

JAN 21 2011

S.B. NO. 614

---

---

# A BILL FOR AN ACT

RELATING TO ENVIRONMENTAL IMPACT STATEMENTS.

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

1 SECTION 1. The purpose of this Act is to:

2 (1) Create certainty and predictability in the  
3 environmental review process;

4 (2) Streamline the process based on existing practices;  
5 and

6 (3) Clarify the intent and process based on recent  
7 interpretations and decisions.

8 SECTION 2. Chapter 343, Hawaii Revised Statutes, is  
9 amended by adding a new section to be appropriately designated  
10 and to read as follows:

11 "§343- Duration of environmental impact statement. For  
12 projects that are phased or developed over a period of time, an  
13 accepted environmental impact statement will be valid as long as  
14 a supplemental document is not required. Government permits and  
15 approvals issued for the project subsequent to the acceptance of  
16 the environmental impact statement shall consider the need for  
17 more detailed studies to address environmental concerns that



1 were addressed in good faith during the preparation of the  
2 environmental impact statement."

3 SECTION 3. Section 343-1, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "**§343-1 Findings and purpose.** The legislature finds that  
6 the quality of humanity's environment is critical to humanity's  
7 well being, that humanity's activities have broad and profound  
8 effects upon the interrelations of all components of the  
9 environment, and that an environmental review process will  
10 integrate the review of environmental concerns with existing  
11 planning processes of the State and counties and alert decision  
12 makers to significant environmental effects which may result  
13 from the implementation of certain actions. The legislature  
14 further finds that the process of reviewing environmental  
15 effects is desirable because environmental consciousness is  
16 enhanced, cooperation and coordination are encouraged, and  
17 public participation during the review process benefits all  
18 parties involved and society as a whole.

19 It is the purpose of this chapter to establish a  
20 non-regulatory public disclosure system of environmental review  
21 which will ensure that environmental concerns are given  
22 appropriate consideration in decision making along with economic



1 and technical considerations. The environmental review process  
2 is separate and distinct from the regulatory or permitting  
3 process. While there is a reliance on the environmental review  
4 process to identify impacts and mitigation measures, it is  
5 during the regulatory or permitting process where appropriate  
6 mitigation measures are imposed."

7 SECTION 4. Section 343-2, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 "§343-2 Definitions. As used in this chapter unless the  
10 context otherwise requires:

11 "Acceptance" means a formal determination that the document  
12 required to be filed pursuant to section 343-5 fulfills the  
13 definition of an environmental impact statement[7] as a public  
14 disclosure document, adequately describes identifiable  
15 environmental impacts, and satisfactorily responds to comments  
16 received during the review of the statement.

17 [~~"Action" means any program or project to be initiated by~~  
18 ~~any agency or applicant.~~]

19 "Agency action" means a program or project initiated by any  
20 department, office, board, or commission of the state or county  
21 government [~~which~~] that is a part of the executive branch of  
22 that government.



1           "Applicant action" means a program or project initiated by  
2 any person who, pursuant to statute, ordinance, or rule,  
3 officially requests approval for a proposed action.

4           "Approval" means a discretionary [~~consent~~] approval  
5 required from an agency prior to actual implementation of an  
6 action.

7           "Council" means the environmental council.

8           "Director" means the director of the office of  
9 environmental quality control.

10           "Discretionary [~~consent~~] approval" means a land use  
11 related consent, sanction, or recommendation, such as zoning,  
12 from an agency for which judgment and free will may be exercised  
13 by the issuing agency, as distinguished from a ministerial  
14 [~~consent~~] approval.

15           "Environmental assessment" means a written evaluation to  
16 determine whether an action may have a significant effect.

17           "Environmental impact statement" or "statement" means an  
18 informational document prepared in compliance with the rules  
19 adopted under section 343-6 and which discloses the  
20 environmental effects of a proposed action, effects of a  
21 proposed action on the economic welfare, social welfare, and  
22 cultural practices of the community and State, effects of the



1 economic activities arising out of the proposed action, measures  
2 proposed to minimize adverse effects, and alternatives to the  
3 action and their environmental effects.

4 The initial statement filed for public review shall be  
5 referred to as the draft statement and shall be distinguished  
6 from the final statement which is the document that has  
7 incorporated the public's comments and the responses to those  
8 comments. The final statement is the document that shall be  
9 evaluated for acceptability by the respective accepting  
10 authority.

