



LAND USE RESEARCH
FOUNDATION OF HAWAII

1100 Alakea Street, 4th Floor
Honolulu, Hawaii 96813
(808) 521-4717
www.lurf.org



HB 792
* Followed by
Proposed changes

February 3, 2011

Representative Hermina Morita, Chair and Representative Denny Coffman, Vice Chair
Committee on Energy & Environmental Protection

Testimony of the Land Use Research Foundation of Hawaii

Thursday, February 3, 2011 at 8:30 a.m. in CR 325

Support of HB 792 & PROPOSED HD1 DRAFT. Relating to the Environment (Clarifications to Chapter 343, Hawaii Revised Statutes regarding environmental assessments and environmental impact statements.)

My name is David Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable and rational land use planning, legislation and regulation.

We appreciate the opportunity to provide our testimony **in support of HB 792**, which proposed clarifications to the current law relating to the environmental review process, environmental assessments (EA) and environmental impact statements (EIS). **We would also respectfully request revisions identified below and shown in the attached Proposed H.D. 1.**

BACKGROUND. In 1974, the Hawaii Environmental Protection Act (HEPA) established a public disclosure system of environmental review, with the purpose of **ensuring that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations.** At the time, the legislature expressed its intent that the environmental review process will integrate the review of environmental concerns with existing planning processes of the State and counties and **alert decision makers** to significant environmental effects which may result from the implementation of certain actions. (Hawaii Revised Statutes "HRS" §343-1)

Over the years, the state and county agencies have operated under HEPA and their own agency policies and procedures to protect Hawaii's environment as well as the health, safety, welfare of the residents of the State of Hawaii. As a result, there have been no major environmental disasters as a result of the HEPA process. Meanwhile, over the past couple of decades Chapter 343 has been used as a weapon to stop or delay projects. These actions have had a severe impact on Hawaii's economy, the availability of jobs for our young adults and affordable housing.

HB 792 and LURF's proposed HD1 are based on the collective input and revisions by dozens of government and private stakeholders and organizations who have extensive experience in

preparing EA and EIS, processing land use entitlements and construction of major development projects which require EIS'.

We believe that the clarifications in this bill will provide certainty and predictability to Chapter 343 and the environmental review system, and allow responsible development of government and private projects while continuing to protect and preserve Hawaii's environment.

LURF's POSITION. The major provisions of HB 792 include the following:

1. **Clarifies that the "Environmental review process," is a public disclosure system of environmental review; and that EAs and EIS' are not a permits.** Clarifies that the environmental review process is separate and distinct from "discretionary" approval process. While the environmental review process identifies potential impacts and mitigation measures, it is during the discretionary approval process that mitigation measures and economic and technical considerations are given appropriate consideration. This is consistent with current statute, rules and case law.
2. **Clarifies the definitions of "Discretionary" consents and "ministerial" consents; and clarifies that EA, EIS, SEA and SEIS are not applicable to "Ministerial" consents.**
 - "Discretionary consent" means a consent for which judgment, deliberation and free will may be exercised by the issuing agency, as distinguished from a ministerial consent.
 - "Ministerial consent" means a consent, sanction or recommendation from an agency based upon a set of given facts, as prescribed by law or rule, without the use of extensive judgment or discretion.
 - As has been the practice since HEPA was adopted, an agency action or applicant action shall not be subject to Chapter 343 solely because a ministerial consent is required. This is consistent with the intent of the existing statute and existing government environmental review practices pursuant to HEPA.
3. **Clarifies the "trigger" for a SEA and SEIS, and the content and review process for a SEA and SEIS.**
 - Clarifies that the **"trigger" for a supplemental EA (SEA) or EIS (SEIS) is substantial changes to the size, scope, intensity, use or location of a proposed action (not timing) that are anticipated to have a "significant effect."** Also clarifies the definition of **"Significant effect"** to mean the **adverse impacts of the action on the quality of the environment that are extensive and meaningful in terms of context and intensity, etc.** This clarification conforms with existing law regarding acceptance of an EA or EIS; and is consistent with prior interpretation and practice which requires a SEIS for "substantial changes" in the action. (The issue of "timing" is addressed in another section relating to "phased projects or projects developed over time"). This clarification is also consistent with existing rules on "significance criteria" which describe various adverse, extensive and meaningful effects such as "involves a substantial degradation of environmental quality." Confirms the intent that only substantial changes which are likely to have significant effects should require a SEA or SEIS.
 - Provides that the **content of the SEA or SEIS shall be limited to those substantial changes to the proposed action and their likely significant**

