

**ACT 246**

**H.B. NO. 2067-74**

**A Bill for an Act Relating to Environmental Impact Statements.**

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
ENVIRONMENTAL QUALITY COMMISSION  
AND ENVIRONMENTAL IMPACT STATEMENTS**

**Sec. -1 Definitions.** As used in this chapter unless the context otherwise requires:

- (1) ‘Acceptance’ means a formal determination by an agency, the governor of the State, or the mayor of a county, that the document required to be filed pursuant to section -4 fulfills the definition of an environmental impact statement, adequately describes identifiable environmental impacts, and satisfactorily responds to comments received during the review of the statement.
- (2) ‘Action’ means any program or project to be initiated by any agency or applicant.
- (3) ‘Agency’ means any department, office or board or commission of the State or county government which is a part of the executive branch of that government.
- (4) ‘Applicant’ means any person that, pursuant to statute, ordinance, rule, or regulation, officially requests approval for a proposed action.
- (5) ‘Commission’ means the environmental quality commission.
- (6) ‘Environmental impact statement’ or ‘statement’ means an informational document prepared in compliance with applicable rules and regulations promulgated under section -5 and which discloses the environmental effects of a proposed action, effects of a proposed action on the economic and social welfare of the community and State, effects of the economic activities arising out of the proposed action, measures proposed to minimize adverse effects, and alternatives to the action and their environmental effects.
- (7) ‘Person’ includes any individual, partnership, firm, association, trust, estate, private corporation, or other legal entity other than agencies.
- (8) ‘Significant effect’ means the sum of those effects that affect the quality of the environment, including actions that irrevocably commit a natural resource, curtail the range of beneficial uses of the environment, are contrary to the State’s environmental policies or long-term environmental goals as established by law, or adversely affect the economic or social welfare.

**Sec. -2 Public records and notice.** All statements and other documents prepared under the provisions of this chapter shall be made available for inspection by the public during established office hours.

The commission shall inform the public of notices filed by agencies of determinations that statements are required or not required, of the availability of statements for review and comments, and of the acceptance or non-acceptance of statements. The commission shall inform the public by the publication of a periodic bulletin to be available to persons requesting this information through its office and through public libraries.

**Sec. -3 Environmental quality commission.** There is established in the office of the governor an environmental quality commission which shall administer this chapter. The commission may delegate to any person such power or authority vested in the commission as it deems reasonable and proper for the effective administration of this chapter, except the power to make, amend, or repeal rules and regulations. The commission shall be composed of ten members appointed by the governor as provided in section 26-34. The term of each member shall be four years, provided that of the members initially appointed four members shall serve for four years, four members shall serve for three years, and the remaining two members shall serve for two years. Vacancies shall be filled for the remainder of any unexpired term in the same manner as original appointments. At least part of the membership shall include representatives of labor, management, the construction industry, environmental interest groups, real estate groups, and the architectural, engineering, and planning professions. The director of environmental quality control shall serve as ex officio voting member. The governor shall appoint the chairman. The members shall serve without compensation but shall be reimbursed for expenses incurred in the performance of their duties.

**Sec. -4 Applicability and requirements.** (a) Except as otherwise provided, an environmental impact statement shall be required for:

- (1) Any action which will probably have significant effects and which proposes the use of State or county lands or the use of State or county funds, other than funds to be used for feasibility or planning studies for possible future programs or projects which the agency has not approved, adopted, or funded, provided that the agency shall consider environmental factors and available alternatives in its feasibility or planning studies.
- (2) Any action within the classes of action specified below:
  - (A) All actions proposing any use within any land classified as conservation district by the State land use commission under chapter 205 which will probably have significant environmental effects.
  - (B) All actions proposing any use within the shoreline area as defined in section 205-31, Hawaii Revised Statutes or within 300 feet seaward of it which will probably have significant environmental effects.
  - (C) All actions proposing any use within any historic site as designated in the National Register or Hawaii Register as provided for in the Historic Preservation Act of 1966, Public Law 89-665, or chapter 6, Hawaii Revised Statutes which will probably have significant environmental effects.
  - (D) All actions proposing any use within the Waikiki-Diamond Head area of Oahu, the boundaries of which are delineated on the development plan for the Kalia, Waikiki, and Diamond Head areas (map designated as portion of 1967 city and county of Honolulu General Plan Development Plan Waikiki-Diamond

Head [Section A]), which will probably have significant environmental effects.

