

JAN 25 2006

A BILL FOR AN ACT

RELATING TO NOISE POLLUTION.

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

1 SECTION 1. Chapter 342F, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§342F- Suits by individuals. (a) Any person acting as
5 a private attorney general may commence a civil action against
6 any person, including partnerships, corporations, associations,
7 public or private organizations, the State, any county, or any
8 agency, who is alleged to be in violation of chapter 342F, and
9 ordinances or rules adopted pursuant thereto, including any
10 order, variance, or permit issued; provided that the alleged
11 violation occurred or is occurring in rural areas.

12 (b) For purposes of this section, "rural areas" shall
13 include all areas in the rural district as set forth in section
14 205-2; provided that each county is expressly authorized to
15 enact ordinances expanding the definition of the term within
16 that county.

17 (b) The circuit court shall have jurisdiction to:



1 (1) Enforce the requirements of the applicable law,
2 ordinance, or rules; and
3 (2) Apply any appropriate civil penalties.
4 (c) Except for actions necessary to prevent imminent
5 endangerment to health or the environment, no action under this
6 chapter may be commenced:

7 (1) Prior to sixty days after the plaintiff has given
8 notice of the violation to:

9 (A) The officer or employee responsible for
10 administering the applicable law, ordinance,
11 rule, order, permit, or variance; and

12 (B) Any alleged violator of the applicable law,
13 ordinance, rule, order, permit, or variance;

14 (2) If the plaintiff does not make reasonable efforts to
15 arrange a meeting with the defendant and a
16 representative of the agency responsible for
17 administering the applicable law, ordinance, rule,
18 order, permit, or variance within sixty days after
19 this notice has been served to discuss the
20 circumstances that gave rise to the notice and
21 possible settlement of the issues;



1 (3) If the agency has commenced and is diligently
2 prosecuting a civil or administrative action to
3 require compliance with the applicable law, ordinance,
4 rule, order, permit, or variance, but in any such
5 action any person may intervene as a matter of right;
6 or

7 (4) Two years after the claim accrues, except where a
8 violation is part of a continuing violation or pattern
9 of violations.

10 (d) Any action under this section shall be brought only in
11 the judicial circuit in which the violation occurs or where the
12 harm is alleged to occur.

13 (e) In any action, the officer or employee responsible for
14 administering the applicable law, if not a party, may intervene
15 as a matter of right at any time in the proceeding.

16 (f) The court, in issuing any final order in any action
17 brought pursuant to this section, may award costs of litigation,
18 including reasonable attorney's and expert witness fees to any
19 prevailing or substantially prevailing plaintiff, whenever the
20 court determines such an award to be appropriate. The award
21 shall be limited to the extent that there is a reasonable
22 correlation between the importance of the case and the fees



1 awarded. In any action against a state agency, fees shall not
2 exceed a total of \$50,000.

3 (g) Nothing in this section shall restrict any right that
4 any person may have under any constitutional provision, statute,
5 or common law to seek enforcement of any violation of any land
6 use or environmental law, ordinance, rule, permit, variance,
7 approval, or order. Nothing in this section shall restrict any
8 right that any person may have under common law to seek damages
9 against another party whose actions have been determined to be
10 frivolous.

11 (h) Penalties received shall be deposited into the general
12 fund of the State or appropriate county, as the case may be,
13 unless the applicable statute directs that civil penalties be
14 deposited elsewhere. The court shall have discretion to order
15 that, in lieu of civil penalties, the defendant shall provide
16 funding for beneficial mitigation, restoration, management,
17 education, or protection projects that enhance public health or
18 the environment."

19 SECTION 2. New statutory material is underscored.

20 SECTION 3. This Act does not affect rights and duties that
21 matured, penalties that were incurred, and proceedings that were
22 begun, before its effective date.



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

2

INTRODUCED BY: *F. Alan Rish* *B/R*



Report Title:

Noise Pollution; Citizen Action; Rural District

Description:

Authorizes any person acting as a private attorney general to commence a civil action against a person or entity that is in violation of the noise pollution law.

