

ACT 87

H.B. NO. 640

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 department of transportation has a critical role in ensuring the efficient and timely processing of permits for proposed actions within public rights-of-way. However, during the 2008 legislative session, the legislature found that the problems experienced by applicants in processing permits for the use of public rights-of-way arose from multi-agency

jurisdiction with regard to which agency should take the lead role to exempt certain proposed actions from the environmental assessment requirement. Act 110, Session Laws of Hawaii 2008 (Act 110) provided that whenever an applicant requests approval for a proposed action and there is a question as to which of two or more state or county agencies with jurisdiction has the responsibility of preparing the environmental assessment, the office of environmental quality control, after consultation with and assistance from the affected agencies, is to determine which agency must prepare the environmental assessment.

Notwithstanding Act 110, the legislature finds that the department of transportation is requiring a determination from the office of environmental quality control for secondary actions that are clearly exempt from the environmental assessment requirement under the department's own rules. As a result, the legislature further finds that the office of environmental quality control is overwhelmed by the number of requests from the department for action reviews, which has created unnecessary delays for actions that would clearly be exempt from the environmental assessment requirement.

The purpose of this Act is to delineate a clear exemption to the applicability of Chapter 343, Hawaii Revised Statutes, the state's environmental impact statement law, when the primary action is not subject to a discretionary consent or a public hearing and the secondary action is ancillary and limited to the installation, improvement, renovation, construction, or development of infrastructure within an existing public right-of-way.

SECTION 2. Chapter 343, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§343- Exception to applicability of chapter. (a) Notwithstanding any other law to the contrary, any primary action that requires a permit or approval that is not subject to a discretionary consent and that involves a secondary action that is ancillary and limited to the installation, improvement, renovation, construction, or development of infrastructure within an existing public right-of-way or highway shall be exempt from this chapter.

(b) As used in this section:

“Discretionary consent” means:

- (1) An action as defined in section 343-2; or
- (2) An approval from a decision-making authority in an agency, which approval is subject to a public hearing.

“Infrastructure” includes waterlines and water facilities, wastewater lines and wastewater facilities, gas lines and gas facilities, drainage facilities, electrical, communications, telephone, and cable television utilities, and highway, roadway, and driveway improvements.

“Primary action” refers to any action outside of the highway or public right-of-way that is on private property.

“Secondary action” refers to any infrastructure within the highway or public right-of-way.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on July 1, 2009, and shall be repealed on July 1, 2011.

(Approved June 3, 2009.)

Note

1. Edited pursuant to HRS §23G-16.5.