
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- Duration of environmental impact statements.
5 For projects that are phased or developed over a period of time,
6 an accepted environmental impact statement shall remain valid;
7 provided that a supplemental statement is not required. State
8 or county permits or approvals issued for the project subsequent
9 to the acceptance of the environmental impact statement shall
10 consider the need for additional studies to address
11 environmental concerns that were addressed in good faith during
12 the preparation of the environmental impact statement."

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

15 "**§343-1 Findings and purpose.** The legislature finds that
16 the quality of humanity's environment is critical to humanity's
17 well being, that humanity's activities have broad and profound
18 effects upon the interrelations of all components of the



1 environment, and that an environmental review process will
2 integrate the review of environmental concerns with existing
3 planning processes of the State and counties and alert decision
4 makers to significant environmental effects which may result
5 from the implementation of certain actions. The legislature
6 further finds that the process of reviewing environmental
7 effects is desirable because environmental consciousness is
8 enhanced, cooperation and coordination are encouraged, and
9 public participation during the review process benefits all
10 parties involved and society as a whole.

11 It is the purpose of this chapter to establish a non-
12 regulatory public disclosure system of environmental review
13 which will ensure that environmental concerns are given
14 appropriate consideration in decision making along with economic
15 and technical considerations. The environmental review process
16 is intended to be separate and distinct from the regulatory or
17 permitting process. While there is a reliance on the
18 environmental review process to identify impacts and mitigation
19 measures, it is at the regulatory or permitting process where
20 appropriate mitigation measures are imposed."

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



1 "§343-2 Definitions. As used in this chapter unless the
2 context otherwise requires:

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

9 ~~["Action" means any program or project to be initiated by~~
10 ~~any agency or applicant.~~

11 "Agency"] "Agency action" means a program or project
12 initiated by any department, office, board, or commission of the
13 state or county government which is a part of the executive
14 branch of that government.

15 ~~["Applicant"]~~ "Applicant action" means any program or
16 project initiated by a person who, pursuant to statute,
17 ordinance, or rule, officially requests discretionary approval
18 for a proposed action.

19 "Approval" means a discretionary [~~consent~~] approval
20 required from an agency prior to actual implementation of an
21 action.

22 "Council" means the environmental council.



1 "Director" means the director of the office of
2 environmental quality control.

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

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

10 "Environmental impact statement" or "statement" means an
11 informational document prepared in compliance with the rules
12 adopted under section 343-6 and which discloses the
13 environmental effects of a proposed action, effects of a
14 proposed action on the economic welfare, social welfare, and
15 cultural practices of the community and State, effects of the
16 economic activities arising out of the proposed action, measures
17 proposed to minimize adverse effects, and alternatives to the
18 action and their 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 process" means an integrated review
5 of environmental concerns with existing planning processes of
6 the State and counties to identify significant environmental
7 effects that may result from the implementation of certain
8 actions. The environmental review process shall establish a
9 non-regulatory public disclosure system of environmental review
10 to ensure that environmental, economic, and technical concerns
11 are considered in decision making.

12 "Exempt" means an action that is exempt from the
13 preparation of an environmental assessment because it will have
14 minimal or no significant effect on the environment, including
15 actions that are consistent with existing zoning, county
16 general, or development plans.

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

21 [~~"Helicopter facility" means any area of land or water~~
22 ~~which is used, or intended for use for the landing or takeoff of~~



1 ~~helicopters; and any appurtenant areas which are used, or~~
2 ~~intended for use for helicopter related activities or rights of-~~
3 ~~way.]~~

4 "Ministerial approval" means a governmental decision,
5 issued after land use or zoning approval, involving little or no
6 judgment by the agency and involving the use of established
7 standards, guidelines, or objective measurements, pursuant to
8 rules, ordinances, policies, or procedures adopted by the
9 agency.

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

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

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

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

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



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

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

10 "Supplemental statement" means an environmental impact
11 statement that is accepted with respect to a particular action
12 and that is qualified by size, scope, location, intensity, and
13 use, among other things. A supplemental statement that is
14 accepted with respect to a particular action shall satisfy the
15 requirements of this chapter and no other supplemental statement
16 for that proposed action shall be required; provided that the
17 action has not changed substantively in size, scope, location,
18 intensity, or use, among other things. Any change that
19 significantly affects the proposed action shall require
20 preparation and review of a new supplemental statement. As long
21 as there is no change in a proposed action resulting in
22 individual or cumulative impacts not originally disclosed, the



1 statement associated with that action shall be deemed to comply
2 with this chapter.