11 "Environmental review process" means an integrated review  
12 of environmental concerns with existing planning processes of  
13 the State and counties to identify significant environmental  
14 effects that may result from the implementation of certain  
15 actions. The purpose of the environmental review process is to  
16 establish a non-regulatory public disclosure system of  
17 environmental review, which will ensure that environmental  
18 concerns are given appropriate consideration in decision making  
19 along with economic and technical considerations. The  
20 environmental review process is separate and distinct from the  
21 regulatory or permitting process. While there is a reliance on  
22 the environmental review process to identify impacts and



1 mitigation measures, it is during the regulatory or permitting  
2 process where appropriate mitigation measures are imposed.

3 "Exempt" means any specific types of actions that, because  
4 they may have minimal or no significant effects on the  
5 environment, are declared exempt from the preparation of an  
6 environmental assessment, including those actions that are  
7 consistent with existing zoning, county general, or development  
8 plans.

9 "Finding of no significant impact" means a determination  
10 based on an environmental assessment that the subject action  
11 will not have a significant effect and, therefore, will not  
12 require the preparation of an environmental impact statement.

13 [~~"Helicopter facility" means any area of land or water~~  
14 ~~which is used, or intended for use for the landing or takeoff of~~  
15 ~~helicopters; and any appurtenant areas which are used, or~~  
16 ~~intended for use for helicopter related activities or rights of~~  
17 ~~way.]~~

18 "Ministerial approval" means a governmental decision,  
19 usually issued after land use or zoning approval, involving  
20 little or no judgment by the agency and involving the use of  
21 established standards, guidelines, or objective measurements,



1 usually reflected in rules, ordinances, or other formally  
2 adopted agency procedures or policies.

3 "Office" means the office of environmental quality control.

4 "Person" includes any individual, partnership, firm,  
5 association, trust, estate, private corporation, or other legal  
6 entity other than an agency.

7 [~~"Power generating facility" means:~~

8 ~~(1) A new, fossil fueled, electricity generating facility,~~  
9 ~~where the electrical output rating of the new~~  
10 ~~equipment exceeds 5.0 megawatts; or~~

11 ~~(2) An expansion in generating capacity of an existing,~~  
12 ~~fossil fueled, electricity generating facility, where~~  
13 ~~the incremental electrical output rating of the new~~  
14 ~~equipment exceeds 5.0 megawatts.~~

15 ~~"Renewable energy facility" has the same meaning as defined~~  
16 ~~in section 201N-1.]~~

17 "Significant effect" means the sum of effects on the  
18 quality of the environment, including actions that irrevocably  
19 commit a natural resource, curtail the range of beneficial uses  
20 of the environment, are contrary to the State's environmental  
21 policies or long-term environmental goals as established by law,



1 or adversely affect the economic welfare, social welfare, or  
2 cultural practices of the community and State.

3 ~~["Wastewater treatment unit" means any plant or facility~~  
4 ~~used in the treatment of wastewater.]~~

5 "Supplemental statement" means a statement that is accepted  
6 with respect to a particular action and is usually qualified by  
7 the size, scope, location, intensity, and use, among other  
8 things. A statement that is accepted with respect to a  
9 particular action shall satisfy the requirements of this chapter  
10 and no other statement for that proposed action shall be  
11 required, to the extent that the action has not changed  
12 substantively in size, scope, intensity, use, or location, among  
13 other things. If there is any change in any of these  
14 characteristics that may have a significant effect, the original  
15 statement that was changed shall no longer be valid because an  
16 essentially different action would be under consideration and a  
17 supplemental statement shall be prepared and reviewed as  
18 provided by this chapter. As long as there is no change in a  
19 proposed action resulting in individual or cumulative impacts  
20 not originally disclosed, the statement associated with that  
21 action shall be deemed to comply with this chapter."





1 SECTION 5. 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 use of government owned road rights-of-ways solely  
13 for utility and access connections shall not require  
14 an environmental assessment or an environmental impact  
15 statement; provided further that the agency shall  
16 consider environmental factors and available  
17 alternatives in its feasibility or planning studies;  
18 provided further that an environmental assessment for  
19 proposed uses under section 205-2(d)(11) or 205-  
20 4.5(a)(13) shall only be required pursuant to section  
21 205-5(b);



# S.B. NO. 614

- 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, as  
8           provided for in the Historic Preservation Act of 1966,  
9           Public Law 89-665, or chapter 6E;
- 10          (5) Propose any use within the Waikiki area of Oahu, the  
11          boundaries of which are delineated in the land use  
12          ordinance as amended, establishing the "Waikiki  
13          Special District";
- 14          (6) Propose any amendments to existing county general  
15          plans where the amendment would result in designations  
16          other than agriculture, conservation, or preservation,  
17          except actions proposing any new county general plan  
18          or amendments to any existing county general plan  
19          initiated by a county;
- 20          (7) Propose any reclassification of any land classified as  
21          a conservation district by the state land use  
22          commission under chapter 205;



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



1           ~~serving fewer than fifty single family dwellings~~  
2           ~~or the equivalent;~~  
3           ~~(B) Waste to energy facility;~~  
4           ~~(C) Landfill;~~  
5           ~~(D) Oil refinery; or~~  
6           ~~(E) Power generating facility.]~~ reclassification of  
7           any land from the agricultural to the urban  
8           district by the state land use commission under  
9           chapter 205.

