

CHAPTER 322
NUISANCES; SANITARY REGULATIONS

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"PART I. ABATEMENT OF NUISANCES

§322-1 Removal, prevention. The department of health and its agents shall examine into all nuisances, foul or noxious odors, gases or vapors, water in which mosquito larvae exist, sources of filth, and all causes of sickness or disease, on shore, and in any vessel, which may be known to them or brought to their attention, which in their opinion are dangerous or injurious to health, and into any and all conditions created or existing which cause or tend to cause sickness or disease or to be dangerous or injurious to health, and shall cause the same to be abated, destroyed, removed, or prevented.

For purposes of this part, a nuisance shall include:

- (1) Toxic materials that are used in or by-products of the manufacture or conversion of methamphetamine, and clandestine drug labs that manufacture methamphetamine; and
- (2) Odors and filth resulting from a person feeding feral birds. [PC 1869, c 59, §9; am L 1911, c 111, §1; am L 1915, c 96, §1; RL 1925, §923; RL 1935, §1310; RL 1945, §2701; RL 1955, §47-1; am L Sp 1959 2d, c 1, §19; HRS §322-1; am L 2004, c 44, §23; am L 2013, c 269, §1]

Case Notes

Dumping of garbage at sea. 283 U.S. 473.

Does not authorize board to destroy what is not a nuisance or to declare that to be which is not in fact a nuisance. 14 H. 533, 537.

Courts will review board's actions when taken without notice to owner. 22 H. 327, 345.

Cited: 19 H. 628.

" **§322-2 Ordering owner to remove.** Whenever any such nuisance, foul or noxious odors, gases or vapors, water in which mosquito larvae exist, source of filth, or cause of sickness or disease is found on private property, the department of health shall cause notice to be given to the owner to remove and abate the same at the owner's own expense within such reasonable time as the department may deem proper. A duplicate of the notice so given shall be left with one or more of the tenants or occupants of the premises. If the premises are unoccupied, notice shall be mailed to the last known place of residence of the owner if residing in the State. If the owner resides out of the State or cannot be reached with notice speedily, notice left at the house or posted on the premises shall be sufficient. If the owner

thus notified does not comply with the notification or order of the department, or its agent, within the time specified, the department or its agent may apply to the district court of the circuit in which the property is situated for an order authorizing the department to execute and carry out the notice or for an order to abate the nuisance and remove, destroy, or prevent the cause of the foul or noxious odors, gases or vapors, water in which mosquito larvae exist, source of filth, or cause of sickness or disease, or other thing detrimental to public health.

The department may recover by appropriate proceedings the expenses incurred by it in the abatement, removal, destruction, or prevention, from any person who has caused or allowed the nuisances, source of foul or noxious odors, gases or vapors, water in which mosquito larvae breed, source of filth, or cause of sickness or disease, or other thing detrimental to the public health, and from any owner, tenant, or occupant of the premises, who, after notice, has failed to abate, remove, destroy, or prevent the nuisance, source of foul or noxious odors, gases or vapors, water in which mosquito larvae exist, source of filth, or cause of sickness or disease, or other thing detrimental to the public health within the time specified in the notice. In no case shall the department or any officer or agent thereof be liable for costs in any action or proceeding that may be commenced in pursuance of this part. [PC 1869, c 59, §10; am L 1911, c 111, §2; am L 1919, c 80, §1; RL 1925, §924; RL 1935, §1311; RL 1945, §2702; RL 1955, §47-2; am L Sp 1959 2d, c 1, §19; HRS §322-2; am L 1970, c 188, §40; gen ch 1985]

