

JAN 22 2008

A BILL FOR AN ACT

RELATING TO CRUISE SHIPS.

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

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

4 **"PART . AIR POLLUTION FROM COMMERCIAL PASSENGER VESSELS**

5 **§342B-A Definitions.** As used in this part:

6 "Commercial passenger vessel" means a vessel that carries
7 passengers for hire. The term does not include a vessel:

8 (1) Authorized to carry fewer than fifty passengers;

9 (2) That does not provide overnight accommodations for at
10 least fifty passengers for hire, determined with
11 reference to the number of lower berths and based on
12 an average of two persons per cabin; or

13 (3) Operated by the United States or a foreign government.

14 "Large commercial passenger vessel" means a commercial passenger
15 vessel that provides overnight accommodations for two hundred
16 fifty or more passengers for hire, determined with

17

1 reference to the number of lower berths and based on an average
2 of two persons per cabin.

3 "Marine waters of the State" means those waters between the
4 shoreline of the State of Hawaii and any point three nautical
5 miles from the shoreline of the State.

6 "Passengers for hire" means vessel passengers for whom
7 consideration is contributed as a condition of carriage on the
8 vessel, whether directly or indirectly flowing to the owner,
9 charterer, operator, agent, or any other person having an
10 interest in the vessel.

11 "Small commercial passenger vessel" means a commercial
12 passenger vessel that provides overnight accommodations for two
13 hundred forty-nine or fewer passengers for hire, determined with
14 reference to the number of lower berths and based on an average
15 of two persons per cabin.

16 "Vessel" means any form or manner of watercraft, other than
17 a seaplane on the water, whether or not capable of self-
18 propulsion.

19 "Voyage" means a vessel trip to or from one or more ports of
20 call in the state with the majority of the passengers for hire
21 completing the entire vessel trip. A vessel trip involving
22 stops at more than one port of call is considered a single

1 voyage so long as the majority of passengers for hire complete
2 the entire trip.

3 **§342B-B Prohibited air pollution.** (a) No person shall
4 operate an incinerator of a large commercial passenger vessel in
5 any Hawaiian port for the combustion of any waste materials.

6 (b) Except as provided under section 342B-F, large
7 commercial passenger vessels shall limit visible emissions,
8 excluding condensed water vapor, to no more than twenty per cent
9 opacity for periods of time exceeding six minutes in any sixty-
10 minute period except for the following:

11 (1) When the ship is maneuvering to or from the dock or
12 anchor;

13 (2) In the event of a navigational or safety concern on
14 the ship; or

15 (3) In the event of an equipment failure; provided that
16 the cruise line shall, upon request, provide
17 information to the department that describes the
18 subject equipment, malfunction, corrective actions
19 taken, and the start and end times of the
20 malfunctioning period.

21 **§342B-C Information-gathering requirements.** (a) Except
22 as provided under section 342B-J, the owner or operator of a

1 commercial passenger vessel shall maintain records and, upon
2 request of the department, provide to the department a report,
3 with copies of the records related to the period of operation in
4 the marine waters of the State, detailing the dates, times, and
5 locations, and the opacity of air emissions.

6 (b) Except as provided under section 342B-J, while a
7 commercial passenger vessel is present in the marine waters of
8 the State, the department through an independent contractor may
9 monitor the opacity of air emissions.

10 (c) The owner or operator of a commercial passenger vessel
11 shall pay for all monitoring under subsection (a) and (b).

12 (d) If the owner or operator of a commercial passenger
13 vessel, when complying with another state or federal law that
14 requires substantially equivalent information gathering, has
15 gathered the type of information required under subsection (a)
16 and (b), the owner or operator shall be considered to be in
17 compliance with that subsection so long as the information is
18 also provided to the department. The department shall
19 establish, by rule, requirements for determining substantially
20 equivalent information gathering.

21 **§342B-D Recordkeeping requirements.** An owner or operator
22 subject to section 342B-C shall record the information required

1 to be gathered under that section and shall maintain the records
2 for three years after the date the information was gathered.

