
A BILL FOR AN ACT

RELATING TO SUSTAINABILITY.

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

1 SECTION 1. Chapter 225M, Hawaii Revised Statutes, is
2 amended by adding two new sections to be appropriately
3 designated and to read as follows:
4 "§225M- Environmental advisory council; established.
5 (a) There is created an environmental advisory council not to
6 exceed fifteen members. Members of the environmental advisory
7 council shall be appointed by the governor as provided in
8 section 26-34. The environmental advisory council shall be
9 established within the office of planning for administrative
10 purposes. The term of each member shall be four years; provided
11 that of the members initially appointed five members shall serve
12 for four years, five members shall serve for three years, and
13 the remaining five members shall serve for two years. Vacancies
14 shall be filled for the remainder of any unexpired term in the
15 same manner as original appointments. The environmental
16 advisory council chairperson shall be elected by the council
17 from among the appointed members of the council.



1 (b) Members shall be appointed to ensure a broad and
2 balanced representation of educational, business, and
3 environmentally pertinent disciplines and professions, such as
4 the natural and social sciences, the humanities, architecture,
5 engineering, environmental consulting, public health, and
6 planning; educational and research institutions with
7 environmental competence; agriculture, real estate, visitor
8 industry, construction, and media; and voluntary community and
9 environmental groups. The members of the environmental advisory
10 council shall serve without compensation but shall be reimbursed
11 for actual and necessary expenses, including travel expenses,
12 incurred in the discharge of their duties.

13 **§225M- Functions of the environmental advisory council.**
14 The environmental advisory council shall serve as a liaison
15 between the sustainability and environmental review division and
16 the general public by soliciting information, opinions,
17 complaints, recommendations, and advice concerning ecology and
18 environmental quality through public hearings or any other means
19 and by publicizing such matters. The council may make
20 recommendations concerning ecology and environmental quality to
21 the sustainability and environmental review division and shall



1 meet at the call of the council chairperson or the director upon
2 notifying the council chairperson. The environmental advisory
3 council shall monitor the progress of state, county, and federal
4 agencies in achieving the State's environmental and
5 sustainability goals and policies."

6 SECTION 2. Section 10-41, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

8 "(a) The training required by this part shall apply to
9 members of the land use commission, board of land and natural
10 resources, commission on water resource management,
11 environmental advisory council, board of directors of the
12 agribusiness development corporation, board of agriculture,
13 legacy land conservation commission, natural area reserves
14 system commission, and Hawaii historic places review board."

15 SECTION 3. Section 128D-31, Hawaii Revised Statutes, is
16 amended by amending subsection (b) to read as follows:

17 "(b) Additionally, within ten days of receiving an
18 application and processing fee, the department shall:

19 (1) Post a sign at the site notifying the public of
20 participation in the voluntary response program, the



1 public's opportunity to comment, and how a copy of the
2 application may be obtained; and
3 (2) Send a brief summary of the application to the [~~office~~
4 ~~of environmental quality control~~] sustainability and
5 environmental review division for publication in the
6 office's bulletin along with instructions for
7 obtaining a copy of the application and commenting
8 procedures to the department.

9 The comment period shall run concurrently with and shall not
10 delay the application process."

11 SECTION 4. Section 128E-2, Hawaii Revised Statutes, is
12 amended by amending subsection (b) to read as follows:

13 "(b) The commission shall consist of the following
14 members, who shall be appointed by the governor as provided in
15 section 26-34:

- 16 (1) The director of health;
- 17 (2) The chairperson of the board of agriculture;
- 18 (3) The adjutant general;
- 19 (4) The director of labor and industrial relations;
- 20 (5) The chairperson of the board of land and natural
21 resources;



- 1 (6) The [~~director of the office of environmental quality~~
2 ~~control;~~] director of the office of planning;
- 3 (7) The director of business, economic development, and
4 tourism;
- 5 (8) The director of transportation;
- 6 (9) The dean of the University of Hawaii school of public
7 health or the dean of the University of Hawaii school
8 of medicine, as determined by the governor;
- 9 (10) [~~The director of the environmental center of the~~
10 ~~University of Hawaii;~~
- 11 ~~(11)]~~ One representative from each committee designated by
12 the mayor of each respective county; and
- 13 ~~(12)]~~ (11) Other persons appointed by the governor to meet
14 the minimum requirements of the Emergency Planning and
15 Community Right-to-Know Act of 1986."

