

JAN 17 2020

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# A BILL FOR AN ACT

RELATING TO WATER POLLUTION.

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

1           SECTION 1. Section 342D-6, Hawaii Revised Statutes, is  
2 amended to read as follows:  
3           "~~§342D-6~~ **Permits; procedures for.** (a) No permit shall be  
4 issued for discharge of pollution arising from a use in a class  
5 of waters of which the use is not an approved use under  
6 standards established by regulation or rule. No permit shall be  
7 issued for expansion of an existing use or addition of accessory  
8 use if the existing or accessory use is not an approved use in  
9 the class of waters. No permit for an activity involving  
10 discharge of pollution including nonpoint source pollution shall  
11 be issued for water designated with the highest level of  
12 protection by regulation or rule without first obtaining a  
13. variance.

14           ~~[(a)]~~ (b) An application for any permit required under  
15 this chapter shall be in a form prescribed by the director.

16           ~~[(b)]~~ (c) The department may require that applications for  
17 permits shall be accompanied by plans, specifications, and any



1 other information that it deems necessary in order to determine  
2 whether the proposed installation, alteration, or use will be in  
3 accord with applicable rules and standards.

4       ~~[(e)]~~ (d) The director shall issue a permit for any term,  
5 not exceeding five years, if the director determines that it  
6 will be in the public interest; provided that the permit may be  
7 subject to any reasonable conditions that the director may  
8 prescribe. The director may include conditions in permits or  
9 may issue separate permits for management practices for domestic  
10 sewage, sewage sludge, and recycled water, whether or not the  
11 practices cause water pollution. The director, on application,  
12 shall renew a permit from time to time for a term not exceeding  
13 five years if the director determines that it will be in the  
14 public interest. The director shall not grant or deny an  
15 application for the issuance or renewal of a permit without  
16 affording the applicant and any person who commented on the  
17 proposed permit during the public comment period an opportunity  
18 for a hearing in accordance with chapter 91. A request for a  
19 hearing and any judicial review of the hearing shall not stay  
20 the effect of the issuance or renewal of a permit unless



1 specifically ordered by the director or ~~[+]~~an~~[+]~~ environmental  
2 court.

3 ~~[(d)]~~ (e) The director, on the director's own motion or  
4 the application of any person, may modify, suspend, revoke, or  
5 revoke and reissue any water pollution permit if, after  
6 affording the permittee an opportunity for a hearing in  
7 accordance with chapter 91, the director determines that:

- 8 (1) There is a violation of any condition of the permit;
- 9 (2) The permit was obtained by misrepresentation, or there  
10 was failure to disclose fully all relevant facts;
- 11 (3) There is a change in any condition that requires  
12 either a temporary or permanent reduction or  
13 elimination of the permitted discharge; or
- 14 (4) It is in the public interest.

15 The public interest excludes any reason less stringent than  
16 the causes for permit modification, revocation, and termination,  
17 or revocation and reissuance identified in 40 Code of Federal  
18 Regulations section 122.62 or 122.64.

19 ~~[(e)]~~ (f) The director, on the director's own motion or  
20 the application of any person, may modify, suspend, revoke, or  
21 revoke and reissue any sludge permit after affording the



1 permittee an opportunity for a hearing in accordance with  
2 chapter 91, and consistent with 40 Code of Federal Regulations  
3 section 501.15(c)(2) and (3) and (d)(2).

4 [~~f~~] (g) The director shall ensure that the public  
5 receives notice of each application for a permit to control  
6 water pollution. The director may hold a public hearing before  
7 ruling on an application for a permit to control water pollution  
8 if the director determines the public hearing to be in the  
9 public interest. In determining whether a public hearing would  
10 be in the public interest, the director shall be guided by 40  
11 Code of Federal Regulations section 124.12(a).

12 [~~g~~] (h) In determining the public interest regarding  
13 permit issuance or renewal, the director shall consider the  
14 environmental impact of the proposed action, any adverse  
15 environmental effects which cannot be avoided should the action  
16 be implemented, the alternatives to the proposed action, the  
17 relationship between local short-term uses of the environment  
18 and the maintenance and enhancement of long-term productivity,  
19 any irreversible and irretrievable commitments of resources  
20 which would be involved in the proposed action should it be  
21 implemented, and any other factors which the director, by rule,



1 may prescribe; provided that any determination of public  
2 interest shall promote the optimum balance between economic  
3 development and environmental quality.

4 ~~[(h)]~~ (i) No applicant for a modification or renewal of a  
5 permit shall be held in violation of this chapter during the  
6 pendency of the applicant's application so long as the applicant  
7 acts consistently with the permit previously granted, the  
8 application and all plans, specifications, and other information  
9 submitted as part thereof."

10 SECTION 2. Section 342D-7, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "§342D-7 Variances. (a) A variance may be granted by the  
13 director from the provisions of chapter 342D or any rules  
14 adopted under this chapter subject to the requirements set forth  
15 in this section. All variance proceedings shall require the  
16 burden of proving entitlement to a variance on the applicant.

17 ~~[(a)]~~ (b) Every application for a variance shall be made  
18 on forms furnished by the department and shall be accompanied by  
19 a complete and detailed description of present conditions, how  
20 present conditions do not conform to standards, and such other  
21 information as the department may by rule prescribe.



1            [~~(b)~~] (c) Each application for a variance shall be  
2 reviewed in light of the descriptions, statements, plans,  
3 histories, and other supporting information submitted with the  
4 application, such additional information as may be submitted  
5 upon the request of the department, and the effect or probable  
6 effect upon the water quality standards established pursuant to  
7 this chapter.

