HOUSE OF REPRESENTATIVES
TWENTY-FOURTH LEGISLATURE, 2008
STATE OF HAWAII

H.B. NO. 3209

A BILL FOR AN ACT

RELATING TO ENVIRONMENTAL IMPACT STATEMENTS.

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

SECTION 1. The legislature finds that recent court decisions have expanded the situations where an environmental assessment is required beyond those originally intended by the legislature. The courts have found that any use of state or county lands or funds requires an environmental assessment to make a determination whether an environmental impact statement is necessary. The courts have stated that the agency making a determination regarding whether an environmental impact statement is necessary must consider every phase and every expected consequence of the proposed action.

Based upon these decisions, an agency, such as the department of transportation or a county transportation service, must consider both primary and secondary phases or consequences of a project on the environment whenever any part of the project involves a public highway.

The legislature is concerned about the unintended consequences of the recent court decisions. The impact of the interpretation is that any project that involves the use of a

state or county road right-of-way could "trigger" an environmental assessment and an environmental impact statement. Thus, for instance, whenever an access improvement, easement, drainage, or waterline project touches a state or county right-of-way, the action is viewed as a use of state or county lands, and therefore, the entire project is required to comply with the environmental impact statement law as it relates to cumulative impacts.

The legislature finds that this interpretation causes problems for small and large landowners and businesses, as they may be required to comply with chapter 343, Hawaii Revised Statutes, for what has historically been a relatively minor utility or access concern.

The purpose of this Act is to exempt an existing public street, road, highway, trail, or bikeway from the applicability of the environmental impact statements law.

SECTION 2. Section 343-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except as otherwise provided, an environmental assessment shall be required for actions that:

(1) Propose 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 that the agency has not approved, adopted, or funded, or funds to be used for the acquisition of unimproved real property; provided that [~~the~~]:

(A) The agency shall consider environmental factors and available alternatives in its feasibility or planning studies; [~~provided further that an~~]

(B) An environmental assessment for proposed uses under section [~~+~~]205-2(d)(10)[~~+~~] or [~~+~~]205-4.5(a)(13)[~~+~~] shall only be required pursuant to section 205-5(b); and

(C) For purposes of this section, "state or county lands" shall not include an existing public street, road, highway, trail, or bikeway, as those terms are used in section 291-1;

(2) Propose any use within any land classified as a conservation district by the state land use commission under chapter 205;

(3) Propose any use within a shoreline area as defined in section 205A-41;

(4) Propose 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 6E;

(5) Propose any use within the Waikiki area of Oahu, the boundaries of which are delineated in the land use ordinance as amended, establishing the "Waikiki Special District";

(6) Propose any amendments to existing county general plans where the amendment would result in designations other than agriculture, conservation, or preservation, except actions proposing any new county general plan or amendments to any existing county general plan initiated by a county;

(7) Propose any reclassification of any land classified as a conservation district by the state land use commission under chapter 205;

(8) Propose the construction of new or the expansion or modification of existing helicopter facilities within the State[~~,~~] that, by way of their activities, may affect:

(A) Any land classified as a conservation district by the state land use commission under chapter 205;

(B) A shoreline area as defined in section 205A-41; or

(C) 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 6E; or until the statewide historic places inventory is completed, any historic site that is found by a field reconnaissance of the area affected by the helicopter facility and is under consideration for placement on the National Register or the Hawaii Register of Historic Places; and

(9) Propose any:

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

(B) Waste-to-energy facility;

(C) Landfill;

(D) Oil refinery; or

(E) Power-generating facility."

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

SECTION 4. This Act shall take effect upon its approval.

INTRODUCED BY: By Request

JAN 22 2008

Report Title:
Environmental Impact Statements; Exemption

Description:
Exempts an existing public street, road, highway, trail, or bikeway from applicability of the environmental impact statements law.