16 SECTION 5. Section 150A-10, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§150A-10 Advisory committee on plants and animals.** There
19 shall be an advisory committee on plants and animals composed of
20 the chairperson of the board or the chairperson's representative
21 who shall be chairperson of the committee, the chairperson of



1 the board of land and natural resources, the director of the
2 office of [~~environmental quality control~~,] planning or their
3 designee, the director of department of health or their
4 designees, and five other members, with expertise in plants,
5 animals, or microorganisms, and who, by virtue of their vocation
6 or avocation, also are thoroughly conversant with modern
7 ecological principles and the variety of problems involved in
8 the adequate protection of our natural resources. The latter
9 five members shall be chosen by the chairperson. The committee
10 shall advise and assist the department in developing or revising
11 laws and regulations to carry out and effectuate the purposes of
12 this chapter and in advising the department in problems relating
13 to the introduction, confinement, or release of plants, animals,
14 and microorganisms.

15 The chairperson may create ad hoc or permanent
16 subcommittees, as needed."

17 SECTION 6. Section 186-3, Hawaii Revised Statutes, is
18 amended by amending subsection (b) to read as follows:

19 "(b) All public hearings required by statute or rules of
20 the department shall be held before any management plan is
21 approved. The management plan shall be available to the public



1 not less than thirty days before approval. Notice of its
2 availability shall be published in the bulletin of the [~~office~~
3 ~~of environmental quality control.~~] sustainability and
4 environmental review division. The plan shall be reviewed
5 periodically by the board or its employees or authorized agents
6 at intervals of no more than every five years. The review shall
7 determine whether the owner has met the objectives in the
8 management plan. The board may approve or require in
9 consultation with the landowner alteration of the management
10 plan to adapt to current conditions."

11 SECTION 7. Section 195D-4, Hawaii Revised Statutes, is
12 amended as follows:

13 1. By amending subsection (g) to read:

14 "(g) After consultation with the endangered species
15 recovery committee, the board may issue a temporary license as a
16 part of a habitat conservation plan to allow a take otherwise
17 prohibited by subsection (e) if the take is incidental to, and
18 not the purpose of, the carrying out of an otherwise lawful
19 activity; provided that:

20 (1) The applicant, to the maximum extent practicable,
21 shall minimize and mitigate the impacts of the take;



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- 1 (2) The applicant shall guarantee that adequate funding
2 for the plan will be provided;
- 3 (3) The applicant shall post a bond, provide an
4 irrevocable letter of credit, insurance, or surety
5 bond, or provide other similar financial tools,
6 including depositing a sum of money in the endangered
7 species trust fund created by section 195D-31, or
8 provide other means approved by the board, adequate to
9 ensure monitoring of the species by the State and to
10 ensure that the applicant takes all actions necessary
11 to minimize and mitigate the impacts of the take;
- 12 (4) The plan shall increase the likelihood that the
13 species will survive and recover;
- 14 (5) The plan takes into consideration the full range of
15 the species on the island so that cumulative impacts
16 associated with the take can be adequately assessed;
- 17 (6) The measures, if any, required under section 195D-
18 21(b) shall be met, and the department has received
19 any other assurances that may be required so that the
20 plan may be implemented;



1 (7) The activity, which is permitted and facilitated by
2 issuing the license to take a species, does not
3 involve the use of submerged lands, mining, or
4 blasting;

5 (8) The cumulative impact of the activity, which is
6 permitted and facilitated by the license, provides net
7 environmental benefits; and

8 (9) The take is not likely to cause the loss of genetic
9 representation of an affected population of any
10 endangered, threatened, proposed, or candidate plant
11 species.