effects. A SEA or SEIS should be limited to portions of the action that have changed substantially and are likely to have a significant effect; and the agency or applicant should not be required to perform repeat studies or re-hash topics previously addressed that have not substantially changed and are not anticipated to have a significant effect.

- Establishes a **30-day public review period for a draft SEA or SEIS; and Final SEA or Final SEIS is deemed accepted if not acted upon within 30 days of receipt by accepting authority.** The SEA review time is the same as the EA review; the SEIS review time is 30 days rather than 45 days for an EIS, because the scope of the SEIS does not include the entire scope of the original EIS, but is limited only to substantial changes which are likely to have a significant effect.

4. **Clarifies the existing process for discretionary approvals of phased projects or projects developed over time, which allows the accepted EA/EIS to remain valid unless the responsible agency determines that a SEA or SEIS is required; agencies may waive a SEA or SEIS if satisfied with existing studies and reports.**

- EA/EIS rules require agencies to "ensure that statements are prepared at the earliest opportunity in the planning and decision-making process." (HAR 11-200-14) It may take 3 to 10 years to acquire all of the necessary approvals and initiate construction on a master-planned multi-use development. As a result, **changes to projects are expected to occur over time, resulting from subsequent agency approvals and the imposition of conditions by agencies based on consideration of the information in the EA or EIS.**
- This provision **confirms the existing process** since HEPA was enacted, which authorizes agencies that are considering discretionary consents to take a "hard look" at the application and supporting environmental studies and reports and, in its sole discretion, **waive a SEA or SEIS, if the agency determines that existing studies and reports provide sufficient updated information to enable it to fully consider the environmental factors involved and make an informed decision.**
- An **"arbitrary shelf-life" limit on an EA or EIS is unwarranted and unnecessary, because the agencies have the authority to request updated environmental studies and reports or require a SEA or SEIS at anytime during the discretionary approval process.** Parties who wish to stop or delay projects, and those who lack experience and expertise in preparation of EA/EIS and land use entitlements have proposed "arbitrary shelf life" proposals. Experienced land use professionals, planners, architects and engineers understand that the responsible agency, with its technical experience and expertise, is in the best position to take a "hard look" to determine whether a SEA or a SEIS is required for its decision-making.

5. **Exemption/Exclusion of utility and access connections to government owned roads and rights of ways.** This is consistent with existing law Act 87 (2009), which has a sunset date of 2011. The bill provides that the use of government owned rights-of-ways solely for utility and access connections shall not require an EA or an EIS. This bill will make the law permanent by removing the sunset date. Additional justification and recommendation for this can be found in the "Final Report on Hawaii's Environmental Review System, prepared for the Hawaii State Legislature, October 2010" ("UH EIS Study").

6. **Any existing discretionary or ministerial consents shall remain valid, notwithstanding the requirement of a SEA or SEIS.** The bill also provides that the requirement of a SEA or SEIS shall not invalidate any existing discretionary or ministerial consents that were previously issued for the applicant's action. Discretionary and ministerial

consents previously received shall remain valid if a SEA or SEIS is required for a new discretionary approval related to the project. This confirms the existing practice under HEPA for ongoing construction of projects based on previously received discretionary and ministerial consents. Land owners and developers have vested rights based on financial commitments and expenditures for engineering and architectural plans and construction of infrastructure in reliance on such consents.

