



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

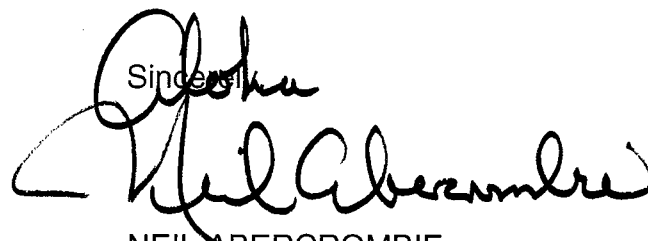
Dear President Tsutsui, Speaker Say and Members of the Legislature:

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

---

---

# 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 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[7] 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



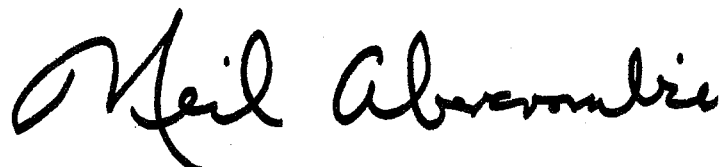
1 shall cooperate with federal agencies to the fullest extent  
2 possible to reduce duplication between federal and state  
3 requirements. Such cooperation, to the fullest extent possible,  
4 shall include joint environmental impact statements with  
5 concurrent public review and processing at both 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