

---

---

# A BILL FOR AN ACT

RELATING TO ECONOMIC REVITALIZATION.

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

1           SECTION 1. **Purpose.** The legislature finds that the  
2 economic recovery of the State is in jeopardy. One strategy to  
3 promote economic revitalization is through capital expenditures  
4 on public infrastructure projects. This strategy will generate  
5 jobs and infuse dollars into the local economy. Additionally,  
6 the public infrastructure constructed will benefit the general  
7 public.

8           The purpose of this Act is to promote economic  
9 revitalization by temporarily removing a barrier to the  
10 expeditious construction of certain state and county projects.  
11 For a temporary period, this Act authorizes exemptions from the  
12 environmental review process of chapter 343, Hawaii Revised  
13 Statutes, for certain state or county projects. Exemptions may  
14 be granted under this Act for narrowly defined projects that  
15 will have environmental impacts that are minimal or acceptable  
16 when weighed against the speed with which the economic and  
17 employment benefits from construction of the projects can be  
18 realized. The legislature finds that exempting narrowly defined



1 projects from the environmental review process will result in  
2 net benefits to the State and serve the significant public  
3 purpose of economic revitalization.

4 The legislature finds that the judicial review process  
5 afforded by this Act establishes reasonable limitations on and  
6 regulation of the legal proceedings through which a person may  
7 enforce the person's rights under article XI, section 9, of the  
8 Hawaii State Constitution with regard to the exemptions  
9 authorized by this Act. The legislature further finds that such  
10 regulation and limitations are temporary and necessary for the  
11 economic revitalization of the State.

12 SECTION 2. **Definitions.** For the purpose of this Act:

13 "Construction" includes grading, grubbing, stockpiling,  
14 excavation, foundation laying, pile driving, demolition,  
15 building, reconstruction, rehabilitation, renovation, repairing,  
16 maintaining, paving, landscaping, and any other improvement of  
17 real property.

18 "County project" means a construction project for which a  
19 county agency is the expending agency.

20 "State project" means a construction project for which a  
21 state agency is the expending agency.



1           SECTION 3.   **Exemption from environmental review process of**  
2 **chapter 343, Hawaii Revised Statutes.**   Notwithstanding any other  
3 law to the contrary, a project shall be exempt from the  
4 environmental review process of chapter 343, Hawaii Revised  
5 Statutes, if the project:

6           (1)   (A)   Is a state project, and the governor before July  
7                   1, 2014, grants an exemption for the project from  
8                   the environmental review process based upon a  
9                   finding that the project meets the requirements  
10                  of this section; or

11           (B)   Is a county project, and the applicable mayor  
12                  before July 1, 2014, grants an exemption for the  
13                  project from the environmental review process  
14                  based on a finding that the project meets the  
15                  requirements of this section;

16           (2)   Is entirely on state or county land, including a state  
17                  or county right-of-way, regardless of whether the  
18                  state or county land is within:

19           (A)   A historic site, as specified under section 343-  
20                  5(a)(4), Hawaii Revised Statutes;

21           (B)   A shoreline area, as defined under section 205A-  
22                  41, Hawaii Revised Statutes; or

- 1 (C) The Waikiki area, as defined under section 343-
- 2 5(a)(5), Hawaii Revised Statutes;
- 3 (3) Is funded entirely by state, county, or federal funds;
- 4 (4) Is not already exempt under chapter 343, Hawaii
- 5 Revised Statutes;
- 6 (5) Is granted, by July 1, 2014, all non-discretionary
- 7 government permits and approvals necessary to commence
- 8 construction;
- 9 (6) Is scheduled by the state or county expending agency
- 10 to be completed by December 31, 2015;
- 11 (7) Is not within a conservation district as established
- 12 pursuant to chapter 205, Hawaii Revised Statutes;
- 13 (8) Does not require, after June 30, 2012:
- 14 (A) The amendment of any land use map of a county
- 15 general plan, development plan, or community
- 16 plan;
- 17 (B) The reclassification of land by the land use
- 18 commission or any county pursuant to chapter 205,
- 19 Hawaii Revised Statutes;
- 20 (C) A zoning code amendment by or zoning variance
- 21 from any county; or



- 1 (D) An amendment of any rule of the Hawaii community
- 2 development authority regulating land use or
- 3 development;
- 4 (9) Is not any of the following:
- 5 (A) A helicopter facility, as defined under section
- 6 343-2, Hawaii Revised Statutes;
- 7 (B) A wastewater treatment unit, as defined under
- 8 section 343-2, Hawaii Revised Statutes, serving
- 9 at least fifty single-family dwellings or
- 10 equivalent;
- 11 (C) A waste-to-energy facility, as referenced under
- 12 section 343-5(a)(9)(B), Hawaii Revised Statutes;
- 13 (D) A landfill, as referenced under section 343-
- 14 5(a)(9)(C), Hawaii Revised Statutes;
- 15 (E) An oil refinery, as referenced under section 343-
- 16 5(a)(9)(D), Hawaii Revised Statutes; or
- 17 (F) A power-generating facility, as defined under
- 18 section 343-2, Hawaii Revised Statutes;
- 19 (10) Is not part of the locally preferred alternative for a
- 20 mass transit project, a county surcharge for which is
- 21 enacted under section 46-16.8, Hawaii Revised
- 22 Statutes; and



1 (11) Is not a renewable energy facility as defined under  
2 section 201N-1, Hawaii Revised Statutes.