7. **Clarifies that judicial actions relating to determinations that an EIS or SEIS is required or not required, may be filed by parties who have filed written comments on EAs and that the contestable issues shall be those in the written comments.** The bill provides that affected agencies and persons who provided written comment to such EA during the designated review period shall be adjudged aggrieved parties for the purpose of bringing judicial action and specifies that the contestable issues shall be limited to issues identified and discussed in the written comment. The added **language is identical to HRS 343-7 (c)** and applies the same standing requirement to review of an EA and EIS. This permits the agency or applicant to respond to comments and correct any deficiencies in the EA or EIS rather than be "sandbagged" by a court challenge by a person who never raised a concern during the public review process.
8. **Prior to the preparation of an EA, applicants may proceed directly to an EIS whenever an action is determined to be significant.** The bill provides that whenever an action is determined to be significant by an agency or applicant prior to the preparation of an environmental assessment, the agency or applicant may proceed directly to the environmental impact statement preparation process. This is consistent with current practice; makes practical sense; and avoids unnecessary delays and costs. Additional justification and recommendation for this can be found in the UH EIS Study.
9. **Repetitive or voluminous comments shall be summarized and appended to the final EA or EIS.** The bill provides that substantive comments received on the draft environmental assessment or draft environmental impact statement shall be appended to the final environmental assessment or environmental impact statement or summarized, where comments are repetitive or voluminous, and the summary appended. This is a practical way to address repetitive or voluminous comments and avoids unnecessary delays and costs. The provision is consistent with current NEPA and other state EIS practice and justification is also provided in the UH EIS Study.

LURF's PROPOSED AMENDMENTS TO HB 792. LURF respectfully requests amendments to HB 792 as shown in the attached Proposed HD1, and identified as follows:

➤ **Section 1. §343-___(d)**

For applicant actions, the government agency that is acting upon the application for the discretionary consent may, in its sole discretion, waive the requirement of a SEA or SEIS if the government agency determines that existing or additional studies and reports provide sufficient updated information to enable the government agency to make an informed decision on the application for discretionary consent.

➤ **Section 3. §343-2 Definitions**

"Agency action" means a program or project to be initiated by any department, office, board, or commission of the state or county government which is a part of the executive branch of that government.

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

"Approval" means a discretionary consent required from an agency or county council prior to actual implementation of an action.

"Discretionary consent" means a consent, sanction, or recommendation from an agency for which judgment, deliberation, and free will may be exercised by the issuing agency or county council to approve or disapprove a particular action, as distinguished from a ministerial consent.

"Exempt" means any specific types of actions that do not require the preparation of an environmental assessment because they will [probably] likely have minimal or no significant effects on the environment, including but not limited to those actions that are consistent with existing zoning, county general and/or development plans.

"Ministerial consent" means a consent, sanction, or recommendation from an agency based upon a given set of facts, as prescribed by law or rule, involving the application of established standards, guidelines or objective measurements to the facts presented, without the use of extensive judgment or discretion as to the desirability or manner of carrying out the action. Ministerial consents include but are not limited to consents or permits such as subdivision, grading, and building.

"Significant effect" means the [~~sum of effects~~] sum of effects of the adverse impacts of the action on the quality of the environment[;] that are extensive and meaningful in terms of context and intensity, including actions that are likely to irrevocably commit a natural resource, curtail the range of beneficial uses of the environment, are contrary to the State's environmental policies or long-term environmental goals as established by law, or adversely affect the economic welfare, social welfare, or cultural practices of the community and State.

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

Based on the foregoing reasons, LURF is in **strong support of HB 792**, and we respectfully request that this Committee pass this bill with amendments in the Proposed HD1 Draft format. We greatly appreciate the opportunity to present our testimony regarding this matter.

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

1 discretionary consent for which the environmental assessment or
2 environmental impact statement was prepared is still in force,
3 and a supplemental environmental assessment or supplemental
4 environmental impact statement is not required pursuant to
5 subsection (a).

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

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

20 (e) The content of the supplemental environmental
21 assessment or supplemental environmental impact statement shall

1 be limited to substantial changes to the proposed action and
2 their anticipated significant effects.

