



**STATE OF HAWAII
DEPARTMENT OF HEALTH**

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**Testimony in SUPPORT of HB 2148 HD1
RELATING TO WATER POLLUTION CONTROL**

REPRESENTATIVE DAVID TARNAS, CHAIR
HOUSE COMMITTEE ON WATER AND LAND

Hearing Date: 2/17/22

Room Number: Videoconference

1 **Fiscal Implications:** None.

2 **Department Testimony:** The Department of Health (Department) supports this measure with
3 comments.

4 Include Wetlands in State Waters Definition. The definitions of “state waters” in Section
5 342D-1, Hawaii Revised Statutes (HRS), does not include wetlands. This is an inconsistency
6 that needs to be corrected. The Department protects state waters from surface water pollution
7 through the issuance of permits, variances, and Water Quality Certifications (Certification),
8 which are largely based on requirements specified in Chapter 11-54, Hawaii Administrative
9 Rules (HAR), titled Water Quality Standards (WQS). The WQS includes wetlands as state
10 waters that are afforded protection from surface water pollution and contains wetland water
11 quality criteria to ensure protection. In addition to wetlands being included as state waters in
12 HAR 11-54, wetlands are included in the state waters definition in Chapter 342E, HRS.

13 The bill proposes to include wetlands to the definition of state waters in Section 342D-1,
14 HRS. The Department supports this proposal since wetlands are already included in state water
15 definitions in Section 342E-1, HRS and in HAR 11-54. Consistent definitions of state waters are
16 important to ensure protection of wetlands from surface water pollution.

17 Clarify Director of Health’s Responsibility as Certifying Agency. Under Section 401 of
18 the Clean Water Act (CWA), all projects with a Federal license or permit that may result in a

1 discharge into waters of the United States are required to obtain a Certification or waiver of the
2 Certification from the affected state. The Certification provides states with an important tool to
3 help protect the water quality of federally regulated waters within their borders, in collaboration
4 with federal agencies.

5 On April 14, 1986, Act 30 was signed into law by the Governor of the State of Hawaii,
6 which amended Section 342D-53, HRS by designating the Director of Health as the Certifying
7 Agency as defined in Title 40 of the Code of Federal Regulations (CFR) 121.1(e) (1985). Since
8 1986, the only other sections of Chapter 342D, HRS that reference Certifications are 342D-6(i)
9 and 342D-6.5 which involve not requiring a Certification and expediting processing. No other
10 definitions or requirements related to Certifications or Section 401 of the CWA exist in Chapter
11 342D, HRS.

12 The bill proposes to amend and re-organize applicable sections of Chapter 342D, HRS to
13 add relevant Certification definitions, to clarify roles of the Certifying Agency, to ensure
14 consistency with federal regulations, and to clarify methods used to serve written notice upon
15 alleged violator or violators. The Department supports this proposal as it will provide a
16 framework for the State's Certification program which is a tool to implement Hawaii's WQS.
17 The proposal will also provide the Department with stronger legal footing to protect public
18 health and water quality.

19 Increase Maximum Statutory Penalty in Section 342D-30(a). Statutory requirements on
20 civil monetary penalties assessed by the Department pursuant to violations of water pollution
21 control State law are contained in Section 342D-30(a), HRS. Penalties and fines are tools to
22 deter and to compensate the State when persons violate State water pollution control law.

23 Currently, the maximum statutory civil monetary penalty value set forth in Section
24 342D-30(a), HRS is \$25,000. This maximum amount was last updated in 1997. It should be
25 noted that prior to the Hawaii Legislature's Act 147 (approved June 16, 1997), which increased
26 the maximum to match federal penalty amounts in the Water Quality Act of 1987 the original
27 statutory maximum in Section 342D-30(a), HRS was \$10,000.

1 The U.S. Environmental Protection Agency (EPA) currently conducts annual rulemaking
2 to publish updated civil penalty values for the EPA administered federal statutes to account for
3 inflation. The EPA uses a formula based on the Consumer Price Index values published by the
4 United States Department of Labor, Bureau of Labor Statistics. Section 342D-30(a), HRS is the
5 state equivalent of the EPA's published inflation adjusted civil penalty value for violations of
6 Title 33 U.S. Code Section 1319(d). The current federal regulations adjust the previous \$25,000
7 statutory penalty to \$56,460 when adjusted for inflation for penalties assessed on or after
8 December 23, 2020.

9 The bill proposes to increase the \$25,000 maximum statutory civil penalty amount in
10 Section 342D-30(a), HRS to match the federal penalty amount of \$56,460 for violations of water
11 pollution control statutes, rules, permits, or variances. The Department supports this proposal
12 since it will deter and compensate the State when persons violate State water pollution control
13 laws, and it updates the maximum statutory civil penalty in 342D-30(a), HRS, which was last
14 updated in 1997, to match the current federal penalty amount updated to account for inflation.
15 Failing to update the maximum statutory penalty will weaken the economic deterrence value of
16 the penalty as inflation increases. This revision is necessary to ensure that the Department
17 maintains a sufficient economic deterrence against violations of water pollution control law.

18 Increase Penalty for Obstructing, Denying, or Hampering Entry of Authorized Inspectors
19 in Section 342D-30(b). The bill proposes to increase the \$10,000 maximum statutory penalty
20 amount in Section 342D-30(b), HRS to match the \$25,000 penalty for the same violation for air
21 pollution control in Section 342B-47(d), HRS for obstruction, denial, or hampering entry of
22 authorized inspectors. The Department supports this proposal as it makes the penalty maximums
23 in Section 342D-30(b), HRS and Section 342B-47(b), HRS consistent since both are
24 implemented by the Department. Failing to update the maximum statutory penalty will weaken
25 the economic deterrence value of the penalty as inflation increases. This revision is necessary to
26 ensure that the department maintains a sufficient economic deterrence against violations of water
27 pollution control law.

- 1 **Offered Amendments:** None
- 2 Thank you for the opportunity to testify on this measure.