12 Board approval shall require an affirmative vote of not less
13 than two-thirds of the authorized membership of the board after
14 holding a public hearing on the matter on the affected island.

15 The department shall notify the public of a proposed license
16 under this section through publication in the periodic bulletin
17 of the [~~office of environmental quality control~~] sustainability
18 and environmental review division and make the application and
19 proposed license available for public review and comment for not
20 less than sixty days prior to approval."

21 2. By amending subsection (i) to read:



1 "(i) The department shall work cooperatively with federal
2 agencies in concurrently processing habitat conservation plans,
3 safe harbor agreements, and incidental take licenses pursuant to
4 the Endangered Species Act. After notice in the periodic
5 bulletin of the [~~office of environmental quality control~~]
6 sustainability and environmental review division and a public
7 hearing on the islands affected, which shall be held jointly
8 with the federal agency, if feasible, whenever a landowner seeks
9 both a federal and a state safe harbor agreement, habitat
10 conservation plan, or incidental take license, the board, by a
11 two-thirds majority vote, may approve the federal agreement,
12 plan, or license without requiring a separate state agreement,
13 plan, or license if the federal agreement, plan, or license
14 satisfies, or is amended to satisfy, all the criteria of this
15 chapter. All state agencies, to the extent feasible, shall work
16 cooperatively to process applications for habitat conservation
17 plans and safe harbor agreements on a consolidated basis
18 including concurrent processing of any state land use permit
19 application that may be required pursuant to chapter 183C or
20 205, so as to minimize procedural burdens upon the applicant."



1 SECTION 8. Section 195D-21, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) The department may enter into a planning process with
4 any landowner for the purpose of preparing and implementing a
5 habitat conservation plan. An agreement may include multiple
6 landowners. Applications to enter into a planning process shall
7 identify:

8 (1) The geographic area encompassed by the plan;

9 (2) The ecosystems, natural communities, or habitat types
10 within the plan area that are the focus of the plan;

11 (3) The endangered, threatened, proposed, and candidate
12 species known or reasonably expected to occur in the
13 ecosystems, natural communities, or habitat types in
14 the plan area;

15 (4) The measures or actions to be undertaken to protect,
16 maintain, restore, or enhance those ecosystems,
17 natural communities, or habitat types within the plan
18 area;

19 (5) A schedule for implementation of the proposed measures
20 and actions; and



1 (6) An adequate funding source to ensure that the proposed
2 measures and actions are undertaken in accordance with
3 the schedule.

4 After a habitat conservation plan is prepared, the board shall
5 notify the public of the proposed habitat conservation plan
6 through the periodic bulletin of the [~~office of environmental~~
7 ~~quality control~~] sustainability and environmental review
8 division and make the proposed plan and the application
9 available for public review and comment not less than sixty days
10 prior to approval. The notice shall include[~~7~~] but not be
11 limited to[~~7~~] identification of the area encompassed by the
12 plan, the proposed activity, and the ecosystems, natural
13 communities, and habitat types within the plan area. The notice
14 shall solicit public input and relevant data."

15 SECTION 9. Section 195D-22, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) To encourage landowners to voluntarily engage in
18 efforts that benefit endangered, threatened, proposed, and
19 candidate species, except as otherwise provided by law, the
20 board, upon approval by not less than two-thirds of the board's
21 authorized membership, after a public hearing on the island



1 affected, may enter into a safe harbor agreement with one or
2 more landowners to create, restore, or improve habitats or to
3 maintain currently unoccupied habitats that threatened or
4 endangered species can be reasonably expected to use, if the
5 board determines that the cumulative activities, if any,
6 contemplated to be undertaken within the areas covered by the
7 agreement are environmentally beneficial. In the event the
8 board votes to enter into a safe harbor agreement for which the
9 majority of the endangered species recovery committee
10 recommended disapproval, the board may not enter into the safe
11 harbor agreement unless the agreement is approved by a two-
12 thirds majority vote of both houses of the legislature. The
13 board shall notify the public of the proposed safe harbor
14 agreement through the periodic bulletin of the [~~office of~~
15 ~~environmental quality control~~] sustainability and environmental
16 review division and make the proposed agreement available for
17 public review and comment not less than sixty days prior to
18 approval."