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

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

7 "**§343-5 Applicability and requirements.** (a) Except as
8 otherwise provided, an environmental assessment shall be
9 required for actions that:

- 10 (1) Propose the use of state or county lands or the use of
11 state or county funds, other than funds to be used for
12 feasibility or planning studies for possible future
13 programs or projects that the agency has not approved,
14 adopted, or funded, or funds to be used for the
15 acquisition of unimproved real property; provided that
16 the use of state or county road rights-of-way solely
17 for utility or road access connections shall not
18 require an environmental assessment or an
19 environmental impact statement; provided further 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 205-
2 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; and



- 1 (7) Propose any reclassification of any land classified as
- 2 a conservation district by the state land use
- 3 commission under chapter 205[7
- 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 ~~servng 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 (b) Whenever an agency proposes an action in subsection
10 (a), other than feasibility or planning studies for possible
11 future programs or projects that the agency has not approved,
12 adopted, or funded, or other than the use of state or county
13 funds for the acquisition of unimproved real property that is
14 not a specific type of action declared exempt under section 343-
15 6, the agency shall prepare an environmental assessment for such
16 action at the earliest practicable time to determine whether an
17 environmental impact statement shall be required.

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

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



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



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

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

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

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

18 (B) The mayor, or the mayor's authorized
19 representative, of the respective county whenever
20 an action proposes only the use of county lands
21 or county funds.



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

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

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



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

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

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



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

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

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

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



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

10 In any acceptance or nonacceptance, the agency shall
11 provide the applicant with the specific findings and reasons for
12 its determination. In making its determination, the accepting
13 authority shall analyze whether the statement meets the
14 requirements of this chapter as a public disclosure document.

15 An applicant, within sixty days after nonacceptance of a final
16 statement by an agency, may appeal the nonacceptance to the
17 environmental council, which, within thirty days of receipt of
18 the appeal, shall notify the applicant of the council's
19 determination. In any affirmation or reversal of an appealed
20 nonacceptance, the council shall provide the applicant and
21 agency with specific findings and reasons for its determination.
22 The agency shall abide by the council's 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, the office, after
5 consultation with and assistance from the affected state or
6 county agencies, shall determine which agency shall prepare the
7 assessment.

8 (e) In preparing an environmental assessment, an agency
9 may consider and, where applicable and appropriate, incorporate
10 by reference, in whole or in part, previous determinations of
11 whether a statement is required and previously accepted
12 statements. The council, by rule, shall establish criteria and
13 procedures for the use of previous determinations and
14 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 cooperation, to the fullest extent possible, shall include
21 joint environmental impact statements with concurrent public
22 review and processing at both levels of government. Where



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

5 (g) A statement that is accepted with respect to a
6 particular action shall satisfy the requirements of this
7 chapter, and no other statement for the proposed action shall be
8 required.

9 (h) If an agency or applicant determines that an action
10 will have a significant effect prior to the preparation of an
11 environmental assessment, the agency or applicant, with the
12 director's approval, may prepare an environmental impact
13 statement without first preparing an environmental assessment."

14 SECTION 5. Section 343-6, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) After consultation with the affected agencies, the
17 council shall adopt, amend, or repeal necessary rules for the
18 purposes of this chapter in accordance with chapter 91
19 including, but not limited to, rules that shall:

20 (1) Prescribe the procedures whereby a group of proposed
21 actions may be treated by a single environmental
22 assessment or statement[+], including the



1 consolidation of proposed actions into a single
2 environmental impact assessment or environmental
3 impact statement;

4 (2) Establish procedures whereby specific types of
5 actions, because they will probably have minimal or no
6 significant effects on the environment, are declared
7 exempt from the preparation of an environmental
8 assessment;

9 (3) Prescribe procedures for the preparation of an
10 environmental assessment;

11 (4) Prescribe the contents of an environmental assessment;

12 (5) Prescribe procedures for informing the public of
13 determinations that a statement is either required or
14 not required, for informing the public of the
15 availability of draft environmental impact statements
16 for review and comments, and for informing the public
17 of the acceptance or nonacceptance of the final
18 environmental statement;

19 (6) Prescribe the contents of an environmental impact
20 statement;



1 (7) Prescribe procedures for the submission, distribution,
2 review, acceptance or nonacceptance, and withdrawal of
3 an environmental impact statement;

4 (8) Establish criteria to determine whether an
5 environmental impact statement is acceptable or not;
6 [and]

7 (9) Establish procedures for electronic comments and
8 responses to environmental assessments and
9 environmental impact statements; and

10 [~~9~~] (10) Prescribe procedures to appeal the nonacceptance
11 of an environmental impact statement to the
12 environmental council."

13 SECTION 6. This Act does not affect rights and duties that
14 matured, penalties that were incurred, and proceedings that were
15 begun before its effective date.

16 SECTION 7. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

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

19

INTRODUCED BY:

Calvin H. Day
JAN 26 2011



Report Title:

Environmental Impact Statements

Description:

Makes numerous revisions to 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.

