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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. Chapter 343, Hawaii Revised Statutes, is

2 amended by adding a new section to read as follows:

3 "§343- Exception to applicability of chapter. (a)

4 Notwithstanding any other law to the contrary, if at the time an

5 application for a secondary action is submitted, a 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 shall submit documentation from the

13 appropriate agency confirming that no further discretionary

14 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 any action outside of the highway or  
9 public right-of-way that is on private property.

10       "Secondary action" means any action on infrastructure  
11 within the highway or public right-of-way that is ancillary or  
12 incidental to the primary action."

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

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



1 proposes the establishment of a renewable energy facility, a  
2 draft environmental impact statement shall be prepared at the  
3 earliest practicable time. The final approving agency for the  
4 request for approval is not required to be the accepting  
5 authority.

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

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

14 SECTION 3. Statutory material to be repealed is bracketed  
15 and new statutory material is underscored.

16 SECTION 4. 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 that applicants prepare environmental assessments when required. (SB2873 HD2)

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