19 SECTION 10. Section 195D-24, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "**§195D-24 Confidentiality.** All information submitted to
2 the board by a landowner pursuant to section 195D-21 or 195D-22,
3 in the course of preparing a habitat conservation plan or safe
4 harbor agreement for private lands, respectively, shall be kept
5 confidential until notice of the proposed plan or agreement is
6 published in the periodic bulletins of the [~~office of~~
7 ~~environmental quality control.~~] sustainability and environmental
8 review division. For habitat conservation plans or safe harbor
9 agreements for private lands, the precise location of any
10 threatened or endangered species may remain confidential."

11 SECTION 11. Section 205A-30, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§205A-30 Emergency and minor permits.** Each county
14 authority shall provide specific procedures consistent with this
15 part for the issuance of special management area emergency
16 permits or special management area minor permits, pursuant to
17 the procedural requirements within this part, and judicial
18 review from the grant and denial thereof. The lead agency shall
19 file notice of special management area minor permits in the next
20 available issue of the periodic bulletin of the [~~office of~~



1 ~~environmental quality control.] sustainability and environmental~~
2 ~~review division."~~

3 SECTION 12. Section 205A-42, Hawaii Revised Statutes, is
4 amended by amending subsection (b) to read as follows:

5 "(b) The chairperson of the board of land and natural
6 resources shall cause a public notice to be published in the
7 periodic bulletin published by the [~~office of environmental~~
8 ~~quality control.] sustainability and environmental review~~
9 ~~division.~~ All comments to the application for shoreline
10 certification shall be submitted in writing to the state land
11 surveyor no later than fifteen calendar days from the date of
12 the public notice of the application. Notice of application for
13 certification shall be identified by tax map key number, and
14 where applicable, street address and nearest town. "

15 SECTION 13. Section 225M, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "[+]§225M-8[+] **Statewide sustainability [~~branch~~] and**
18 **environmental review division; established.** (a) The statewide
19 sustainability [~~branch~~] and environmental review division is
20 established within the office of planning. [~~The state~~
21 ~~sustainability coordinator shall serve as the administrator of~~



1 ~~the branch.]~~ The [~~branch~~] division shall have the following
2 duties:

- 3 (1) Develop, organize, and promote policies and programs
4 that assist in the meeting of Hawaii's numerous
5 sustainability and climate policies and goals, and the
6 priority guidelines and principles to promote
7 sustainability set forth in section 226-108;
- 8 (2) Identify, evaluate, and make recommendations regarding
9 proposed legislation, regulatory changes, or policy
10 modifications to the governor, the legislature,
11 government agencies, private entities, and other
12 bodies for the purpose of encouraging activities that
13 best sustain, protect, and enhance the quality of the
14 environment, economy, and community for the present
15 and future benefit of the people of Hawaii; [~~and~~]
- 16 (3) Develop and promote proposals that jointly and
17 mutually enhance local economies, the environment, and
18 community well-being for the present and future
19 benefit of the people of Hawaii[~~-~~];



- 1 (4) Perform its duties under chapter 343 and serve the
- 2 governor in an advisory capacity on all matters
- 3 relating to sustainability and environmental review;
- 4 (5) Advise and assist private industries, government
- 5 departments and agencies, and other persons on the
- 6 requirements of chapter 343; and
- 7 (6) Conduct public education programs on environmental
- 8 quality control.

9 (b) The statewide sustainability and environmental review
10 division shall have such powers delegated by the governor as are
11 necessary to coordinate and, when requested by the governor,
12 direct pursuant to chapter 91 all state governmental agencies in
13 matters concerning environmental quality control.

14 (c) The director shall adopt rules in accordance with
15 chapter 91 necessary to implement this section."

