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RL:0200

HB 1065

RELATING TO ENVIRONMENTAL IMPACT STATEMENTS

Statement for
House Committee on Ecology and Environmental Protection
Public Hearing
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HB 1065 proposes amendments to the State Environmental Impact Statement (EIS) Act (HRS Chapt 343) similar in some respects to those proposed in HB 125, concerning which the U. H. Environmental Center provided earlier a review for this committee (RL:0194, 8 February 1977). In this review of HB 1065 attention will be directed primarily to differences between this new bill and HB 125. Time has not permitted the engagement in the preparation of this statement of all who authored the earlier statement. However, this statement is being submitted for review to other authors of the earlier statement as well as to the Legislative Subcommittee of the Center. The statement does not reflect an institutional position of the University.

HB 1065 proposes one further expansion of the EIS system not proposed in HB 125. This relates to actions requiring special use permits in the State Agricultural Land Use District. The addition is one which we have suggested be considered.

In the other ways in which HB 1065 differs from HB 125, HB 1065 represents improvements. However, consideration should be given to:

- (i) Revising the language of subsec 343-4(a)(7) relating to county options as to additional EIS requirements.
- (ii) Revising the order of subsecs. 343-4(a)(6), (7), and (8).
- (iii) A minor housekeeping revision of subsec. 343-4(c).
- (iv) A clarification of the intent of subsec 343-4(c) regarding supplemental EIS's.
- (v) A housekeeping revision of subsecs. 343-5(b) and (d) dealing with appeals on the appropriateness of determinations on assessment.

The reasons for these suggestions, as well as comments in detail on the differences between HB 1065 and HB 125, are provided, section by section, below.

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Proposed amendments to subsecs. of 343-1. Definitions

Our comments in RL:0194, Appendix A, on the changes in definitions proposed in HB 125 are pertinent to the changes proposed in HB 1065 except as follows:

(1) "Acceptance" (p. 1, 1s. 5-12)

The retention of present language that makes following proper procedures a criterion for acceptance of an EIS is useful.

(2) "Agency" (p. 2, 1s. 1-4)

The return to the present language will avoid the application of EIS requirements to the judiciary. A present inconsistency in the EIS requirements, between counties in which a Planning Commission is the final approval authority on some actions and counties in which the County Council must give final approval, will be remedied by the definition of "approval" in new subsec. (5) (p. 2, 1s. 8-10).

(7) "Discretionary approval" (p. 2, 1s. 13-21)

This subsec. has been improved by indicating explicitly that a ministerial approval does not involve judgement..

(8) "Environmental impact statement" (p. 3, 1s. 1-11)

The retention of language requiring attention to special impacts in an EIS is an improvement.

(10) "Significant effects" (p. 3, 1s. 15-22)

The amendment returns to the original language, except to define the term in the plural, as it is used elsewhere in the statute.

(11) "Environmental assessment" (p. 3, 1s. 23-25).

See comments on 343-4(a) introduction, below.

Proposed amendments to subsecs. of 343-4(a) [Criteria for EIS requirement]

The differences between the changes proposed in HB 1025 and those proposed in HB 125 will have the following effects:

Introduction (p. 4, 1s. 3-4)

The language now proposed in the introductory part of subsec. (a), together with the definition of "environmental assessment" in 343-1(11), will provide full recognition in the statute of the assessment procedure usefully established by the EQC.

(3) and (4) [Assessments in shoreline areas and historic sites] (p. 5, 1s. 1-13)

The changes of language from HB 125 represent housekeeping.

(5) [Assessments in Waikiki-Diamond Head] (p. 5, ls. 14-22)

The retention of the present language of the law will continue the need for assessment of actions in Waikiki.

(6) [Assessments if general plan changes needed] (p. 6, ls. 1-9)

Language proposed in this subsec in HG 125 but not in HB 1025 was well intended but very confusing. The present inconsistency noted with respect to 343-1(2), with which this language also dealt, is removed through the definition of " approval" in 343-1(5).

(7) [Assessments at county option] (p. 6, ls. 10-11)

This added subsection seems intended to provide legislative authority to county extensions of the use of the State EIS system. As phrased, however, it would appear to require assessment of any "use" that requires approval by a county council through ordinance, whether or not the council had identified that kind of use as requiring an EIS. The proposed subsection could be reworded for greater clarity somewhat as follows: "Propose any other type of use within a county, provided assessment of that type of use has been determined appropriate by the county council and specified by county ordinance."

The intent might be better met by:

- i) deleting proposed subsec.(7) and renumbering what is now subsec. (8) as subsec. (7), and
- ii) adding a concluding paragraph to 343-4(a), following the 7 enumerated subsections, and reading somewhat as follows: "A county council may enlarge upon the kinds of uses requiring environmental assessment enumerated above, except as otherwise provided."

(8) [Assessments in agricultural lands] (p. 6, ls. 12-13)

This added subsection would require environmental assessment of any proposed use within the State Agricultural Land Use District that would require a special use permit, unless exempted. The addition is one that, in RL 1094, Appendix A, we suggested be considered by the Legislature.