- (E) All actions proposing any amendments to existing county general plans where such amendment would result in designations other than agriculture, conservation, or preservation, and which will probably have significant environmental effects, except all actions proposing any new county general plan or amendments to any existing county general plan initiated by a county.

(b) Whenever an agency proposes to implement an action proposing the use of State or county lands or the use of State or county funds, other than funds to be used for feasibility or planning studies for possible future programs or projects which the agency has not approved, adopted or funded, which is not included in any of the lists referred to in section -5, that agency shall assess such action at the earliest practicable time to determine whether an environmental impact statement shall be required; provided that the statement shall be required only if the agency finds that the proposed action may have a significant effect on the environment. The agency shall file notice of such determination with the commission which shall, in turn, publish the agency determination for the public's information pursuant to section -2. The statement, if required, shall be made available for public review and comment through the commission. The commission shall inform the public of the availability of the statement for public review and comments pursuant to section -2. The agency shall respond in writing to comments received during the review. Following this review by the public and any subsequent revision by the agency, the commission, when requested by the agency, may make a recommendation as to the acceptability of the statement. The final authority to accept such a statement shall rest with:

- (1) The governor, or his authorized representative, whenever an action proposes the use of State lands or the use of State funds; or
- (2) The mayor, or his authorized representative, of the respective county whenever an action proposes only the use of county lands or county funds.

Acceptance of a required statement shall be a condition precedent to the use of State or county lands or of State or county funds in implementing the proposed action. Upon acceptance or non-acceptance of the statement, the governor or mayor, or his authorized representative, shall file notice of such determination with the commission. The commission shall, in turn, publish the determination of acceptance or non-acceptance of the statement pursuant to section -2.

(c) Whenever an applicant proposes to implement an action specified by sec. -4(a) (2) and which requires approval of an agency, the agency receiving the request for approval shall assess such proposed action at the earliest practicable time to determine whether an environmental impact statement shall be required; provided that the statement shall be required only if the agency finds that the proposed action may have a significant effect on the environment. The agency shall file notice of such determination with the commission which shall, in turn, publish the agency determination

for the public's information pursuant to section -2. The statement, if required, shall be prepared by the applicant who shall file the statement with the agency. The statement shall be made available for public review and comments through the commission. The commission shall inform the public of the availability of the statement for public review and comments pursuant to section -2. The applicant shall respond in writing to comments received during the review. Following the review by the public and any subsequent revision by the applicant, the commission, when requested by the applicant or agency, may make a recommendation as to the acceptability of the statement. The authority to accept such statement shall rest with the agency initially receiving the request for approval. Acceptance of a required statement shall be a condition precedent to approval of the request and commencement of the proposed action. Upon acceptance or non-acceptance of the statement, the agency shall file notice of such determination with the commission. The commission shall, in turn, publish the determination of acceptance or non-acceptance of the statement pursuant to section -2. The agency receiving the request shall, within sixty days of receipt of the statement, notify the applicant and the commission of the acceptance or non-acceptance of the statement. The statement shall be deemed to be accepted if the agency fails to accept or not accept the statement within sixty days after receipt of the statement.

In any acceptance or non-acceptance, the agency shall provide the applicant with the specific findings and reasons for its determination. An applicant may, within sixty days after non-acceptance of a statement by an agency, appeal the non-acceptance to the environmental quality commission, which shall, within thirty days of receipt of the appeal, notify the applicant of its determination. In any affirmation or reversal of an appealed non-acceptance, the commission shall provide the applicant and the agency with specific findings and reasons for its determination. The agency shall abide by the commission's decision.

(d) Whenever an applicant simultaneously requests approval from two or more agencies and there is a question as to which agency has responsibility of complying with subsection (c) with respect to a particular action, the commission, after consultation with the agencies involved, shall determine which agency is responsible.

