

NEIL ABERCROMBIE
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COMMITTEE ON ENERGY & ENVIRONMENT
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SB 2281, RELATING TO ENVIRONMENTAL IMPACT STATEMENTS

Testimony of Gary Hooser
Director of the Office of Environmental Quality Control

February 7, 2012

1 **Office's Position:** SUPPORT – Suggested Amendments

2 **Fiscal Implications:** Will likely reduce costs to agencies and applicants with regards to the
3 avoidance of preparing duplicate documentation.

4 **Purpose and Justification:** SB 2281 authorizes an agency or an applicant to bypass the
5 preparation of a separate environmental assessment and proceed directly to the preparation of an
6 environmental impact statement.

7 The suggested amendments below are intended to provide clarity and consistency with
8 regards to the treatment of the various types of environmental reviews and the addition of the
9 direct to EIS option.

10 On Page 5, line 19, replace existing language with the following: subsection, the publication of a
11 Direct To Environmental Impact Statement Notice shall be considered adequate notice.

12 On Page 8 line 21, replace existing language with the following;

1 all interested parties; provided further that the publication of a Direct To Environmental Impact
2 Statement Notice shall be considered adequate notice.

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

4 **“§343-2 Definitions.** As used in this chapter unless the context otherwise requires:

5 "Acceptance" means a formal determination that the document required to be filed pursuant
6 to section 343-5 fulfills the definition of an environmental impact statement, adequately
7 describes identifiable environmental impacts, and satisfactorily responds to comments received
8 during the review of the statement.

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

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

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

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

16 "Council" means the environmental council.

17 “Direct to environmental impact statement decision” means a decision by the agency to
18 proceed directly, or allow an applicant to proceed directly, to the preparation of an environmental
19 impact statement where the agency has found, before conducting an environmental assessment,
20 that a proposed action is likely to have a significant effect on the environment.

21 “Direct to environmental impact statement notice” means a notice to the office, the public
22 and all interested parties that the agency has made a direct to environmental impact statement
23 decision.

1 "Discretionary consent" means a consent, sanction, or recommendation from an agency for
2 which judgment and free will may be exercised by the issuing agency, as distinguished from a
3 ministerial consent.

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

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

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

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

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

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

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

1 "Power-generating facility" means:

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

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

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

8 "Significant effect" means the sum of effects on the quality of the environment, including
9 actions that irrevocably commit a natural resource, curtail the range of beneficial uses of the
10 environment, are contrary to the State's environmental policies or long-term environmental goals
11 as established by law, or adversely affect the economic welfare, social welfare, or cultural
12 practices of the community and State.

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

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

15 **§343-3 Public records and notice.** (a) All statements, environmental assessments, and
16 other documents prepared under this chapter shall be made available for inspection by the public
17 during established office hours.

18 (b) The office shall inform the public of notices filed by agencies of the availability of
19 environmental assessments for review and comments, of determinations that statements are
20 required or not required, of direct to environmental impact statement decisions, of the
21 availability of statements for review and comments, and of the acceptance or nonacceptance of
22 statements.

23 (c) The office shall inform the public of:

1 (b) Any judicial proceeding, the subject of which is the determination that a statement is
2 required for a proposed action, shall be initiated within sixty days after the public has been
3 informed of such determination pursuant to section 343-3. Any judicial proceeding, the subject
4 of which is the determination that a statement is not required for a proposed action or an
5 agency's direct to environmental impact statement decision shall be initiated within [~~thirty~~] sixty
6 days after the public has been informed of such determination pursuant to section 343-3. The
7 council or the applicant shall be adjudged an aggrieved party for the purposes of bringing
8 judicial action under this subsection. Others, by court action, may be adjudged aggrieved.

9 (c) Any judicial proceeding, the subject of which is the acceptance of an environmental
10 impact statement required under section 343-5 or prepared pursuant to a direct to environmental
11 impact statement decision, shall be initiated within sixty days after the public has been informed
12 pursuant to section 343-3 of the acceptance of such statement. The council shall be adjudged an
13 aggrieved party for the purpose of bringing judicial action under this subsection. Affected
14 agencies and persons who provided written comment to such statement during the designated
15 review period shall be adjudged aggrieved parties for the purpose of bringing judicial action
16 under this subsection; provided that the contestable issues shall be limited to issues identified and
17 discussed in the written comment.

18 Thank you.