
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 faces
2 urgent and interconnected challenges in achieving its clean
3 energy goals and increasing the supply of affordable housing.
4 The legislature further finds that environmental review under
5 chapter 343, Hawaii Revised Statutes, plays an essential role in
6 protecting the State's natural and cultural resources and
7 ensuring informed public decision-making.

8 The legislature also finds that uncertainty and the threat
9 of prolonged judicial challenges to environmental review
10 determinations can delay projects and increase costs,
11 particularly for affordable housing and clean energy projects
12 that depend on time-sensitive financing and approvals. In some
13 cases, projects become infeasible and are abandoned because
14 challenges can extend for long periods, regardless of the
15 project's merits.

16 Accordingly, this Act establishes clearer and more
17 predictable timelines for certain judicial proceedings involving



1 environmental assessments and environmental impact statements
2 for actions that propose the use of land for, or construction
3 of, affordable housing projects and clean energy projects,
4 including by shortening the period within which specified
5 challenges must be initiated and providing a more streamlined
6 path for appellate review.

7 This Act does not eliminate or diminish environmental
8 review requirements. Through these changes, this Act seeks to
9 balance environmental stewardship with the urgent public need to
10 accelerate renewable energy deployment and the development of
11 affordable housing, while maintaining meaningful opportunities
12 for public participation and accountability.

13 Accordingly, the purpose of this Act is to:

- 14 (1) Shorten the period during which certain judicial
15 proceedings involving environmental assessments and
16 environmental impact statements on actions that
17 propose the use of land for, or construction of,
18 affordable housing or clean energy projects must be
19 initiated; and
- 20 (2) Specify that appeals from environmental courts that
21 involve actions that propose the use of land for, or



1 construction of, affordable housing or clean energy
2 projects meet one of the grounds for transfer to the
3 Supreme Court and prohibits any court from awarding
4 attorneys' fees in these judicial proceedings.

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

7 "**§343-7 Limitation of actions[-]; attorneys' fees.** (a)

8 Any judicial proceeding, the subject of which is the lack of
9 assessment required under section 343-5, shall be initiated
10 within one hundred twenty days of the agency's decision to carry
11 out or approve the action[~~, or, if~~]; provided that if the
12 judicial proceeding involves the lack of an assessment required
13 under section 343-5 for an action that proposes the use of land
14 for, or construction of, an affordable housing project or clean
15 energy project, the proceeding shall be initiated within thirty
16 days of the agency's decision to carry out or approve the
17 action. If a proposed action is undertaken without a formal
18 determination by the agency that a statement is or is not
19 required, a judicial proceeding shall be instituted within one
20 hundred twenty days after the proposed action is started[-];
21 provided that if the proposed action is for the use of land for,



1 or construction of, an affordable housing or clean energy
2 project, the judicial proceeding shall be instituted within
3 thirty days after the proposed action is started. The office,
4 any agency responsible for approval of the action, or the
5 applicant shall be adjudged an aggrieved party for the purposes
6 of bringing judicial action under this subsection. Others, by
7 environmental court action, may be adjudged aggrieved.

8 (b) Any judicial proceeding, the subject of which is the
9 determination that a statement is required for a proposed
10 action, shall be initiated within sixty days after the public
11 has been informed of such determination pursuant to section 343-
12 3. Any judicial proceeding, the subject of which is the
13 determination that a statement is not required for a proposed
14 action, shall be initiated within thirty days after the public
15 has been informed of such determination pursuant to section 343-
16 3. The applicant shall be adjudged an aggrieved party for the
17 purposes of bringing judicial action under this subsection.
18 Others, by environmental court action, may be adjudged
19 aggrieved.

20 (c) Any judicial proceeding, the subject of which is the
21 acceptance or nonacceptance of an environmental impact statement



1 required under section 343-5, shall be initiated within sixty
2 days after the public has been informed pursuant to section 343-
3 3 of the acceptance or nonacceptance of such statement[-];
4 provided that if the subject of the judicial proceeding is the
5 acceptance or nonacceptance of a statement for an action that
6 proposes the use of land for, or construction of, an affordable
7 housing project or clean energy project, the proceeding shall be
8 initiated within thirty days after the public has been informed
9 pursuant to section 343-3 of the acceptance or nonacceptance of
10 the statement. Affected agencies and persons who provided
11 written comment to an accepted statement during the designated
12 review period shall be adjudged aggrieved parties for the
13 purpose of bringing judicial action under this subsection;
14 provided that for aggrieved parties, the contestable issues
15 shall be limited to issues identified and discussed in the
16 written comment, and for applicants bringing judicial action
17 under this section on the nonacceptance of a statement, the
18 contestable issues shall be limited to those issues identified
19 by the accepting authority as the basis for nonacceptance of the
20 statement.



1 (d) An appeal from a decision of the environmental court
2 that involves an action that proposes the use of land for, or
3 construction of, an affordable housing or clean energy project
4 shall constitute a case involving a question of imperative or
5 fundamental public importance under section 602-58(a)(1) for
6 purposes of transferring the case to the supreme court pursuant
7 to section 602-58.

8 (e) No court shall award attorneys' fees in a judicial
9 proceeding initiated pursuant to this section that involves an
10 action that proposes the use of land for, or construction of, an
11 affordable housing project or clean energy project.

12 (f) For the purposes of this section:

13 "Affordable housing project" means a housing project:

14 (1) As defined by the controlling law or ordinance
15 governing a state or county agency proposing or
16 approving an affordable housing project;

17 (2) In which the owner has executed a declaration of
18 restrictive covenants or other legally binding
19 agreement that ensures compliance with county
20 affordable housing ordinances;



- 1 (3) Under county jurisdiction pursuant to section 46-15.1
2 or that is subject to any county ordinance or funding
3 that has an income restriction requirement; or
- 4 (4) In which the acquisition, financing, construction,
5 development, redevelopment, repair, renovation, and
6 occupancy have been directly facilitated by a state or
7 county program.
- 8 "Affordable housing project" includes a housing project with
9 ancillary on-site mixed uses and any necessary on-site or off-
10 site infrastructure, and that satisfies at least one criterion
11 under this definition.
- 12 "Clean energy project" means a project, facility, or
13 installation that is primarily for the purpose of generating or
14 producing energy using the following sources:
- 15 (1) Wind;
16 (2) Sun;
17 (3) Falling water;
18 (4) Geothermal; and
19 (5) Ocean water, currents, and waves, including ocean
20 thermal energy conversion."



1 SECTION 3. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 4. This Act shall take effect on July 1, 3000.



Report Title:

Environmental Review; Clean Energy Projects; Affordable Housing Projects; Judicial Proceedings; Supreme Court; Appeals; Transfer; Attorneys' Fees

Description:

Shortens the period during which certain judicial proceedings involving environmental assessments and environmental impact statements on actions that propose the use of land for, or construction of, affordable housing or clean energy projects must be initiated. Specifies that appeals from environmental courts that involve actions that propose the use of land for, or construction of, affordable housing or clean energy projects meet one of the grounds for transfer to the Supreme Court and prohibits any court from awarding attorneys' fees in these judicial proceedings. Effective 7/1/3000. (HD2)

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