3 **§342B-E Reporting requirements.** (a) An owner or operator
4 of a commercial passenger vessel who becomes aware of an air
5 emission in violation of section 342B-B shall immediately report
6 that air emission to the department. The report shall not be
7 deemed to be privileged information.

8 (b) If the owner or operator of a commercial passenger
9 vessel operating in the marine waters of the State is required
10 by the administrator of the United States Environmental
11 Protection Agency or the secretary of the federal department in
12 which the United States Coast Guard is operating to collect
13 samples and test the opacity of air emissions and keep records
14 of the sampling and testing, then the owner or operator, within
15 twenty-one days after the opacity of air emissions is tested,
16 shall submit to the department a copy of the records.

17 (c) Upon request of the department, the information
18 required under this section shall be submitted electronically.

19 (d) This section does not relieve the owner or operator of
20 a commercial passenger vessel from other applicable reporting
21 requirements of state or federal law.

1 (e) The requirements of this section are subject to
2 alternative terms and conditions established under section 342B-
3 J.

4 **§342B-F Memorandum of understanding; recognition program.**

5 (a) Nothing contained in this part shall prevent the State
6 from:

7 (1) Entering into voluntary agreements with any owners or
8 operators of commercial passenger vessels, or their
9 representatives, for the purpose of controlling
10 pollution outside the marine waters of the State; or

11 (2) Adopting pollution controls more stringent than those
12 contained in this part.

13 (b) The department may engage in efforts to encourage and
14 recognize superior environmental protection efforts made by the
15 owners or operators of commercial passenger vessels that exceed
16 the requirements established by law.

17 **§342B-G Exemption for vessels in innocent passage.** This
18 part does not apply to a commercial passenger vessel that
19 operates in the marine waters of the State solely in innocent
20 passage. For purposes of this section, a vessel is engaged in
21 innocent passage if its operation in marine waters of the State,
22 regardless of whether the vessel is a United States or foreign-

1 flag vessel, would constitute innocent passage under the United
2 Nations Convention on the Law of the Sea 1982, December 10,
3 1982, United Nations Publication No. E.83.V.5, 21 I.L.M. 1261
4 (1982), were the vessel a foreign-flag vessel.

5 **§342B-H Activities of the department.** The department may
6 engage in the following activities relating to commercial
7 passenger vessels operating in the marine waters of the State:

- 8 (1) Direct monitoring of the opacity of air emissions from
9 those vessels;
- 10 (2) Monitoring and studying of direct or indirect
11 environmental effects of those vessels; and
- 12 (3) Researching ways to reduce effects of those vessels on
13 marine waters and other coastal resources.

14 **§342B-I Fine schedules for illegal air pollution.** (a) Any
15 person who fails to comply with any requirement of this part
16 shall be subject to the fines established by the department
17 pursuant to subsection (b).

18 (b) The department shall by rule under chapter 91,
19 establish fines for the failure to comply with any requirement of
20 this part.

21 **§342B-J Alternative terms and conditions of vessel**
22 **discharges.** (a) The department may establish alternative terms

1 and conditions of vessel air pollution applicable to an owner or
2 operator of a vessel who cannot practicably comply with the
3 standard terms and conditions of vessel air pollution under
4 sections 342B-B, 342B-C, 342B-D, and 342B-E or who wishes to use
5 or test alternative environmental protection equipment or
6 procedures. Except as specified in alternative terms and
7 conditions set by the department under this subsection, the
8 alternative terms and conditions of vessel air pollution must
9 require compliance with the standard terms and conditions of
10 vessel air pollution under sections 342B-B, 342B-C, 342B-D, and
11 342B-E. The department, on a case-by-case basis, may set
12 alternative terms and conditions of vessel air pollution if:

- 13 (1) The vessel owner or operator demonstrates to the
14 department's reasonable satisfaction that equivalent
15 environmental protection can be attained through other
16 terms or conditions appropriate for the specific
17 configuration or operation of the vessel;
- 18 (2) The vessel owner or operator agrees to make necessary
19 changes to the vessel to allow it to comply with the
20 standard terms and conditions of vessel air pollution
21 under sections 342B-B, 342B-C, 342B-D, and 342B-E, but
22 demonstrates to the department's reasonable

1 satisfaction that additional time is needed to make
2 the necessary changes; or

3 (3) An experimental technology or method for pollution
4 control of air pollution is being used or is proposed
5 as one of the alternative terms and conditions of
6 vessel air pollution, and the department determines
7 that the experimental technology or method has a
8 reasonable likelihood of success in providing
9 increased protection for the environment.

