
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 Hawaii 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:
- 4 (A) Native Hawaiian traditional and customary rights
- 5 protected pursuant to article XII, section 7, of
- 6 the Hawaii State Constitution;
- 7 (B) Cultural, historic, and natural resources; and
- 8 (C) Cultural sites, including archaeological and
- 9 burial sites,
- 10 in the ahupua'a in which an action is proposed;
- 11 (2) An assessment of and mitigation measures for the
- 12 effects the proposed action may have on cultural
- 13 practices, including:
- 14 (A) Native Hawaiian traditional and customary rights
- 15 protected pursuant to article XII, section 7, of
- 16 the Hawaii State Constitution;
- 17 (B) Cultural, historic, and natural resources; and
- 18 (C) Cultural sites, including archaeological and
- 19 burial sites;
- 20 (3) A review of all plans, including mitigation plans and
- 21 burial treatment plans, surveys, reports, and other
- 22 relevant documents that are required for the proposed



1 action pursuant to rules adopted by the department of
2 land and natural resources under chapter 6E; provided
3 that all requisite documents shall be approved or
4 accepted as required by the department of land and
5 natural resources prior to being included in the
6 review under this subsection;

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

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

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

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

15 (2) Interviews with individual community members and
16 cultural practitioners shall be conducted;

17 (3) The cultural impact assessment, as a part of a draft
18 or final environmental assessment or environmental
19 impact assessment, shall be made available for
20 inspection by the public pursuant to section 343-3;

21 and



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

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

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

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

13 "Cultural impact assessment" means a document that
14 discloses the effects of a proposed action on native Hawaiian
15 cultural practices and sites."

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

22 SECTION 5. New statutory material is underscored.



1 SECTION 6. This Act shall take effect on January 1, 2012;
2 provided that it shall be repealed upon the adoption of rules by
3 the environmental council, established under chapter 343, Hawaii
4 Revised Statutes, as set forth in section 343- (e) of section
5 2 of this Act.



Report Title:

Environmental Impact Statements; Cultural Impact Assessments;
Office of Hawaiian Affairs

Description:

Requires all environmental assessments and environmental impact statements to include a cultural impact assessment. Requires OHA's approval of cultural impact assessments. Effective January 1, 2012. (HB402 HD1)

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