

Informational Briefing: Chapters 341, 343, and 344, HRS

Office of Environmental Quality Control
Joint House/Senate
Committees on Energy and Environment

March 8, 2012

The Law

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|-------------|----------------------------------------------------------------------------------------------------------------------|
| Chapter 341 | Establishes the Office of Environmental Quality Control (OEQC), Environmental Council (EC), and Environmental Center |
| Chapter 343 | Creates the Hawaii Environmental Policy Act requiring review of certain actions |
| Chapter 344 | Establishes the overall State policy on environmental protection |

OEQC

The OEQC has 5 funded positions and a budget of \$340,000, responsible for:

- Managing the Ch. 343 process
- Publishing the bimonthly Environmental Notice
- Working with the EC, the Environmental Center, and the public on environmental issues
- Serving in an advisory capacity to the executive branch on environmental issues
- Administratively attached to the DOH

Environmental Council (EC)

The EC is 15-member volunteer commission supported by the OEQC and responsible for:

- Reviewing and concurring of agency categorical exemption lists
- Rulemaking (HAR 11-200) to implement Ch. 343
- Monitoring the progress of state, county and federal agencies on state environmental goals and policies
- Serving as a public liaison on environmental issues

UH Environmental Center

- Partnership with OEQC and EC
- Environmental research
- Environmental consultation
- Environmental Assessment (EA) and Environmental Impact Statement (EIS) review and comment utilizing university expertise

Major Accomplishments in 2011-2012

- Updated Ch. 343 Guidebook (last version 2004)
- Initiated “education and outreach” events in each county, reaching over 600 planning and agency professionals
- Processed and published over 250 environmental review documents
- Eliminated long-standing backlog of exemptions classification requests
- Published Annual Report (last published 2008)
- Initiated formal Rulemaking process (last updated 1996)
- Renewed partnership with the UH Environmental Center

OEQC/EC Goals

1. Secure increased funding via fees SB 699
2. Streamline EIS process SB 2281 SD1
3. Pursue other streamline initiatives for 2013 legislative session
4. Modernize technology and information management systems
5. Continue and expand education and outreach statewide

Entering HEPA: 3 Steps

1. What agency is responsible?
2. Does the action trigger Ch. 343?
3. If so, which of three paths is warranted?
 1. Exemption
 2. Environmental Assessment (EA)
 3. EA/Environmental Impact Statement (EIS)

Step 1: Determining Responsibility

- Agencies determine whether Ch. 343 is triggered.
- If Ch. 343 is triggered, the agency determines if the action is exempt or requires an EA to determine if an EIS is needed.

NOTE: *The OEQC offers only advice and consultation upon request. The OEQC has no legal authority to make determinations.*

Step 1: Determining Responsibility

Two types of proponents:

- Agency (public)
- Applicant (private)

	Approving Authority	
	EA	EIS
Agency Action	Agency	<ul style="list-style-type: none">• Governor (State agency)• Mayor (County agency)
Applicant Action	Agency	Agency

Step 2: Triggering Ch. 343

1. State or county lands or funds
2. Conservation lands
3. Shoreline setback area
4. Registered Historic Site areas
5. Waikiki
6. Amending county general plans (by applicant)
7. Reclassification of conservation land
8. Building helicopter facilities
9. Building power plants, landfills, wastewater plants, waste-to-energy facilities, or oil refineries

Step 3: Determining Level of Review

Three ways to fulfill Ch. 343 requirements

1. Exempt declaration
2. Finding of No Significant Impact (FONSI) for an EA
3. Acceptance of a Final EIS

Exemption Declaration

- Question: Is there likely to be any significant environmental impact?
- If the answer is NO, an agency can exempt if:
 - The action class is on an agency's exemption list, it simply documents the justification of declaration. (§11-200-8D)
 - The action is **not** on an agency's exemption list, it may consult other agencies and stakeholders and document the justification of declaration. (§11-200-8A)

The Exception to Exemptions

§11-200-8B states that:

“...the classes in this section **are inapplicable** when the **cumulative impact** of planned successive actions in the same place, over time, **is significant**, or when an action that is normally insignificant in its impact on the environment **may be significant in a particularly sensitive environment.**”

11 Classes of Exempt Actions

1. Operation, repairs, or maintenance of existing structures, equipment, or topographical features.
2. Replacement or reconstruction of existing structures and facilities.
3. Construction and location of single, new, small facilities or structures.
4. Minor alterations in the conditions of land, water, or vegetation.
5. Basic data collection, research and experimental management.
6. Construction or placement of minor structures accessory to existing facilities.
7. Interior alterations.
8. Demolition of structures except historic sites.
9. Zoning variances except shoreline setback variances.
10. Continuing administrative activities such as purchasing supplies.
11. Acquisition of land and existing structures for the provision of affordable housing.
12. Reconstruction, restoration, repair, or use of any Hawaiian fishpond.

Exemption Lists

- EC reviews and concurs agency categorical exemption lists
- Agencies submit changes/additions to the EC
- Review and concurrence is a public process
- EC suggests changes based on consultation and professional expertise
- There is currently no back log of agency lists
- EC is currently reviewing DLNR and City & County of Honolulu lists

Non-Exempt Actions

An action that is not exempt must undergo, at the minimum, an EA to determine whether or not the anticipated impacts of the action are likely to have any significant effects.

This can have one of two results:

- An EA Finding of No Significant Impact (FONSI)
- Acceptance determination of a Final EIS

Significant Effects

“Significant effect” means the sum of effects on the quality of the environment.

This includes actions that:

- 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.
- Adversely affect the economic welfare, social welfare, or cultural practices of the community and State.

Environmental Impact Statement

If an action is determined to have (via an EA) or expected to have (via agency experience) a significant effect on the environment, then an EIS is required.

Environmental Review

- Purpose
 - Ascertain impacts
 - Suggest mitigation
 - Examine alternatives
 - Public participation and disclosure
- Process
 - Early consultation
 - Thorough examination
 - Public comment and response
 - Agency determination
 - Permitting agency utilization

Essential Elements of an EA/EIS

- Concise summary of proposed action
- Complete list of all anticipated permits
- Early consultation comment letters from all effected agencies and stakeholders
- Appropriate analysis of various potential impacts; e.g., traffic, air, water, cultural, endangered species, social, visual, etc.
- Public comment and response
- Suggested mitigation and alternatives
- Agency determination of acceptance

Conclusion

- 1) Ch. 343 only applies to actions that have a direct public interest via “triggers” and do not apply to totally private projects that do not involve these public “triggers.”
- 2) Exemptions from Ch. 343 are easy to grant for small and routine actions if the expected environmental impact is negligible.
- 3) The EA and EIS process ensures a thorough review of impacts, public notification and public participation in projects that have a direct public interest, and provides essential information that is critical for the decision making processes of various agencies.

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