3 SECTION 4. **Exemption; publication of notice.** The governor  
4 or mayor shall publish notice of an exemption granted pursuant  
5 to section 3. The notice shall be published on at least three  
6 separate days in a statewide publication in accordance with  
7 section 1-28.5, Hawaii Revised Statutes.

8 The project shall be deemed exempt from chapter 343, Hawaii  
9 Revised Statutes, upon first publication of the notice that an  
10 exemption has been granted.

11 SECTION 5. **Non-termination of exemption; non-applicability**  
12 **to subsequent action.** (a) Except as otherwise provided under  
13 section 6 or 7(b):

14 (1) The exemption granted for a project under this Act  
15 shall not be invalidated; and

16 (2) There shall not be any retroactive application of  
17 chapter 343, Hawaii Revised Statutes.

18 (b) The exemption granted for a project under this Act  
19 shall not apply to any action improving, supplementing, or  
20 otherwise affecting the project subsequent to its completion.  
21 The subsequent action shall be subject to chapter 343, Hawaii  
22 Revised Statutes.



1           SECTION 6.   **Invalidation of exemption.**  If, subsequent to  
2 the grant of an exemption for a project under this Act, the  
3 governor or mayor, as applicable, finds that the project no  
4 longer complies with section 3, the governor or mayor shall  
5 invalidate the exemption on the date of the finding.  Upon  
6 invalidation, the project shall be subject to chapter 343,  
7 Hawaii Revised Statutes, and all construction of the project  
8 shall cease.  Construction may recommence upon compliance with  
9 chapter 343, Hawaii Revised Statutes.

10           SECTION 7.   **Authority to continue construction after**  
11 **December 31, 2015.**  (a)  If the construction of a project  
12 granted an exemption under this Act is not completed by December  
13 31, 2015, the governor or mayor, as appropriate, may authorize  
14 in writing before that date the continuation of construction of  
15 the project until completion.  If so authorized, the project  
16 shall be exempt from chapter 343, Hawaii Revised Statutes, and  
17 the state or county expending agency may continue construction  
18 of the project after December 31, 2015, until completion.

19           The governor or mayor shall publish notice of the  
20 authorization at least once in a statewide publication in  
21 accordance with section 1-28.5, Hawaii Revised Statutes.



1 (b) If the governor or mayor, as appropriate, does not  
2 authorize in writing before December 31, 2015, the continuation  
3 of construction of the project, construction shall cease on that  
4 date. The exemption granted for the project under this Act  
5 shall also be deemed invalid as of that date. The state or  
6 county expending agency for the project shall thereafter conduct  
7 an environmental assessment, environmental impact statement, or  
8 both, as required under chapter 343, Hawaii Revised Statutes.  
9 Construction of the project may resume after a finding of no  
10 significant impact or acceptance of an environmental impact  
11 statement for the project.

12 SECTION 8. **Judicial review.** (a) A project granted an  
13 exemption under this Act shall not be subject to the judicial  
14 review authorized by section 343-7, Hawaii Revised Statutes, or  
15 any other provision of chapter 343, Hawaii Revised Statutes.

16 (b) As an alternative to judicial review under chapter  
17 343, Hawaii Revised Statutes, a private person may petition the  
18 circuit court of the county where a project granted an exemption  
19 under this Act is located to invalidate the exemption. Under  
20 the petition, the only question before the court shall be  
21 whether the exemption for the project was granted in compliance  
22 with this Act.





1           A private person may also petition the circuit court of the  
2 county where a project granted an exemption under this Act is  
3 located to invalidate the governor's or mayor's authorization  
4 under section 7 to continue construction of the project after  
5 December 31, 2015. Under the petition, the only question before  
6 the court shall be whether the authorization complies with this  
7 Act.

8           The private person shall file the petition under this  
9 subsection within ten working days of the publication of the  
10 notice of the grant of the exemption or authorization to  
11 continue construction after December 31, 2015, as applicable.  
12 The court shall reject a petition that is not properly filed by  
13 the deadline. If the petition is properly filed by the  
14 deadline, the court:

15           (1) Shall order a stay of the exemption or authorization  
16           to continue construction until the petition is  
17           decided;

18           (2) May order the petitioner and the governor or mayor, as  
19           applicable, to submit briefs;

20           (3) Shall not permit any other private person or public  
21           agency to intervene; and

22           (4) May hold a hearing for oral arguments.