" **§322-3 Nuisance on public property.** Whenever any nuisance, foul or noxious odors, gases or vapors, water in which mosquito larvae exist, source of filth, or cause of sickness or disease is found on public property or on a public highway, street, lane, alley, or other public place, notice shall be given by the department of health, or its agent, to the person officially in charge thereof, and the person shall be notified to abate, destroy, remove, or prevent the same. In case of failure to comply with the notice, the mode of procedure shall be the same as hereinbefore provided in case of private persons in section 322-2. [L 1911, c 111, §3; RL 1925, §926; RL 1935, §1313; RL 1945, §2704; RL 1955, §47-4; am L Sp 1959 2d, c 1, §19; HRS §322-3]

" **§322-4 Entering lands, buildings, etc.** Whenever any member of the department of health deems it necessary for the preservation of the lives or health of the public to enter any land, building, vessel, or aircraft for the purpose of examining

into, abating, destroying, removing, or preventing any nuisance, source of foul or noxious odors, gases or vapors, water in which mosquito larvae exist, source of filth, or cause of sickness or disease, or other thing detrimental to the public health, and is refused such entry, the member may make complaint to the district judge in whose circuit the nuisance, source, place, or cause is, and the district judge may thereupon issue a warrant, directed to any police officer of the circuit, commanding the police officer to take sufficient aid, and, being accompanied by the member of the department, between the hours of sunrise and sunset, to repair to the place described in the complaint, and to abate, destroy, remove, or prevent, under the directions of the member, the nuisance, source or cause. [PC 1869, c 59, §13; am L 1911, c 111, §4; RL 1925, §927; RL 1935, §1314; RL 1945, §2705; am L 1953, c 32, §2; RL 1955, §47-5; am L Sp 1959 2d, c 1, §19; HRS §322-4; am L 1970, c 188, §§39, 40; gen ch 1985]

" **§322-5 REPEALED.** L 1990, c 8, §2.

" **§322-6 Who to report nuisances.** The sheriff, all officers of police, and physicians shall report to the department of health, or its nearest authorized agent, the existence of any nuisance injurious to the public health, of which any of them may be cognizant, as soon as possible after it comes to their knowledge. Any individual may report to the department of health, or its nearest authorized agent, the existence of any nuisance injurious to the public health as soon as possible after the individual learns of the existence of the nuisance. [PC 1869, c 59, §22; RL 1925, §929; RL 1935, §1316; RL 1945, §2707; RL 1955, §47-7; am L Sp 1959 2d, c 1, §19; am L 1963, c 85, §3; HRS §322-6; am L 1989, c 211, §10; am L 1990, c 281, §11; am L 2013, c 269, §2]

" **§322-7 REPEALED.** L 1983, c 100, §6.

" **§322-8 Administrative penalties.** (a) Any person who violates this part or any rule adopted by the department of health to implement this part shall be fined not more than \$10,000 for each separate offense. Any action taken to collect the penalty provided for in this subsection shall be considered a civil action.

(b) The director of health may impose by order the administrative penalty specified in this section. Factors to be considered in imposing the administrative penalty include the nature and history of the violation and of any prior violation, and the opportunity, difficulty, and history of corrective action. It is presumed that the violator's economic and

financial conditions allow payment of the penalty and the burden of proof to the contrary is on the violator. For any judicial proceeding to recover the administrative penalty imposed, the director of health need only show that notice was given, a hearing was held, or the time granted for requesting a hearing has expired without such a request, the administrative penalty was imposed, and that the penalty remains unpaid.

(c) In addition to the penalty under subsection (a), the director of health may order the person who has committed the violation to correct the violation at the person's own expense. [L 1983, c 100, pt of §1; am L 1984, c 12, §1]

" **[§322-9] Injunctive relief.** The director of health may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent any violation of this part or any rule adopted to implement this part. The court shall have powers to grant relief in accordance with the Hawaii rules of civil procedure. [L 1983, c 100, pt of §1]

Rules of Court

Injunctions, see HRCF rule 65.

"PART II. INSANITARY CONDITIONS OF LAND

§322-21 Insanitary conditions of land to be reported.

