
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- Exception to applicability of chapter. (a)
5 Notwithstanding any other law to the contrary, for any primary
6 action that requires a permit or approval that is not subject to
7 a discretionary consent and that involves a secondary action
8 that is ancillary and limited to the installation, improvement,
9 renovation, construction, or development of infrastructure
10 within an existing public right-of-way or highway, that
11 secondary action shall be exempt from this chapter; provided
12 that the applicant for the primary action shall submit
13 documentation from the appropriate agency confirming that no
14 further discretionary approvals are required.

15 (b) As used in this section:

16 "Discretionary consent" means:

17 (1) An action as defined in section 343-2; or



1 (2) An approval from a decision-making authority in an
2 agency, which approval is subject to a public hearing.

3 "Infrastructure" includes waterlines and water facilities,
4 wastewater lines and wastewater facilities, gas lines and gas
5 facilities, drainage facilities, electrical, communications,
6 telephone, and cable television utilities, and highway, roadway,
7 and driveway improvements.

8 "Primary action" means an action outside of the highway or
9 public right-of-way that is on private property.

10 "Secondary action" means an action involving infrastructure
11 within the highway or public right-of-way."

12 SECTION 2. Section 343-5, Hawaii Revised Statutes, is
13 amended by amending subsections (c) and (d) to read as follows:

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



1 draft environmental impact statement shall be prepared at the
2 earliest practicable time. The final approving agency for the
3 request for approval is not required to be the accepting
4 authority.

5 For environmental assessments for which a finding of no
6 significant impact is anticipated:

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



1 determination for the public's information pursuant to
2 section 343-3.

3 The draft and final statements, if required, shall be
4 prepared by the applicant, who shall file these statements with
5 the office.

6 The draft statement shall be made available for public
7 review and comment through the office for a period of forty-five
8 days. The office shall inform the public of the availability of
9 the draft statement for public review and comment pursuant to
10 section 343-3.

11 The applicant shall respond in writing to comments received
12 during the review and prepare a final statement. The office,
13 when requested by the applicant or agency, may make a
14 recommendation as to the acceptability of the final statement.

15 The authority to accept a final statement shall rest with
16 the agency initially receiving and agreeing to process the
17 request for approval. The final decision-making body or
18 approving agency for the request for approval is not required to
19 be the accepting authority. The planning department for the
20 county in which the proposed action will occur shall be a
21 permissible accepting authority for the final statement.



1 Acceptance of a required final statement shall be a
2 condition precedent to approval of the request and commencement
3 of the proposed action. Upon acceptance or nonacceptance of the
4 final statement, the agency shall file notice of such
5 determination with the office. The office, in turn, shall
6 publish the determination of acceptance or nonacceptance of the
7 final statement pursuant to section 343-3.

8 The agency receiving the request, within thirty days of
9 receipt of the final statement, shall notify the applicant and
10 the office of the acceptance or nonacceptance of the final
11 statement. The final statement shall be deemed to be accepted
12 if the agency fails to accept or not accept the final statement
13 within thirty days after receipt of the final statement;
14 provided that the thirty-day period may be extended at the
15 request of the applicant for a period not to exceed fifteen
16 days.

17 In any acceptance or nonacceptance, the agency shall
18 provide the applicant with the specific findings and reasons for
19 its determination. An applicant, within sixty days after
20 nonacceptance of a final statement by an agency, may appeal the
21 nonacceptance to the environmental council, which, within thirty
22 days of receipt of the appeal, shall notify the applicant of the



1 council's determination. In any affirmation or reversal of an
2 appealed nonacceptance, the council shall provide the applicant
3 and agency with specific findings and reasons for its
4 determination. The agency shall abide by the council's
5 decision.

6 (d) Whenever an applicant requests approval for a proposed
7 action and there is a question as to which of two or more state
8 or county agencies with jurisdiction has the responsibility of
9 ~~[preparing the]~~ determining whether an environmental
10 assessment[7] is required, the office, after consultation with
11 and assistance from the affected state or county agencies, shall
12 determine ~~[which agency shall prepare the assessment.]~~ whether
13 preparation of the environmental assessment by the applicant is
14 required, except in situations involving secondary actions under
15 this section."

16 SECTION 3. Act 87, Session Laws of Hawaii 2009, is
17 repealed.

18 SECTION 4. Act 45, Session Laws of Hawaii 2011, is
19 repealed.

20 SECTION 5. Statutory material to be repealed is bracketed
21 and new statutory material is underscored.

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



Report Title:

Environmental Impact Statements; Exemption

Description:

Permanently amends chapter 343, Hawaii Revised Statutes, to clarify current exemptions for secondary actions and require the Office of Environmental Quality Control to determine if an environmental assessment is required by the applicant when two or more state or county agencies have responsibility for that determination, except in situations involving exempt secondary actions. Repeals Act 87, Session Laws of Hawaii 2009, and Act 45, Session Laws of Hawaii 2011. (CD1)

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

