



GOV. MSG. NO. 1275

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

June 27, 2012

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

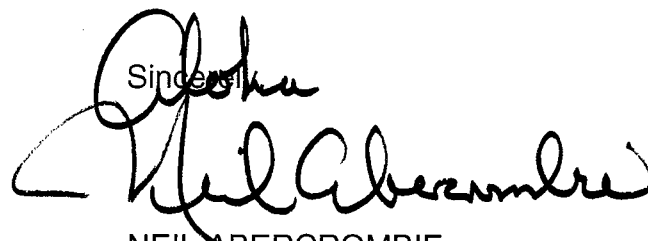
Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on June 27, 2012, the following bill was signed into law:

SB2281 SD1 HD1

RELATING TO ENVIRONMENTAL IMPACT
STATEMENTS.

Act 172 (12)

Sincerely,


NEIL ABERCROMBIE
Governor, State of Hawaii

Approved by the Governor

on JUN 27 2012

ACT 172

THE SENATE
TWENTY-SIXTH LEGISLATURE, 2012
STATE OF HAWAII

S.B. NO. 2281
S.D. 1
H.D. 1

A BILL FOR AN ACT

RELATING TO ENVIRONMENTAL IMPACT STATEMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that state agencies that
2 have experience with environmental review in Hawaii are able to
3 determine which projects are likely to require full
4 environmental review and should proceed directly to the
5 preparation of an environmental impact statement. While this
6 omits one layer of public participation through the
7 environmental assessment, opportunities for public participation
8 remain in the environmental impact statement process. The
9 legislature further finds that bypassing the environmental
10 assessment in certain situations will improve the efficiency of
11 the environmental review process and speed the progress of
12 completing those proposed actions.

13 The purpose of this Act is to allow agencies to determine,
14 based on their judgment and experience, that an environmental
15 impact statement is likely to be required for a proposed action,
16 and, therefore, choose not to prepare an environmental
17 assessment or to allow an applicant not to prepare an



1 environmental assessment, and instead proceed directly to the
2 preparation of an environmental impact statement.

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

5 "**§343-5 Applicability and requirements.** (a) Except as
6 otherwise provided, an environmental assessment shall be
7 required for actions that:

8 (1) Propose the use of state or county lands or the use of
9 state or county funds, other than funds to be used for
10 feasibility or planning studies for possible future
11 programs or projects that the agency has not approved,
12 adopted, or funded, or funds to be used for the
13 acquisition of unimproved real property; provided that
14 the agency shall consider environmental factors and
15 available alternatives in its feasibility or planning
16 studies; provided further that an environmental
17 assessment for proposed uses under section 205-
18 2(d)(11) or 205-4.5(a)(13) shall only be required
19 pursuant to section 205-5(b);

20 (2) Propose any use within any land classified as a
21 conservation district by the state land use commission
22 under chapter 205;



- 1 (3) Propose any use within a shoreline area as defined in
2 section 205A-41;
- 3 (4) Propose any use within any historic site as designated
4 in the National Register or Hawaii Register, as
5 provided for in the Historic Preservation Act of 1966,
6 Public Law 89-665, or chapter 6E;
- 7 (5) Propose any use within the Waikiki area of Oahu, the
8 boundaries of which are delineated in the land use
9 ordinance as amended, establishing the "Waikiki
10 Special District";
- 11 (6) Propose any amendments to existing county general
12 plans where the amendment would result in designations
13 other than agriculture, conservation, or preservation,
14 except actions proposing any new county general plan
15 or amendments to any existing county general plan
16 initiated by a county;
- 17 (7) Propose any reclassification of any land classified as
18 a conservation district by the state land use
19 commission under chapter 205;
- 20 (8) Propose the construction of new or the expansion or
21 modification of existing helicopter facilities within



1 the State, that by way of their activities, may
2 affect:

3 (A) Any land classified as a conservation district by
4 the state land use commission under chapter 205;

5 (B) A shoreline area as defined in section 205A-41;
6 or

7 (C) Any historic site as designated in the National
8 Register or Hawaii Register, as provided for in
9 the Historic Preservation Act of 1966, Public Law
10 89-665, or chapter 6E; or until the statewide
11 historic places inventory is completed, any
12 historic site that is found by a field
13 reconnaissance of the area affected by the
14 helicopter facility and is under consideration
15 for placement on the National Register or the
16 Hawaii Register of Historic Places; and

17 (9) Propose any:

18 (A) Wastewater treatment unit, except an individual
19 wastewater system or a wastewater treatment unit
20 serving fewer than fifty single-family dwellings
21 or the equivalent;

22 (B) Waste-to-energy facility;



- 1 (C) Landfill;
- 2 (D) Oil refinery; or
- 3 (E) Power-generating facility.