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

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

1 supplemental environmental impact statement is required for a
2 new discretionary approval related to the project."

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

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

19 It is the purpose of this chapter to establish a public
20 disclosure system of environmental review which will ensure that
21 environmental concerns are given appropriate consideration in

1 decision making along with economic and technical
2 considerations. The environmental review process is separate
3 and distinct from the discretionary approval process. While the
4 environmental review process identifies potential impacts and
5 mitigation measures, it is during the discretionary approval
6 process that mitigation measures and economic and technical
7 considerations are given appropriate consideration."

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

10 "**§343-2 Definitions.** As used in this chapter unless the
11 context otherwise requires:

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

18 "Action" means any program or project to be initiated by
19 any agency or applicant.

1 "Agency" means any department, office, board, or commission
2 of the state or county government which is a part of the
3 executive branch of that government.

4 ~~"Agency action" means a program or project to be initiated~~
5 ~~by any department, office, board, or commission of the state or~~
6 ~~county government which is a part of the executive branch of~~
7 ~~that government.~~

8 "Applicant" means any person who, pursuant to statute,
9 ordinance, or rule, officially requests approval for a proposed
10 action.

11 ~~"Applicant action" means any program or project initiated~~
12 ~~by a person who, pursuant to statute, ordinance, or rule,~~
13 ~~officially requests discretionary approval for a proposed~~
14 ~~action.~~

15 "Approval" means a discretionary consent required from an
16 agency or county council prior to actual implementation of an
17 action.

18 "Council" means the environmental council.

19 "Director" means the director of the office of
20 environmental quality control.

1 "Discretionary consent" means a consent, sanction, or
2 recommendation from an agency or county council for which
3 judgment, deliberation, and free will may be exercised by the
4 issuing agency to approve or disapprove a particular action, as
5 distinguished from a ministerial consent.

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

8 "Environmental impact statement" or "statement" means an
9 informational document prepared in compliance with the rules
10 adopted under section 343-6 and which discloses the
11 environmental effects of a proposed action, effects of a
12 proposed action on the economic welfare, social welfare, and
13 cultural practices of the community and State, effects of the
14 economic activities arising out of the proposed action, measures
15 proposed to minimize adverse effects, and alternatives to the
16 action and their environmental effects.

17 The initial statement filed for public review shall be
18 referred to as the draft statement and shall be distinguished
19 from the final statement which is the document that has
20 incorporated the public's comments and the responses to those
21 comments. The final statement is the document that shall be

1 evaluated for acceptability by the respective accepting
2 authority.

3 "Exempt" means any specific types of actions that do not
4 require the preparation of an environmental assessment because
5 they will [probably] likely have minimal or no significant
6 effects on the environment, including but not limited to those
7 actions that are consistent with existing zoning, county general
8 and/or development plans.

9 "Finding of no significant impact" means a determination
10 based on an environmental assessment that the subject action
11 will not have a significant effect and, therefore, will not
12 require the preparation of an environmental impact statement.

13 "Helicopter facility" means any area of land or water which
14 is used, or intended for use for the landing or takeoff of
15 helicopters; and any appurtenant areas which are used, or
16 intended for use for helicopter related activities or rights-of-
17 way.

18 "Ministerial consent" means a consent, sanction, or
19 recommendation from an agency based upon a given set of facts,
20 as prescribed by law or rule, involving the application of
21 established standards, guidelines or objective measurements to

1 the facts presented, without the use of extensive judgment or
2 discretion as to the desirability or manner of carrying out the
3 action. Ministerial consents include but are not limited to
4 consents or permits such as subdivision, grading, and building.

5 "Office" means the office of environmental quality control.

6 "Person" includes any individual, partnership, firm,
7 association, trust, estate, private corporation, or other legal
8 entity other than an agency.

9 "Power-generating facility" means:

10 (1) A new, fossil-fueled, electricity-generating facility,
11 where the electrical output rating of the new
12 equipment exceeds 5.0 megawatts; or

13 (2) An expansion in generating capacity of an existing,
14 fossil-fueled, electricity-generating facility, where
15 the incremental electrical output rating of the new
16 equipment exceeds 5.0 megawatts.

