

JAN 22 2021

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# A BILL FOR AN ACT

RELATING TO ENVIRONMENTAL IMPACT STATEMENTS.

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

1           SECTION 1. Section 341-3, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "~~§341-3~~ Office of environmental quality control;  
4 ~~[environmental center]~~; environmental council. (a) There is  
5 created an office of environmental quality control that shall be  
6 headed by a single executive to be known as the director of  
7 environmental quality control who shall be appointed by the  
8 governor as provided in section 26-34. This office shall  
9 implement this chapter and shall be placed within the department  
10 of health for administrative purposes. The office shall perform  
11 its duties under chapter 343 and shall serve the governor in an  
12 advisory capacity on all matters relating to environmental  
13 quality control.

14           ~~[(b) The environmental center within the University of~~  
15 ~~Hawaii shall be as established under section [304A 1551].~~

16           ~~(e)]~~ (b) There is created an environmental council not to  
17 exceed fifteen members. Except for the director, members of the



1 environmental council shall be appointed by the governor as  
2 provided in section 26-34. The council shall be attached to the  
3 department of health for administrative purposes. Except for  
4 the director, the term of each member shall be four years;  
5 provided that, of the members initially appointed, five members  
6 shall serve for four years, five members shall serve for three  
7 years, and the remaining four members shall serve for two years.  
8 Vacancies shall be filled for the remainder of any unexpired  
9 term in the same manner as original appointments. The director  
10 shall be an ex officio voting member of the council. The  
11 council chairperson shall be elected by the council from among  
12 the appointed members of the council.

13 Members shall be appointed to assure a broad and balanced  
14 representation of educational, business, and environmentally  
15 pertinent disciplines and professions, such as the natural and  
16 social sciences, the humanities, architecture, engineering,  
17 environmental consulting, public health, and planning;  
18 educational and research institutions with environmental  
19 competence; agriculture, real estate, visitor industry,  
20 construction, media, and voluntary community and environmental  
21 groups. The members of the council shall serve without



1 compensation but shall be reimbursed for expenses, including  
2 travel expenses, incurred in the discharge of their duties."

3 SECTION 2. Section 341-4, Hawaii Revised Statutes, is  
4 amended by amending subsection (b) to read as follows:

5 "(b) To further the objective of subsection (a), the  
6 director shall:

7 (1) Direct the attention of the university community and  
8 the residents of the State in general to ecological  
9 and environmental problems through the [~~center and~~  
10 ~~the~~] council, respectively, and through public  
11 education programs;

12 (2) Conduct research or arrange for the conduct of  
13 research through contractual relations with [~~the~~  
14 ~~center,~~] state agencies[~~7~~] or other persons with  
15 competence in the field of ecology and environmental  
16 quality;

17 (3) Encourage public acceptance of proposed legislative  
18 and administrative actions concerning ecology and  
19 environmental quality, and receive notice of any  
20 private or public complaints concerning ecology and  
21 environmental quality through the council;



(4) Recommend programs for long-range implementation of environmental quality control;

(5) Submit direct to the governor and to the legislature such legislative bills and administrative policies, objectives, and actions, as are necessary to preserve and enhance the environmental quality of the State;

(6) Conduct public educational programs; and

(7) Offer advice and assistance to private industry, governmental agencies, or other persons upon request."

SECTION 3. Section 341-6, Hawaii Revised Statutes, is amended to read as follows:

**"§341-6 Functions of the environmental council.** The council shall serve as a liaison between the director and the general public by soliciting information, opinions, complaints, recommendations, and advice concerning ecology and environmental quality through public hearings or any other means and by publicizing such matters as requested by the director pursuant to section 341-4(b)(3). The council may make recommendations concerning ecology and environmental quality to the director and shall meet at the call of the council chairperson or the director upon notifying the council chairperson. The council



1 shall monitor the progress of state, county, and federal  
2 agencies in achieving the State's environmental goals and  
3 policies ~~[and with the assistance of the director shall make an~~  
4 ~~annual report with recommendations for improvement to the~~  
5 ~~governor, the legislature, and the public no later than January~~  
6 ~~31 of each year. All state and county agencies shall cooperate~~  
7 ~~with the council and assist in the preparation of such a report~~  
8 ~~by responding to requests for information made by the council]~~.  
9 The council may delegate to any person such power or authority  
10 vested in the council as it deems reasonable and proper for the  
11 effective administration of this section and chapter 343, except  
12 the power to make, amend, or repeal rules."