Whenever in the opinion of the department of health any tract or parcel of land situate in the State is deleterious to the public health in consequence of being low, and at times covered or partly covered by water, or of being situated between high and low water mark, or of being improperly drained, or incapable by reasonable expenditure of effectual drainage, or for other reason in an insanitary or dangerous condition, the department shall report such fact to the comptroller, together with a brief recommendation of the operation deemed advisable to improve the land. [L 1896, c 61, §1; am L 1911, c 112, §1; RL 1925, §975; RL 1935, §1325; RL 1945, §2716; RL 1955, §47-20; am L Sp 1959 2d, c 1, §§12, 19; HRS §322-21]

Case Notes

This part does not make approval of department or its officers a prerequisite to granting of building permit. 13 H. 239. Does not contravene 5th or 7th Am. Const. 21 H. 314. Refers to improved lands as well as unimproved. 22 H. 327. Lien. 31 H. 446. Application generally. See 33 H. 199.

" **§322-22 Maps and plans.** If the department of health in any case recommends a system of drainage or of filling and drainage, the comptroller shall, upon receipt of the notice, prepare a map of the land so reported upon by the department and to be so drained, or filled and drained, which land shall constitute a drainage district. The map shall show the district to be so drained, or filled and drained, the location and the size of each parcel or lot therein, a list of all known owners and occupants of the lots, the lots or parcels either within or without the drainage district through which rights-of-way for drains or ditches for draining the district are necessary, the amount of land necessary to be taken for the drains or ditches and for the banks thereof, a description of the same, an estimate of the value of the lands so sought to be taken for rights-of-way, and of the damages sustained by any person by reason of the appropriation irrespective of any benefit to be derived by the owners by reason of the construction of the improvements, which estimates shall be made respectively as to each person through whose land the rights-of-way are sought to be appropriated. The map shall also show the extent and location of the proposed drains or ditches, the width, depth, and slope of the sides thereof, an estimate of the total cost of the system of drainage in and for the district, including therein among other things the cost of acquiring the necessary rights-of-way and of making ditches, estimates of the cost, respectively, of the filling of each lot or parcel of land in the district, and the estimate of the cost to be apportioned to and assessed against each lot or parcel of land in the district for the drainage of the lot or parcel, the apportionment to be as hereinafter required.

If the department recommends only that the land be filled, the map shall, so far as practicable, show the present heights of each parcel, the height to be filled to, the approximate amount of fill required for each parcel, and the estimated cost thereof.

The comptroller may embody any of the information herein required in a statement to accompany the appropriate map instead of placing the same upon the map. [L 1915, c 190, §1; RL 1925, §976; RL 1935, §1326; RL 1945, §2717; RL 1955, §47-21; am L Sp 1959 2d, c 1, §§12, 19; HRS §322-22]

Case Notes

Cited: 31 H. 446, 449.

" **§322-23 Notice to owners to improve.** The comptroller upon the receipt of the notice shall cause a copy of the same to be

served in the manner prescribed in section 322-24 upon the owner or occupant of the land. The comptroller shall also notify each owner or occupant that a detailed statement and map or plan of the proposed improvement is on file in the comptroller's office accessible to the owner or occupant. The comptroller shall at the same time and in the same manner serve notice that, in case of failure to begin work upon the improvements within twenty days, or such further time in special cases as to the comptroller may seem reasonable, and to complete such work within a reasonable time in the notice designated, such work or so much thereof as may remain undone will be done by the State at the cost of the lands benefited thereby. [L 1896, c 61, §2; am L 1911, c 112, §2; am L 1915, c 190, §2; RL 1925, §977; RL 1935, §1327; RL 1945, §2718; RL 1955, §47-22; am L Sp 1959 2d, c 1, §12; HRS §322-23; gen ch 1985]

Case Notes

"Owner" defined, sufficiency of notice. 22 H. 327, 335, 342.
Lien attaches, when. 31 H. 446.
Sufficiency of notice, waiver. 33 H. 199.

