
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 legislature finds that state agencies that
2 have experience with environmental review in Hawaii are able to
3 determine which projects are likely to require full
4 environmental review and should proceed directly to the
5 preparation of an environmental impact statement. While this
6 omits one layer of public participation through the
7 environmental assessment, opportunities for public participation
8 remain in the environmental impact statement process. The
9 legislature further finds that bypassing the environmental
10 assessment in certain situations will improve the efficiency of
11 the environmental review process and speed the progress of
12 completing those proposed actions.

13 The purpose of this Act is to allow agencies to determine,
14 based on their judgment and experience, that an environmental
15 impact statement is likely to be required for a proposed action,
16 and, therefore, choose not to prepare an environmental
17 assessment or to allow an applicant not to prepare an



1 environmental assessment, and instead proceed directly to the
2 preparation of an environmental impact statement.

3 SECTION 2. Section 343-2, Hawaii Revised Statutes, is
4 amended by adding two new definitions to be appropriately
5 inserted and to read as follows:

6 "Direct to environmental impact statement decision" means
7 a decision by an agency to proceed directly, or allow an
8 applicant to proceed directly, to the preparation of an
9 environmental impact statement where the agency has found,
10 before conducting an environmental assessment, that a proposed
11 action is likely to have a significant effect on the
12 environment.

13 "Direct to environmental impact statement notice" means a
14 notice to the office, the public, and all interested parties
15 that the agency has made a direct to environmental impact
16 statement decision."

17 SECTION 3. Section 343-3, Hawaii Revised Statutes, is
18 amended by amending subsection (b) to read as follows:

19 "(b) The office shall inform the public of notices filed
20 by agencies of the availability of environmental assessments for
21 review and comments, of determinations that statements are
22 required or not required, of direct to environmental impact



1 statement decisions, of the availability of statements for
2 review and comments, and of the acceptance or nonacceptance of
3 statements."

4 SECTION 4. Section 343-5, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§343-5 Applicability and requirements.** (a) Except as
7 otherwise provided, an environmental assessment shall be
8 required for actions that:

9 (1) Propose the use of state or county lands or the use of
10 state or county funds, other than funds to be used for
11 feasibility or planning studies for possible future
12 programs or projects that the agency has not approved,
13 adopted, or funded, or funds to be used for the
14 acquisition of unimproved real property; provided that
15 the agency shall consider environmental factors and
16 available alternatives in its feasibility or planning
17 studies; provided further that an environmental
18 assessment for proposed uses under section
19 205-2(d)(11) or 205-4.5(a)(13) shall only be required
20 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, 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.

7 (b) Whenever an agency proposes an action in subsection
8 (a), other than feasibility or planning studies for possible
9 future programs or projects that the agency has not approved,
10 adopted, or funded, or other than the use of state or county
11 funds for the acquisition of unimproved real property that is
12 not a specific type of action declared exempt under section
13 343-6, the agency shall prepare an environmental assessment for
14 ~~[such]~~ the action at the earliest practicable time to determine
15 whether an environmental impact statement shall be required[-];
16 provided that if the agency determines, through its judgment and
17 experience, that an environmental impact statement is likely to
18 be required, the agency may choose not to prepare an
19 environmental assessment and instead shall prepare an
20 environmental impact statement, following adequate notice to the
21 public and all interested parties. For the purposes of this



1 subsection, the publication of a direct to environmental impact
2 statement notice shall be considered adequate notice.

3 ~~[(1)]~~ (c) For environmental assessments for which a
4 finding of no significant impact is anticipated:

5 ~~[(A)]~~ (1) A draft environmental assessment shall be
6 made available for public review and comment for a
7 period of thirty days;

8 ~~[(B)]~~ (2) The office shall inform the public of the
9 availability of the draft environmental assessment for
10 public review and comment pursuant to section 343-3;

11 ~~[(C)]~~ (3) The agency shall respond in writing to
12 comments received during the review and prepare a
13 final environmental assessment to determine whether an
14 environmental impact statement shall be required;

15 ~~[(D)]~~ (4) A statement shall be required if the agency
16 finds that the proposed action may have a significant
17 effect on the environment; and

18 ~~[(E)]~~ (5) The agency shall file notice of [such] the
19 determination with the office. When a conflict of
20 interest may exist because the proposing agency and
21 the agency making the determination are the same, the
22 office may review the agency's determination, consult



1 the agency, and advise the agency of potential
2 conflicts, to comply with this section. The office
3 shall publish the final determination for the public's
4 information pursuant to section 343-3.

