A BILL FOR AN ACT

RELATING TO THE ENVIRONMENTAL IMPACT STATEMENT LAW.

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

SECTION 1. Section 343-5, Hawaii Revised Statutes, is amended to read as follows:

"§343-5 Applicability and requirements. (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 agency shall consider environmental factors and available alternatives in its feasibility or planning studies; provided further that an environmental assessment for proposed uses under section 205-2(d)(11) or 205-4.5(a)(13) shall only be required pursuant to section 205-5(b);"
(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] of Historic Places or the Hawaii register of historic places, 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;
Propose any reclassification of any land classified as a conservation district by the state land use commission under chapter 205;

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,] of Historic Places or the Hawaii register of historic places, 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; 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.

(b) Whenever an agency proposes an action in subsection (a), other than feasibility or planning studies for possible future programs or projects that the agency has not approved, adopted, or funded, or other than the use of state or county funds for the acquisition of unimproved real property that is not a specific type of action declared exempt under section 343-6, the agency shall prepare an environmental assessment for the action at the earliest practicable time to determine whether an environmental impact statement shall be required; provided
that if the agency determines, through its judgment and
experience, that an environmental impact statement is likely to
be required, the agency may choose not to prepare an
environmental assessment and instead shall prepare an
environmental impact statement that begins with the preparation
of an environmental impact statement preparation notice as
provided by rules.

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

(1) A draft environmental assessment shall be made
available for public review and comment for a period
of thirty days;

(2) The office shall inform the public of the availability
of the draft environmental assessment for public
review and comment pursuant to section 343-3;

(3) The agency shall respond in writing to comments
received during the review and prepare a final
environmental assessment to determine whether an
environmental impact statement shall be required;
(4) A statement shall be required if the agency finds that the proposed action may have a significant effect on the environment; and

(5) The agency shall file notice of the determination with the office. When a conflict of interest may exist because the proposing agency and the agency making the determination are the same, the office may review the agency's determination, consult the agency, and advise the agency of potential conflicts, to comply with this section. The office shall publish the final determination for the public's information pursuant to section 343-3.

The draft and final statements, if required, shall be prepared by the agency and submitted to the office. The draft statement shall be made available for public review and comment through the office for a period of forty-five days. The office shall inform the public of the availability of the draft statement for public review and comment pursuant to section 343-3. The agency shall respond in writing to comments received during the review and prepare a final statement.
The office, when requested by the agency, may make a recommendation as to the acceptability of the final statement.

(d) The final authority to accept a final statement shall rest with:

(1) The governor, or the governor's authorized representative, whenever an action proposes the use of state lands or the use of state funds, or whenever a state agency proposes an action within the categories in subsection (a); or

(2) The mayor, or the mayor's authorized representative, of the respective county whenever an action proposes only the use of county lands or county funds.

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

(e) Whenever an applicant proposes an action specified by subsection (a) that requires approval of an agency and that is
not a specific type of action declared exempt under section 343-6, the agency initially receiving and agreeing to process the request for approval shall require the applicant to prepare an environmental assessment of the proposed action at the earliest practicable time to determine whether an environmental impact statement shall be required; provided that if the agency determines, through its judgment and experience, that an environmental impact statement is likely to be required, the agency may authorize the applicant to choose not to prepare an environmental assessment and instead prepare an environmental impact statement that begins with the preparation of an environmental impact statement preparation notice as provided by rules. The final approving agency for the request for approval is not required to be the accepting authority.

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

(1) A draft environmental assessment shall be made available for public review and comment for a period of thirty days;
(2) The office shall inform the public of the availability of the draft environmental assessment for public review and comment pursuant to section 343-3; and

(3) The applicant shall respond in writing to comments received during the review and the applicant shall prepare a final environmental assessment to determine whether an environmental impact statement shall be required. A statement shall be required if the agency finds that the proposed action may have a significant effect on the environment. The agency shall file notice of the agency's determination with the office, which, in turn, shall publish the agency's determination for the public's information pursuant to section 343-3.