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

20           (1) For environmental assessments for which a finding of  
21 no significant impact is anticipated:

- 1 (A) A draft environmental assessment shall be made
- 2 available for public review and comment for a
- 3 period of thirty days;
- 4 (B) The office shall inform the public of the
- 5 availability of the draft environmental
- 6 assessment for public review and comment pursuant
- 7 to section 343-3;
- 8 (C) The agency shall respond in writing to comments
- 9 received during the review and prepare a final
- 10 environmental assessment to determine whether an
- 11 environmental impact statement shall be required;
- 12 (D) A statement shall be required if the agency finds
- 13 that the proposed action may have a significant
- 14 effect on the environment; and
- 15 (E) The agency shall file notice of such
- 16 determination with the office. When a conflict
- 17 of interest may exist because the proposing
- 18 agency and the agency making the determination
- 19 are the same, the office may review the agency's
- 20 determination, consult the agency, and advise the
- 21 agency of potential conflicts, to comply with
- 22 this section. The office shall publish the final



1                   determination for the public's information  
2                   pursuant to section 343-3.

3           The draft and final statements, if required, shall be  
4 prepared by the agency and submitted to the office. The draft  
5 statement shall be made available for public review and comment  
6 through the office for a period of forty-five days. The office  
7 shall inform the public of the availability of the draft  
8 statement for public review and comment pursuant to section 343-  
9 3. The agency shall respond in writing to comments received  
10 during the review and prepare a final statement.

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

13           (2) The final authority to accept a final statement shall  
14 rest with:

15           (A) The governor, or the governor's authorized  
16 representative, whenever an action proposes the  
17 use of state lands or the use of state funds, or  
18 whenever a state agency proposes an action within  
19 the categories in subsection (a); or

20           (B) The mayor, or the mayor's authorized  
21 representative, of the respective county whenever



1           an action proposes only the use of county lands  
2           or county funds.

3           Acceptance of a required final statement shall be a  
4           condition precedent to implementation of the proposed action.  
5           Upon acceptance or nonacceptance of the final statement, the  
6           governor or mayor, or the governor's or mayor's authorized  
7           representative, shall file notice of such determination with the  
8           office. The office, in turn, shall publish the determination of  
9           acceptance or nonacceptance pursuant to section 343-3.

10          (c) Whenever an applicant proposes an action specified by  
11          subsection (a) that requires discretionary approval of an agency  
12          and that is not a specific type of action declared exempt under  
13          section 343-6, the agency initially receiving and agreeing to  
14          process the request for approval shall prepare or require the  
15          applicant to prepare an environmental assessment of the proposed  
16          action at the earliest practicable time to determine whether an  
17          environmental impact statement shall be required[~~; provided~~  
18          ~~that, for an action that proposes the establishment of a~~  
19          ~~renewable energy facility, a draft environmental impact~~  
20          ~~statement shall be prepared at the earliest practicable time].  
21          The final approving agency for the request for approval is not  
22          required to be the accepting authority.~~



1 For environmental assessments for which a finding of no  
2 significant impact is anticipated:

- 3 (1) A draft environmental assessment shall be made  
4 available for public review and comment for a period  
5 of thirty days;
- 6 (2) The office shall inform the public of the availability  
7 of the draft environmental assessment for public  
8 review and comment pursuant to section 343-3; and
- 9 (3) The applicant shall respond in writing to comments  
10 received during the review, and [~~the agency shall~~]  
11 prepare a final environmental assessment to determine  
12 whether an environmental impact statement shall be  
13 required. A statement shall be required if the agency  
14 finds that the proposed action may have a significant  
15 effect on the environment. The agency shall file  
16 notice of the agency's determination with the office,  
17 which, in turn, shall publish the agency's  
18 determination for the public's information pursuant to  
19 section 343-3.

20 The draft and final statements, if required, shall be  
21 prepared by the applicant, who shall file these statements with  
22 the office.





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

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

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

17           Acceptance of a required final statement shall be a  
18 condition precedent to approval of the request and commencement  
19 of the proposed action. Upon acceptance or nonacceptance of the  
20 final statement, the agency shall file notice of such  
21 determination with the office. The office, in turn, shall



1 publish the determination of acceptance or nonacceptance of the  
2 final statement pursuant to section 343-3.

