

ACT 140

S.B. NO. 1279

A Bill for an Act Relating to Environmental Quality.

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

SECTION 1. Section 341-3, Hawaii Revised Statutes, is amended to read as follows:

“§341-3 Office of environmental quality control; ecology or environmental center; environmental council. (a) There is created an office of environmental quality control which shall be headed by a single executive to be known as the director of environmental quality control who shall be appointed by the governor as provided in section 26-34. This office shall implement this chapter and shall be placed within the department of health for administrative purposes. The office shall perform its duties under chapter 343 and shall serve the governor in an advisory capacity on all matters relating to environmental quality control.

(b) There is created within the university an ecology or environmental center.

(c) There is created an environmental council not to exceed fifteen members. Except for the director, members of the environmental council shall be appointed by the governor as provided in section 26-34. The council shall be placed within the department of health for administrative purposes. Except for the director, the term of each member shall be four years; provided that of the members initially appointed five members shall serve for four years, five members shall serve for three years, and the remaining four members shall serve for two years. Vacancies shall be filled for the remainder of any unexpired term in the same manner as original appointments. The director shall be [the council chairman.] an ex-officio voting member of the council. The council chairperson shall be elected by the council from among the appointed members of the council. [The membership of the council shall include: representatives from mass media, and representatives from relevant disciplines, for example, environmental design, natural, physical and social sciences, technologies, social ethics and philosophy, representatives of the university, representatives from business and industry, public and private schools and colleges, and voluntary community group and associations.]

Members shall be appointed to assure a broad and balanced representation of educational, business, and environmentally pertinent disciplines and professions, such as the natural and social sciences, the humanities, architecture, engineering, public health, and planning; educational and research institutions with environmental competence; agriculture, real estate, visitor industry, construction, media, and voluntary community and environmental groups. The members of the council shall serve without compensation but shall be reimbursed for expenses, including travel expenses, incurred in the discharge of their duties."

SECTION 2. Section 341-6, Hawaii Revised Statutes, is amended to read as follows:

"§341-6 Functions of the environmental council. The council shall serve as a liaison between the director and the general public by soliciting information, opinions, complaints, recommendations, and advice concerning ecology and environmental quality through public hearings or any other means and by publicizing such matters as requested by the director pursuant to section 341-4(b)(4). The council may make recommendations concerning ecology and environmental quality to the director and shall meet at the call of the council chairperson or the director upon notifying the council chairperson. The council shall monitor the progress of state, county, and federal agencies in achieving the State's environmental goals and policies and with the assistance of the director shall make an annual report with recommendations for improvement to the governor, the legislature, and the public no later than January 31 of each year. All state and county agencies shall cooperate with the council and assist in the preparation of such a report by responding to requests for information made by the council. The council may delegate to any person such power or authority vested in the council as it deems reasonable and proper for the effective administration of this section and chapter 343, except the power to make, amend, or repeal rules."

SECTION 3. Chapter 343, Hawaii Revised Statutes, is amended by amending the title to read as follows:

“[[CHAPTER 343]]
[ENVIRONMENTAL QUALITY COMMISSION
AND] ENVIRONMENTAL IMPACT STATEMENTS”

SECTION 4. Section 343-1, Hawaii Revised Statutes, is amended to read as follows:

“§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.”

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

“§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” mean 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,] who, pursuant to statute, ordinance, or 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”] “Council” means the environmental [quality commission.] council.
- (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 informational document prepared in compliance with the rules [and regulations promulgated] adopted 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) "Office" means the office of environmental quality control.
- [(10)] (11) "Person" includes any individual, partnership, firm, association, trust, estate, private corporation, or other legal entity other than [agencies.] an agency.
- [(11)] (12) "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."

SECTION 6. Section 343-3, Hawaii Revised Statutes, is amended to read as follows:

"§343-3 Public records and notice. All statements and other documents prepared under [the provisions of] this chapter shall be made available for inspection by the public during established office hours.

