

JAN 22 2021

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



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

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

- 10 (1) A draft environmental assessment shall be made  
11 available for public review and comment for a period  
12 of thirty days;
- 13 (2) The office shall inform the public of the availability  
14 of the draft environmental assessment for public  
15 review and comment pursuant to section 343-3;
- 16 (3) The agency shall respond in writing to comments  
17 received during the review and prepare a final  
18 environmental assessment to determine whether an  
19 environmental impact statement shall be required;



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

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

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



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

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

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

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

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

20          (e) Whenever an applicant proposes an action specified by  
21 subsection (a) that requires approval of an agency and that is



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

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

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



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

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

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

18          The draft statement shall be made available for public  
19          review and comment through the office for a period of forty-five  
20          days. The office shall inform the public of the availability of



1 the draft statement for public review and comment pursuant to  
2 section 343-3.

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

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

14 Acceptance of a required final statement shall be a  
15 condition precedent to approval of the request and commencement  
16 of the proposed action. Upon acceptance or nonacceptance of the  
17 final statement, the agency shall file notice of the  
18 determination with the office. The office, in turn, shall  
19 publish the determination of acceptance or nonacceptance of the  
20 final statement pursuant to section 343-3.



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

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



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

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

18           (h) Whenever an action is subject to both the National  
19 Environmental Policy Act of 1969 (Public Law 91-190) and the  
20 requirements of this chapter, the office and agencies shall  
21 cooperate with federal agencies to the fullest extent possible



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

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

13 (j) Notwithstanding anything in this chapter to the  
14 contrary, if a project, other than one involving a renewable  
15 energy project; or a housing project that has commenced and has  
16 completed ten per cent of its affordable or workforce housing  
17 component, has not been issued a certificate of occupancy within  
18 fifteen years of the date of:

19 (1) The determination of a finding of no significant  
20 impact, the agency that prepared the environmental



1           assessment shall prepare a supplemental environmental  
2           assessment; or

3           (2) The acceptance of an environmental impact statement,  
4           the accepting authority shall require the preparation  
5           of a supplemental environmental impact statement.

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

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

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

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



- 1           (2) Establish procedures whereby specific types of  
2           actions, because they will probably have minimal or no  
3           significant effects on the environment, are declared  
4           exempt from the preparation of an environmental  
5           assessment;
- 6           (3) Prescribe procedures for the preparation of an  
7           environmental assessment;
- 8           (4) Prescribe the contents of an environmental assessment;
- 9           (5) Prescribe procedures for informing the public of  
10          determinations that a statement is either required or  
11          not required, for informing the public of the  
12          availability of draft environmental impact statements  
13          for review and comments, and for informing the public  
14          of the acceptance or nonacceptance of the final  
15          environmental statement;
- 16          (6) Prescribe the contents of an environmental impact  
17          statement;
- 18          (7) Prescribe procedures for the submission, distribution,  
19          review, acceptance or nonacceptance, and withdrawal of  
20          an environmental impact statement;



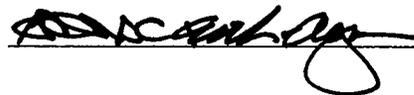
- 1           (8) Establish criteria to determine whether an  
2           environmental impact statement is acceptable or not;  
3           [and]  
4           (9) Prescribe procedures and criteria, as necessary,  
5           relating to supplemental environmental assessments and  
6           supplemental environmental impact statements; and  
7       ~~(9)~~ (10) Prescribe procedures to appeal the nonacceptance  
8           of an environmental impact statement to the  
9           environmental council."

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

12           SECTION 4. This Act shall take effect on July 1, 2021.

13

INTRODUCED BY:

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# S.B. NO. 469

**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.

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