
A BILL FOR AN ACT

RELATING TO ENVIRONMENTAL IMPACT STATEMENTS.

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

1 SECTION 1. 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 agency shall consider environmental factors and
13 available alternatives in its feasibility or planning
14 studies; provided further that an environmental
15 assessment for proposed uses under section 205-2(d)(9)
16 or [†]205-4.5(a)(13)[†] shall only be required
17 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,~~]
8 national register of historic places or the Hawaii
9 register of historic places, as provided for in the
10 Historic Preservation Act of 1966, Public Law 89-665,
11 or chapter 6E;
- 12 (5) Propose any use within the Waikiki area of Oahu, the
13 boundaries of which are delineated in the land use
14 ordinance as amended, establishing the "Waikiki
15 Special District";
- 16 (6) Propose any amendments to existing county general
17 plans where the amendment would result in designations
18 other than agriculture, conservation, or preservation,
19 except actions proposing any new county general plan
20 or amendments to any existing county general plan
21 initiated by a county;



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

4 (8) Propose the construction of new or the expansion or
5 modification of existing helicopter facilities within
6 the State, that by way of their activities, may
7 affect:

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

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

12 (C) Any historic site as designated in the [~~National~~
13 ~~Register or Hawaii Register,~~] national register
14 of historic places or the Hawaii register of
15 historic places, as provided for in the Historic
16 Preservation Act of 1966, Public Law 89-665, or
17 chapter 6E; or until the statewide historic
18 places inventory is completed, any historic site
19 that is found by a field reconnaissance of the
20 area affected by the helicopter facility and is
21 under consideration for placement on the
22 [~~National Register or the Hawaii Register of~~



1 ~~Historic Places;~~] national register of historic
2 places or the Hawaii register of historic places;
3 and

4 (9) Propose any:

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

9 (B) Waste-to-energy facility;

10 (C) Landfill;

11 (D) Oil refinery; or

12 (E) Power-generating facility.

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



- 1 (1) For environmental assessments for which a finding of
2 no significant impact is anticipated:
- 3 (A) A draft environmental assessment shall be made
4 available for public review and comment for a
5 period of thirty days;
- 6 (B) The office shall inform the public of the
7 availability of the draft environmental
8 assessment for public review and comment pursuant
9 to section 343-3;
- 10 (C) The agency shall respond in writing to comments
11 received during the review and prepare a final
12 environmental assessment to determine whether an
13 environmental impact statement shall be required;
- 14 (D) A statement shall be required if the agency finds
15 that the proposed action may have a significant
16 effect on the environment; and
- 17 (E) The agency shall file notice of [~~such~~] the
18 determination with the office. When a conflict
19 of interest may exist because the proposing
20 agency and the agency making the determination
21 are the same, the office may review the agency's
22 determination, consult the agency, and advise the



1 agency of potential conflicts, to comply with
2 this section. The office shall publish the final
3 determination for the public's information
4 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) The final authority to accept a final statement shall
16 rest with:

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



1 (B) The mayor, or the mayor's authorized
2 representative, of the respective county whenever
3 an action proposes only the use of county lands
4 or county 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~~] the determination
10 with the office. The office, in turn, shall publish the
11 determination of acceptance or nonacceptance pursuant to section
12 343-3.

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

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.

16 The agency shall file notice of the agency's
17 determination with the office, which, in turn, shall
18 publish the agency's determination for the public's
19 information pursuant to 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~~] the
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. An applicant, within sixty days after
15 nonacceptance of a final statement by an agency, may appeal the
16 nonacceptance to the environmental council, which, within thirty
17 days of receipt of the appeal, shall notify the applicant of the
18 council's determination. In any affirmation or reversal of an
19 appealed nonacceptance, the council shall provide the applicant
20 and agency with specific findings and reasons for its
21 determination. The agency shall abide by the council's
22 decision.



1 (d) Whenever an applicant simultaneously requests approval
2 for a proposed action from two or more agencies and there is a
3 question as to which agency has the responsibility of preparing
4 the environmental assessment, the office, after consultation
5 with the agencies involved, shall determine which agency shall
6 prepare the assessment.

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

14 (f) Whenever an action is subject to both the National
15 Environmental Policy Act of 1969 (Public Law 91-190) and the
16 requirements of this chapter, the office and agencies shall
17 cooperate with federal agencies to the fullest extent possible
18 to reduce duplication between federal and state requirements.
19 Such cooperation, to the fullest extent possible, shall include
20 joint environmental impact statements with concurrent public
21 review and processing at both levels of government. Where
22 federal law has environmental impact statement requirements in



1 addition to but not in conflict with this chapter, the office
2 and agencies shall cooperate in fulfilling these requirements so
3 that one document shall comply with all applicable laws.

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

8 (h) Anything in this chapter to the contrary
9 notwithstanding, if upon the passage of ten years following:

10 (1) The filing of a finding of no significant impact, an
11 action has not been implemented or completed, the
12 agency that prepared the environmental assessment
13 shall prepare and file a supplemental environmental
14 assessment that shall be subject to the review and
15 filing provisions of this section; and

16 (2) The acceptance of an environmental impact statement,
17 an action has not been implemented or completed, the
18 accepting authority may require the filing of a
19 supplemental environmental impact statement that shall
20 be subject to the review and filing provisions of this
21 section.



1 (i) If a supplemental environmental assessment or
2 environmental impact statement is required pursuant to
3 subsection (h):

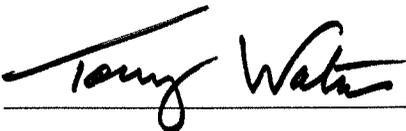
4 (1) The supplemental document shall address all the
5 requirements of this chapter and the rules adopted to
6 implement the chapter as of the date of the submittal
7 of the supplemental document; and

8 (2) The subsequent filing of a finding no significant
9 impact, acceptance of the supplemental environmental
10 impact statement, or the declaration that the action
11 is exempt under section 343-6 shall be a condition to
12 the implementation or completion of the proposed
13 action."

14 SECTION 2. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 3. This Act shall take effect upon its approval.

17

INTRODUCED BY: 

JAN 19 2007



Report Title:

Environmental Impact Statements; Assessments; Supplements

Description:

Allows requirement of environmental impact statement, and requires supplemental environmental assessment after the passage of 10 years from the date of the acceptance of the statement or the filing of a finding of no significant impact, if the proposed action is not completed.