16 SECTION 14. Section 225P-4, Hawaii Revised Statutes, is
17 amended by amending subsection (c) to read as follows:

18 "(c) The membership of the greenhouse gas sequestration
19 task force shall be as follows:

- 20 (1) The director of the office of planning or the
- 21 director's designee, who shall serve as chairperson;



- 1 (2) The chairperson of the board of agriculture or the
- 2 chairperson's designee;
- 3 (3) The chairperson of the board of land and natural
- 4 resources or the chairperson's designee;
- 5 (4) The director of transportation or the director's
- 6 designee;
- 7 (5) The deputy director of the department of health's
- 8 environmental health administration or the deputy
- 9 director's designee;
- 10 (6) The director of the office of [~~environmental quality~~
- 11 ~~control~~] planning or the director's designee;
- 12 (7) The director of the environmental law program at the
- 13 University of Hawaii at Manoa William S. Richardson
- 14 school of law;
- 15 (8) The administrator of the division of forestry and
- 16 wildlife within the department of land and natural
- 17 resources or the administrator's designee;
- 18 (9) One member who is also a member of the climate change
- 19 mitigation and adaptation commission;



- 1 (10) One researcher from the college of tropical
- 2 agriculture and human resources at the University of
- 3 Hawaii at Manoa;
- 4 (11) One extension agent from the college of tropical
- 5 agriculture and human resources at the University of
- 6 Hawaii at Manoa;
- 7 (12) Four members, one each to be appointed by the
- 8 respective mayors of the city and county of Honolulu,
- 9 and the counties of Hawaii, Kauai, and Maui; and
- 10 (13) Four members to be jointly selected and invited to
- 11 participate by the president of the senate and the
- 12 speaker of the house of representatives, of which two
- 13 members shall be selected from an environmental
- 14 nonprofit organization, and two members shall be
- 15 selected from an agricultural or ranching association.

16 Task force members may recommend to the task force
17 additional members with appropriate specialized expertise,
18 subject to approval by the chairperson."

19 SECTION 15. Section 279A-4, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "**§279A-4 Statewide transportation council; establishment.**

2 To assist and advise the state department of transportation in

3 the development of the statewide transportation plan there is

4 hereby established a statewide transportation council consisting

5 of fourteen members. The members of the council shall be the

6 directors of the state department of transportation, the state

7 department of business, economic development, and tourism, the

8 state department of health, the [~~state office of environmental~~

9 ~~quality control,~~] sustainability and environmental review

10 division, and the office of planning, the chairperson of the

11 board of agriculture, the planning directors of each of the four

12 counties, and the transportation directors of each of the four

13 counties. The members may be represented at council meetings by

14 their designated alternates. The director of the state

15 department of transportation shall submit recommendations to the

16 council for additional ex officio[+], [+] nonvoting members who,

17 upon the majority vote of the council, shall be invited to

18 serve.

19 The department of transportation shall furnish staff

20 support to the council; such staff may be exempt from chapter

21 76. The director of transportation shall be the chairperson of



1 the council. All decisions of the council shall be by majority
2 vote unless otherwise provided."

3 SECTION 16. Section 343-2, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By adding a new definition to be appropriately inserted
6 and to read:

7 ""Division" means the sustainability and environmental
8 review division."

9 2. By amending the definition of "council" to read:

10 ""Council" means the environmental advisory council."

11 3. By deleting the definition of "office".

12 [~~""Office" means the office of environmental quality~~
13 ~~control."~~]

14 SECTION 17. Section 343-3, Hawaii Revised Statutes, is
15 amended to read as follows:

16 **"§343-3 Public records and notice.** (a) All statements,
17 environmental assessments, and other documents prepared under
18 this chapter shall be made available for inspection by the
19 public during established [~~office~~] division hours.

20 (b) The [~~office~~] division shall inform the public of
21 notices filed by agencies of the availability of environmental



1 assessments for review and comments, of determinations that
2 statements are required or not required, of the availability of
3 statements for review and comments, and of the acceptance or
4 nonacceptance of statements.