10 (b) Alternative terms and conditions of vessel air
11 pollution approved by the department under subsection (a), if
12 determined appropriate by the department, may include a waiver
13 by the department of portions of the requirements of sections
14 342B-B, 342B-C, and 342B-D for the time period that the
15 department determines to be appropriate."

16 SECTION 2. Section 342D-104, Hawaii Revised Statutes, is
17 amended as follows:

18 (1) By amending subsection (a) to read as follows:

19 "(a) Except as provided under section 342D-111, the owner
20 or operator of a commercial passenger vessel shall maintain
21 records and, upon request of the department, provide to the
22 department a report, with copies of the records related to the

1 period of operation in the marine waters of the State, detailing
2 the dates, times, and locations, and the volumes or flow-rates of
3 any discharge of sewage or other wastewater into the marine
4 waters of the State [~~, or the opacity of air emissions~~]."

5 (2) By amending subsection (c) to read as follows:

6 "(c) Except as provided under section 342D-111, while a
7 commercial passenger vessel is present in the marine waters of
8 the State, the department through an independent contractor may
9 collect additional samples of the vessel's treated sewage that
10 are being discharged into the marine waters of the State [~~, or
11 monitor the opacity of air emissions~~]."

12 SECTION 3. Section 342D-106, Hawaii Revised Statutes, is
13 amended by amending subsection (e) to read as follows:

14 "(e) If the owner or operator of a commercial passenger
15 vessel operating in the marine waters of the State is required by
16 the administrator of the Environmental Protection Agency or the
17 secretary of the federal department in which the United States
18 Coast Guard is operating to collect samples and test sewage [~~or
19 opacity of air emissions~~] and keep records of the sampling and
20 testing, then the owner or operator, within twenty-one days after
21 the sewage [~~or opacity of air emissions~~] is tested, shall submit
22 to the department a copy of the records."

1 SECTION 4. Section 342D-109, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"[§342D-109] Activities of the department.** The department
4 may engage in the following activities relating to commercial
5 passenger vessels operating in the marine waters of the State:

- 6 (1) Direct in-water monitoring of discharges or releases of
7 sewage [~~and direct monitoring of the opacity of air~~
8 ~~emissions~~] from those vessels;
- 9 (2) Monitoring and studying of direct or indirect
10 environmental effects of those vessels; and
- 11 (3) Researching ways to reduce effects of those vessels on
12 marine waters and other coastal resources."

13 SECTION 5. Section 342D-111, Hawaii Revised Statutes, is
14 amended to read as follows:

15 **"[§342D-111] Alternative terms and conditions of vessel**
16 **discharges.** (a) The department may establish alternative terms
17 and conditions of vessel discharges applicable to an owner or
18 operator of a vessel who cannot practicably comply with the
19 standard terms and conditions of vessel discharges under sections
20 342D-102, [~~342D-103,~~] 342D-104, and 342D-106 or who wishes to use
21 or test alternative environmental protection equipment or
22 procedures. Except as specified in alternative terms and

1 conditions set by the department under this subsection, the
2 alternative terms and conditions of vessel discharges must
3 require compliance with the standard terms and conditions of
4 vessel discharges under sections 342D-102, [~~342D-103,~~] 342D-104,
5 and 342D-106. The department, on a case-by-case basis, may set
6 alternative terms and conditions of vessel discharges if:

- 7 (1) The vessel owner or operator demonstrates to the
8 department's reasonable satisfaction that equivalent
9 environmental protection can be attained through other
10 terms or conditions appropriate for the specific
11 configuration or operation of the vessel;
- 12 (2) The vessel owner or operator agrees to make necessary
13 changes to the vessel to allow it to comply with the
14 standard terms and conditions of vessel discharges
15 under sections 342D-102, [~~342D-103,~~] 342D-104, and
16 342D-106 but demonstrates to the department's
17 reasonable satisfaction that additional time is needed
18 to make the necessary changes; or
- 19 (3) An experimental technology or method for pollution
20 control of a discharge is being used or is proposed as
21 one of the alternative terms and conditions of vessel
22 discharges, and the department determines that the

1 experimental technology or method has a reasonable
2 likelihood of success in providing increased protection
3 for the environment.

