

## ACT 197

S.B. NO. 1591

A Bill for an Act Relating to Environmental Quality Commission and Environmental Impact Statements.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 343, Hawaii Revised Statutes, is amended as follows:

1. A new section is added to read:

**“Sec. 343-1 Findings and purpose.** The legislature finds that the quality of humanity’s environment is critical to humanity’s well being, that humanity’s activities have broad and profound effects upon the interrelations of all components of the environment, and that an environmental review process will integrate the review of environmental concerns with existing planning processes of the State and counties and alert decision makers to significant environmental effects which may result from the implementation of certain actions. The legislature further finds that the process of reviewing environmental effects is desirable because environmental consciousness is enhanced, cooperation and coordination are encouraged, and public participation during the review process benefits all parties involved and society as a whole.

It is the purpose of this chapter to establish a system of environmental review at the state and county levels which will ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations.”

2. Section 343-1 is renumbered section 343-2 and is amended to read:

**“Sec. 343-2 Definitions.** As used in this chapter unless the context otherwise requires:

- (1) “Acceptance” means a formal determination that the document required to be filed pursuant to section 343-5 fulfills the definition of an environmental impact statement, adequately describes identifiable environmental impacts, and satisfactorily responds to comments received during the review of the statement.
- (2) “Action” means any program or project to be initiated by any agency or applicant.
- (3) “Agency” means any department, office, board, or commission of the state or county government which is a part of the executive branch of that government.
- (4) “Applicant” means any person that, pursuant to statute, ordinance, rule, or regulation, officially requests approval for a proposed action.
- (5) “Approval” means a discretionary consent required from an agency prior to actual implementation of an action.
- (6) “Commission” means the environmental quality commission.
- (7) “Discretionary consent” means a consent, sanction, or recommendation from an agency for which judgment and free will may be exercised by the issuing agency, as distinguished from a ministerial consent.
- (8) “Environmental assessment” means a written evaluation to determine whether an action may have a significant environmental effect.
- (9) “Environmental impact statement” or “statement” means an informa-

tional document prepared in compliance with the rules and regulations promulgated under section 343-6 and which discloses the environmental effects of a proposed action, effects of a proposed action on the economic and social welfare of the community and State, effects of the economic activities arising out of the proposed action, measures proposed to minimize adverse effects, and alternatives to the action and their environmental effects.

- (10) "Person" includes any individual, partnership, firm, association, trust, estate, private corporation, or other legal entity other than agencies.
- (11) "Significant effect" means the sum of effects on the quality of the environment, including actions that irrevocably commit a natural resource, curtail the range of beneficial uses of the environment, are contrary to the State's environmental policies or long-term environmental goals as established by law, or adversely affect the economic or social welfare."

3. Section 343-2 is renumbered section 343-3.

4. Section 343-3 is renumbered section 343-4.

5. Section 343-4 is renumbered section 343-5 and is amended by amending subsections (a) to (c) to read:

"(a) Except as otherwise provided, an environmental assessment shall be required for actions which:

- (1) Propose the use of state or county lands or the use of state or county funds, other than funds to be used for feasibility or planning studies for possible future programs or projects which the agency has not approved, adopted, or funded, provided that the agency shall consider environmental factors and available alternatives in its feasibility or planning studies.
- (2) Propose any use within any land classified as conservation district by the state land use commission under chapter 205.
- (3) Propose any use within the shoreline area as defined in section 205-31.
- (4) Propose any use within any historic site as designated in the National Register or Hawaii Register as provided for in the Historic Preservation Act of 1966, Public Law 89-665, or chapter 6E.
- (5) Propose any use within the Waikiki-Diamond Head area of Oahu, the boundaries of which are delineated on the development plan for the Kalia, Waikiki, and Diamond Head areas (map designated as portion of 1967 city and county of Honolulu General Plan Development Plan Waikiki-Diamond Head Section A).
- (6) Propose any amendments to existing county general plans where such amendment would result in designations other than agriculture, conservation, or preservation except actions proposing any new county general plan or amendments to any existing county general plan initiated by a county.

(b) Whenever an agency proposes an action which falls within the categories in subsection (a), other than feasibility or planning studies for possible future programs or projects which the agency has not approved, adopted, or funded, which is not included in any of the specific types of actions referred to in section 343-6, that agency shall prepare an environmental assessment for such action at the earliest practicable time to determine whether an environmental impact statement shall be required. A statement shall be required if the agency finds that the proposed action

may have a significant effect on the environment. The agency shall file notice of such determination with the commission which shall, in turn, publish the agency determination for the public's information pursuant to section 343-3. The statement, if required, shall be made available for public review and comment through the commission. The commission shall inform the public of the availability of the statement for public review and comments pursuant to section 343-3. The agency shall respond in writing to comments received during the review. Following this review by the public and any subsequent revision by the agency, the commission, when requested by the agency, may make a recommendation as to the acceptability of the statement. The final authority to accept such a statement shall rest with:

- (1) The governor, or his authorized representative, whenever an action proposes the use of state lands or the use of state funds or, whenever a state agency proposes an action within the categories in subsection (a); or
- (2) The mayor, or his authorized representative, of the respective county whenever an action proposes only the use of county lands or county funds.

