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# A BILL FOR AN ACT

RELATING TO NOTICE TO THE PUBLIC IN THE ENVIRONMENTAL REVIEW  
PROCESS.

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

1           SECTION 1. The legislature finds that public review and  
2 participation are a key and indispensable part of achieving the  
3 goal of Hawaii's environmental review law, which is to ensure  
4 that environmental concerns are identified and accorded  
5 appropriate consideration in government actions and decision  
6 making. Given the limited resources and institutional knowledge  
7 of government agencies and decision makers, public review and  
8 input can provide critical information on the full range and  
9 extent of potential environmental impacts and help to ensure  
10 that decisions are fully transparent and informed. Public input  
11 at an early stage may also serve to minimize any unnecessary  
12 adverse impacts of planned actions, thus avoiding waste,  
13 conflict, and the degradation of the State's natural and  
14 cultural sites and resources.

15           However, while the environmental review process outlined in  
16 chapter 343, Hawaii Revised Statutes, clearly contemplates



1 public review and input, current statutory notice requirements  
2 do not ensure that the full benefits of the public's  
3 participation are realized. For example, members of the public  
4 may not be provided with review or input opportunities prior to  
5 the drafting of an environmental assessment or environmental  
6 impact statement preparation notice, when proposed actions may  
7 already be well-developed, and when substantial adjustments to  
8 environmental review and other planning documents may be  
9 difficult and costly to make. In addition, notice requirements  
10 do not necessarily inform or target members of the local  
11 community surrounding a proposed action site, although those  
12 community members may be particularly knowledgeable about, and  
13 disproportionately affected by, the wide range of potential  
14 environmental impacts of the proposed project. Unfortunately,  
15 the lack of more meaningful notice mechanisms may have resulted  
16 in past failures to adequately consider the full range and  
17 extent of the environmental impacts of particular actions, and  
18 may have led to project delays as well as distrust by the  
19 public.

20 The purpose of this Act is to require a proposing or  
21 approving agency to ensure that a "notice of preparation" is



1 posted in a conspicuous place and manner at any particular site  
2 or sites that may be directly impacted by an action, at an early  
3 planning stage prior to the drafting of an environmental  
4 assessment or impact statement preparation notice.

5 SECTION 2. Section 343-2, Hawaii Revised Statutes, is  
6 amended by adding a new definition to be appropriately inserted  
7 and to read as follows:

8 "Notice of preparation" means a notice posted at the  
9 location of a site-specific proposed action by the initiating  
10 agency or applicant, informing members of the public of the  
11 proposed action."

12 SECTION 3. Section 343-3, Hawaii Revised Statutes, is  
13 amended by amending subsection (b) to read as follows:

14 "(b) The office shall inform the public of notices of  
15 preparation posted at project sites, and of notices filed by  
16 agencies of the availability of environmental assessments for  
17 review and comments, of determinations that statements are  
18 required or not required, of the availability of statements for  
19 review and comments, and of the acceptance or nonacceptance of  
20 statements."



1 SECTION 4. Section 343-5, Hawaii Revised Statutes, is  
2 amended as follows:

3 1. By amending subsection (b) to read:

4 "(b) Whenever an agency proposes an action in subsection  
5 (a), other than feasibility or planning studies for possible  
6 future programs or projects that the agency has not approved,  
7 adopted, or funded, or other than the use of state or county  
8 funds for the acquisition of unimproved real property that is  
9 not a specific type of action declared exempt under section 343-  
10 6, the agency shall post a notice of preparation, in a  
11 conspicuous place and manner clearly visible to the public, at  
12 any particular site or sites that will be directly impacted by  
13 the action. The notice of preparation shall be posted at the  
14 earliest practicable time prior to the preparation of an  
15 environmental assessment or environmental impact statement  
16 preparation notice for the action, and shall include information  
17 about the proposed action, the preparation of an environmental  
18 assessment or environmental impact statement, and how members of  
19 the public may provide comments relating to the proposed action.  
20 A copy of the notice or notices and information regarding the  
21 location or locations of the notice or notices shall be filed



1 with the office. No earlier than thirty days after the posting  
2 of any notice or preparation, the agency shall then prepare an  
3 environmental assessment for the action at the earliest  
4 practicable time to determine whether an environmental impact  
5 statement shall be required; provided that if the agency  
6 determines, through its judgment and experience, that an  
7 environmental impact statement is likely to be required, the  
8 agency may choose not to prepare an environmental assessment and  
9 instead shall prepare an environmental impact statement that  
10 begins with the preparation of an environmental impact statement  
11 preparation notice as provided by rules."