4 (b) Whenever an agency proposes an action in subsection
 5 (a), other than feasibility or planning studies for possible
 6 future programs or projects that the agency has not approved,
 7 adopted, or funded, or other than the use of state or county
 8 funds for the acquisition of unimproved real property that is
 9 not a specific type of action declared exempt under section 343-
 10 6, the agency shall prepare an environmental assessment for
 11 [such] the action at the earliest practicable time to determine
 12 whether an environmental impact statement shall be required[-
 13 ~~(1)~~]; provided that if the agency determines, through its
 14 judgment and experience, that an environmental impact statement
 15 is likely to be required, the agency may choose not to prepare
 16 an environmental assessment and instead shall prepare an
 17 environmental impact statement that begins with the preparation
 18 of an environmental impact statement preparation notice as
 19 provided by rules.

20 (c) For environmental assessments for which a finding of
 21 no significant impact is anticipated:

1 ~~[(A)]~~ (1) A draft environmental assessment shall be
2 made available for public review and comment for
3 a period of thirty days;

4 ~~[(B)]~~ (2) The office shall inform the public of the
5 availability of the draft environmental
6 assessment for public review and comment
7 pursuant to section 343-3;

8 ~~[(C)]~~ (3) The agency shall respond in writing to
9 comments received during the review and prepare
10 a final environmental assessment to determine
11 whether an environmental impact statement shall
12 be required;

13 ~~[(D)]~~ (4) A statement shall be required if the agency
14 finds that the proposed action may have a
15 significant effect on the environment; and

16 ~~[(E)]~~ (5) The agency shall file notice of ~~[such]~~ the
17 determination with the office. When a conflict
18 of interest may exist because the proposing
19 agency and the agency making the determination
20 are the same, the office may review the agency's
21 determination, consult the agency, and advise
22 the agency of potential conflicts, to comply



1 with this section. The office shall publish the
2 final determination for the public's information
3 pursuant to section 343-3.

4 The draft and final statements, if required, shall be
5 prepared by the agency and submitted to the office. The draft
6 statement shall be made available for public review and comment
7 through the office for a period of forty-five days. The office
8 shall inform the public of the availability of the draft
9 statement for public review and comment pursuant to section 343-
10 3. The agency shall respond in writing to comments received
11 during the review and prepare a final statement.

12 The office, when requested by the agency, may make a
13 recommendation as to the acceptability of the final statement.

14 [~~+~~2] (d) The final authority to accept a final statement
15 shall rest with:

16 [~~+~~A] (1) The governor, or the governor's authorized
17 representative, whenever an action proposes the
18 use of state lands or the use of state funds, or
19 whenever a state agency proposes an action
20 within the categories in subsection (a); or

21 [~~+~~B] (2) The mayor, or the mayor's authorized
22 representative, of the respective county



1 whenever an action proposes only the use of
2 county lands or county funds.

3 Acceptance of a required final statement shall be a
4 condition precedent to implementation of the proposed action.
5 Upon acceptance or nonacceptance of the final statement, the
6 governor or mayor, or the governor's or mayor's authorized
7 representative, shall file notice of such determination with the
8 office. The office, in turn, shall publish the determination of
9 acceptance or nonacceptance pursuant to section 343-3.

10 ~~[(e)]~~ (e) Whenever an applicant proposes an action
11 specified by subsection (a) that requires approval of an agency
12 and that is not a specific type of action declared exempt under
13 section 343-6, the agency initially receiving and agreeing to
14 process the request for approval shall require the applicant to
15 prepare an environmental assessment of the proposed action at
16 the earliest practicable time to determine whether an
17 environmental impact statement shall be required; provided
18 that ~~[, for]~~ if the agency determines, through its judgment and
19 experience, that an environmental impact statement is likely to
20 be required, the agency may authorize the applicant to choose
21 not to prepare an environmental assessment and instead prepare
22 an environmental impact statement that begins with the



1 preparation of an environmental impact statement preparation
2 notice as provided by rules. For an action that proposes the
3 establishment of a renewable energy facility, a draft
4 environmental impact statement shall be prepared at the earliest
5 practicable time. The final approving agency for the request
6 for approval is not required to be the accepting authority.