13 SECTION 4. Section 343-5, Hawaii Revised Statutes, is  
14 amended by amending subsection (e) to read as follows:

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



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

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

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



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

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

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

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

20          The authority to accept a final statement shall rest with  
21          the agency initially receiving and agreeing to process the



1 request for approval. The final decision-making body or  
2 approving agency for the request for approval is not required to  
3 be the accepting authority. The planning department for the  
4 county in which the proposed action will occur shall be a  
5 permissible accepting authority for the final statement.

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

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





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

12           SECTION 5. Section 343-7, Hawaii Revised Statutes, is  
13    amended to read as follows:

14           "(a) Any judicial proceeding, the subject of which is the  
15    lack of assessment required under section 343-5, shall be  
16    initiated within one hundred twenty days of the agency's  
17    decision to carry out or approve the action, or, if a proposed  
18    action is undertaken without a formal determination by the  
19    agency that a statement is or is not required, a judicial  
20    proceeding shall be instituted within one hundred twenty days  
21    after the proposed action is started. The ~~[council or]~~ office,



1 any agency responsible for approval of the action, or applicant  
2 shall be adjudged an aggrieved party for the purposes of  
3 bringing judicial action under this subsection. Others, by  
4 environmental court action, may be adjudged aggrieved.

5 (b) Any judicial proceeding, the subject of which is the  
6 determination that a statement is required for a proposed  
7 action, shall be initiated within sixty days after the public  
8 has been informed of such determination pursuant to section  
9 343-3. Any judicial proceeding, the subject of which is the  
10 determination that a statement is not required for a proposed  
11 action, shall be initiated within thirty days after the public  
12 has been informed of such determination pursuant to section  
13 343-3. The council or the applicant shall be adjudged an  
14 aggrieved party for the purposes of bringing judicial action  
15 under this subsection. Others, by environmental court action,  
16 may be adjudged aggrieved.

17 (c) Any judicial proceeding, the subject of which is the  
18 acceptance or nonacceptance of an environmental impact statement  
19 required under section 343-5, shall be initiated within sixty  
20 days after the public has been informed pursuant to section  
21 343-3 of the acceptance of such statement. [~~The council shall~~



1 ~~be adjudged an aggrieved party for the purpose of bringing~~  
2 ~~judicial action under this subsection.]~~ Affected agencies and  
3 persons who provided written comment to such statement during  
4 the designated review period shall be adjudged aggrieved parties  
5 for the purpose of bringing judicial action under this  
6 subsection; provided that for aggrieved parties, the contestable  
7 issues shall be limited to issues identified and discussed in  
8 the written comment~~[-]~~, and for applicants, the contestable  
9 issues shall be limited to those issues identified by the  
10 accepting authority as the basis for nonacceptance of the  
11 statement."

12 SECTION 6. Section 341-2, Hawaii Revised Statutes, is  
13 amended by deleting the definition of "center".

14 [~~"Center" means the University of Hawaii environmental."~~]

15 SECTION 7. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17 SECTION 8. This Act shall take effect upon its approval.

18  
INTRODUCED BY: 



# S.B. NO. 351

**Report Title:**

Environmental Council; Environmental Impact Statements; Appeals

**Description:**

Amends the statutory requirement for the Environmental Council to prepare an annual report by January 31 of each year. Repeals the requirement that allows for hearing appeals from applicant actions where an environmental impact statement was not accepted by the accepting authority.

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