12 2. By amending subsection (e) to read:

13 "(e) Whenever an applicant proposes an action specified by  
14 subsection (a) that requires approval of an agency and that is  
15 not a specific type of action declared exempt under section 343-  
16 6, the agency initially receiving and agreeing to process the  
17 request for approval shall require the applicant to post a  
18 notice of preparation, in a conspicuous place and manner clearly  
19 visible to the public, at any particular site or sites that will  
20 be impacted by the action. The notice of preparation shall be  
21 posted at the earliest practicable time prior to the preparation



1 of an environmental assessment or environmental impact statement  
2 preparation notice for the action, and shall include information  
3 about the proposed action, the preparation of an environmental  
4 assessment or environmental impact statement, and how members of  
5 the public may provide comments relating to the proposed action.  
6 A copy of the notice or notices and information regarding the  
7 location or locations of the notice or notices shall be filed  
8 with the office. The agency shall then require the applicant to  
9 prepare an environmental assessment of the proposed action at  
10 the earliest practicable time, but no earlier than thirty days  
11 after the posting of any notice or notices of preparation, to  
12 determine whether an environmental impact statement shall be  
13 required; provided that if the agency determines, through its  
14 judgment and experience, that an environmental impact statement  
15 is likely to be required, the agency may authorize the applicant  
16 to choose not to prepare an environmental assessment and instead  
17 prepare an environmental impact statement that begins with the  
18 preparation of an environmental impact statement preparation  
19 notice as provided by rules. For an action that proposes the  
20 establishment of a renewable energy facility, a draft  
21 environmental impact statement shall be prepared at the earliest



1 practicable time. The final approving agency for the request  
2 for approval is not required to be the accepting authority.

3 For environmental assessments for which a finding of no  
4 significant impact is anticipated:

5 (1) A draft environmental assessment shall be made  
6 available for public review and comment for a period  
7 of thirty days;

8 (2) The office shall inform the public of the availability  
9 of the draft environmental assessment for public  
10 review and comment pursuant to section 343-3; and

11 (3) The applicant shall respond in writing to comments  
12 received during the review and the applicant shall  
13 prepare a final environmental assessment to determine  
14 whether an environmental impact statement shall be  
15 required. A statement shall be required if the agency  
16 finds that the proposed action may have a significant  
17 effect on the environment. The agency shall file  
18 notice of the agency's determination with the office,  
19 which, in turn, shall publish the agency's  
20 determination for the public's information pursuant to  
21 section 343-3.



1           The draft and final statements, if required, shall be  
2 prepared by the applicant, who shall file these statements with  
3 the office.

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

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

13           The authority to accept a final statement shall rest with  
14 the agency initially receiving and agreeing to process the  
15 request for approval. The final decision-making body or  
16 approving agency for the request for approval is not required to  
17 be the accepting authority. The planning department for the  
18 county in which the proposed action will occur shall be a  
19 permissible accepting authority for the final statement.

20           Acceptance of a required final statement shall be a  
21 condition precedent to approval of the request and commencement





1 of the proposed action. Upon acceptance or nonacceptance of the  
2 final statement, the agency shall file notice of the  
3 determination with the office. The office, in turn, shall  
4 publish the determination of acceptance or nonacceptance of the  
5 final statement pursuant to section 343-3.

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

15 In any acceptance or nonacceptance, the agency shall  
16 provide the applicant with the specific findings and reasons for  
17 its determination. An applicant, within sixty days after  
18 nonacceptance of a final statement by an agency, may appeal the  
19 nonacceptance to the environmental council, which, within thirty  
20 days of receipt of the appeal, shall notify the applicant of the  
21 council's determination. In any affirmation or reversal of an



1 appealed nonacceptance, the council shall provide the applicant  
2 and agency with specific findings and reasons for its  
3 determination. The agency shall abide by the council's  
4 decision."

5 SECTION 5. Section 343-6, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "§343-6 Rules. (a) After consultation with the affected  
8 agencies, the council shall adopt, amend, or repeal necessary  
9 rules for the purposes of this chapter in accordance with  
10 chapter 91 including, but not limited to, rules that shall:

11 (1) Prescribe the procedures whereby a group of proposed  
12 actions may be treated by a single environmental  
13 assessment or statement;

14 (2) Establish procedures whereby specific types of  
15 actions, because they will probably have minimal or no  
16 significant effects on the environment, are declared  
17 exempt from the preparation of an environmental  
18 assessment;

19 (3) Prescribe procedures for the preparation of an  
20 environmental assessment;

21 (4) Prescribe the contents of an environmental assessment;



- 1           (5) Prescribe procedures for informing the public of  
2           determinations that a statement is either required or  
3           not required, for informing the public of the  
4           availability of draft environmental impact statements  
5           for review and comments, and for informing the public  
6           of the acceptance or nonacceptance of the final  
7           environmental statement;
- 8           (6) Prescribe the contents of an environmental impact  
9           statement;
- 10          (7) Prescribe procedures for the submission, distribution,  
11          review, acceptance or nonacceptance, and withdrawal of  
12          an environmental impact statement;
- 13          (8) Establish criteria to determine whether an  
14          environmental impact statement is acceptable or not;  
15          and
- 16          (9) Prescribe procedures to appeal the nonacceptance of an  
17          environmental impact statement to the environmental  
18          council.
- 19          (b) After consultation with the affected agencies, the  
20          council may adopt, amend, or repeal rules that prescribe  
21          procedures for the posting and content of a notice or notices of



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1 preparation, and procedures for the receipt of comments in  
2 response to the notice or notices, in accordance with chapter  
3 91.

4 (c) At least one public hearing shall be held in each  
5 county prior to the final adoption, amendment, or repeal of any  
6 rule."

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

10 SECTION 7. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 8. This Act shall take effect on July 1, 2019.

13

INTRODUCED BY:

*Mark W.*  
BY REQUEST



# S.B. NO. 2126

**Report Title:**

OHA Package; Environmental Review; Notice to Public; Posting

**Description:**

Requires a proposing or approving agency to ensure that a notice is posted at any site impacted by an action prior to the drafting of an environmental assessment or environmental impact statement preparation notice.

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