" **§322-24 Service of notice.** Service of the notice upon an owner in person, if within the State, or upon the owner's agent if without the State, or upon the occupant of the land if the owner is unknown, or upon the guardian if the owner is a minor or person under guardianship, or by mail or personal delivery to the owner if without the State, shall be deemed good and sufficient service. If the land is unoccupied and the owner or the owner's place of residence is unknown, or if the owner is without the State and the owner's address is unknown and the owner has no known agent within the State, or if the owner is under age or incompetent, having no guardian in the State, the notice shall be published for five consecutive days in some newspaper of general circulation published in the county where the land is situated. The notice in all cases may be general in terms and addressed to all persons whom it may concern. [L 1896, c 61, §3; am L 1911, c 112, §3; RL 1925, §978; RL 1935, §1328; RL 1945, §2719; RL 1955, §47-23; HRS §322-24; gen ch 1985]

" **§322-25 Appeal.** During the period of twenty days, or such further time in special cases as is specified in the notice given pursuant to section 322-23, any owner or occupant of land sought to be improved, the owner's or occupant's attorney or agent, may file an appeal from the decision of the department of health condemning the land as deleterious to the public health or from its decision or the order of the comptroller as to the

nature and extent of the improvements to be made, including the size, character, and location of any drains or ditches, and within twenty days after written demand by the comptroller on the owner or occupant of any land in a drainage district improved by drainage under this chapter, for the payment of the cost of any such drainage, the owner or occupant, the owner's or occupant's attorney or agent, may file an appeal from the order of the comptroller apportioning the cost of the drainage to be borne by the owner's or occupant's land. All appeals shall be filed with the comptroller, and the comptroller shall transmit them to the circuit court of the circuit wherein the land is situated. [L 1896, c 61, §4; am L 1911, c 112, §4; am L 1915, c 190, §3; RL 1925, §979; RL 1935, §1329; RL 1945, §2720; RL 1955, §47-24; am L Sp 1959 2d, c 1, §§12, 19; HRS §322-25; gen ch 1985]

Case Notes

Effect of appeal not taken. 22 H. 327.

" **§322-26 Hearing, decision.** Upon receiving any appeal from the comptroller, the court shall appoint three disinterested persons who shall sit as a board to hear and determine the appeal in conformity with chapter 91. They shall have power to determine whether or not the land is deleterious to the public health and whether the improvements of the nature designated in the notice are required, and if the improvements are not required, what, if any, improvements are required in order to render the lands sanitary. The board shall also have power upon any appeal to determine the amount to be in conformity with section 322-30, apportioned to and assessed against each lot or parcel for drains or ditches and for the lands acquired therefor and for all other cost, if any, of the drainage system, and whether or not any lands are improperly included in or excluded from the drainage district. The decision of a majority of the board as to the necessity and nature and extent of the improvements and as to the apportionment of the cost of any drainage system shall be final and conclusive upon all parties in interest, unless an appeal is taken as provided in chapter 91. The board shall appoint a time and place for hearing, first giving reasonable notice thereof to the director of health, the comptroller, and the owner or occupant of the land in question. Service of notice shall be as provided in section 322-24. As compensation for their services each member of the board is entitled to receive \$5 for each day of actual service. [L 1896, c 61, §5; am L 1911, c 112, §5; am L 1915, c 190, §4; RL1925,

§980; RL 1935, §1330; RL 1945, §2721; RL 1955, §47-25; am L 1965, c 96, §30; HRS §322-26]

Rules of Court

Appeal, see HRCP rule 72.