4 (b) Alternative terms and conditions of vessel discharges
5 approved by the department under subsection (a), if determined
6 appropriate by the department, may include a waiver by the
7 department of portions of the requirements of sections 342D-102,
8 [~~342D-103,~~] and 342D-104 for the time period that the department
9 determines to be appropriate."

10 SECTION 6. Section 342D-103, Hawaii Revised Statutes, is
11 repealed.

12 ~~["§342D-103] Prohibited air emissions. (a) No person~~
13 ~~shall operate an incinerator of a large commercial passenger~~
14 ~~vessel in any Hawaiian port for the combustion of any waste~~
15 ~~materials.~~

16 ~~(b) Except as provided under section 342D-106, large~~
17 ~~commercial passenger vessels shall limit visible emissions,~~
18 ~~excluding condensed water vapor, to no more than twenty per cent~~
19 ~~opacity for periods of time exceeding six minutes in any sixty-~~
20 ~~minute period except for the following:~~

21 ~~(1) When the ship is maneuvering to or from the dock or~~
22 ~~anchor;~~

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1 ~~(2) In the event of a navigational or safety concern on the~~
2 ~~ship; or~~

3 ~~(3) In the event of an equipment failure; provided that the~~
4 ~~cruise line shall upon request, provide information to~~
5 ~~the department that describes the subject equipment,~~
6 ~~malfunction, corrective actions taken, and the start~~
7 ~~and end times of the malfunctioning period."]~~

8 SECTION 7. This Act does not affect rights and duties that
9 matured, penalties that were incurred, and proceedings that were
10 begun, before its effective date.

11 SECTION 8. If any provision of this Act, or the
12 application thereof to any person or circumstance is held
13 invalid, the invalidity does not affect other provisions or
14 applications of the Act, that can be given effect without the
15 invalid provision or application and to this end the provisions
16 of this Act are severable.

17 SECTION 9. In codifying the new sections added to chapter
18 342B, Hawaii Revised Statutes, by section 1 of this Act, the
19 revisor of statutes shall substitute appropriate section numbers
20 for the letters used in the designations of and references to
21 those new sections in this Act.

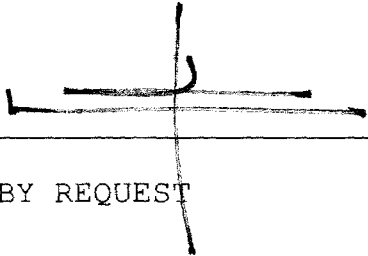
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1 SECTION 10. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 11. This Act shall take effect on July 1, 2008.

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INTRODUCED BY: _____



BY REQUEST

Report Title:

Cruise Ships

Description:

Transfers the cruise ship air emission provisions from HRS, chapter 342D, Water Pollution, to HRS, chapter 342B, Air Pollution Control.

JUSTIFICATION SHEET

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO CRUISE SHIPS.

PURPOSE: To transfer and amend, as deemed appropriate, the cruise ship air emission provisions from Hawaii Revised Statutes (HRS) chapter 342D, Water Pollution, to HRS, Chapter 342B, Air Pollution Control.

MEANS: Add a new part to chapter 342B, HRS; amend sections 342D-104(a) and (c), 342D-106(e), 342D-109 and 342D-111, HRS; and repeal sections 342D-103 and 342D-110, HRS.

JUSTIFICATION: Currently, the air emission provisions for cruise ships are contained in HRS, chapter 342D, Water Pollution. This bill would delete the subject provisions from chapter 342D and incorporate them and any supporting provisions into chapter 342B, Air Pollution Control. It is difficult and cumbersome for the Clean Air Branch to enforce the air emission provisions while they are located in the water pollution statutes.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: July 1, 2008.