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## A BILL FOR AN ACT

RELATING TO THE ENVIRONMENT.

**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 supplemental environmental impact statement may be  
14 required for 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 supplemental  
3 environmental impact statement is not required pursuant to  
4 subsection (a).

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

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

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



1       (f) The initial supplemental environmental assessment or  
2 supplemental environmental impact statement filed for public  
3 review shall be a draft supplemental environmental assessment or  
4 draft supplemental environmental impact statement and shall be  
5 made available for public review and comment through the office  
6 for a period of thirty days. The final supplemental  
7 environmental assessment or supplemental environmental impact  
8 statement shall incorporate comments received during this  
9 period. Final supplemental environmental assessment or  
10 supplemental environmental impact statements shall be deemed to  
11 be accepted if the agency fails to reject the final supplemental  
12 environmental assessment or supplemental environmental impact  
13 statements within thirty days after receipt.

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



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

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

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



1 environmental review process identifies potential impacts and  
2 mitigation measures, it is during the discretionary approval  
3 process that mitigation measures and economic and technical  
4 considerations are given appropriate consideration."

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

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

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

15 "Action" means any program or project to be initiated by  
16 any agency or applicant.

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

20 "Agency action" means a program or project to be initiated  
21 by any department, office, board, or commission of the state or



1 county government which is a part of the executive branch of  
2 that government.

3 "Applicant" means any person who, pursuant to statute,  
4 ordinance, or rule, officially requests approval for a proposed  
5 action.

6 "Applicant action" means any program or project initiated  
7 by a person who, pursuant to statute, ordinance, or rule,  
8 officially requests discretionary approval for a proposed  
9 action.

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

12 "Council" means the environmental council.

13 "Director" means the director of the office of  
14 environmental quality control.

15 "Discretionary consent" means a consent, sanction, or  
16 recommendation from an agency for which judgment, deliberation,  
17 and free will may be exercised by the issuing agency, as  
18 distinguished from a ministerial consent.

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

21 "Environmental impact statement" or "statement" means an  
22 informational document prepared in compliance with the rules



1 adopted under section 343-6 and which discloses the  
2 environmental effects of a proposed action, effects of a  
3 proposed action on the economic welfare, social welfare, and  
4 cultural practices of the community and State, effects of the  
5 economic activities arising out of the proposed action, measures  
6 proposed to minimize adverse effects, and alternatives to the  
7 action and their environmental effects.

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

15       "Exempt" means specific types of actions that do not  
16 require the preparation of an environmental assessment because  
17 they will have minimal or no significant effects on the  
18 environment.

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



1 "Helicopter facility" means any area of land or water which  
2 is used, or intended for use for the landing or takeoff of  
3 helicopters; and any appurtenant areas which are used, or  
4 intended for use for helicopter related activities or rights-of-  
5 way.

6 "Ministerial consent" means a consent, sanction, or  
7 recommendation from an agency based upon a given set of facts,  
8 as prescribed by law or rule, without the use of extensive  
9 judgment or discretion.

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

12 "Supplemental statement" means an additional statement  
13 prepared pursuant to section 343- that addresses substantial  
14 changes to a proposed action that are anticipated to have  
15 significant effects on the environment.

16 "Wastewater treatment unit" means any plant or facility  
17 used in the treatment of wastewater."

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

20 "(b) The office shall inform the public of notices filed  
21 by agencies of the availability of environmental assessments for  
22 review and comments, of determinations that statements and



1 supplemental statements are required or not required, of the  
2 availability of statements and supplemental statements for  
3 review and comments, and of the acceptance or nonacceptance of  
4 statements[-] and supplemental statements."