" **§322-27 Plans, etc.** The comptroller shall transmit to the board with each appeal the appropriate map or plan (or a copy thereof) of the lands to be improved prepared in accordance with the requirements of section 322-22, and shall also transmit to the board with each appeal a statement of the matters and things required by section 322-22 to be noted upon or to accompany the map. [L 1911, c 112, §6; am L 1915, c 190, §5; RL 1925, §981; RL 1935, §1331; RL 1945, §2722; RL 1955, §47-26; am L Sp 1959 2d, c 1, §12; HRS §322-27]

" **§322-28 Entry upon and acquisition of land.** The comptroller may enter upon all lands on the routes of the proposed drains or ditches for the purpose of examining, surveying, and laying out the route thereof, and upon all lands proposed to be included in any such drainage district for the purpose of determining whether the same or any portion thereof shall be included in the district, and institute and conduct proceedings for the condemnation of all lands declared by the comptroller, when the comptroller's order is not appealed from, or by the board on appeal to be necessary for rights-of-way for the drains or ditches. In acquiring any such lands the method pursued shall be as prescribed in chapter 101; provided that in acquiring by condemnation proceedings any land situated within the drainage district the award of compensation therefor shall be without deduction for any benefits accruing to the remainder of the lot or parcel by reason of the construction of such improvement.

Any lands acquired by condemnation for rights-of-way for drains or ditches shall be paid for out of any funds available for the improvement of any lands under this part. [L 1915, c 190, §6; RL 1925, §982; RL 1935, §1332; RL 1945, §2723; RL 1955, §47-27; am L Sp 1959 2d, c 1, §12; HRS §322-28; gen ch 1985]

" **§322-29 Comptroller to make improvements, when.** The board shall transmit a copy of its decision to the comptroller and to the other persons affected thereby, so far as practicable, and in case the owner of the land does not within ten days after the receipt of the decision begin work upon the improvements, or in case the work is not completed within such additional time as has been specified as provided in section 322-23, the

comptroller may proceed to make or complete the improvement according to the decision of the board. In case no appeal is taken from the decision of the board as above provided, or work is not begun and completed within the times prescribed, the comptroller may proceed to make or complete the improvements. [L 1896, c 61, §6; am L 1911, c 112, §7; RL 1925, §983; RL 1935, §1333; RL 1945, §2724; RL 1955, §47-28; am L Sp 1959 2d, c 1, §12; HRS §322-29]

Case Notes

Owner may object to methods under proper circumstances, and extra cost must be assumed by owner. 22 H. 327. See 33 H. 199.

" **§322-30 Cost of improvement; how apportioned.** The cost of the improvements made or completed by the comptroller shall be apportioned as follows:

- (1) Cost of filling any lot or parcel shall be borne by the lot or parcel;
- (2) Cost of any drainage system including the cost of drains or ditches, damages for property taken for the same, and other expenses, if any, shall be apportioned among all the lots or parcels in the drainage district in proportion to their respective areas. [L 1915, c 190, §7; RL 1925, §984; RL 1935, §1334; RL 1945, §2725; RL 1955, §47-29; am L Sp 1959 2d, c 1, §12; HRS §322-30]

" **§322-31 Lien.** The cost of the improvements made or completed by the comptroller as determined and apportioned pursuant to the provisions of this part shall constitute a lien upon the land improved, which lien shall have priority over all other liens. [L 1896, c 61, §7; am L 1911, c 112, §8; am L 1915, c 190, §8; RL 1925, §985; RL 1935, §1335; RL 1945, §2726; RL 1955, §47-30; am L Sp 1959 2d, c 1, §12; HRS §322-31]

Case Notes

Lien attaches to interest of person who as owner is in control of land. 22 H. 327.

Cited: 31 H. 446, 449.

" **§322-32 Notice and recording of lien.** Whenever work or improvement is done or completed by the comptroller, the comptroller shall record in the office of the registrar of conveyances a notice of the cost of the work so done or completed and a brief description of the land on which the same

is a charge, together with the name of the last known owner, and shall also serve a copy of the notice upon such owner in the manner provided in section 322-24. [L 1896, c 61, §8; am L 1911, c 112, §9; RL 1925, §986; RL 1935, §1336; RL 1945, §2727; RL 1955, §47-31; am L Sp 1959 2d, c 1, §12; HRS §322-32; gen ch 1985]

Case Notes

Cited: 31 H. 446, 449.

