

---

# A BILL FOR AN ACT

RELATING TO ENVIRONMENTAL IMPACT STATEMENTS.

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

1 SECTION 1. Chapter 343, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 "§343- Exception to applicability of chapter. (a)  
5 Notwithstanding any other law to the contrary, for any primary  
6 action that requires a permit or approval that is not subject to  
7 a discretionary consent and that involves a secondary action  
8 that is ancillary and limited to the installation, improvement,  
9 renovation, construction, or development of infrastructure  
10 within an existing public right-of-way or highway, that  
11 secondary action shall be exempt from this chapter; provided  
12 that the applicant for the primary action shall submit  
13 documentation from the appropriate agency confirming that no  
14 further discretionary approvals are required.

15 (b) As used in this section:

16 "Discretionary consent" means:

17 (1) An action as defined in section 343-2; or



1           (2) An approval from a decision-making authority in an  
2           agency, which approval is subject to a public hearing.

3           "Infrastructure" includes waterlines and water facilities,  
4           wastewater lines and wastewater facilities, gas lines and gas  
5           facilities, drainage facilities, electrical, communications,  
6           telephone, and cable television utilities, and highway, roadway,  
7           and driveway improvements.

8           "Primary action" means an action outside of the highway or  
9           public right-of-way that is on private property.

10          "Secondary action" means an action involving infrastructure  
11          within the highway or public right-of-way."

12          SECTION 2. Section 343-5, Hawaii Revised Statutes, is  
13          amended by amending subsections (c) and (d) to read as follows:

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



1 draft environmental impact statement shall be prepared at the  
2 earliest practicable time. The final approving agency for the  
3 request for approval is not required to be the accepting  
4 authority.

5 For environmental assessments for which a finding of no  
6 significant impact is anticipated:

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



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

3 The draft and final statements, if required, shall be  
4 prepared by the applicant, who shall file these statements with  
5 the office.

6 The draft statement shall be made available for public  
7 review and comment through the office for a period of forty-five  
8 days. The office shall inform the public of the availability of  
9 the draft statement for public review and comment pursuant to  
10 section 343-3.

11 The applicant shall respond in writing to comments received  
12 during the review and prepare a final statement. The office,  
13 when requested by the applicant or agency, may make a  
14 recommendation as to the acceptability of the final statement.

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



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

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

17 In any acceptance or nonacceptance, the agency shall  
18 provide the applicant with the specific findings and reasons for  
19 its determination. An applicant, within sixty days after  
20 nonacceptance of a final statement by an agency, may appeal the  
21 nonacceptance to the environmental council, which, within thirty  
22 days of receipt of the appeal, shall notify the applicant of the



1 council's determination. In any affirmation or reversal of an  
2 appealed nonacceptance, the council shall provide the applicant  
3 and agency with specific findings and reasons for its  
4 determination. The agency shall abide by the council's  
5 decision.

6 (d) Whenever an applicant requests approval for a proposed  
7 action and there is a question as to which of two or more state  
8 or county agencies with jurisdiction has the responsibility of  
9 ~~[preparing the]~~ determining whether an environmental  
10 assessment[7] is required, the office, after consultation with  
11 and assistance from the affected state or county agencies, shall  
12 determine which agency ~~[shall prepare the assessment.]~~ has the  
13 responsibility for determining whether an environmental  
14 assessment by the applicant is required, except in situations  
15 involving secondary actions under section 343- ; provided that  
16 in no case shall the office be considered the approving agency."

17 SECTION 3. Act 87, Session Laws of Hawaii 2009, is  
18 repealed.

19 SECTION 4. Act 45, Session Laws of Hawaii 2011, is  
20 repealed.

21 SECTION 5. Statutory material to be repealed is bracketed  
22 and new statutory material is underscored.



1 SECTION 6. This Act shall take effect upon its approval.



**Report Title:**

Environmental Impact Statements; Exemption

**Description:**

Permanently amends chapter 343, Hawaii Revised Statutes, to clarify current exemptions for secondary actions and require the Office of Environmental Quality Control to determine which agency has the responsibility for determining whether an environmental assessment is required by the applicant except in situations involving exempt secondary actions. Repeals Act 87, Session Laws of Hawaii 2009, and Act 45, Session Laws of Hawaii 2011. (SB2873 CD2)

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

