission under chapter 205;

13 (B) A shoreline area as defined in section 205A-41;
14 or

15 (C) Any historic site as designated in the National
16 Register or Hawaii Register, as provided for in
17 the Historic Preservation Act of 1966, Public Law
18 89-665, or chapter 6E; or until the statewide
19 historic places inventory is completed, any
20 historic site that is found by a field
21 reconnaissance of the area affected by the
22 helicopter facility and is under consideration



1 for placement on the National Register or the
2 Hawaii Register of Historic Places; and

3 (9) Propose any:

4 (A) Wastewater treatment unit, except an individual
5 wastewater system or a wastewater treatment unit
6 serving fewer than fifty single-family dwellings
7 or the equivalent;

8 (B) Waste-to-energy facility;

9 (C) Landfill;

10 (D) Oil refinery; or

11 (E) Power-generating facility.

12 (b) Whenever an agency proposes an action in subsection
13 (a), other than feasibility or planning studies for possible
14 future programs or projects that the agency has not approved,
15 adopted, or funded, or other than the use of state or county
16 funds for the acquisition of unimproved real property that is
17 not a specific type of action declared exempt under section 343-
18 6, the agency shall prepare an environmental assessment for
19 [~~such~~] the action at the earliest practicable time to determine
20 whether an environmental impact statement shall be required.

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



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



1 determination for the public's information
2 pursuant to section 343-3.

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

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

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

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

20 (B) The mayor, or the mayor's authorized
21 representative, of the respective county whenever



1 an action proposes only the use of county lands
2 or county funds.

3 Acceptance of a required final statement shall be a
4 condition precedent to implementation of the proposed action.
5 Upon acceptance or nonacceptance of the final statement, the
6 governor or mayor, or the governor's or mayor's authorized
7 representative, shall file notice of [~~such~~] the determination
8 with the office. The office, in turn, shall publish the
9 determination of acceptance or nonacceptance pursuant to section
10 343-3.

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



1 agency for the request for approval is not required to be the
2 accepting authority.

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

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

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

11 (3) The applicant shall respond in writing to comments
12 received during the review^[7] and [~~the agency shall~~]
13 prepare a final environmental assessment to determine
14 whether an environmental impact statement shall be
15 required. A statement shall be required if the agency
16 finds that the proposed action may have a significant
17 effect on the environment. The agency shall file
18 notice of the agency's determination with the office,
19 which, in turn, shall publish the agency's
20 determination for the public's information pursuant to
21 section 343-3.



1 The draft and final statements, if required, shall be
2 prepared by the applicant, who shall file these statements with
3 the office.

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

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

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

20 Acceptance of a required final statement shall be a
21 condition precedent to approval of the request and commencement
22 of the proposed action. Upon acceptance or nonacceptance of the



1 final statement, the agency shall file notice of [~~such~~] the
2 determination with the office. The office, in turn, shall
3 publish the determination of acceptance or nonacceptance of the
4 final statement pursuant to section 343-3.

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

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



1 determination. The agency shall abide by the council's
2 decision.

3 (d) Whenever an applicant requests approval for a proposed
4 action and there is a question as to which of two or more state
5 or county agencies with jurisdiction has the responsibility of
6 preparing the environmental assessment, the office, after
7 consultation with and assistance from the affected state or
8 county agencies, shall determine which agency shall prepare the
9 assessment.

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

17 (f) Whenever an action is subject to both the National
18 Environmental Policy Act of 1969 (Public Law 91-190) and the
19 requirements of this chapter, the office and agencies shall
20 cooperate with federal agencies to the fullest extent possible
21 to reduce duplication between federal and state requirements.

22 [~~Sueh~~] This cooperation, to the fullest extent possible, shall



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

8 (g) Whenever an action is determined to be significant by
9 an agency or applicant prior to the preparation of an
10 environmental assessment, the agency or applicant may proceed
11 directly to the environmental impact statement process.

12 [~~g~~] (h) [A] An environmental assessment or environmental
13 impact statement that is accepted with respect to a particular
14 action shall satisfy the requirements of this chapter, and no
15 other environmental assessment or environmental impact statement
16 for the proposed action shall be required[~~r~~] except as provided
17 in section 343- .

18 (i) An agency action or applicant action shall not be
19 subject to this chapter solely because a ministerial consent is
20 required.

21 (j) Substantive comments received in response to a draft
22 environmental assessment or draft environmental impact statement



1 shall be appended to the final environmental assessment or
2 environmental impact statement or, if comments are repetitive or
3 voluminous, summarized and the summary appended."

4 SECTION 6. Section 343-7, Hawaii Revised Statutes, is
5 amended by amending subsection (b) to read as follows:

6 "(b) Any judicial proceeding, the subject of which is the
7 determination that a statement is required for a proposed
8 action, shall be initiated within sixty days after the public
9 has been informed of [~~such~~] the determination pursuant to
10 section 343-3. Any judicial proceeding, the subject of which is
11 the determination that a statement or supplemental statement is
12 not required for a proposed action, shall be initiated within
13 thirty days after the public has been informed of [~~such~~] the
14 determination pursuant to section 343-3. The council or the
15 applicant shall be adjudged an aggrieved party for the purposes
16 of bringing judicial action under this subsection. [~~Others, by~~
17 ~~court action, may be adjudged aggrieved.~~] Affected agencies and
18 persons who provided written comment to an environmental
19 assessment during the designated review period shall be adjudged
20 aggrieved parties for the purpose of bringing judicial action
21 under this subsection; provided that the contestable issues



1 shall be limited to issues identified and discussed in the
2 written comment."

3 SECTION 7. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun before its effective date.

6 SECTION 8. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 9. This Act shall take effect upon its approval.

9

INTRODUCED BY:

Calvin L. Ay

JAN 24 2011



Report Title:

Environmental Impact Statements; Supplemental Statements

Description:

Makes numerous revisions to the environmental assessment and environmental impact statement process to create a more streamlined, transparent, and consistent process. Defines and provides procedures for supplemental statements.

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