" **§322-33 Foreclosure.** The lien may be foreclosed at any time after six months and within five years from the date of the recording required by section 322-32 by suit in equity or without suit by public sale by the comptroller in the name of the State. Foreclosure by public sale shall be preceded by the publication of a notice, setting forth the time and place of the sale, the amount of the lien, and a brief description of the land, for at least six times, in a weekly paper published in the county where the land is situated. The land shall be offered for sale at public auction at an upset price equal to the amount of the lien, and the cost of all advertising and other costs incurred, and if no higher price is bid, shall be declared sold to the State, which in such case shall be deemed to be the purchaser at the upset price. The sale shall be effectual to convey the title to the purchaser, and a conveyance of the land to the purchaser may be executed in the name of the State by the comptroller. Only the balance of the purchase price, after deducting the amount of the lien and costs, or, in case there is no balance or an insufficient balance, only an amount equal to the value of the land as last previously assessed for taxation, shall be subject to claims against the State. In case the State is the purchaser, the amount of the assessed value shall be payable out of any funds provided therefor, and the land may be sold at any time thereafter at public auction, after due notice, at an upset price equal to the value of the land as determined by one or more, but not more than three disinterested appraisers appointed by the comptroller, and the proceeds of the sale turned into the fund provided therefor. In case of uncertainty as to the person to whom the balance or assessed value should be paid or its apportionment among two or more persons, it may be deposited in the circuit court for the benefit of whom it may concern. [L 1896, c 61, §9; am L 1911, c 112, §10; am L 1915, c 149, §1; RL 1925, §987; RL 1935, §1337; RL 1945, §2728; am L 1953, c 210, §1; RL 1955, §47-32; am L Sp 1959 2d, c 1, §12; HRS §322-33]

Rules of Court

As to one form of action, see HRCF rules 1, 2, 81(i).

" **§322-34 Payment presumed when.** All such liens shall be presumed to have been satisfied at the expiration of six years from the date of record. [L 1896, c 61, §10; am L 1915, c 149, §2; RL 1925, §988; RL 1935, §1338; RL 1945, §2729; RL 1955, §47-33; HRS §322-34]

" **§322-35 Amount paid owner.** Whenever property is improved under this part and the comptroller sells the property so improved to satisfy the lien established in consequence of the improvement, the owner shall be paid out of the proceeds of the sale an amount not less than the assessed value of the property before its improvement. [L 1911, c 29, §2; RL 1925, §991; RL 1935, §1339; RL 1945, §2730; RL 1955, §47-34; am L Sp 1959 2d, c 1, §12; HRS §322-35]

"PART III. APPROVAL OF LOCATION AND SANITARY CONDITION OF BUSINESSES--REPEALED

§§322-41, 42 REPEALED. L 2000, c 14, §1.

"PART IV. DWELLINGS; LODGING HOUSES--REPEALED

§§322-51 to 54 REPEALED. L 2000, c 14, §2.

"PART V. AIR POLLUTION--REPEALED

§§322-61 to 79 REPEALED. L 1972, c 100, §2.

Cross References

For present provisions, see chapter 342B.

"PART VI. EXCESSIVE NOISE--REPEALED

§§322-101 to 110 REPEALED. L 1972, c 100, §2.

Cross References

For present provisions, see chapter 342F.

"PART VII. PIGEONS--REPEALED

§§322-121 to 124 REPEALED. L 1988, c 86, §2.

Cross References

For present provisions, see §§142-101 to 103.

"PART VIII. AVIARY GAME BIRDS--REPEALED

§§322-141 to 143 REPEALED. L 1988, c 86, §3.

Cross References

For present provisions, see §§142-111, 112.