

ACT 187

H.B. NO. 379

A Bill for an Act Relating to Environmental Quality.

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

SECTION 1. Section 343-2, Hawaii Revised Statutes, is amended by amending the definition of “environmental impact statement” or “statement” to read as follows:

““Environmental impact statement” or “statement” means an informational document prepared in compliance with the rules 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.

The initial statement filed for public review shall be referred to as the draft statement and shall be distinguished from the final statement which is the document that has incorporated the public’s comments and the responses to those comments. The final statement is the document that shall be evaluated for acceptability by the respective accepting authority.”

SECTION 2. Section 343-5, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

“(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.] 205A-41;
- (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).] Propose any use within the Waikiki area of Oahu, the boundaries of which are delineated in the land use ordinance as amended, establishing the "Waikiki Special District";
- (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[.]; and
- (7) Propose any reclassification of any land classified as conservation district by the state land use commission under chapter 205.

(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 a specific type of 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 office which, in turn, shall publish the agency determination for the public's information pursuant to section 343-3. The [statement] draft and final statements, if required, shall be prepared by the agency[.] and submitted to the office[, and]. The draft statement shall be made available for public review and comment through the office[.] for a period of forty-five days. The office shall inform the public of the availability of the draft statement for public review and comments pursuant to section 343-3. The agency shall respond in writing to comments received during the review[.] and prepare a final statement. [Following this review by the public and any subsequent revision by the agency, the] The council, when requested by the agency, may make a recommendation as to the acceptability of the final statement. The final authority to accept [such] a final statement shall rest with:

- (1) The governor, or the governor's 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 the mayor's authorized representative, of the respective county whenever an action proposes only the use of county lands or county funds.

Acceptance of a required final statement shall be a condition precedent to implementation of the proposed action. Upon acceptance or nonacceptance of the final statement, the governor or mayor, or the governor's or mayor's authorized representative, shall file notice of such determination

with the office. The office, in turn, shall publish the determination of acceptance or nonacceptance 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 a specific type of 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 office which, in turn, shall publish the agency determination for the public's information pursuant to section 343-3. The [statement] draft and final statements, if required, shall be prepared by the applicant, who shall file [the statement] these statements with the office. The draft statement shall be made available for public review and comments through the office[.] for a period of forty-five days. The office shall inform the public of the availability of the draft statement for public review and comments pursuant to section 343-3. The applicant shall respond in writing to comments received during the review[.] and prepare a final statement. [Following the review by the public and any subsequent revision by the applicant, the] The council, when requested by the applicant or agency, may make a recommendation as to the acceptability of the final statement. The authority to accept [such] a final statement shall rest with the agency receiving the request for approval. Acceptance of a required final statement shall be a condition precedent to approval of the request and commencement of proposed action. Upon acceptance or nonacceptance of the final statement, the agency shall file notice of such determination with the office. The office, in turn, shall publish the determination of acceptance or nonacceptance of the final statement pursuant to section 343-3. The agency receiving the request, within [sixty] thirty days of receipt of the final statement, shall notify the applicant and the office of the acceptance or nonacceptance of the final statement. The final statement shall be deemed to be accepted if the agency fails to accept or not accept the final statement within [sixty] thirty days after receipt of the final statement; provided that the [sixty-day] thirty-day period may be extended at the request of the applicant for a period not to exceed [thirty] fifteen days.

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

SECTION 3. Section 343-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) After consultation with the affected agencies, the council shall adopt, amend, or repeal necessary rules for the purposes of this chapter in accordance with chapter 91 including, but not limited to, rules which 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 preparation and contents of an environmental assessment;

- [(3)] (4) Prescribe procedures for the submission, distribution, review, [and] acceptance or nonacceptance, and withdrawal of a statement;
- [(4)] (5) Prescribe procedures [for the applicant] to appeal the nonacceptance of a statement to the environmental council;
- [(5)] (6) Establish criteria to determine whether a statement is acceptable or not;
- [(6)] (7) 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)] (8) Prescribe procedures for informing the public of determinations that a statement is either required or not required, for informing the public of the availability of draft statements for review and comments, and for informing the public of the acceptance or nonacceptance of the final statement; and
- [(8)] (9) Prescribe the contents of an environmental assessment.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 6, 1987.)