5 (c) The [~~office~~] division shall inform the public of:

6 (1) A public comment process or public hearing if a
7 federal agency provides for the public comment process
8 or public hearing to process a habitat conservation
9 plan, safe harbor agreement, or incidental take
10 license pursuant to the federal Endangered Species
11 Act;

12 (2) A proposed habitat conservation plan or proposed safe
13 harbor agreement, and availability for inspection of
14 the proposed agreement, plan, and application to enter
15 into a planning process for the preparation and
16 implementation of the habitat conservation plan for
17 public review and comment;

18 (3) A proposed incidental take license as part of a
19 habitat conservation plan or safe harbor agreement;
20 and



1 (4) An application for the registration of land by
2 accretion pursuant to section 501-33 or 669-1(e) for
3 any land accreted along the ocean.

4 (d) The [~~office~~] division shall inform the public by the
5 publication of a periodic bulletin to be available to persons
6 requesting this information. The bulletin shall be available
7 through the [~~office~~] division and public libraries."

8 SECTION 18. Section 343-5, Hawaii Revised Statutes, is
9 amended as follows:

10 1. By amending subsections (c) through (f) to read:

11 "(c) For environmental assessments for which a finding of
12 no 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~~] division shall inform the public of the
17 availability of the draft environmental assessment for
18 public review and comment pursuant to section 343-3;

19 (3) The agency shall respond in writing to comments
20 received during the review and prepare a final



1 environmental assessment to determine whether an
2 environmental impact statement shall be required;

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

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

15 The draft and final statements, if required, shall be
16 prepared by the agency and submitted to the ~~[office-]~~ division.
17 The draft statement shall be made available for public review
18 and comment through the ~~[office]~~ division for a period of forty-
19 five days. The ~~[office]~~ division shall inform the public of the
20 availability of the draft statement for public review and
21 comment pursuant to section 343-3. The agency shall respond in



1 writing to comments received during the review and prepare a
2 final statement.

3 The [~~office,~~] division, when requested by the agency, may
4 make a recommendation as to the acceptability of the final
5 statement.

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

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

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

16 Acceptance of a required final statement shall be a
17 condition precedent to implementation of the proposed action.

18 Upon acceptance or nonacceptance of the final statement, the
19 governor or mayor, or the governor's or mayor's authorized
20 representative, shall file notice of such determination with the
21 [~~office,~~] division. The [~~office,~~] division, in turn, shall



1 publish the determination of acceptance or nonacceptance
2 pursuant to section 343-3.

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

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



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



1 The draft statement shall be made available for public
2 review and comment through the [~~office~~] division for a period of
3 forty-five days. The [~~office~~] division shall inform the public
4 of the availability of the draft statement for public review and
5 comment pursuant to 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 division], 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 the
21 determination with the [~~office~~] division. The [~~office~~,



1 division, in turn, shall publish the determination of acceptance
2 or nonacceptance of the final statement pursuant to section
3 343-3.

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

13 In any acceptance or nonacceptance, the agency shall
14 provide the applicant with the specific findings and reasons for
15 its determination. [~~An applicant, within sixty days after~~
16 ~~nonacceptance of a final statement by an agency, may appeal the~~
17 ~~nonacceptance to the environmental council, which, within thirty~~
18 ~~days of receipt of the appeal, shall notify the applicant of the~~
19 ~~council's determination. In any affirmation or reversal of an~~
20 ~~appealed nonacceptance, the council shall provide the applicant~~
21 ~~and agency with specific findings and reasons for its~~



1 ~~determination. The agency shall abide by the council's~~
2 ~~decision.]~~

3 (f) Whenever an applicant requests approval for a proposed
4 action and there is a question as to which of two or more state
5 or county agencies with jurisdiction has the responsibility of
6 determining whether an environmental assessment is required, the
7 ~~[office]~~ division, after consultation with and assistance from
8 the affected state or county agencies, shall determine which
9 agency has the responsibility for determining whether an
10 environmental assessment by the applicant is required, except in
11 situations involving secondary actions under section 343-5.5;
12 provided that in no case shall the ~~[office]~~ division be
13 considered the approving agency."