5 SECTION 5. 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~~]:

17 (A) The use of government owned rights-of-way solely  
18 for utility and access connections shall not  
19 require an environmental assessment or an  
20 environmental impact statement;



- 1           (B)   The agency shall consider environmental factors  
2                                   and available alternatives in its feasibility or  
3                                   planning studies; [~~provided further that an~~] and  
4           (C)   An environmental assessment for proposed uses  
5                                   under section 205-2(d)(11) or 205-4.5(a)(13)  
6                                   shall only be required pursuant to section  
7                                   205-5(b);
- 8           (2)   Propose any use within any land classified as a  
9                                   conservation district by the state land use commission  
10                                  under chapter 205;
- 11           (3)   Propose any use within a shoreline area as defined in  
12                                  section 205A-41;
- 13           (4)   Propose any use within any historic site as designated  
14                                  in the National Register or Hawaii Register, as  
15                                  provided for in the Historic Preservation Act of 1966,  
16                                  Public Law 89-665, or chapter 6E;
- 17           (5)   Propose any use within the Waikiki area of Oahu, the  
18                                  boundaries of which are delineated in the land use  
19                                  ordinance as amended, establishing the "Waikiki  
20                                  Special District";
- 21           (6)   Propose any amendments to existing county general  
22                                  plans where the amendment would result in designations



1 other than agriculture, conservation, or preservation,  
2 except actions proposing any new county general plan  
3 or amendments to any existing county general plan  
4 initiated by a county;

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

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

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

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

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



1 helicopter facility and is under consideration  
2 for placement on the National Register or the  
3 Hawaii Register of Historic Places; and

4 (9) Propose any:

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

9 (B) Waste-to-energy facility;

10 (C) Landfill;

11 (D) Oil refinery; or

12 (E) Power-generating facility.

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



- 1           (1) For environmental assessments for which a finding of  
2           no significant impact is anticipated:
- 3           (A) A draft environmental assessment shall be made  
4           available for public review and comment for a  
5           period of thirty days;
- 6           (B) The office shall inform the public of the  
7           availability of the draft environmental  
8           assessment for public review and comment pursuant  
9           to section 343-3;
- 10          (C) The agency shall respond in writing to comments  
11          received during the review and prepare a final  
12          environmental assessment to determine whether an  
13          environmental impact statement shall be required;
- 14          (D) A statement shall be required if the agency finds  
15          that the proposed action may have a significant  
16          effect on the environment; and
- 17          (E) The agency shall file notice of such  
18          determination with the office. When a conflict  
19          of interest may exist because the proposing  
20          agency and the agency making the determination  
21          are the same, the office may review the agency's  
22          determination, consult the agency, and advise the



1           agency of potential conflicts, to comply with  
2           this section. The office shall publish the final  
3           determination for the public's information  
4           pursuant to section 343-3.

5           The draft and final statements, if required, shall be  
6           prepared by the agency and submitted to the office. The draft  
7           statement shall be made available for public review and comment  
8           through the office for a period of forty-five days. The office  
9           shall inform the public of the availability of the draft  
10          statement for public review and comment pursuant to section  
11          343-3. The agency shall respond in writing to comments received  
12          during the review and prepare a final statement.

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

15          (2) The final authority to accept a final statement shall  
16          rest with:

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



1 (B) The mayor, or the mayor's authorized  
2 representative, of the respective county whenever  
3 an action proposes only the use of county lands  
4 or county funds.

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

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





1 practicable time. The final approving agency for the request  
2 for approval is not required to be the 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, 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  
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 Such cooperation, to the fullest extent possible, shall include



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

7 (g) [A] An environmental assessment or environmental  
8 impact statement that is accepted with respect to a particular  
9 action shall satisfy the requirements of this chapter, and no  
10 other environmental assessment or environmental impact statement  
11 for the proposed action shall be required[-], except as provided  
12 in section 343- .

13 (h) Whenever an action is determined to be significant by  
14 an agency or applicant prior to the preparation of an  
15 environmental assessment, the agency or applicant may proceed  
16 directly to the environmental impact statement preparation  
17 process.

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 on the draft  
22 environmental assessment or draft environmental impact statement



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

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

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



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

3 SECTION 7. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

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

6

INTRODUCED BY:

Calvin K. Ray

JAN 21 2011



**Report Title:**

Environment; Environmental Assessment; Environmental Impact Statement

**Description:**

Requires a supplemental environmental assessment or supplemental environmental impact statement to be provided if an action by an agency or applicant is anticipated to have a significant effect on the environment. Establishes public disclosure system of environmental review.

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