However, this subsection proposing another geographic category of actions subject to EIS system requirements would best be transposed to follow immediately after the present subsections prescribing geographic categories, subsections (2) through (5). Depending on whether or not the suggestion is adopted that what is now subsec (7) be made an unnumbered concluding paragraph to 314-4(a), the numbered subsections of 314-4(a) proposed in HB 1065 would then become:

Nature of category	Numbering in HB 1065	Revised numbering	
		If (7) remains a numbered subsec.	If (7) becomes an unnumbered paragraph
State or county lands or funds	(1)	(1)	(1)
Geographic	(2)	(2)	(2)
	(3)	(3)	(3)
	(4)	(4)	(4)
	(5)	(5)	(5)
	(8)	(6)	(6)
	Requiring general plan change	(6)	(7)
County option			

Proposed amendments to subsec. 343-4(b) [EIS prescriptions for agency actions]

The differences between the changes proposed in HB 1065 and those proposed in HB 125 will have the following beneficial effects:

- i) Recognize the new provisions in 343-4(a) (p. 6, ls. 14 and p. 8, l.5)
- ii) Provide fully for the use of the EQC assessment procedure for agency actions (p. 6, l. 21 to p. 7, l. 1)
- iii) Provide for the application to agency actions of the EQC procedure for supplemental EIS's (p. 7, ls. 8-14).
- iv) Retain original language clarifying who has the power of EIS acceptance in the case of a joint State-County action (p. 8, l. 7).

Proposed amendments to subsec. 343-4(c) [EIS prescriptions for applicant actions]

The differences between the changes proposed in HB 1065 and HB 125 will have the following effects:

- i) Recognize the new provisions in 343-4(a) (p. 8, ls. 19-20). However, the wording: "subscction (a)(2) to (7)" should be changed to: "subsections (a)(2) to (8) , unless the intent of 343-4 (a)(7) is met by the alternate means discussed above.
- ii) Provide fully for the use of the EQC assessment procedure for applicant actions (p. 8, l. 23).

HB 1065 as well as HB 125 would make provision for use of supplemental EIS's in the case of certain applicant actions. However, as noted in RL 0194, Appendix A, " it should not be necessary to require a supplemental EIS for each phase of the approval process. The initial EIS should, so far as is possible, address the concerns that will be face in the subsequent approval phases, and a supplemental EIS should be required only if there are significant changes in the action or set of actions proposed, if the circumstances under which these actions would be undertaken change, or if new evidence as to environmental impacts comes to light." It might be desirable, also to indicate that the applicant should have considerable choice whether the initial EIS is to be complete and final, or whether a series of EIS's is to be prepared for the project. If further clarification of the provisions of the Act in these respects is desirable, the Environmental Center would be pleased to suggest appropriate language.

Proposed amendments to subsec. 343-4(f) [Joint federal-State actions]

HB 1065 would retain, as HB 125 would not, the clarity as to the power of acceptance under the state law of an EIS for a federal-state-county action that is provided under the present language.

Proposed amendments to sec. 343.5. Rules and regulations

HB 1065 would not only provide the improvements of the provisions concerning rules and regulations of the EQC that HB 125 would, but would improve subsec. (6) relating to exemption, through provisions for public notice and public

input (p. 13, l. 10 to p. 7, l. 3). However, it proposed to accomplish this by providing that the EQC establish "procedures whereby specific types of actions...are approved for inclusion within those classes of actions declared exempt from the preparation of a statement", but the provision for the EQC to establish general exempt classes would have been deleted.

The problem may be avoided by substituting for the first part of subsec. (6) the following:

(6) Establish procedures whereby general classes and specific types of actions shall be exempt from the preparation of an environmental assessment or statement because they will probably have no significant effects on the environment. Such procedures shall:

(a) provide for a list of general classes of actions to be exempt from assessment;

(b) provide for notice to the public pursuant to section 343-2 that a specific type of action is to be considered by the commission for inclusion within a class of actions already declared exempt;

(c) [as in present (b)]; and

(d) [as in present (c)].

It should be noted that "environmental assessment" or "environmental assessment or statement" has been substituted in the above proposed language for "statement". Without the substitution, environmental assessments would be required by sec. 343-4 even in the case of exempted actions.

An alternative means to provide the improvements suggested would be to retain the substance of the present language in subsec. (6) and to replace present subsec. (7) with either the substance of proposed subsecs. (b) through (d) or some other simplified paraphrase of the EQC provisions for agency exemption lists. In any case "statement" should be replaced by "environmental assessment".

Proposed amendments to Sec. 343-6. Limitations of actions

The amendments proposed in HB 1065 would usefully provide, as those proposed in HB 125 would not, that in the case of a judicial action concerning:

(a) Lack of determination on assessment (P.15, ls. 5-13):

(i) An applicant may appeal within 30 days.

(ii) The EQC has standing.

(ii) The general public has standing.

(b) Appropriateness of determination (p. 15, ls. 18-21):

The EQC has standing.

(d) Appropriateness of determination (p. 16, ls. 12-18):

The general public has standing.

It should be noted that the content of proposed subsec. (d) could be added to subsec. (b) because both deal with the appropriateness of "negative declarations" or "preparation notices" issued on the basis of assessments.