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

12 In any acceptance or nonacceptance, the agency shall  
13 provide the applicant with the specific findings and reasons for  
14 its determination. In making its determination, the accepting  
15 authority shall provide an explanation on how the document met  
16 the requirements of chapter 343 as a public disclosure document.

17 An applicant, within sixty days after nonacceptance of a final  
18 statement by an agency, may appeal the nonacceptance to the  
19 environmental council, which, within thirty days of receipt of  
20 the appeal, shall notify the applicant of the council's  
21 determination. In any affirmation or reversal of an appealed  
22 nonacceptance, the council shall provide the applicant and



1 agency with specific findings and reasons for its determination.

2 The agency shall abide by the council's decision.

3 (d) Whenever an applicant requests approval for a proposed  
4 action and there is a question as to which of two or more state  
5 or county agencies with jurisdiction has the responsibility of  
6 preparing the environmental assessment, the office, after  
7 consultation with and assistance from the affected state or  
8 county agencies, shall determine which agency shall prepare the  
9 assessment.

10 (e) In preparing an environmental assessment, an agency  
11 may consider and, where applicable and appropriate, incorporate  
12 by reference, in whole or in part, previous determinations of  
13 whether a statement is required and previously accepted  
14 statements. The council, by rule, shall establish criteria and  
15 procedures for the use of previous determinations and  
16 statements.

17 (f) Whenever an action is subject to both the National  
18 Environmental Policy Act of 1969 (Public Law 91-190) and the  
19 requirements of this chapter, the office and agencies shall  
20 cooperate with federal agencies to the fullest extent possible  
21 to reduce duplication between federal and state requirements.  
22 Such cooperation, to the fullest extent possible, shall include



1 joint environmental impact statements with concurrent public  
2 review and processing at both levels of government. Where  
3 federal law has environmental impact statement requirements in  
4 addition to but not in conflict with this chapter, the office  
5 and agencies shall cooperate in fulfilling these requirements so  
6 that one document shall comply with all applicable laws.

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

11 (h) Whenever an action is determined to be significant by  
12 an agency or applicant prior to the preparation of an  
13 environmental assessment, and with the approval of the director,  
14 the agency or applicant may proceed directly to the  
15 environmental impact statement preparation process."

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

18 "(a) After consultation with the affected agencies, the  
19 council shall adopt, amend, or repeal necessary rules for the  
20 purposes of this chapter in accordance with chapter 91  
21 including [7] but not limited to [7] rules that shall:



- 1           (1)   Prescribe the procedures whereby a group of proposed  
2                   actions may be treated by a single environmental  
3                   assessment or statement [7], including the  
4                   consolidation of actions into a single environmental  
5                   assessment or environmental impact statement;
- 6           (2)   Establish procedures whereby specific types of  
7                   actions, because they will probably have minimal or no  
8                   significant effects on the environment, are declared  
9                   exempt from the preparation of an environmental  
10                  assessment;
- 11          (3)   Prescribe procedures for the preparation of an  
12                  environmental assessment;
- 13          (4)   Prescribe the contents of an environmental assessment;
- 14          (5)   Prescribe procedures for informing the public of  
15                  determinations that a statement is either required or  
16                  not required, for informing the public of the  
17                  availability of draft environmental impact statements  
18                  for review and comments, and for informing the public  
19                  of the acceptance or nonacceptance of the final  
20                  environmental statement;
- 21          (6)   Prescribe the contents of an environmental impact  
22                  statement;



- 1 (7) Prescribe procedures for the submission, distribution,
- 2 review, acceptance or nonacceptance, and withdrawal of
- 3 an environmental impact statement;
- 4 (8) Establish criteria to determine whether an
- 5 environmental impact statement is acceptable or not;
- 6 [and]
- 7 (9) Establish procedures for electronic comments and
- 8 responses on an environmental assessment or an
- 9 environmental impact statement; and
- 10 [~~9~~] (10) Prescribe procedures to appeal the nonacceptance
- 11 of an environmental impact statement to the
- 12 environmental council."

13 SECTION 7. This Act does not affect rights and duties that  
 14 matured, penalties that were incurred, and proceedings that were  
 15 begun before its effective date.

16 SECTION 8. Statutory material to be repealed is bracketed  
 17 and stricken. New statutory material is underscored.

18 SECTION 9. This Act shall take effect upon its approval.

19

INTRODUCED BY: \_\_\_\_\_



By Request



**Report Title:**

Environmental Impact Statements

**Description:**

Amends various provisions of chapter 343, Hawaii Revised Statutes, to create certainty and predictability in the environmental review process; streamline the process based on existing practice; and clarify the intent and process based on recent interpretations and decision.

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

