



**STATE OF HAWAII  
DEPARTMENT OF HEALTH**

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

REPRESENTATIVE NICOLE LOWEN, CHAIR  
HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

REPRESENTATIVE DAVID TARNAS, CHAIR  
HOUSE COMMITTEE ON WATER & LAND

REPRESENTATIVE MARK NAKASHIMA, CHAIR  
HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Hearing Date: 02/03/2022

Room Number: Videoconference

1 **Fiscal Implications:** None.

2 **Department Testimony:** The Department supports this measure with comments.

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

12 The bill proposes to include wetlands to the definition of state waters in Section 342D-1,  
13 HRS. The Department supports this proposal since wetlands are already included in state water

1 definitions in Section 342E-1, HRS and in HAR 11-54. Consistent definitions of state waters are  
2 important to ensure protection of wetlands from surface water pollution.

3 Clarify Director of Health's Responsibility as Certifying Agency. Under Section 401 of  
4 the Clean Water Act (CWA), all projects with a Federal license or permit that may result in a  
5 discharge into waters of the United States are required to obtain a Certification or waiver of the  
6 Certification from the affected state. The Certification provides states with an important tool to  
7 help protect the water quality of federally regulated waters within their borders, in collaboration  
8 with federal agencies.

9 On April 14, 1986, Act 30 was signed into law by the Governor of the State of Hawaii,  
10 which amended Section 342D-53, HRS by designating the Director of Health as the Certifying  
11 Agency as defined in Title 40 of the Code of Federal Regulations (CFR) 121.1(e) (1985). Since  
12 1986, the only other sections of Chapter 342D, HRS that reference Certifications are 342D-6(i)  
13 and 342D-6.5 which involve not requiring a Certification and expediting processing. No other  
14 definitions or requirements related to Certifications or Section 401 of the CWA exist in Chapter  
15 342D, HRS.

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

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

1           Currently, the maximum statutory civil monetary penalty value set forth in Section 342D  
2 30(a), HRS is \$25,000. This maximum amount was last updated in 1997. It should be noted that  
3 prior to the Hawaii Legislature’s Act 147 (approved June 16, 1997), which increased the  
4 maximum to match federal penalty amounts in the Water Quality Act of 1987 the original  
5 statutory maximum in Section 342D-30(a), HRS was \$10,000.

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

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

23           Increase Penalty for Obstructing, Denying, or Hampering Entry of Authorized Inspectors  
24 in Section 342D-30(b). The bill proposes to increase the \$10,000 maximum statutory penalty  
25 amount in Section 342D-30(b), HRS to match the \$25,000 penalty for the same violation for air  
26 pollution control in Section 342B-47(d), HRS for obstruction, denial, or hampering entry of  
27 authorized inspectors. The Department supports this proposal as it makes the penalty maximums

1 in Section 342D-30(b), HRS and Section 342B-47(b), HRS consistent since both are  
2 implemented by the Department. Failing to update the maximum statutory penalty will weaken  
3 the economic deterrence value of the penalty as inflation increases. This revision is necessary to  
4 ensure that the department maintains a sufficient economic deterrence against violations of water  
5 pollution control law.

6 **Offered Amendments:** None

7 Thank you for the opportunity to testify on this measure.

**HB-2148**

Submitted on: 1/31/2022 9:11:20 PM

Testimony for EEP on 2/3/2022 9:05:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Charles Prentiss	Individual	Support	No

Comments:

Support.

**HB-2148**

Submitted on: 2/1/2022 8:27:00 PM

Testimony for EEP on 2/3/2022 9:05:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Barbara Barry	Individual	Support	No

Comments:

Aloha,

Protecting our wetland should be top priority,

Yes on HB 2148.

Mahalo,

Barbara Barry

**HB-2148**

Submitted on: 2/2/2022 8:41:44 AM

Testimony for EEP on 2/3/2022 9:05:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Ted Bohlen	Individual	Support	Yes

Comments:

To: The Honorable Nicole Lowen, Chair, the Honorable Lisa Marten, Vice Chair, and Members of the House Committee on Energy and Environmental Protection

From: Ted Bohlen

Re: Hearing **HB2399 RELATING TO WATER POLLUTION CONTROL**

Hearing: Thursday, February 3, 2022, 9:05 a.m., by videoconference

Aloha Chair Lowen, Vice Chair Marten, and members of the House Committee on Energy and Environmental Protection:

I have been deeply involved in water pollution control in Hawai'i for the past 15 years. I am intimately familiar with the water pollution statute, HRS c. 342D, and DOH rules implementing that statute, particularly HAR 11-54. **The amendments proposed in this bill are in the public interest and should be enacted into law.**

The change to the statute to include the definition of **wetlands** (already in rules) is appropriate to have the statute protect these critical ecosystems. Changes to **401 certification** authority and procedures are long overdue.

Most importantly, the **civil and administrative penalties** in HRS Secs. 342D-30 and 31, **key enforcement tools in Hawai'i**, have not been updated since the 1990s. **An increase in line with the increases in federal penalties, as provided by this bill, is long overdue.**

Please pass this important bill to protect Hawaii's waters from pollution!

Mahalo!

Ted Bohlen