SB 516
RELATING TO ENVIRONMENTAL IMPACT STATEMENTS

Senate Committee on Water, Land and Hawaiian Affairs
Senate Committee on Labor and Environment

Joint Public Hearing, February 10, 1999
1:00 p.m., Room 225, State Capitol

By
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SB 516 would amend Chapter 343, HRS, to provide that proposed land uses subject to state or county discretionary approvals are considered according to the provisions of Chapter 343.

Our comments on this measure are compiled from voluntarily submitted opinions of the listed academic sources, and as such, do not constitute an institutional position of the University of Hawaii.

The intent of this measure is to close a long-standing loophole in Hawaii's environmental review law. At present, proposed actions having significant potential impacts but utilizing private funds and privately owned lands have not been subject to formal environmental review. Thus, an undertaking as massive as the construction of the Hamakua Electric Power Generating facility, being built on private lands with private funds, was not reviewed under the state's EIS law. Actions such as private resorts, golf courses, and many other major projects may be so located as to avoid environmental review under Chapter 343. The beneficial effects of this review are self-evident, and indeed, there has been at least one instance in which a private applicant has prepared an equivalent document even though not legally required to do so, as a means of deriving the advantages accruing thereunder.

The proposed measure will not open the floodgates to burdensome, unreasonable constraints on every small project that requires a building permit or a grading and grubbing permit. The EIS process is a disclosure system that employs a series of screens
to ensure that only those proposed actions meriting a closer look will be examined. The attached flowchart shows the sequence of events, once a project is proposed. Immediately following the entry into the system, the first screen that is encountered is the Exemption process. Actions that will have minimal or no significant effect on the environment will proceed immediately to implementation. The EIS Rules further elaborate on the kinds of actions that are exempt, including repairs or reconstruction of existing structures, single family homes or condos of 4 or fewer dwelling units, and most other minor actions. Thus, only those actions that may have a significant environmental impact will be reviewed, and state and county agencies possess considerable experience in the rapid implementation of the exemption process.

While some may argue that this proposed measure casts too broad a net, speaking from over 60 years of collective expertise in the theory and practice of Environmental Impact Assessment, we find this to be the most effective yet unobtrusive means by which to close this egregious loophole. We understand the concerns of agencies and private business interests and landowners concerning this proposed remedy, and we have initiated discussions designed to reach a solution to the problem that is generally acceptable.
Environmental Review Decision-Making Process

1. Project is proposed

2. Does HRS 343 apply?
   - NO
   - YES

3. Does project qualify as exempt?
   - NO
   - YES

4. Does agency anticipate any significant impacts?
   - NO
   - YES

5. Does agency make a finding of no significant impact (FONSI)?
   - YES
   - NO

   • EA is prepared

6. Is final EIS accepted?
   - YES
   - NO

- Project may be implemented
  - Permits may still be required
  - Legal challenge is possible

- New study is required or appeal to Environmental Council or legal challenge of agency decision