17 "Renewable energy facility" has the same meaning as defined
18 in section 201N-1.

19 "Significant effect" means the ~~[sum of effects]~~ sum of
20 effects of the adverse impacts of the action on the quality of
21 the environment[7] that are extensive and meaningful in terms of

1 | context and intensity, including actions that are likely to
2 | irrevocably commit a natural resource, curtail the range of
3 | beneficial uses of the environment, are contrary to the State's
4 | environmental policies or long-term environmental goals as
5 | established by law, or adversely affect the economic welfare,
6 | social welfare, or cultural practices of the community and
7 | State.

8 | "Supplemental statement" means an additional statement
9 | prepared pursuant to section 343- that addresses substantial
10 | changes to a proposed action that are [anticipated]likely to
11 | have significant effects on the environment.

12 | "Wastewater treatment unit" means any plant or facility
13 | used in the treatment of wastewater."

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

16 | "(b) The office shall inform the public of notices filed
17 | by agencies of the availability of environmental assessments for
18 | review and comments, of determinations that statements and
19 | supplemental statements are required or not required, of the
20 | availability of statements and supplemental statements for

1 review and comments, and of the acceptance or nonacceptance of
2 statements[-] and supplemental statements."

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

5 "**§343-5 Applicability and requirements.** (a) Except as
6 otherwise provided, an environmental assessment shall be
7 required for actions that:

8 (1) Propose the use of state or county lands or the use of
9 state or county funds, other than funds to be used for
10 feasibility or planning studies for possible future
11 programs or projects that the agency has not approved,
12 adopted, or funded, or funds to be used for the
13 acquisition of unimproved real property; provided that
14 ~~[the]~~:

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

19 (B) The agency shall consider environmental factors
20 and available alternatives in its feasibility or
21 planning studies; ~~[provided further that an]~~ and

- 1 (C) An environmental assessment for proposed uses
- 2 under section 205-2(d)(11) or 205-4.5(a)(13)
- 3 shall only be required pursuant to section
- 4 205-5(b);
- 5 (2) Propose any use within any land classified as a
- 6 conservation district by the state land use commission
- 7 under chapter 205;
- 8 (3) Propose any use within a shoreline area as defined in
- 9 section 205A-41;
- 10 (4) Propose any use within any historic site as designated
- 11 in the National Register or Hawaii Register, as
- 12 provided for in the Historic Preservation Act of 1966,
- 13 Public Law 89-665, or chapter 6E;
- 14 (5) Propose any use within the Waikiki area of Oahu, the
- 15 boundaries of which are delineated in the land use
- 16 ordinance as amended, establishing the "Waikiki
- 17 Special District";
- 18 (6) Propose any amendments to existing county general
- 19 plans where the amendment would result in designations
- 20 other than agriculture, conservation, or preservation,
- 21 except actions proposing any new county general plan

1 or amendments to any existing county general plan
2 initiated by a county;

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

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

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

12 (B) A shoreline area as defined in section 205A-41;
13 or

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

1 for placement on the National Register or the
2 Hawaii Register of Historic Places; and

3 (9) Propose any:

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

8 (B) Waste-to-energy facility;

9 (C) Landfill;

10 (D) Oil refinery; or

11 (E) Power-generating facility.

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

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

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

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

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

18 (A) The governor, or the governor's authorized
 19 representative, whenever an action proposes the
 20 use of state lands or the use of state funds, or

1 whenever a state agency proposes an action within
2 the categories in subsection (a); or
3 (B) The mayor, or the mayor's authorized
4 representative, of the respective county whenever
5 an action proposes only the use of county lands
6 or county funds.

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

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

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

1 which, in turn, shall publish the agency's
2 determination for the public's information pursuant to
3 section 343-3.