14 2. By amending subsection (h) to read:

15 "(h) Whenever an action is subject to both the National
16 Environmental Policy Act of 1969 (Public Law 91-190) and the
17 requirements of this chapter, the ~~[office]~~ division and agencies
18 shall cooperate with federal agencies to the fullest extent
19 possible to reduce duplication between federal and state
20 requirements. Such cooperation, to the fullest extent possible,
21 shall include joint environmental impact statements with



1 concurrent public review and processing at both levels of
2 government. Where federal law has environmental impact
3 statement requirements in addition to but not in conflict with
4 this chapter, the [~~office~~] division and agencies shall cooperate
5 in fulfilling these requirements so that one document shall
6 comply with all applicable laws."

7 SECTION 19. Section 343-6, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) After consultation with the affected agencies, the
10 [~~council~~] office of planning shall adopt, amend, or repeal
11 necessary rules for the purposes of this chapter in accordance
12 with chapter 91 including[~~7~~] but not limited to[~~7~~] rules that
13 shall:

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

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



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



1 SECTION 20. Section 343-7, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "(a) Any judicial proceeding, the subject of which is the
4 lack of assessment required under section 343-5, shall be
5 initiated within one hundred twenty days of the agency's
6 decision to carry out or approve the action, or, if a proposed
7 action is undertaken without a formal determination by the
8 agency that a statement is or is not required, a judicial
9 proceeding shall be instituted within one hundred twenty days
10 after the proposed action is started. The [~~council or office,~~
11 division, any agency responsible for approval of the action, or
12 the applicant shall be adjudged an aggrieved party for the
13 purposes of bringing judicial action under this subsection.
14 Others, by environmental court action, may be adjudged
15 aggrieved.

16 (b) Any judicial proceeding, the subject of which is the
17 determination that a statement is required for a proposed
18 action, shall be initiated within sixty days after the public
19 has been informed of such determination pursuant to section 343-
20 3. Any judicial proceeding, the subject of which is the
21 determination that a statement is not required for a proposed



1 action, shall be initiated within thirty days after the public
2 has been informed of such determination pursuant to section 343-
3 3. The [~~council~~] division or the applicant shall be adjudged an
4 aggrieved party for the purposes of bringing judicial action
5 under this subsection. Others, by environmental court action,
6 may be adjudged aggrieved.

7 (c) Any judicial proceeding, the subject of which is the
8 acceptance or nonacceptance of an environmental impact statement
9 required under section 343-5, shall be initiated within sixty
10 days after the public has been informed pursuant to section 343-
11 3 of the acceptance of such statement. [~~The council shall be~~
12 ~~adjudged an aggrieved party for the purpose of bringing judicial~~
13 ~~action under this subsection.~~] Affected agencies and persons
14 who provided written comment to such statement during the
15 designated review period shall be adjudged aggrieved parties for
16 the purpose of bringing judicial action under this subsection;
17 provided that for aggrieved parties, the contestable issues
18 shall be limited to issues identified and discussed in the
19 written comment[~~-~~], and for applicants, the contestable issues
20 shall be limited to those issues identified by the accepting
21 authority as the basis for nonacceptance of the statement."



1 SECTION 21. Section 501-33, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "[+] (b) [+] The applicant shall supply the [~~office of~~
4 ~~environmental quality control~~] sustainability and environmental
5 review division with notice of the application, for publication
6 in the [~~office's~~] division's periodic bulletin in compliance
7 with section 343-3(c) (4). The application shall not be approved
8 unless the [~~office of environmental quality control~~]
9 sustainability and environmental review division has published
10 notice in the [~~office's~~] division's periodic bulletin."