Acceptance of a required statement shall be a condition precedent to implementation of the proposed action. Upon acceptance or nonacceptance of the statement, the governor or mayor, or his authorized representative, shall file notice of such determination with the commission. The commission shall, in turn, publish the determination of acceptance or nonacceptance of the statement pursuant to section 343-3.

(c) Whenever an applicant proposes an action specified by subsection (a) which requires approval of an agency, and which is not included in any of the specific types of actions referred to in section 343-6, the agency receiving the request for approval shall prepare an assessment of such proposed action at the earliest practicable time to determine whether an environmental impact statement shall be required. A statement shall be required if the agency finds that the proposed action may have a significant effect on the environment. The agency shall file notice of such determination with the commission which shall, in turn, publish the agency determination for the public's information pursuant to section 343-3. The statement, if required, shall be prepared by the applicant who shall file the statement with the agency. The statement shall be made available for public review and comments through the commission. The commission shall inform the public of the availability of the statement for public review and comments pursuant to section 343-3. The applicant shall respond in writing to comments received during the review. Following the review by the public and any subsequent revision by the applicant, the commission, when requested by the applicant or agency, may make a recommendation as to the acceptability of the statement. The authority to accept such statement shall rest with the agency receiving the request for approval. Acceptance of a required statement shall be a condition precedent to approval of the request and commencement of the proposed action. Upon acceptance or nonacceptance of the statement, the agency shall file notice of such determination with the commission. The commission shall, in turn, publish the determination of acceptance or nonacceptance of the statement pursuant to section 343-3. The agency receiving the request shall, within sixty days of receipt of the statement, notify the applicant and the commission of the acceptance or nonacceptance of the statement. The statement shall be deemed to be accepted if the agency fails to accept or not accept the statement within sixty days after receipt of the statement; provided that the sixty day period may be extended at the request of the

applicant for a period not to exceed thirty days.

In any acceptance or nonacceptance, the agency shall provide the applicant with the specific findings and reasons for its determination. An applicant may, within sixty days after nonacceptance of a statement by an agency, appeal the nonacceptance to the environmental quality commission, which shall, within thirty days of receipt of the appeal, notify the applicant of its determination. In any affirmation or reversal of an appealed nonacceptance, the commission shall provide the applicant and agency with specific findings and reasons for its determination. The agency shall abide by the commission's decision."

6. By amending subsections (f) and (g) of section 343-4 to read:

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

(g) A statement that is accepted with respect to a particular action shall satisfy the requirements of this chapter and no other statement for that proposed action shall be required."

7. Section 343-5 is renumbered section 343-6 and is amended to read:

"**Sec. 343-6 Rules and regulations.** After consultation with the affected agencies, the commission shall make, amend, and repeal rules and regulations to implement the provisions of this chapter. The adoption, amendment, and repeal of all rules and regulations shall be subject to chapter 91. At least one public hearing shall be held in each county prior to the final adoption, amendment, or repeal of such rules and regulations. The rules and regulations shall:

- (1) Prescribe the contents of an environmental impact statement;
- (2) Prescribe procedures whereby a group of proposed actions may be treated by a single statement;
- (3) Prescribe procedures for the submission, distribution, review, and acceptance or nonacceptance of a statement;
- (4) Prescribe procedures for the applicant to appeal the nonacceptance of a statement to the environmental quality commission;
- (5) Establish criteria to determine whether a statement is acceptable or not;
- (6) Establish procedures whereby specific types of actions, because they will probably have minimal or no significant effects on the environment, are declared exempt from the preparation of an assessment;
- (7) Prescribe procedures for informing the public of determinations that a statement is either required or not required under section 343-5(b) and (c), and for informing the public of the availability of statements for review and comments, and for informing the public of the acceptance or nonacceptance of the statement."

8. Section 343-6 is renumbered section 343-7 and amended to read:

**“Sec. 343-7 Limitation of actions.** (a) Any judicial proceeding, the subject of which is the lack of assessment required under section 343-5, shall be initiated within 120 days of the agency’s decision to carry out or approve the action, or if a proposed action is undertaken without a formal determination by the agency that a statement is or is not required, a judicial proceeding shall be instituted within 120 days after the proposed action is started. The commission, any agency responsible for approval of the action, or the applicant shall be adjudged an aggrieved party for the purposes of bringing judicial action under this subsection. Others may, by court action, be adjudged aggrieved.

(b) Any judicial proceeding, the subject of which is the determination that a statement is or is not required for a proposed action, shall be initiated within sixty days after the public has been informed of such determination pursuant to section 343-3. The commission or the applicant shall be adjudged an aggrieved party for the purposes of bringing judicial action under this subsection. Others may, by court action, be adjudged aggrieved.

(c) Any judicial proceeding, the subject of which is the acceptance of an environmental impact statement required under section 343-5, shall be initiated within sixty days after the public has been informed pursuant to section 343-3 of the acceptance of such statement. The commission shall be adjudged an aggrieved party for the purpose of bringing judicial action under this subsection. Affected agencies and persons who provided written comment to such statement during the designated review period shall be adjudged aggrieved parties for the purpose of bringing judicial action under this subsection; provided that the contestable issues shall be limited to issues identified and discussed in the written comment.”

9. Section 343-7 is renumbered section 343-8.

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored.\*

SECTION 3. This Act shall take effect upon its approval, but is not retroactive and shall not apply to those actions which have received approvals from appropriate agencies authorized to approve actions covered by this Act.

(Approved June 8, 1979.)

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\*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.