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

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

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

16 The authority to accept a final statement shall rest with
17 the agency initially receiving and agreeing to process the
18 request for approval. The final decision-making body or
19 approving agency for the request for approval is not required to
20 be the accepting authority. The planning department for the

1 county in which the proposed action will occur shall be a
2 permissible accepting authority for the final statement.

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

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

19 In any acceptance or nonacceptance, the agency shall
20 provide the applicant with the specific findings and reasons for
21 its determination. An applicant, within sixty days after

1 nonacceptance of a final statement by an agency, may appeal the
2 nonacceptance to the environmental council, which, within thirty
3 days of receipt of the appeal, shall notify the applicant of the
4 council's determination. In any affirmation or reversal of an
5 appealed nonacceptance, the council shall provide the applicant
6 and agency with specific findings and reasons for its
7 determination. The agency shall abide by the council's
8 decision.

9 (d) Whenever an applicant requests approval for a proposed
10 action and there is a question as to which of two or more state
11 or county agencies with jurisdiction has the responsibility of
12 preparing the environmental assessment, the office, after
13 consultation with and assistance from the affected state or
14 county agencies, shall determine which agency shall prepare the
15 assessment.

16 (e) In preparing an environmental assessment, an agency
17 may consider and, where applicable and appropriate, incorporate
18 by reference, in whole or in part, previous determinations of
19 whether a statement is required and previously accepted
20 statements. The council, by rule, shall establish criteria and

1 procedures for the use of previous determinations and
2 statements.

3 (f) Whenever an action is subject to both the National
4 Environmental Policy Act of 1969 (Public Law 91-190) and the
5 requirements of this chapter, the office and agencies shall
6 cooperate with federal agencies to the fullest extent possible
7 to reduce duplication between federal and state requirements.
8 Such cooperation, to the fullest extent possible, shall include
9 joint environmental impact statements with concurrent public
10 review and processing at both levels of government. Where
11 federal law has environmental impact statement requirements in
12 addition to but not in conflict with this chapter, the office
13 and agencies shall cooperate in fulfilling these requirements so
14 that one document shall comply with all applicable laws.

15 (g) [A] An environmental assessment or environmental
16 impact statement that is accepted with respect to a particular
17 action shall satisfy the requirements of this chapter, and no
18 other environmental assessment or environmental impact statement
19 for the proposed action shall be required~~[]~~, except as provided
20 in section 343- .

1 (h) Whenever an action is determined to be significant by
2 an agency or applicant prior to the preparation of an
3 environmental assessment, the agency or applicant may proceed
4 directly to the environmental impact statement preparation
5 process.

6 (i) An agency action or applicant action shall not be
7 subject to this chapter solely because a ministerial consent is
8 required.

9 (j) Substantive comments received on the draft
10 environmental assessment or draft environmental impact statement
11 shall be appended to the final environmental assessment or final
12 environmental impact statement. If comments are repetitive or
13 voluminous, comments shall be summarized and the summary shall
14 be appended to the final environmental assessment or final
15 environmental impact statement."

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

18 "(b) Any judicial proceeding, the subject of which is the
19 determination that a statement is required for a proposed
20 action, shall be initiated within sixty days after the public
21 has been informed of such determination pursuant to section

1 343-3. Any judicial proceeding, the subject of which is the
 2 determination that a statement or supplemental statement is not
 3 required for a proposed action, shall be initiated within thirty
 4 days after the public has been informed of such determination
 5 pursuant to section 343-3. The council or the applicant shall
 6 be adjudged an aggrieved party for the purposes of bringing
 7 judicial action under this subsection. [~~Others, by court~~
 8 ~~action, may be adjudged aggrieved.~~] Affected agencies and
 9 persons who provided written comment to the environmental
 10 assessment during the designated review period shall be judged
 11 aggrieved parties for the purpose of bringing judicial action
 12 under this subsection. Contestable issues shall be limited to
 13 issues identified and discussed in the written comment."

14 SECTION 7. Statutory material to be repealed is bracketed
 15 and stricken. New statutory material is underscored.

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

17

INTRODUCED BY: _____

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.

