

---

---

# A BILL FOR AN ACT

RELATING TO THE ENVIRONMENTAL IMPACT STATEMENT LAW.

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

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

3           "§343-5 Applicability and requirements. (a) Except as  
4 otherwise provided, an environmental assessment shall be  
5 required for actions that:

6           (1) Propose the use of state or county lands or the use of  
7 state or county funds, other than funds to be used for  
8 feasibility or planning studies for possible future  
9 programs or projects that the agency has not approved,  
10 adopted, or funded, or funds to be used for the  
11 acquisition of unimproved real property; provided that  
12 the agency shall consider environmental factors and  
13 available alternatives in its feasibility or planning  
14 studies; provided further that an environmental  
15 assessment for proposed uses under section 205-  
16 2(d)(11) or 205-4.5(a)(13) shall only be required  
17 pursuant to section 205-5(b);



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



- 1           (7) Propose any reclassification of any land classified as  
2           a conservation district by the state land use  
3           commission under chapter 205;
- 4           (8) Propose the construction of new or the expansion or  
5           modification of existing helicopter facilities within  
6           the State, that by way of their activities, may  
7           affect:
- 8           (A) Any land classified as a conservation district by  
9           the state land use commission under chapter 205;
- 10          (B) A shoreline area as defined in section 205A-41;  
11          or
- 12          (C) Any historic site as designated in the National  
13          Register [~~or Hawaii Register,~~] of Historic Places  
14          or the Hawaii register of historic places, as  
15          provided for in the Historic Preservation Act of  
16          1966, Public Law 89-665, or chapter 6E; or until  
17          the statewide historic places inventory is  
18          completed, any historic site that is found by a  
19          field reconnaissance of the area affected by the  
20          helicopter facility and is under consideration  
21          for placement on the National Register [~~or the~~



1                    ~~Hawaii Register of Historic Places,~~] of Historic  
2                    Places or the Hawaii register of historical  
3                    places; and

4            (9) Propose any:

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

9                    (B) Waste-to-energy facility;

10                   (C) Landfill;

11                   (D) Oil refinery; or

12                   (E) Power-generating facility.

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



1 if the agency determines, through its judgment and experience,  
2 that an environmental impact statement is likely to be required,  
3 the agency may choose not to prepare an environmental assessment  
4 and instead shall prepare an environmental impact statement that  
5 begins with the preparation of an environmental impact statement  
6 preparation notice as provided by rules.

7 (c) For environmental assessments for which a finding of  
8 no significant impact is anticipated:

9 (1) A draft environmental assessment shall be made  
10 available for public review and comment for a period  
11 of thirty days;

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

15 (3) The agency shall respond in writing to comments  
16 received during the review and prepare a final  
17 environmental assessment to determine whether an  
18 environmental impact statement shall be required;

19 (4) A statement shall be required if the agency finds that  
20 the proposed action may have a significant effect on  
21 the environment; and



1           (5) The agency shall file notice of the determination with  
2           the office. When a conflict of interest may exist  
3           because the proposing agency and the agency making the  
4           determination are the same, the office may review the  
5           agency's determination, consult the agency, and advise  
6           the agency of potential conflicts, to comply with this  
7           section. The office shall publish the final  
8           determination for the public's information pursuant to  
9           section 343-3.

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

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

20           (d) The final authority to accept a final statement shall  
21           rest with:



# H.B. NO. 2382

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

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

16          (e) Whenever an applicant proposes an action specified by  
17          subsection (a) that requires approval of an agency and that is  
18          not a specific type of action declared exempt under section 343-  
19          6, the agency initially receiving and agreeing to process the  
20          request for approval shall require the applicant to prepare an  
21          environmental assessment of the proposed action at the earliest



1 practicable time to determine whether an environmental impact  
2 statement shall be required; provided that if the agency  
3 determines, through its judgment and experience, that an  
4 environmental impact statement is likely to be required, the  
5 agency may authorize the applicant to choose not to prepare an  
6 environmental assessment and instead prepare an environmental  
7 impact statement that begins with the preparation of an  
8 environmental impact statement preparation notice as provided by  
9 rules. The final approving agency for the request for approval  
10 is not required to be the accepting authority.

11 For environmental assessments for which a finding of no  
12 significant impact is anticipated:

- 13 (1) A draft environmental assessment shall be made  
14 available for public review and comment for a period  
15 of thirty days;
- 16 (2) The office shall inform the public of the availability  
17 of the draft environmental assessment for public  
18 review and comment pursuant to section 343-3; and
- 19 (3) The applicant shall respond in writing to comments  
20 received during the review and the applicant shall  
21 prepare a final environmental assessment to determine





1           whether an environmental impact statement shall be  
2           required. A statement shall be required if the agency  
3           finds that the proposed action may have a significant  
4           effect on the environment. The agency shall file  
5           notice of the agency's determination with the office,  
6           which, in turn, shall publish the agency's  
7           determination for the public's information pursuant to  
8           section 343-3.

9           The draft and final statements, if required, shall be  
10          prepared by the applicant, who shall file these statements with  
11          the office.

12          The draft statement shall be made available for public  
13          review and comment through the office for a period of forty-five  
14          days. The office shall inform the public of the availability of  
15          the draft statement for public review and comment pursuant to  
16          section 343-3.