(e) Whenever an agency proposes to implement an action or receives a request for approval, the agency may consider and, where applicable and appropriate, incorporate by reference in whole or in part previous determinations of whether a statement is required and previously accepted statements. The commission shall, by rules and regulations, establish criteria and procedures for the use of previous determinations and statements.

(f) Whenever an action is subject to both the National Environmental Policy Act of 1969 (Public Law 91-190) and the requirements of this chapter, the draft statement for such action shall be submitted to the environmental quality commission for distribution, review, and evaluation at least 30 days prior to submission of the draft statement to the President's Council on Environmental Quality. The final statement for such action shall be first

approved, by the governor or his authorized representative, whenever an action proposes the use of State lands or the use of State funds, or by the mayor, or his authorized representative, of the respective county whenever an action proposes only the use of county lands or the use of county funds, prior to the submission of the statement to the President's Council on Environmental Quality.

(g) A statement that is approved with respect to a particular action shall satisfy the requirements of this chapter and no other statement for that proposed action shall be required.

**Sec. -5 Rules and regulations.** After consultation with the affected agencies, the commission shall make, amend, and repeal rules and regulations to implement the provisions of this chapter. The adoption, amendment, and repeal of all rules and regulations shall be subject to chapter 91. At least one public hearing shall be held in each county prior to the final adoption, amendment, or repeal of such rules and regulations. The rules and regulations shall:

- (a) Prescribe the contents of an environmental impact statement;
- (b) Prescribe procedures whereby a group of proposed actions may be treated by a single statement;
- (c) Prescribe procedures for the submission, distribution, review, and approval or disapproval of a statement;
- (d) Prescribe procedures for the applicant to appeal a determination to the environmental quality commission;
- (e) Establish criteria to determine whether a statement is acceptable or not;
- (f) Establish a list of classes of action within the actions specified in section -4(a) (1) and section -4(a) (2) which, because such action will probably have minimal or no significant effect on the environment, shall be exempt from the preparation of a statement;
- (g) Establish a list of classes of action, within the actions specified in section -4(a) (1) and section -4(a) (2), which provide essential public utility services and which, because such action will probably have minimal or no significant effect on the environment, shall be exempt from the preparation of a statement;
- (h) Prescribe procedures for informing the public of determinations that a statement is either required or not required under section -4(b) and (c), and for informing the public of the availability of statements for review and comments, and for informing the public of the acceptance of non-acceptance of the statement.

**Sec. -6 Limitation of actions.** (a) Any judicial proceeding, the subject of which is the lack of determination that a statement is or is not required for a proposed action not otherwise exempted, shall be initiated within one hundred eighty days of the agency's decision to carry out or approve the action, or if a proposed action is undertaken without a formal determination by the agency that a statement is or is not required, a judicial proceeding

shall be instituted within one hundred eighty days after the proposed action is started.

(b) Any judicial proceeding, the subject of which is the determination that a statement is or is not required for a proposed action, shall be initiated within sixty days after the public has been informed of such determination pursuant to section -2.

(c) Any judicial proceeding, the subject of which is the acceptability of a statement, shall be initiated within sixty days after the public has been informed pursuant to section -2 of the acceptance of such statement; provided that only affected agencies, or persons who will be aggrieved by a proposed action and who provided written comments to such statement during the designated review period shall have standing to file suit; further provided that contestable issues shall be limited to issues identified and discussed by the plaintiff in the written comments.

**Sec. -7 Severability.** If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application; and to this end, the provisions of this chapter are declared to be severable."

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring; provided that the section "[Section A]" and the brackets around the section shall not be deleted.\*

SECTION 3. **Effective date.** This Act shall take effect upon its approval. This Act is not retroactive and shall not apply to those actions which have received approvals from appropriate agencies authorized to approve actions covered by this Act. For those actions pending approval as of the effective date of this Act or for which an applicant requests approval prior to the effective date of initial rules and regulations adopted by the commission, the agency authorized to approve such action, at its discretion, may require a statement from the applicant; provided, that any statement which has been accepted on or before the effective date of rules and regulations shall be deemed to be in compliance with this Act and no further statement shall be required.

(Approved June 15, 1974.)

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\*Edited accordingly.