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## A BILL FOR AN ACT

RELATING TO ENVIRONMENTAL IMPACT STATEMENTS.

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

1           SECTION 1. Act 50, Session Laws of Hawaii 2000, amended  
2 chapter 343, Hawaii Revised Statutes, to require that  
3 environmental impact statements assess the effects of a proposed  
4 action on the cultural practices of the community and State.

5           Act 50 specifically acknowledged the State's responsibility  
6 to protect native Hawaiian cultural practices. Act 50 states:

7           The legislature also finds that native Hawaiian  
8 culture plays a vital role in preserving and advancing the  
9 unique quality of life and the "aloha spirit" in Hawaii.  
10 Articles IX and XII of the state constitution, other state  
11 laws, and the courts of the State impose on government  
12 agencies a duty to promote and protect cultural beliefs,  
13 practices, and resources of native Hawaiians as well as  
14 other ethnic groups.

15           For example, article IX, section 9 of the state  
16 constitution gives the State the power to "preserve and develop  
17 the cultural, creative and traditional arts of the various  
18 ethnic groups." Article XII, section 7 of the state



1 constitution requires the State to "protect all rights,  
2 customarily and traditionally exercised for subsistence,  
3 cultural and religious purposes and possessed by ahupua'a  
4 tenants who are descendants of native Hawaiians who inhabited  
5 the Hawaiian Islands prior to 1778, subject to the right of the  
6 State to regulate such rights."

7 Act 50 also states:

8       Moreover, the past failure to require native Hawaiian  
9 cultural impact assessments has resulted in the loss and  
10 destruction of many important cultural resources and has  
11 interfered with the exercise of native Hawaiian culture.

12 The legislature further finds that due consideration of the  
13 effects of human activities on native Hawaiian culture and  
14 the exercise thereof is necessary to ensure the continued  
15 existence, development, and exercise of native Hawaiian  
16 culture.

17 More than ten years after the enactment of Act 50, the  
18 legislature finds that the State's environmental impact  
19 statement law still does not adequately protect constitutionally  
20 protected native Hawaiian traditional and customary rights. Act  
21 50 did not provide requirements for assessing cultural impacts,  
22 nor does the term "cultural impact assessment" exist within the



1 Hawaii Revised Statutes. Despite its clear intent, Act 50  
2 amended chapter 343 without specifying that the cultural  
3 practices to be assessed in an environmental impact statement are  
4 native Hawaiian. Nor did the amendments specify that a  
5 significant effect would be found if there was an adverse effect  
6 on native Hawaiian cultural practices. None of these amendments  
7 addressed the legislature's findings of Act 50, which included  
8 the need to assess impacts on the native Hawaiian culture,  
9 because of the need to perpetuate that specific culture.  
10 Therefore, the problems that the legislature found in 2000  
11 remain.

12 The purpose of this Act is to amend chapter 343, Hawaii  
13 Revised Statutes, to require that environmental assessments and  
14 environmental impact statements include cultural impact  
15 assessments that assess impacts and effects on native Hawaiian  
16 culture.

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

20 "§343- Cultural impact assessment. (a) All draft and  
21 final environmental assessments and environmental impact  
22 statements shall include a cultural impact assessment.



- 1        (b) A cultural impact assessment shall include:
- 2        (1) The identification and description of cultural  
3        practices, including native Hawaiian traditional and  
4        customary rights protected pursuant to article XII,  
5        section 7 of the state constitution; cultural,  
6        historic, and natural resources; and cultural sites  
7        including archaeological and burial sites, in the  
8        ahupua'a in which an action is proposed;
- 9        (2) An assessment of and mitigation measures for the  
10       effects the proposed action may have on cultural  
11       practices, including native Hawaiian traditional and  
12       customary rights protected pursuant to article XII,  
13       section 7 of the state constitution; cultural,  
14       historic, and natural resources; and cultural sites,  
15       including archaeological and burial sites;
- 16       (3) A review of all plans, including mitigation plans and  
17       burial treatment plans, surveys, reports, and other  
18       relevant documents that are required for the proposed  
19       action pursuant to rules adopted by the department of  
20       land and natural resources under chapter 6E; provided  
21       that all requisite documents shall be approved or  
22       accepted as required by the department of land and



1 natural resources prior to being included in the  
2 review under this subsection;

3 (4) A review of ethnographic and oral history studies and  
4 primary and secondary source materials; and

5 (5) Documentation of the public consultation conducted for  
6 the cultural impact assessment.

7 (c) The public shall be notified of and consulted in the  
8 preparation of a cultural impact assessment, as follows:

9 (1) At least one public meeting shall be held in the  
10 community of the proposed action;

11 (2) Interviews with individual community members and  
12 cultural practitioners shall be conducted;

13 (3) The cultural impact assessment, as a part of a draft  
14 or final environmental assessment or environmental  
15 impact assessment, shall be made available for  
16 inspection by the public pursuant to section 343-3;

17 and

18 (4) The public shall be allowed to review and comment on  
19 the cultural impact assessment as a part of the public  
20 comment process pursuant to section 343-3.



1        (d) The approval by the office of Hawaiian affairs of a  
2 cultural impact assessment shall be a condition precedent to  
3 acceptance of an environmental assessment or statement.

4        (e) The council shall adopt rules, pursuant to chapter 91,  
5 that prescribe the contents and procedures for a cultural impact  
6 assessment."

7        SECTION 3. Section 343-2, Hawaii Revised Statutes, is  
8 amended by adding a new definition to be appropriately inserted  
9 and to read as follows:

10        "Cultural impact assessment" means a document that  
11 discloses the effects of a proposed action on native Hawaiian  
12 cultural practices and sites."

13        SECTION 4. The provisions of this Act shall not apply to  
14 environmental assessments or environmental impact statements  
15 that have been announced as available for public review through  
16 the office of environmental quality control's periodic bulletin  
17 pursuant to section 343-3(d), Hawaii Revised Statutes, prior to  
18 the effective date of this Act.

19        SECTION 5. New statutory material is underscored.



1 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY: Calvin K. Day  
By Request

JAN 21 2011



**Report Title:**

Environmental Impact Statements; Cultural Impact Assessments;  
OHA

**Description:**

Requires all environmental assessments and environmental impact statements to include a cultural impact assessment. Requires OHA's approval of cultural impact assessments.

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