17          The applicant shall respond in writing to comments received  
18          during the review and prepare a final statement. The office,  
19          when requested by the applicant or agency, may make a  
20          recommendation as to the acceptability of the final statement.



1           The authority to accept a final statement shall rest with  
2 the agency initially receiving and agreeing to process the  
3 request for approval. The final decision-making body or  
4 approving agency for the request for approval is not required to  
5 be the accepting authority. The planning department for the  
6 county in which the proposed action will occur shall be a  
7 permissible accepting authority for the final statement.

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

15           The agency receiving the request, within thirty days of  
16 receipt of the final statement, shall notify the applicant and  
17 the office of the acceptance or nonacceptance of the final  
18 statement. The final statement shall be deemed to be accepted  
19 if the agency fails to accept or not accept the final statement  
20 within thirty days after receipt of the final statement;  
21 provided that the thirty-day period may be extended at the



1 request of the applicant for a period not to exceed fifteen  
2 days.

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

14 (f) Whenever an applicant requests approval for a proposed  
15 action and there is a question as to which of two or more state  
16 or county agencies with jurisdiction has the responsibility of  
17 determining whether an environmental assessment is required, the  
18 office, after consultation with and assistance from the affected  
19 state or county agencies, shall determine which agency has the  
20 responsibility for determining whether an environmental  
21 assessment by the applicant is required, except in situations



1 involving secondary actions under section 343-5.5; provided that  
2 in no case shall the office be considered the approving agency.

3 (g) In preparing an environmental assessment, an agency  
4 may consider and, where applicable and appropriate, incorporate  
5 by reference, in whole or in part, previous determinations of  
6 whether a statement is required and previously accepted  
7 statements. The council, by rule, shall establish criteria and  
8 procedures for the use of previous determinations and  
9 statements.

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



1 (i) A statement that is accepted with respect to a  
2 particular action shall satisfy the requirements of this  
3 chapter, and no other statement for the proposed action shall be  
4 required.

5 (j) Notwithstanding anything in this chapter to the  
6 contrary, if an action has not been implemented or completed  
7 within fifteen years of the date of:

8 (1) The determination of a finding of no significant  
9 impact, the agency that prepared the environmental  
10 assessment shall prepare a supplemental environmental  
11 assessment; and

12 (2) The acceptance of an environmental impact statement,  
13 the accepting authority shall require the preparation  
14 of a supplemental environmental impact statement.

15 (k) When a supplemental environmental assessment or  
16 environmental impact statement is required pursuant to  
17 subsection (j):

18 (1) The supplemental document shall comply with all the  
19 requirements of this chapter, including review and  
20 filing deadlines, and rules adopted pursuant to



1           section 343-6 as of the date of the determination that  
2           a supplemental document is required; and

3           (2) The subsequent determination of a finding of no  
4           significant impact, acceptance of the supplemental  
5           environmental impact statement, or the declaration  
6           that the action is exempt under section 343-6 shall be  
7           a condition precedent to the implementation or  
8           completion of the proposed action."

9           SECTION 2. Section 343-6, Hawaii Revised Statutes, is  
10          amended by amending subsection (a) to read as follows:

11           "(a) After consultation with the affected agencies, the  
12          council shall adopt, amend, or repeal necessary rules for the  
13          purposes of this chapter in accordance with chapter 91  
14          including, but not limited to, rules that shall:

15           (1) Prescribe the procedures whereby a group of proposed  
16           actions may be treated by a single environmental  
17           assessment or statement;

18           (2) Establish procedures whereby specific types of  
19           actions, because they will probably have minimal or no  
20           significant effects on the environment, are declared



- 1           exempt from the preparation of an environmental  
2           assessment;
- 3           (3) Prescribe procedures for the preparation of an  
4           environmental assessment;
- 5           (4) Prescribe the contents of an environmental assessment;
- 6           (5) Prescribe procedures for informing the public of  
7           determinations that a statement is either required or  
8           not required, for informing the public of the  
9           availability of draft environmental impact statements  
10          for review and comments, and for informing the public  
11          of the acceptance or nonacceptance of the final  
12          environmental statement;
- 13          (6) Prescribe the contents of an environmental impact  
14          statement;
- 15          (7) Prescribe procedures for the submission, distribution,  
16          review, acceptance or nonacceptance, and withdrawal of  
17          an environmental impact statement;
- 18          (8) Establish criteria to determine whether an  
19          environmental impact statement is acceptable or not;
- 20          [and]




# H.B. NO. 2382

1        (9) Prescribe procedures and criteria, as necessary,  
 2        relating to supplemental environmental assessments and  
 3        environmental impact statements; and  
 4        [~~9~~] (10) Prescribe procedures to appeal the nonacceptance  
 5        of an environmental impact statement to the  
 6        environmental council."

7        SECTION 3. Statutory material to be repealed is bracketed  
 8        and stricken. New statutory material is underscored.

9        SECTION 4. This Act shall take effect on July 1, 2020.

10

INTRODUCED BY:   
 JAN 22 2020





# H.B. NO.2382

**Report Title:**

Environmental Impact Statements; Environmental Assessments;  
Supplements

**Description:**

Requires a supplemental environmental assessment or supplemental environmental impact statement after the passage of 15 years from the date of the acceptance of the statement or the determination of a finding of no significant impact, if the proposed action is not completed.

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