1 The court shall issue a decision on the petition within forty-  
2 five working days from the filing of the petition. If the court  
3 does not issue a decision by the deadline, the petition shall be  
4 deemed denied, and the grant of the exemption or authorization  
5 to continue construction after December 31, 2015, as applicable,  
6 shall be deemed valid under this Act.

7 (c) A private person may petition the circuit court of the  
8 county where a project granted an exemption under this Act is  
9 located for a writ of mandamus ordering the governor or mayor,  
10 as applicable, to issue a finding that the project no longer  
11 complies with section 3 and invalidate the exemption for the  
12 project in accordance with section 6. Under the petition, the  
13 only question before the court shall be whether the writ of  
14 mandamus shall be issued.

15 The private person shall file the petition under this  
16 subsection within ten working days of the initial occurrence of  
17 the alleged noncompliance of the project with section 3. The  
18 court shall reject a petition that is not properly filed by the  
19 deadline. If the petition is properly filed by the deadline,  
20 the court:

21 (1) May order the petitioner and the governor or mayor, as  
22 applicable, to submit briefs;



1           (2) Shall not permit any other private person or public  
2                   agency to intervene; and

3           (3) May hold a hearing for oral arguments.

4           The court shall not order a stay of construction of the  
5 project during the pendency of the court's deliberation on the  
6 petition.

7           The court shall issue a decision on the petition within  
8 forty-five working days from the filing of the petition. If the  
9 court does not issue a decision by the deadline, the petition  
10 shall be deemed denied, and the exemption shall be deemed valid  
11 under this Act.

12           (d) A decision issued by a circuit court on a petition  
13 filed pursuant to subsection (b) or (c) shall be final and not  
14 subject to further review.

15           (e) A private person may petition the state supreme court  
16 for a review of the validity of this Act under the Constitutions  
17 of the United States and the State of Hawaii. Under the  
18 petition, the only question before the court shall be whether  
19 this Act is constitutionally valid.

20           The private person shall file the petition under this  
21 subsection within forty-five days of the effective date of this  
22 Act. The court shall reject a petition that is not properly



1 filed by the deadline. If the petition is properly filed by the  
2 deadline, the court:

3 (1) Shall order a stay of all exemptions or authorizations  
4 to continue construction issued under this Act until  
5 the petition is decided;

6 (2) May order the petitioner and the attorney general to  
7 submit briefs;

8 (3) Shall not permit any other private person or public  
9 agency to intervene; and

10 (4) May hold a hearing for oral arguments.

11 The court shall issue a decision on the petition within one  
12 hundred eighty days from the filing of the petition. If the  
13 court does not issue a decision by the deadline, the petition  
14 shall be deemed denied, and this Act shall be deemed  
15 constitutionally valid.

16 (f) The state supreme court or circuit court, as  
17 applicable, may summarily reject any petition that the court  
18 deems frivolous.

19 **SECTION 9. No intent to affect exemptions allowed under**  
20 **chapter 343, Hawaii Revised Statutes.** This Act is not intended  
21 to affect exemptions allowed under chapter 343, Hawaii Revised



1 Statutes, or the authority of a state or county agency to grant  
2 exemptions pursuant to chapter 343, Hawaii Revised Statutes.

3 The exemptions established by this Act shall be in addition  
4 to the exemptions established in chapter 343, Hawaii Revised  
5 Statutes, or granted by a state or county agency pursuant to  
6 chapter 343, Hawaii Revised Statutes.

7 SECTION 10. **Report to legislature and county councils.**

8 (a) Within ten days of the end of each fiscal quarter, the  
9 governor and each mayor shall submit to the legislature a list  
10 of exemptions granted under this Act during the fiscal quarter.  
11 Each mayor shall also submit the list to the pertinent county  
12 council.

13 (b) No later than twenty days prior to the convening of  
14 the regular session of 2016, the governor and each mayor shall  
15 submit to the legislature a list of projects for which  
16 construction has been authorized to continue after December 31,  
17 2015, pursuant to section 7. Each mayor shall also submit the  
18 list to the pertinent county council.

19 SECTION 11. **Savings clause.** This Act does not affect  
20 rights and duties that matured, penalties that were incurred,  
21 and proceedings that were begun before its effective date.



1 SECTION 12. **Effective date.** This Act shall take effect  
2 upon its approval.

3

INTRODUCED BY:

*Calvin L. Day*

JAN 17 2012



**Report Title:**

Environmental Review Process; Exemptions; State or County  
Construction Projects; Economic Revitalization

**Description:**

Temporarily allows exemptions from the environmental review  
process under chapter 343, HRS, for certain narrowly defined  
state or county construction projects.

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