8            [~~(e)~~] (d) Whenever an application is approved, the  
9 department shall issue a variance authorizing the discharge of  
10 water pollutant in excess of applicable standards. No variance  
11 shall be granted by the department unless the application and  
12 the supporting information clearly show that:

- 13            (1) The continuation of the function or operation involved  
14            in the discharge of waste occurring or proposed to  
15            occur by the granting of the variance is in the public  
16            interest as defined in section 342D-6;
- 17            (2) The discharge occurring or proposed to occur does not  
18            substantially endanger human health or safety; and
- 19            (3) Compliance with the rules or standards from which  
20            variance is sought would produce serious hardship  
21            without equal or greater benefits to the public.



1           ~~(d)~~ (e) Any variance or renewal thereof shall be granted  
2 within the requirements of this section and for time periods and  
3 under conditions consistent with the reasons therefor, and  
4 within the following limitations:

- 5           (1) If the variance is granted on the ground that there is  
6           no practicable means known or available for the  
7           adequate prevention, control, or abatement of the  
8           water pollution involved, it shall be only until the  
9           necessary means for prevention, control, or abatement  
10          become practicable and subject to the taking of any  
11          substitute or alternate measures that the department  
12          may prescribe. No renewal of a variance granted under  
13          this subsection shall be allowed without a thorough  
14          review of known and available means of preventing,  
15          controlling, or abating the water pollution involved.
- 16          (2) The director may issue a variance for a period not  
17          exceeding five years.
- 18          (3) Every variance granted under this section shall  
19          include conditions requiring the grantee to perform  
20          discharge or effluent sampling and report the results  
21          of such sampling to the department.



1           ~~(e)~~ (f) Any variance granted pursuant to this section  
2 may be renewed from time to time on terms and conditions and for  
3 periods not exceeding five years which would be appropriate on  
4 initial granting of a variance; provided that the applicant for  
5 renewal has met all of the conditions specified in the  
6 immediately preceding variance; and provided further that the  
7 renewal, and the variance issued in pursuance thereof, shall  
8 provide for discharge not greater than that attained pursuant to  
9 the terms of the immediately preceding variance at its  
10 expiration. No renewal shall be granted except on application  
11 therefor. Any such application shall be made at least one  
12 hundred eighty days prior to the expiration of the variance.  
13 The director shall act on an application for renewal within one  
14 hundred eighty days of the receipt of such application.

15           ~~(f)~~ (g) The director may afford a hearing in accordance  
16 with chapter 91 in relation to an application for the issuance,  
17 renewal, or modification of a variance.

18           ~~(g)~~ (h) No variance granted pursuant to this chapter  
19 shall be construed to prevent or limit the application of any  
20 emergency provisions and procedures provided by law.





1           ~~[(h)]~~ (i) Notwithstanding any provision in this section,  
2 no variance shall be granted or renewed pursuant to this chapter  
3 with respect to any discharge of water pollutants or wastes that  
4 is in violation of the requirements of the Federal Water  
5 Pollution Control Act and the amendments thereto.

6           ~~[(i)]~~ (j) Any application for a variance, submitted  
7 pursuant to this chapter, shall be subject to the public  
8 participation requirements listed below:

9           (1) Public notices of every completed application for a  
10 variance shall be circulated in a manner designed to  
11 inform interested and potentially interested persons  
12 of the proposed discharge or other proposed activity.  
13 Procedures for the circulation of public notices shall  
14 include at least the following:

15           (A) Notice shall be given within the geographical  
16 areas of the proposed discharge or other proposed  
17 activity;

18           (B) Notice shall be mailed to any person or group  
19 upon request; and

20           (C) The director shall add the name of any person or  
21 group upon request to a mailing list to receive



1           copies of notices for all variance applications  
2           within the State or within a certain geographical  
3           area;

4           (2) The director shall provide a period of not less than  
5           thirty days following the date of the public notice  
6           during which time interested persons may submit their  
7           written reviews with respect to the variance  
8           application and the tentative determinations of the  
9           department, if any. The period for comment may be  
10          extended at the discretion of the director;

11          (3) The contents of public notice of applications for  
12          variances shall include at least the following:

13           (A) Name, address, and phone number of agency issuing  
14           the public notice;

15           (B) Name and address of each applicant;

16           (C) Brief description of each applicant's activities  
17           or operations which result in the discharge or  
18           other activity described in the variance  
19           application (e.g., rock crushing plant, municipal  
20           waste treatment plant, raw sugar factory, or  
21           pineapple cannery);



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- 1 (D) A short description of the location of each  
2 discharge indicating whether the discharge is new  
3 or existing;
- 4 (E) A brief description of the procedures for the  
5 formulation of final determinations, including  
6 the thirty-day comment period required by  
7 paragraph (2) and any other means by which  
8 interested persons may influence or comment upon  
9 those determinations; and
- 10 (F) Address and phone number of state agency premises  
11 at which interested persons may obtain further  
12 information and inspect a copy of the variance  
13 applications and supporting and related  
14 documents; and
- 15 (4) The director may hold a public hearing if, after  
16 reviewing the comments submitted under paragraph (2),  
17 the director determines that a public hearing is  
18 warranted. Any hearing brought pursuant to this  
19 subsection shall be held in the geographical area of  
20 the proposed discharge or other proposed activity, or



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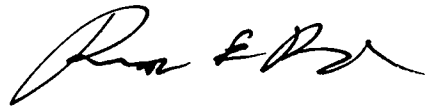
1           other appropriate area, at the discretion of the  
2           director."

3           SECTION 3. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

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

6

INTRODUCED BY:



# S.B. NO. 2501

**Report Title:**

Water Pollution; Rules; Permits; Variances

**Description:**

Disallows any permits to be issued for the discharge of pollution in certain instances. Allows the director to grant a variance pursuant to chapter 342D. Provides that in all variance proceedings the burden of proof is on the applicant.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

