

ACT 55

H.B. NO. 1294

A Bill for an Act Relating To Environmental Impact Statements.

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

SECTION 1. The legislature finds that the purpose of environmental impact statements under chapter 343, Hawaii Revised Statutes, is to include the following environmental considerations in the state and county planning process:

- (1) The environmental effects of a proposed action on the economic welfare, social welfare, and cultural practices of the community and the State;
- (2) The effects of the economic activities arising out of the proposed action;
- (3) Measures suggested to minimize the adverse effects of the proposed action; and
- (4) Alternatives to the proposed action and the environmental effects of such alternatives.

Chapter 343 also provides that the environmental council shall prescribe procedures for the submission, distribution, review, acceptance or nonacceptance, and withdrawal of an environmental impact statement.

Furthermore, at the county level, each county's department of planning or department of planning and permitting serves as a technical and advisory resource to the mayor and county council on all planning issues, including zoning and general-plan amendments, which, by county charter, require legislative action by the county council. Although section 343-2 limits the definition of agency to a department, office, board, or commission within the executive branch of the State or a county, it

is not the legislature's intent to preclude the planning agency of each county from acting in its technical and advisory capacity to the county's legislative body.

However, the legislature finds that legal challenges have arisen regarding the most appropriate agency to receive, process, and accept or reject an environmental impact statement. It has become necessary to clarify statutorily what has been established by administrative rules and past practice with respect to the submission, review, and acceptance or nonacceptance of the document.

In addition, the legislature finds that proposals for privately financed wastewater facilities, waste-to-energy facilities, landfills, oil refineries, or power-generating facilities on private lands fail to trigger an environmental review under current law. Thus, this Act specifically includes these types of proposed actions within the scope of chapter 343.

The purpose of this Act is to:

- (1) Close loopholes in the environmental review process by including proposals for any:
 - (A) Wastewater facility, except an individual wastewater system or a wastewater facility serving fewer than fifty single-family dwellings or the equivalent;
 - (B) Waste-to-energy facility;
 - (C) Landfill;
 - (D) Oil refinery; or
 - (E) Power-generating facility,
 in the list of proposals for which an environmental assessment and impact statement may be required; and
- (2) Clarify the procedure for submission, processing, and approval of environmental assessments and impact statements by specifically authorizing the respective planning departments to process and accept such informational documents.

SECTION 2. Section 343-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Power-generating facility” means:

- (1) A new, fossil-fueled, electricity-generating facility, where the electrical output rating of the new equipment exceeds 5.0 megawatts; or
- (2) An expansion in generating capacity of an existing, fossil-fueled, electricity-generating facility, where the incremental electrical output rating of the new equipment exceeds 5.0 megawatts.”

SECTION 3. Section 343-5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a), (b), and (c) to read:

“(a) Except as otherwise provided, an environmental assessment shall be required for actions [~~which~~] that:

- (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~~] that 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~~] a shoreline area as defined in section 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 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~~ the 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;
- (7) Propose any reclassification of any land classified as conservation district by the state land use commission under chapter 205; ~~and~~
- [H](8)[I] Propose the construction of new[-] or the expansion or modification of existing helicopter facilities within the State, which, by way of their activities, may affect ~~any~~:
 - (A) Any land classified as conservation district by the state land use commission under chapter 205; ~~the~~
 - (B) The shoreline area as defined in section 205A-41; or ~~any~~
 - (C) 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; or until the statewide historic places inventory is completed, any historic site ~~that is~~ found by a field reconnaissance of the area affected by the helicopter facility and ~~which~~ is under consideration for placement on the National Register or the Hawaii Register of Historic Places[-]; ~~and~~
- (9) Propose any:
 - (A) Wastewater facility, except an individual wastewater system or a wastewater facility serving fewer than fifty single-family dwellings or the equivalent;
 - (B) Waste-to-energy facility;
 - (C) Landfill;
 - (D) Oil refinery; or
 - (E) Power-generating facility.

(b) Whenever an agency proposes an action in subsection (a), other than feasibility or planning studies for possible future programs or projects ~~which~~ that 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~~ that is not a specific type of action declared exempt under section 343-6, ~~that~~ the agency shall prepare an environmental assessment for such action at the earliest practicable time to determine whether an environmental impact statement shall be required.

For environmental assessments for which a finding of no significant impact is anticipated[-a]:

- (1) A draft environmental assessment shall be made available for public review and comment for a period of thirty days[-];
- (2) The office shall inform the public of the availability of the draft environmental assessment for public review and ~~comments~~ comment pursuant to section 343-3[-];
- (3) The agency shall respond in writing to comments received during the review and prepare a final environmental assessment to determine whether an environmental impact statement shall be required[-];
- (4) A statement shall be required if the agency finds that the proposed action may have a significant effect on the environment[-]; ~~and~~

- (5) The agency shall file notice of such determination with the office, which, in turn, shall publish the agency's determination for the public's information pursuant to section 343-3.

The draft and final statements, if required, shall be prepared by the agency and submitted to the office. 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~~ comment pursuant to section 343-3. The agency shall respond in writing to comments received during the review and prepare a final statement.

The office, when requested by the agency, may make a recommendation as to the acceptability of the final statement. The final authority to accept 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~~ that requires approval of an agency~~;~~ and ~~which~~ that is not a specific type of action declared exempt under section 343-6, the agency initially receiving and agreeing to process the request for approval shall prepare an environmental assessment of ~~such~~ the proposed action at the earliest practicable time to determine whether an environmental impact statement shall be required. The final approving agency for the request for approval is not required to be the accepting authority.

For environmental assessments for which a finding of no significant impact is anticipated~~;~~ a:

- (1) A draft environmental assessment shall be made available for public review and comment for a period of thirty days~~;~~ ;
- (2) The office shall inform the public of the availability of the draft environmental assessment for public review and ~~comments~~ comment pursuant to section 343-3~~;~~ ;
- (3) The applicant shall respond in writing to comments received during the review, and the agency shall prepare a final environmental assessment 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~~ the agency's determination with the office, which, in turn, shall publish the agency's determination for the public's information pursuant to section 343-3.

The draft and final statements, if required, shall be prepared by the applicant, who shall file these statements with the office.

The draft statement shall be made available for public review and ~~comments~~ 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~~ comment pursuant to section 343-3.

The applicant shall respond in writing to comments received during the review and prepare a final statement. The office, when requested by the applicant or agency, may make a recommendation as to the acceptability of the final statement.

The authority to accept a final statement shall rest with the agency initially receiving and agreeing to process the request for approval. The final decision-making body or approving agency for the request for approval is not required to be the accepting authority. The planning department for the county in which the proposed action will occur shall be a permissible accepting authority for the final statement.

Acceptance of a required final statement shall be a condition precedent to approval of the request and commencement of the 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 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 thirty days after receipt of the final statement; provided that the thirty-day period may be extended at the request of the applicant for a period not to exceed 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 nonacceptance, 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."

2. By amending subsection (e) to read:

"(e) 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 council, by [~~rules,~~] rule, shall establish criteria and procedures for the use of previous determinations and statements."

3. By amending subsection (g) to read:

"(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~~] the proposed action shall be required."

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved May 5, 2004.)

Note

1. Prior to amendment “,” appeared here.