

JAN 17 2020

A BILL FOR AN ACT

RELATING TO THE ENVIRONMENTAL IMPACT STATEMENT LAW.

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-
16 2(d)(11) 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,~~] of
8 Historic Places or the Hawaii register of historic
9 places, as provided for in the Historic Preservation
10 Act of 1966, Public Law 89-665, or chapter 6E;
- 11 (5) Propose any use within the Waikiki area of Oahu, the
12 boundaries of which are delineated in the land use
13 ordinance as amended, establishing the "Waikiki
14 Special District";
- 15 (6) Propose any amendments to existing county general
16 plans where the amendment would result in designations
17 other than agriculture, conservation, or preservation,
18 except actions proposing any new county general plan
19 or amendments to any existing county general plan
20 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,~~] of Historic Places
14 or the Hawaii register of historic places, as
15 provided for in the Historic Preservation Act of
16 1966, Public Law 89-665, or chapter 6E; or until
17 the statewide historic places inventory is
18 completed, any historic site that is found by a
19 field reconnaissance of the area affected by the
20 helicopter facility and is under consideration
21 for placement on the National Register [~~or the~~



1 ~~Hawaii Register of Historic Places,]~~ of Historic
2 Places or the Hawaii register of historical
3 places; 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 343-
19 6, the agency shall prepare an environmental assessment for the
20 action at the earliest practicable time to determine whether an
21 environmental impact statement shall be required; provided that



1 if the agency determines, through its judgment and experience,
2 that an environmental impact statement is likely to be required,
3 the agency may choose not to prepare an environmental assessment
4 and instead shall prepare an environmental impact statement that
5 begins with the preparation of an environmental impact statement
6 preparation notice as provided by rules.

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

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

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

15 (3) The agency shall respond in writing to comments
16 received during the review and prepare a final
17 environmental assessment to determine whether an
18 environmental impact statement shall be required;

19 (4) A statement shall be required if the agency finds that
20 the proposed action may have a significant effect on
21 the environment; and



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

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

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

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



- 1 (1) The governor, or the governor's authorized
2 representative, whenever an action proposes the use of
3 state lands or the use of state funds, or whenever a
4 state agency proposes an action within the categories
5 in subsection (a); or
- 6 (2) The mayor, or the mayor's authorized representative,
7 of the respective county whenever an action proposes
8 only the use of county lands or county funds.

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

16 (e) Whenever an applicant proposes an action specified by
17 subsection (a) that requires approval of an agency and that is
18 not a specific type of action declared exempt under section 343-
19 6, the agency initially receiving and agreeing to process the
20 request for approval shall require the applicant to prepare an
21 environmental assessment of the proposed action at the earliest



1 practicable time to determine whether an environmental impact
2 statement shall be required; provided that if the agency
3 determines, through its judgment and experience, that an
4 environmental impact statement is likely to be required, the
5 agency may authorize the applicant to choose not to prepare an
6 environmental assessment and instead prepare an environmental
7 impact statement that begins with the preparation of an
8 environmental impact statement preparation notice as provided by
9 rules. The final approving agency for the request for approval
10 is not required to be the accepting 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 and the applicant shall
21 prepare a final environmental assessment to determine



1 whether an environmental impact statement shall be
2 required. A statement shall be required if the agency
3 finds that the proposed action may have a significant
4 effect on the environment. The agency shall file
5 notice of the agency's determination with the office,
6 which, in turn, shall publish the agency's
7 determination for the public's information pursuant to
8 section 343-3.

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

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

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



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

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

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



1 request of the applicant for a period not to exceed fifteen
2 days.

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

14 (f) Whenever an applicant requests approval for a proposed
15 action and there is a question as to which of two or more state
16 or county agencies with jurisdiction has the responsibility of
17 determining whether an environmental assessment is required, the
18 office, after consultation with and assistance from the affected
19 state or county agencies, shall determine which agency has the
20 responsibility for determining whether an environmental
21 assessment by the applicant is required, except in situations



1 involving secondary actions under section 343-5.5; provided that
2 in no case shall the office be considered the approving agency.

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

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



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

5 (j) Notwithstanding anything in this chapter to the
6 contrary, if an action has not been implemented or completed
7 within fifteen years of the date of:

8 (1) The determination of a finding of no significant
9 impact, the agency that prepared the environmental
10 assessment shall prepare a supplemental environmental
11 assessment; and

12 (2) The acceptance of an environmental impact statement,
13 the accepting authority shall require the preparation
14 of a supplemental environmental impact statement.

15 (k) When a supplemental environmental assessment or
16 environmental impact statement is required pursuant to
17 subsection (j):

18 (1) The supplemental document shall comply with all the
19 requirements of this chapter, including review and
20 filing deadlines, and rules adopted pursuant to



1 section 343-6 as of the date of the determination that
2 a supplemental document is required; and
3 (2) The subsequent determination of a finding of no
4 significant impact, acceptance of the supplemental
5 environmental impact statement, or the declaration
6 that the action is exempt under section 343-6 shall be
7 a condition precedent to the implementation or
8 completion of the proposed action."

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

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

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

18 (2) Establish procedures whereby specific types of
19 actions, because they will probably have minimal or no
20 significant effects on the environment, are declared



- 1 exempt from the preparation of an environmental
2 assessment;
- 3 (3) Prescribe procedures for the preparation of an
4 environmental assessment;
- 5 (4) Prescribe the contents of an environmental assessment;
- 6 (5) Prescribe procedures for informing the public of
7 determinations that a statement is either required or
8 not required, for informing the public of the
9 availability of draft environmental impact statements
10 for review and comments, and for informing the public
11 of the acceptance or nonacceptance of the final
12 environmental statement;
- 13 (6) Prescribe the contents of an environmental impact
14 statement;
- 15 (7) Prescribe procedures for the submission, distribution,
16 review, acceptance or nonacceptance, and withdrawal of
17 an environmental impact statement;
- 18 (8) Establish criteria to determine whether an
19 environmental impact statement is acceptable or not;
20 [and]



1 (9) Prescribe procedures and criteria, as necessary,
 2 relating to supplemental environmental assessments and
 3 environmental impact statements; and
 4 ~~(9)~~ (10) Prescribe procedures to appeal the nonacceptance
 5 of an environmental impact statement to the
 6 environmental council."

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

9 SECTION 4. This Act shall take effect on July 1, 2020.

10

INTRODUCED BY:

~~DC Keith Agan~~

Kal Rhoads

Paul E. Johnson



S.B. NO. 2663

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 acceptance of the statement or the determination of a finding of no significant impact, if the proposed action is not completed.

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