7 For environmental assessments for which a finding of no
8 significant impact is anticipated:

- 9 (1) A draft environmental assessment shall be made
10 available for public review and comment for a period
11 of thirty days;
- 12 (2) The office shall inform the public of the availability
13 of the draft environmental assessment for public
14 review and comment pursuant to section 343-3; and
- 15 (3) The applicant shall respond in writing to comments
16 received during the review[~~r~~] and [~~the agency~~] the
17 applicant shall prepare a final environmental
18 assessment to determine whether an environmental
19 impact statement shall be required. A statement shall
20 be required if the agency finds that the proposed
21 action may have a significant effect on the
22 environment. The agency shall file notice of the



1 agency's determination with the office, which, in
2 turn, shall publish the agency's determination for the
3 public's information pursuant to section 343-3.

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

7 The draft statement shall be made available for public
8 review and comment through the office for a period of forty-five
9 days. The office shall inform the public of the availability of
10 the draft statement for public review and comment pursuant to
11 section 343-3.

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

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



1 Acceptance of a required final statement shall be a
2 condition precedent to approval of the request and commencement
3 of the proposed action. Upon acceptance or nonacceptance of the
4 final statement, the agency shall file notice of [~~sueh~~] the
5 determination with the office. The office, in turn, shall
6 publish the determination of acceptance or nonacceptance of the
7 final statement pursuant to section 343-3.

8 The agency receiving the request, within thirty days of
9 receipt of the final statement, shall notify the applicant and
10 the office of the acceptance or nonacceptance of the final
11 statement. The final statement shall be deemed to be accepted
12 if the agency fails to accept or not accept the final statement
13 within thirty days after receipt of the final statement;
14 provided that the thirty-day period may be extended at the
15 request of the applicant for a period not to exceed fifteen
16 days.

17 In any acceptance or nonacceptance, the agency shall
18 provide the applicant with the specific findings and reasons for
19 its determination. An applicant, within sixty days after
20 nonacceptance of a final statement by an agency, may appeal the
21 nonacceptance to the environmental council, which, within thirty
22 days of receipt of the appeal, shall notify the applicant of the



1 council's determination. In any affirmation or reversal of an
2 appealed nonacceptance, the council shall provide the applicant
3 and agency with specific findings and reasons for its
4 determination. The agency shall abide by the council's
5 decision.

6 [~~(d)~~] (f) Whenever an applicant requests approval for a
7 proposed action and there is a question as to which of two or
8 more state or county agencies with jurisdiction has the
9 responsibility of preparing the environmental assessment, the
10 office, after consultation with and assistance from the affected
11 state or county agencies, shall determine which agency shall
12 prepare the assessment.

13 [~~(e)~~] (g) In preparing an environmental assessment, an
14 agency may consider and, where applicable and appropriate,
15 incorporate by reference, in whole or in part, previous
16 determinations of whether a statement is required and previously
17 accepted statements. The council, by rule, shall establish
18 criteria and procedures for the use of previous determinations
19 and statements.

20 [~~(f)~~] (h) Whenever an action is subject to both the
21 National Environmental Policy Act of 1969 (Public Law 91-190)
22 and the requirements of this chapter, the office and agencies



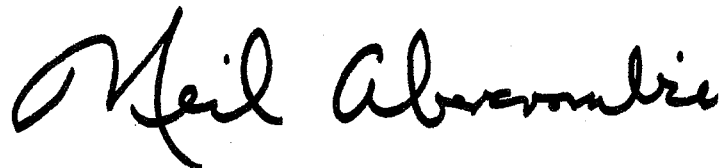
1 shall cooperate with federal agencies to the fullest extent
2 possible to reduce duplication between federal and state
3 requirements. Such cooperation, to the fullest extent possible,
4 shall include joint environmental impact statements with
5 concurrent public review and processing at both levels of
6 government. Where federal law has environmental impact
7 statement requirements in addition to but not in conflict with
8 this chapter, the office and agencies shall cooperate in
9 fulfilling these requirements so that one document shall comply
10 with all applicable laws.

11 ~~(g)~~ (i) A statement that is accepted with respect to a
12 particular action shall satisfy the requirements of this
13 chapter, and no other statement for the proposed action shall be
14 required."

15 SECTION 3. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 4. This Act shall take effect upon its approval.

APPROVED this 27 day of JUN, 2012



GOVERNOR OF THE STATE OF HAWAII