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

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

15 [~~2~~] (d) The final authority to accept a final statement
16 shall rest with:

17 [~~A~~] (1) The governor, or the governor's authorized
18 representative, whenever an action proposes the use of
19 state lands or the use of state funds, or whenever a
20 state agency proposes an action within the categories
21 in subsection (a); or



1 ~~[(B)]~~ (2) The mayor, or the mayor's authorized
2 representative, of the respective county whenever an
3 action proposes only the use of county lands or county
4 funds.

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

12 ~~[(e)]~~ (e) Whenever an applicant proposes an action
13 specified by subsection (a) that requires approval of an agency
14 and that is not a specific type of action declared exempt under
15 section 343-6, the agency initially receiving and agreeing to
16 process the request for approval shall require the applicant to
17 prepare an environmental assessment of the proposed action at
18 the earliest practicable time to determine whether an
19 environmental impact statement shall be required; provided that
20 if the agency determines, through its judgment and experience,
21 that an environmental impact statement is likely to be required,
22 the agency may authorize the applicant to choose not to prepare



1 an environmental assessment and instead prepare an environmental
 2 impact statement, following adequate notice to the public and
 3 all interested parties; provided further that [~~7~~ for] the
 4 publication of a direct to environmental impact statement notice
 5 shall be considered adequate notice. For an action that
 6 proposes the establishment of a renewable energy facility, a
 7 draft environmental impact statement shall be prepared at the
 8 earliest practicable time. The final approving agency for the
 9 request for approval is not required to be the accepting
 10 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 [~~7~~] and [~~the agency~~] the
 21 applicant shall prepare a final environmental
 22 assessment to determine whether an environmental



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



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

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

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

21 In any acceptance or nonacceptance, the agency shall
22 provide the applicant with the specific findings and reasons for



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

10 ~~[(d)]~~ (f) Whenever an applicant requests approval for a
 11 proposed action and there is a question as to which of two or
 12 more state or county agencies with jurisdiction has the
 13 responsibility of preparing the environmental assessment, the
 14 office, after consultation with and assistance from the affected
 15 state or county agencies, shall determine which agency shall
 16 prepare the assessment.

17 ~~[(e)]~~ (g) In preparing an environmental assessment, an
 18 agency may consider and, where applicable and appropriate,
 19 incorporate by reference, in whole or in part, previous
 20 determinations of whether a statement is required and previously
 21 accepted statements. The council, by rule, shall establish



1 criteria and procedures for the use of previous determinations
2 and statements.

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

16 ~~[-(g)]~~ (i) A statement that is accepted with respect to a
17 particular action shall satisfy the requirements of this
18 chapter, and no other statement for the proposed action shall be
19 required."

20 SECTION 5. Section 343-7, Hawaii Revised Statutes, is
21 amended by amending subsections (b) and (c) to read as follows:



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

14 (c) Any judicial proceeding, the subject of which is the
15 acceptance of an environmental impact statement required under
16 section 343-5~~[7]~~ or prepared pursuant to a direct to
17 environmental impact statement decision, shall be initiated
18 within sixty days after the public has been informed pursuant to
19 section 343-3 of the acceptance of such statement. The council
20 shall be adjudged an aggrieved party for the purpose of bringing
21 judicial action under this subsection. Affected agencies and
22 persons who provided written comment to such statement during



1 the designated review period shall be adjudged aggrieved parties
2 for the purpose of bringing judicial action under this
3 subsection; provided that the contestable issues shall be
4 limited to issues identified and discussed in the written
5 comment."

6 SECTION 6. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 7. This Act shall take effect upon its approval.



Report Title:

Environmental Impact Statements

Description:

Authorizes an agency or an applicant to bypass the preparation of an environmental assessment and proceed directly with an environmental impact statement for proposed actions that are determined by the agency to require an environmental impact statement. (SD1)

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