The [commission] office shall inform the public of notices filed by agencies of determinations that statements are required or not required, of the availability of statements for review and comments, and of the acceptance or non-acceptance of statements. The [commission] office shall inform the public by the publication of a periodic bulletin to be available to persons requesting this information. The bulletin shall be available through [its] the office and [through] public libraries."

SECTION 7. Section 343-4, Hawaii Revised Statutes, is repealed.

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

"§343-5 Applicability and requirements. (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, or funds to be used for the acquisition of unimproved real property; 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, or other than the use of state or county funds for the acquisition of unimproved real property, which is not [included in any of the] a specific [types] type of [actions referred to in] action declared exempt under 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] office which [shall], in turn, shall publish the agency determination for the public's information pursuant to section 343-3. The statement[, if required,] shall be prepared by the agency, submitted to the office, and made available for public review and comment through the [commission.] office. The [commission] office 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,] council, 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.] office. The [commission shall,]

office, in turn, shall 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] a specific [types] type of [actions referred to in] action declared exempt under section 343-6, the agency receiving the request for approval shall prepare an environmental 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] office which [shall], in turn, shall 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.] office. The statement shall be made available for public review and comments through the [commission.] office. The [commission] office 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,] council, 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 proposed action. Upon acceptance or nonacceptance of the statement, the agency shall file notice of such determination with the [commission.] office. The [commission] office 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, shall notify the applicant and the [commission] office 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, may appeal the nonacceptance to the environmental [quality commission,] council, which [shall], within thirty days of receipt of the appeal, shall notify the applicant of [its] the council's determination. In any affirmation or reversal of an appealed nonacceptance, the [commission] council shall provide the applicant and agency with specific findings and reasons for its determination. The agency shall abide by the [commission's] council's decision.

(d) Whenever an applicant simultaneously requests approval for a proposed action from two or more agencies and there is a question as to which agency has the responsibility of [complying with subsection (c) with respect to a particular action, the commission,] preparing the environmental assessment, the office, after

consultation with the agencies involved, shall determine which agency [is responsible.] shall prepare the assessment.

(e) [Whenever an agency proposes to implement an action or receives a request for approval, the] In preparing an environmental assessment, an agency may consider and, where applicable and appropriate, incorporate by reference, in whole or in part, previous determinations of whether a statement is required and previously accepted statements. The [commission] council [shall], by rules [and regulations], shall establish criteria and procedures for the use of previous determinations and statements.

(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, the office and 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, shall 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, the office and 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."

SECTION 9. Section 343-6, Hawaii Revised Statutes, is amended to read as follows:

"§343-6 Rules [and regulations]. After consultation with the affected agencies, the [commission] council 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 the 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;] council;
- (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.”

SECTION 10. Section 343-7, Hawaii Revised Statutes, is amended to read as follows:

“§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] one hundred twenty 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] one hundred twenty days after the proposed action is started. The [commission,] council or office, 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, may 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] council or the applicant shall be adjudged an aggrieved party for the purposes of bringing judicial action under this subsection. Others [may], by court action, may 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] council 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.”

SECTION 11. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the environmental quality commission relating to the functions transferred to the office of environmental quality control and environmental council shall be transferred with the functions to which they relate.

All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

No officer or employee of the State having tenure shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act.

SECTION 12. The rules of the environmental quality commission in effect upon the effective date of this Act shall remain in effect until superseded by later

rules adopted by the environmental council under chapter 343, Hawaii Revised Statutes.

SECTION 13. The terms of the existing environmental council and environmental quality commission shall terminate on December 31, 1983 and a new environmental council shall be appointed with terms effective January 1, 1984. The initial members of the new environmental council shall be appointed by the governor as provided in section 26-34, Hawaii Revised Statutes, and shall consist of a minimum of ten members from the environmental council and environmental quality commission whose terms terminate on December 31, 1983.

SECTION 14. Statutory material to be repealed is bracketed. New material is underscored.¹

SECTION 15. This Act shall take effect on January 1, 1984, but is not retroactive and shall not apply to those actions which have received approval prior to January 1, 1984 from appropriate agencies which had been authorized to approve actions prior to January 1, 1984.

(Approved May 28, 1983.)

Note

1. Edited pursuant to HRS §23G-16.5.