

ACT 130

H.B. NO. 408

A Bill for an Act Relating to the Environment.

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

SECTION 1. The legislature finds that various approving agencies are interpreting the meaning of “wastewater facility”, as used in chapter 343, Hawaii Revised Statutes, differently, thereby causing confusion in the environmental review process.

The intent of the legislature in Act 55, Session Laws of Hawaii 2004, was to trigger the environmental review process for a newly proposed wastewater facility. The term “wastewater facility” in Act 55, was not intended to include only a portion of an existing facility, such as the collection system of an existing wastewater facility.

The legislature also finds that the definition of wastewater treatment unit in the department of health’s wastewater systems administrative rules encompasses a wastewater treatment facility. Therefore, the legislature finds that the term “waste-

water treatment unit” is a more appropriate description of the type of new project that would trigger an environmental review process.

The legislature further finds that the present environmental review process allows the proposing agency to determine whether its own project may cause a significant impact. Because the proposing agency and the determining agency are the same, a lack of impartiality may exist.

Accordingly, the purpose of this Act is to strengthen the environmental review process by:

- (1) Clarifying the intent of Act 55, Session Laws of Hawaii 2004, by providing a definition for “wastewater treatment unit” that encompasses wastewater facilities; and
- (2) Clarifying that when the proposing agency and the determining agency are the same, the office of environmental quality control may review an agency’s determination, consult the agency, and advise of non-compliance with chapter 343.

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

““Wastewater treatment unit” means any plant or facility used in the treatment of wastewater.”

SECTION 3. Section 343-5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Except as otherwise provided, an environmental assessment shall be required for actions 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 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 a conservation district by the state land use commission under chapter 205;
- (3) Propose any use within 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 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 a conservation district by the state land use commission under chapter 205;
- (8) Propose the construction of new or the expansion or modification of existing helicopter facilities within the State, [~~which,~~] that by way of their activities, may affect:
 - (A) Any land classified as a conservation district by the state land use commission under chapter 205;

- (B) [The] A shoreline area as defined in section 205A-41; or
 - (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 is under consideration for placement on the National Register or the Hawaii Register of Historic Places; and
- (9) Propose any:
- (A) Wastewater [facility,] treatment unit, except an individual wastewater system or a wastewater [faecility] treatment unit 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 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 that is not a specific type of action declared exempt under section 343-6, 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.

- (1) For environmental assessments for which a finding of no significant impact is anticipated:
- [(1)] (A) A draft environmental assessment shall be made available for public review and comment for a period of thirty days;
 - [(2)] (B) The office shall inform the public of the availability of the draft environmental assessment for public review and comment pursuant to section 343-3;
 - [(3)] (C) 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)] (D) A statement shall be required if the agency finds that the proposed action may have a significant effect on the environment; and
 - [(5)] (E) The agency shall file notice of such determination with the office[, which, in turn, shall publish the agency's]. When a conflict of interest may exist because the proposing agency and the agency making the determination are the same, the office may review the agency's determination, consult the agency, and advise the agency of potential conflicts, to comply with this section. The office shall publish the final 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 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.

- (2) The final authority to accept a final statement shall rest with:

- [~~(1)~~] (A) 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)~~] (B) 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.'

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

SECTION 5. This Act shall take effect on July 1, 2005.

(Approved June 16, 2005.)