
A BILL FOR AN ACT

RELATING TO THE ENVIRONMENTAL REVIEW PROCESS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 343, Hawaii Revised Statutes, is
2 amended by adding four new sections to be appropriately
3 designated and to read as follows:

4 "§343-A Principles for considering environmental justice;
5 application to the preparation of environmental impact
6 statements and environmental assessments. (a) In preparing an
7 environmental impact statement or an environmental assessment,
8 an agency or applicant shall consider the impacts on the natural
9 and physical environment and related social, cultural, and
10 economic impacts from the perspective of the five principles of
11 environmental justice, as follows:

12 (1) The demographic composition of the affected area shall
13 be considered in determining whether under-represented
14 populations such as native Hawaiians, minorities, or
15 low-income persons will be significantly impacted by
16 the proposed action. If impacts are identified, the
17 agency or applicant shall determine whether there is a



H.B. NO. 2770

1 disproportionately high and adverse human health or
2 environmental effect on that population;

3 (2) The interrelated cultural, social, occupational,
4 historical, and economic factors that may amplify the
5 natural and physical environmental effects of the
6 proposed action shall be considered. These factors
7 include:

8 (A) The physical sensitivity of the affected
9 community or population to particular impacts;

10 (B) The effects of any disruption on the community
11 structure associated with the proposed action;
12 and

13 (C) The nature and degree of the impact on the
14 physical and social structure of the community;

15 (3) Relevant public health data shall be considered with
16 regard to the potential for multiple or cumulative
17 exposure to human health or environmental hazards in
18 the affected population. Historical patterns of
19 exposure to environmental hazards shall be taken into
20 account, to the extent that the information is
21 reasonably available. Multiple or cumulative effects



1 shall be considered, even if they are not within the
2 control of the agency or the applicant proposing the
3 action;

4 (4) Effective public participation strategies shall be
5 developed, by acknowledging and seeking to overcome
6 linguistic, cultural, institutional, geographic, and
7 other barriers to meaningful participation, and by
8 incorporating active outreach to affected groups; and

9 (5) There shall be early and meaningful community
10 representation through all phases of the environmental
11 review process that reflect on an awareness of the
12 diverse constituencies within any particular community
13 and efforts to have complete representation throughout
14 the process.

15 **§343-B Precautionary principle; adopted.** (a) In addition
16 to the requirements of section 343-A, an agency or applicant
17 shall apply the precautionary principle in the environmental
18 review process.

19 (b) The agency or applicant shall bear the burden of proof
20 in showing that:



1 (1) All potential affected parties were included in the
2 environmental review process; and

3 (2) The full range of alternatives was examined, including
4 the alternative of no action.

5 (c) For the purpose of this section, "precautionary
6 principle" means the taking of precautionary measures when it is
7 determined that a proposed action poses a threat of harm to
8 human health or the environment, regardless of whether causation
9 between the proposed action and the threatened harm is fully
10 established scientifically.

11 **§343-C Factors under the principles of environmental**
12 **justice.** In any analysis of environmental justice for the
13 environmental review process under this chapter, the agency or
14 applicant shall consider that:

15 (1) The prevailing legal thresholds, statutory
16 interpretations of this chapter, and existing case law
17 shall not be affected;

18 (2) The identification of a disproportionately high and
19 adverse human health or environmental effect on under-
20 represented groups may not preclude a proposed action
21 from proceeding to completion or require a conclusion



1 that a proposed action is environmentally
2 unsatisfactory; provided that the agency or applicant
3 gives heightened attention to alternatives, mitigating
4 strategies, monitoring needs, and preferences
5 expressed by the affected community or population; and
6 (3) No specific format shall be required for incorporating
7 environmental justice into an environmental impact
8 statement or an environmental assessment.

9 §343-D Guidelines for considering environmental justice in
10 specific phases of an environmental review process. (a) If an
11 environmental justice screening analysis is conducted before the
12 scoping phase, an agency or applicant shall:

13 (1) Identify any under-represented population in the
14 proposed action area; and

15 (2) Determine the likelihood of disproportionate impacts
16 upon the under-represented populations.

17 (b) If an agency or applicant identifies any potentially
18 affected under-represented population, the agency or applicant
19 may develop a strategy for effective public participation after
20 the environmental justice screening analysis is complete and
21 before the scoping phase begins.



1 (c) The agency or applicant may form a local assessment
2 committee to interact with facility proponents and opponents
3 early in the planning process to provide an opportunity for
4 minority and low-income community members to understand
5 technical issues and have meaningful involvement in the
6 environmental review process.

7 (d) The agency or applicant may enter into community
8 benefits agreements with community organizations that enable
9 community organizations to negotiate for environmental benefits
10 and mitigations beyond the requirements of this chapter.

11 (e) Environmental justice concerns shall be incorporated
12 into environmental assessment planning as follows:

13 (1) If the environmental justice screening analysis does
14 not identify minority or low-income communities and
15 does not suggest disproportionately high and adverse
16 impacts on those communities, the agency or applicant
17 may describe the analysis and note the conclusion in
18 the environmental analysis; or

19 (2) If the environmental justice screening analysis
20 identifies an affected under-represented community or
21 a disproportionately high and adverse impact upon a



1 minority or low-income community, the agency or
2 applicant may conduct a smaller-scale scoping
3 analysis; provided that the agency or applicant may
4 also design and implement a public participation plan
5 to solicit community input to develop alternatives and
6 mitigation measures.

