



**STATE OF HAWAII  
DEPARTMENT OF HEALTH**

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**Testimony COMMENTING on SB 3220  
RELATING TO POLLUTION ABATEMENT**

SENATOR MIKE GABBARD, CHAIR  
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

Hearing Date: 02/09/2022

Room Number: Videoconference

1 **Fiscal Implications:** None.

2 **Department Testimony:** The Department supports the proposed penalty increases for  
3 violations of pollution provisions. Penalties and fines are tools to deter and penalize persons  
4 when they violate State pollution control law. Revisions are necessary to ensure that the  
5 Department maintains a sufficient economic deterrence against pollution control law violations.  
6 The Department also supports and appreciates the proposed appropriation of funds for one full-  
7 time equivalent position at the Clean Water Branch as the Clean Water Branch enforcement  
8 program is severely understaffed. The Department is offering amendments that will strengthen  
9 the bill and align State penalties with Federal penalties and similar environmental laws.

10 **Offered Amendments:** Below are recommendations to revise the proposed measure.

11 **Increase Maximum Statutory Penalty in Section 342D-30(a).** It is recommended that  
12 SB3220 be amended to increase the \$25,000 maximum statutory civil penalty amount in Section  
13 342D-30(a), HRS to match the federal penalty amount of \$56,460 for violations of water  
14 pollution control statutes, rules, permits, or variances.

15 Statutory requirements on civil monetary penalties assessed by the Department pursuant  
16 to violations of water pollution control State law are contained in Section 342D-30(a), Hawaii  
17 Revised Statutes (HRS). Currently, the maximum statutory civil monetary penalty value set

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

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

13 The Department's administrative bill proposed to increase the maximum statutory civil  
14 penalty from \$25,000 to \$56,460 to match the federal penalty for water pollution violations that  
15 was adjusted for inflation. Refer to SB3116 and the companion bill, HB2148.

16 **Increase Penalty for Obstructing, Denying, or Hampering Entry of Authorized**  
17 **Inspectors in Section 342D-30(b).** It is recommended that SB3220 be amended to increase the  
18 \$10,000 maximum statutory penalty amount in Section 342D-30(b), HRS to match the \$25,000  
19 penalty for the same violation for air pollution control in Section 342B-47(d), HRS for  
20 obstruction, denial, or hampering entry of authorized inspectors. The Department's  
21 administrative bill proposed this increase as it makes the penalty maximums in 342D-30(b), HRS  
22 and Section 342B-47(b), HRS consistent since both are implemented by the Department. Refer  
23 to SB3116 and the companion bill, HB2148.

24 **Increase Maximum Statutory Penalty in Section 342E-4(a).** It is recommended that  
25 the \$10,000 maximum statutory civil penalty in Section 342E-4(a), HRS be revised to \$56,400  
26 for consistency with the proposed amendment to Section 342D-30(a) in SB3116 and its  
27 companion bill, HB2148. While the Department has never issued a penalty for nonpoint sources

1 of pollution, the Department adopted administrative rules (HAR 11-56) that provides both  
2 control and enforcement for nonpoint sources. The alignment of penalties between the point  
3 source and nonpoint source violations recognizes the reality that severe violations are equally  
4 possible from both point or nonpoint sources.

5 **Increase Penalty for Obstructing, Denying, or Hampering Entry of Authorized**  
6 **Inspectors in Section 342E-4(b).** It is recommended that the \$5,000 maximum penalty in  
7 Section 342E-4(b), HRS be revised to \$25,000 for consistency with the proposed amendment to  
8 Section 342D-30(b) in SB3116 and its companion bill, HB2148.

9 **Increase Maximum Statutory Penalty in Section 342L-10(a).** It is recommended that  
10 the \$25,000 maximum penalty in section 342L-10(a), HRS, be revised to \$56,400 to match the  
11 federal penalty for water pollution violations that was adjusted for inflation and to provide a  
12 stronger deterrent to violation of the Underground Storage Tank rules.

13 **Increase Penalty for Obstructing, Denying, or Hampering Entry of Authorized**  
14 **Inspectors or for Failing to Provide Requested Information in Section 342L-10(b).** It is  
15 recommended that the \$500 maximum penalty in Section 342L-10(b), HRS, be revised to  
16 \$10,000 for consistency with 342J-9, HRS, and to provide a stronger deterrent.

17 **Appropriating Funds for One Permanent Full-Time Equivalent State Biologist or**  
18 **Ecologist Within Clean Water Branch.** It is recommended that the funds for one permanent  
19 Full-Time Equivalent (FTE) position be allocated for an Environmental Health Specialist in the  
20 Enforcement Section of the Clean Water Branch. This additional FTE would provide manpower  
21 to conduct inspections, investigations and enforcement that may result in the issuance of the  
22 proposed penalty increases included in this bill. As written, the bill currently limits potential  
23 applicants to those who only qualify as a biologist or ecologist. The Environmental Health  
24 Specialist classification includes those who qualify as biologists and ecologists as well as  
25 persons with environmental science, chemistry, and other applicable backgrounds. This helps  
26 the program cast a wider net for applicants who may be highly effective in conducting the duties  
27 required for the program.

- 1 Thank you for the opportunity to testify on this measure.

DAVID Y. IGE  
GOVERNOR



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EMPLOYEES' RETIREMENT SYSTEM  
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND  
OFFICE OF THE PUBLIC DEFENDER

ADMINISTRATIVE AND RESEARCH OFFICE  
BUDGET, PROGRAM PLANNING AND  
MANAGEMENT DIVISION  
FINANCIAL ADMINISTRATION DIVISION  
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

**WRITTEN ONLY**  
TESTIMONY BY CRAIG K. HIRAI  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
TO THE SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT  
ON  
SENATE BILL NO. 3220

**February 9, 2022**  
**1:00 p.m.**  
**Room 224 and Videoconference**

RELATING TO POLLUTION ABATEMENT

The Department of Budget and Finance (B&F) offers comments on Senate Bill (S.B.) No. 3220.

S.B. No. 3220 amends Sections 342D-30, 342E-4, and 342L-10 to change the maximum amounts for fines for the violation of various pollution provisions to unspecified amounts and appropriates an unspecified amount of general funds in FY 23 to the Department of Health for one permanent full-time equivalent State Biologist or Ecologist within the Clean Water Branch.

B&F notes that, with respect to the general fund appropriation in this bill, the federal Coronavirus Response and Relief Supplemental Appropriations Act requires that states receiving Elementary and Secondary School Emergency Relief (ESSER) II funds and Governor's Emergency Education Relief II funds must maintain state support for:

- Elementary and secondary education in FY 22 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and

- Higher education in FY 22 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

Further, the federal American Rescue Plan (ARP) Act requires that states receiving ARP ESSER funds must maintain state support for:

- Elementary and secondary education in FY 22 and FY 23 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and
- Higher education in FY 22 and FY 23 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

The U.S. Department of Education has issued rules governing how these maintenance of effort (MOE) requirements are to be administered. B&F will be working with the money committees of the Legislature to ensure that the State of Hawai'i complies with these ESSER MOE requirements.

Thank you for your consideration of our comments.

**SB-3220**

Submitted on: 2/8/2022 5:23:54 PM

Testimony for AEN on 2/9/2022 1:00:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Remote Testimony Requested</b> |
|---------------------|---------------------|---------------------------|-----------------------------------|
| Lois Crozer         | Individual          | Support                   | No                                |

Comments:

We need to get serious about protecting our aina.