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

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

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

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

Acceptance of a required final statement shall be a
condition precedent to approval of the request and commencement
of the proposed action. Upon acceptance or nonacceptance of the
final statement, the agency shall file notice of the
determination with the office. The office, in turn, shall
publish the determination of acceptance or nonacceptance of the
final statement pursuant to section 343-3.
The agency receiving the request, within thirty days of receipt of the final statement, shall notify the applicant and the office of the acceptance or nonacceptance of the final statement. The final statement shall be deemed to be accepted if the agency fails to accept or not accept the final statement within thirty days after receipt of the final statement; provided that the thirty-day period may be extended at the request of the applicant for a period not to exceed fifteen days.

In any acceptance or nonacceptance, the agency shall provide the applicant with the specific findings and reasons for its determination. An applicant, within sixty days after nonacceptance of a final statement by an agency, may appeal the nonacceptance to the environmental council, which, within thirty days of receipt of the appeal, shall notify the applicant of the council's determination. In any affirmation or reversal of an appealed nonacceptance, the council shall provide the applicant and agency with specific findings and reasons for its determination. The agency shall abide by the council's decision.
(f) Whenever an applicant requests approval for a proposed action and there is a question as to which of two or more state or county agencies with jurisdiction has the responsibility of determining whether an environmental assessment is required, the office, after consultation with and assistance from the affected state or county agencies, shall determine which agency has the responsibility for determining whether an environmental assessment by the applicant is required, except in situations involving secondary actions under section 343-5.5; provided that in no case shall the office be considered the approving agency.

(g) In preparing an environmental assessment, an 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 council, by rule, shall establish criteria and procedures for the use of previous determinations and statements.

(h) 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 office and agencies shall cooperate with federal agencies to the fullest extent possible.
to reduce duplication between federal and state requirements. Such cooperation, to the fullest extent possible, shall include joint environmental impact statements with concurrent public review and processing at both levels of government. Where federal law has environmental impact statement requirements in addition to but not in conflict with this chapter, the office and agencies shall cooperate in fulfilling these requirements so that one document shall comply with all applicable laws.

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

(j) Notwithstanding anything in this chapter to the contrary, if an action other than one involving a renewable energy project has not been implemented within fifteen years of the date of:

(1) The determination of a finding of no significant impact, the agency that prepared the environmental assessment shall prepare a supplemental environmental assessment; and
(2) The acceptance of an environmental impact statement, the accepting authority shall require the preparation of a supplemental environmental impact statement.

(k) When a supplemental environmental assessment or environmental impact statement is required pursuant to subsection (j), the supplemental document shall comply with all the requirements of this chapter, including the review and filing deadlines, and rules adopted pursuant to section 343-6 as of the date of the determination that a supplemental document is required."

SECTION 2. Section 343-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

(1) Prescribe the procedures whereby a group of proposed actions may be treated by a single environmental assessment or statement;

(2) Establish procedures whereby specific types of actions, because they will probably have minimal or no
significant effects on the environment, are declared
exempt from the preparation of an environmental
assessment;

(3) Prescribe procedures for the preparation of an
environmental assessment;

(4) Prescribe the contents of an environmental assessment;

(5) Prescribe procedures for informing the public of
determinations that a statement is either required or
not required, for informing the public of the
availability of draft environmental impact statements
for review and comments, and for informing the public
of the acceptance or nonacceptance of the final
environmental statement;

(6) Prescribe the contents of an environmental impact
statement;

(7) Prescribe procedures for the submission, distribution,
review, acceptance or nonacceptance, and withdrawal of
an environmental impact statement;

(8) Establish criteria to determine whether an
environmental impact statement is acceptable or not;
(9) Prescribe procedures and criteria, as necessary, relating to supplemental environmental assessments and supplemental environmental impact statements; and

[+9+] (10) Prescribe procedures to appeal the nonacceptance of an environmental impact statement to the environmental council."

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

SECTION 4. This Act shall take effect on July 1, 2050.
Report Title:
Environmental Impact Statements; Environmental Assessments; Supplements

Description:
Requires a supplemental environmental assessment or supplemental environmental impact statement after the passage of 15 years from the date of the determination of a finding of no significant impact or the acceptance of the statement, if the proposed action is not implemented. Exempts actions involving a renewable energy project from this requirement. Effective 7/1/2050. (SD2)

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