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# A BILL FOR AN ACT

RELATING TO ENVIRONMENTAL REVIEW.

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

1           SECTION 1. The legislature finds that the State's  
2 environmental review process under chapter 343, Hawaii Revised  
3 Statutes, was designed to evaluate new projects having potential  
4 environmental impacts. However, recent court decisions have  
5 broadened the definition of an environmental "action." The new  
6 definition includes long-standing, historically permitted  
7 activities in state-managed areas like ocean recreation  
8 management areas, marine life conservation districts, and public  
9 hunting areas.

10           The legislature recognizes that this unintended expansion  
11 jeopardizes law-abiding operations, including commercial boating  
12 and recreational activities that are already regulated under  
13 strict administrative rules that are designed to protect  
14 Hawaii's natural resources. The legislature believes that  
15 subjecting these activities to additional review under chapter  
16 343 creates redundancies and disrupts compliant operations.



1           Accordingly, the purpose of this Act is to minimize  
2   disruptions to law-abiding operations by permitting, except in  
3   certain circumstances, a previously authorized activity  
4   challenged as being subject to environmental review to continue  
5   while the applicable agency or applicant conducts an  
6   environmental assessment, prepares an environmental impact  
7   statement, or determines whether the activity is exempt.

8           SECTION 2. Section 343-5, Hawaii Revised Statutes, is  
9   amended to read as follows:

10           "**§343-5 Applicability and requirements.** (a) Except as  
11   otherwise provided, an environmental assessment shall be  
12   required for actions that:

13           (1) Propose the use of state or county lands or the use of  
14           state or county funds, other than funds to be used for  
15           feasibility or planning studies for possible future  
16           programs or projects that the agency has not approved,  
17           adopted, or funded, or funds to be used for the  
18           acquisition of unimproved real property; provided that  
19           the agency shall consider environmental factors and  
20           available alternatives in its feasibility or planning  
21           studies; provided further that an environmental



- 1 assessment for proposed uses under  
2 section 205-2(d) (11) or 205-4.5(a) (13) shall only be  
3 required pursuant to section 205-5(b);
- 4 (2) Propose any use within any land classified as a  
5 conservation district by the state land use commission  
6 under chapter 205;
- 7 (3) Propose any use within a shoreline area as defined in  
8 section 205A-41;
- 9 (4) Propose any use within any historic site as designated  
10 in the National Register or Hawaii Register, as  
11 provided for in the Historic Preservation Act of 1966,  
12 Public Law 89-665, or chapter 6E;
- 13 (5) Propose any use within the Waikiki area of Oahu, the  
14 boundaries of which are delineated in the land use  
15 ordinance as amended, establishing the "Waikiki  
16 Special District";
- 17 (6) Propose any amendments to existing county general  
18 plans where the amendment would result in designations  
19 other than agriculture, conservation, or preservation,  
20 except actions proposing any new county general plan



- 1 or amendments to any existing county general plan  
2 initiated by a county;
- 3 (7) Propose any reclassification of any land classified as  
4 a conservation district by the state land use  
5 commission under chapter 205;
- 6 (8) Propose the construction of new or the expansion or  
7 modification of existing helicopter facilities within  
8 the State, that by way of their activities, may  
9 affect:
- 10 (A) Any land classified as a conservation district by  
11 the state land use commission under chapter 205;
- 12 (B) A shoreline area as defined in section 205A-41;  
13 or
- 14 (C) Any historic site as designated in the National  
15 Register or Hawaii Register, as provided for in  
16 the Historic Preservation Act of 1966, Public Law  
17 89-665, or chapter 6E; or until the statewide  
18 historic places inventory is completed, any  
19 historic site that is found by a field  
20 reconnaissance of the area affected by the  
21 helicopter facility and is under consideration



1 for placement on the National Register or the  
2 Hawaii Register of Historic Places; and

3 (9) Propose any:

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

8 (B) Waste-to-energy facility;

9 (C) Landfill;

10 (D) Oil refinery; or

11 (E) Power-generating facility.

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



1 judgment and experience, that an environmental impact statement  
2 is likely to be required, the agency may choose not to prepare  
3 an environmental assessment and instead shall prepare an  
4 environmental impact statement that begins with the preparation  
5 of an environmental impact statement preparation notice as  
6 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  
16           section 343-3. The agency shall respond in writing to comments  
17           received 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~~] the determination  
 14          with the office. The office, in turn, shall publish the  
 15          determination of acceptance or nonacceptance pursuant to  
 16          section 343-3.

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



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

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

- 14 (1) A draft environmental assessment shall be made  
15 available for public review and comment for a period  
16 of thirty days;
- 17 (2) The office shall inform the public of the availability  
18 of the draft environmental assessment for public  
19 review and comment pursuant to section 343-3; and
- 20 (3) The applicant shall respond in writing to comments  
21 received during the review and the applicant shall



1           prepare a final environmental assessment to determine  
2           whether an environmental impact statement shall be  
3           required. A statement shall be required if the agency  
4           finds that the proposed action may have a significant  
5           effect on the environment. The agency shall file  
6           notice of the agency's determination with the office,  
7           which, in turn, shall publish the agency's  
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 applicant, who shall file these statements with  
12          the office.

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

18           The applicant shall respond in writing to comments received  
19          during the review and prepare a final statement. The office,  
20          when requested by the applicant or agency, may make a  
21          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.

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

16 (g) In preparing an environmental assessment, an agency  
17 may consider and, where applicable and appropriate, incorporate  
18 by reference, in whole or in part, previous determinations of  
19 whether a statement is required and previously accepted  
20 statements. The council, by rule, shall establish criteria and



1 procedures for the use of previous determinations and  
2 statements.

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

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

20 (j) Notwithstanding any provision of this chapter to the  
21 contrary, when an activity that has been previously permitted,



1 authorized, or undertaken by a state or county agency or  
2 applicant is challenged as being subject to the requirements of  
3 this chapter, the activity may continue while the agency or  
4 applicant conducts an environmental assessment, prepares an  
5 environmental impact statement, or determines whether the  
6 activity is exempt under this chapter; provided that this  
7 subsection shall not apply to activities involving construction,  
8 grading, dredging, or other structural modifications to land,  
9 waterways, or marine environments."

10 SECTION 3. This Act does not affect rights and duties that  
11 matured, penalties that were incurred, and proceedings that were  
12 begun before its effective date.

13 SECTION 4. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 5. This Act shall take effect on July 1, 3000.



**Report Title:**

Environmental Review; Permitted Activities

**Description:**

Permits, except in certain circumstances, a previously authorized activity challenged as being subject to environmental review to continue while the applicable agency or applicant conducts an environmental assessment, prepares an environmental impact statement, or determines whether the activity is exempt. Effective 7/1/3000. (HD1)

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