11 SECTION 22. Section 669-1, Hawaii Revised Statutes, is
12 amended by amending subsection (e) to read as follows:

13 "(e) Action may be brought by any person to quiet title to
14 land by accretion; provided that no action shall be brought by
15 any person other than the State to quiet title to land accreted
16 along the ocean after May 20, 2003, except that a private
17 property owner whose eroded land has been restored by accretion
18 may also bring such an action for the restored portion. The
19 person bringing the action shall prove by a preponderance of the
20 evidence that the accretion is natural and permanent and that
21 the land accreted before or on May 20, 2003. The person



1 bringing the action shall supply the [~~office of environmental~~
2 ~~quality control~~] sustainability and environmental review
3 division with notice of the action for publication in the
4 office's periodic bulletin in compliance with section 343-
5 3(c)(4). The quiet title action shall not be decided by the
6 court unless the [~~office of environmental quality control~~]
7 sustainability and environmental review division has properly
8 published notice of the action in the office's periodic
9 bulletin.

10 As used in this section, "permanent" means that the
11 accretion has been in existence for at least twenty years. The
12 accreted portion of land shall be considered within the
13 conservation district. Land accreted after May 20, 2003, shall
14 be public land except as otherwise provided in this section.
15 Prohibited uses are governed by section 183-45."

16 SECTION 23. Subpart G of part IV of chapter 304A, Hawaii
17 Revised Statutes, is repealed.

18 SECTION 24. Chapter 341, Hawaii Revised Statutes, is
19 repealed.



1 SECTION 25. All rights, powers, functions, and duties of
2 the office of environmental quality control are transferred to
3 the sustainability and environmental review division.

4 SECTION 26. All individuals currently employed at the
5 office of environmental quality control are transferred to the
6 sustainability and environmental review division.

7 Each employee impacted by this Act who occupies a civil
8 service position shall retain their civil service status,
9 whether permanent or temporary. Each employee shall be
10 transferred without loss of salary, seniority (except as
11 prescribed by applicable collective bargaining agreements),
12 retention points, prior service credit, any vacation and sick
13 leave credits previously earned, and other rights, benefits, and
14 privileges, in accordance with state personnel laws and this
15 Act; provided that the employees possess the minimum
16 qualifications and public employment requirements for the class
17 or position to which transferred or appointed, as applicable;
18 provided further that subsequent changes in status may be made
19 pursuant to applicable civil service and compensation laws.

20 Any employee who, prior to this Act, is exempt from civil
21 service may retain the employee's exempt status after the



1 transfer in this Act, but shall not be appointed to a civil
2 service position as a consequence of this Act. Any exempt
3 employee that is transferred by this Act shall not suffer any
4 loss of prior service credit, vacation or sick leave credits
5 previously earned, or other employee benefits or privileges as a
6 consequence of this Act; provided that the employees possess
7 legal and public employment requirements for the position to
8 which transferred or appointed, as applicable; provided further
9 that subsequent changes in status may be made pursuant to
10 applicable employment and compensation laws. The director of
11 the office of planning may prescribe the duties and
12 qualifications of these employees and fix their salaries without
13 regard to chapter 76, Hawaii Revised Statutes.

14 SECTION 27. All appropriations, records, equipment,
15 machines, files, supplies, contracts, books, papers, documents,
16 maps, and other personal property heretofore made, used,
17 acquired, or held by the office of environmental quality control
18 relating to the functions transferred to the sustainability and
19 environmental review division shall be transferred with the
20 functions to which they relate.



1 SECTION 28. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 29. This Act shall take effect upon its approval.

4

INTRODUCED BY: *Mike E. Lowe*

JAN 27 2021



H.B. NO. 1318

Report Title:

Environmental Review; Office of Environmental Quality Control; Sustainability and Environmental Review Division; Environmental Advisory Council; Establishment

Description:

Restructures the statewide sustainability branch as the sustainability and environmental review division. Transfers the environmental council from the department of health to be established in the office of planning as the environmental advisory council. Transfers the rights, powers, employees, appropriations, and other personal property from the office of environmental quality control to the sustainability and environmental review division. Amends the ability for an applicant to appeal nonacceptance of an environmental impact statement from the environmental council to the environmental advisory council.

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