7 (f) Environmental justice concerns shall be incorporated
8 into the preparation of an environmental impact statement as
9 follows:

10 (1) If the environmental impacts of a proposed action are
11 deemed significant, the agency or applicant may
12 include a description of the environmental justice
13 screening results in the scoping notices; provided
14 that the agency or applicant may also design and
15 implement a public participation plan to solicit
16 community input and to develop alternatives and
17 mitigation measures;

18 (2) If the environmental justice screening analysis
19 concludes that there is a potential for
20 disproportionately high and adverse impacts, the
21 agency or applicant shall ensure that the



1 environmental impact statement scoping process raises
2 the environmental justice concerns and collects
3 sufficient data and information to evaluate the
4 potential impacts; or

5 (3) If the results of the environmental justice screening
6 analysis are negative, the agency or applicant may
7 state this finding in the scoping notice and solicit
8 information from the community on whether there may be
9 disproportionately high and adverse effects that were
10 not addressed during the screening analysis.

11 (g) An agency or applicant may identify geographic areas
12 from which to obtain demographic information to determine
13 whether a proposed action is likely to have disproportionately
14 high and adverse human health or environmental effects on under-
15 represented groups. If the agency or applicant determines that
16 a proposed action will not cause any adverse environmental
17 impacts, a specific demographic analysis is not required.

18 (h) If an agency or applicant identifies a
19 disproportionately high and adverse human health or
20 environmental impact on an under-represented group, the agency



1 or applicant may analyze how the distribution of environmental
2 and health impacts affects the community.

3 (i) If an agency or applicant has identified a
4 disproportionately high and adverse human health or
5 environmental impact on under-represented groups from either the
6 proposed action or alternatives, the agency or applicant may
7 deem the distribution as well as the magnitude of the
8 disproportionate impacts in these communities as factors in
9 determining environmentally preferable alternatives. The agency
10 or applicant may consider the views that the agency or applicant
11 received from the affected communities and the magnitude of
12 environmental impacts associated with alternatives that have a
13 less disproportionate and adverse effect on under-represented
14 groups.

15 Reasonable alternatives shall be those alternative actions
16 deemed by the agency or applicant to meet program goals and
17 avoid or reduce the environmental, socioeconomic, human health, or
18 ecological effects associated with the preferred action.

19 (j) An agency or applicant may find that the
20 disproportionately high and adverse human health or environmental



1 effects on under-represented groups constitutes a significant
2 effect.

3 (k) The agency or applicant may develop mitigation
4 measures to specifically address potential disproportionately
5 high and adverse impacts of a proposed action on under-
6 represented populations. When identifying and developing
7 potential mitigation measures to address environmental justice
8 concerns, the agency or applicant may consult members of the
9 affected communities. Mitigation measures may include a variety
10 of approaches for addressing potential effects and for balancing
11 the needs and concerns of the affected community with the
12 requirements of the proposed action."

13 SECTION 2. Section 343-2, Hawaii Revised Statutes, is
14 amended by adding four new definitions to be appropriately
15 inserted and to read as follows:

16 "Community benefits agreement" means a legally binding
17 agreement between an agency or applicant and a community
18 organization in which the agency or applicant agrees to shape
19 the proposed project in a manner to provide specified benefits
20 to the community and the community organization agrees to



1 support the proposed project before any government bodies are
2 required to approve any necessary permits and subsidies.

3 "Environmental justice" means:

4 (1) The right of every person in the State to live in a
5 clean and healthy environment, to be treated fairly,
6 and to have meaningful involvement in decisions that
7 affect that person's environment and health;

8 (2) The duty of every person in the State to uphold
9 traditional and customary native Hawaiian practices
10 that preserve, protect, and restore the natural
11 environment for present and future generations; and

12 (3) The recognition that no segment of the population or a
13 geographic area should be disproportionately burdened
14 with environmental or health impacts resulting from
15 the development, construction, operation, or use of
16 natural resources.

17 "Local assessment committee" means a committee that
18 consists of a representative sampling of minority, low-income,
19 and other members of a community that would be impacted by a
20 proposed action.



H.B. NO. 2770

1 "Planning" and "scoping" mean identifying impacts,
 2 alternatives, and actions that will be considered in completing
 3 an environmental assessment or an environmental impact
 4 statement, respectively."

5 SECTION 3. This Act does not affect rights and duties that
 6 matured, penalties that were incurred, and proceedings that were
 7 begun before its effective date.


8 SECTION 4. In codifying the new sections added by section
 9 1 of this Act, the revisor of statutes shall substitute
 10 appropriate section numbers for the letters used in designating
 11 the new sections in this Act.

12 SECTION 5. New statutory material is underscored.

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

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INTRODUCED BY:



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H.B. NO. 2770

Report Title:

Environmental Review Process; Environmental Justice;
Precautionary Principle

Description:

Incorporates the principles of environmental justice and the precautionary principle into the environmental review process.

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