

ACT 39

A Bill for an Act Relating to Artesian Wells Generally and Amending Chapter 101 of the Revised Laws of Hawaii 1955.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 101 of the Revised Laws of Hawaii 1955 is hereby amended as follows:

“CHAPTER 101 ARTESIAN WELLS, GENERALLY

Section 101-1. Defined. An artesian well, for the purposes of this chapter, is defined to be an artificial well or shaft which is sunk or driven to an artesian stratum or basin, and through which water is raised or carried to or above the surface of the ground by natural pressure or gravity or through which water is or may be raised or carried to or above the surface of the ground by artificial means.

Section 101-2. Uncapped and flowing a common nuisance; persons responsible therefor. An artesian well which is not capped, cased, equipped or furnished with such mechanical appliance as will readily and effectively arrest and prevent the flow of any water from such well is declared to be a common nuisance. The owner, tenant or occupant of the land upon which such a well is situated, or any person in charge of such a well, who causes, suffers or permits such common nuisance, or suffers or permits it to remain or continue, is guilty of a misdemeanor; and any person owning, possessing or occupying any land upon which is situated an artesian well, or any person in charge of such a well, who causes, suffers or permits the water to unnecessarily flow from such well, or to go to waste, is guilty of a misdemeanor.

Section 101-3. Waste from, defined. For the purposes of this chapter, waste is defined to be causing, suffering or permitting the water in any artesian well to reach any porous substratum before coming to the surface of the ground, or to flow from such well upon any land, or directly into any stream, or other natural water course or channel, or into the sea, or any bay, lake or pond; or into any street, road or highway, unless to be used for beneficial purposes; provided, that this section shall not be so construed as to prevent the beneficial use of water by direct flow, or from storage reservoirs served by wells, for irrigation, domestic and other useful purposes, except for driving machinery; provided, that water may be used for driving machinery, in case it is utilized afterwards for irrigation or other useful purposes. Except as otherwise provided the extent to which water of any artesian well may

be devoted to useful or beneficial purposes shall be subject to regulation by the board of land and natural resources, to such quantities as may be necessary for the purposes for which the well is used.

Section 101-4. Inspection of. Every artesian well shall be maintained by the owner, tenant or occupant of the land upon which the well is situated or the person in charge of the well so as to provide access at all times for purposes of inspection unless the well has been sealed just above the water bearing stratum in a manner approved by the board of land and natural resources, except as otherwise provided.

Section 101-5. Drilling, notice of. Except as otherwise provided, no well shall be drilled without first notifying, in writing, the board of land and natural resources which notice shall state the exact location of the proposed well, the owner's name, the well driller's name and the proposed use of the water.

Section 101-6. Boring of, record to be kept and filed. Any person boring, or causing to be bored, a well shall keep a complete and accurate record of the depth and thickness of the different strata penetrated and within ninety days after the last days of boring, shall file the record in the office of the board of land and natural resources, except as otherwise provided.

Section 101-7. Violations; penalties. Any person violating any of the provisions of this chapter shall be fined not more than \$50; and where continuance of waste, as defined in this chapter, is under immediate control, each day's continuance of the same, after written notice shall constitute a separate offense; provided, that when the continuance of the waste is not under immediate control, as where recasing or sealing is necessary, each day's continuance of the same shall constitute a separate offense after sixty days have elapsed from the time of receiving written notice to prevent waste.

Section 101-8. Person may relieve himself of liability. Any person owning an artesian well may relieve himself of further responsibility therefor by transferring it to the county in which it is situated and the exclusive right to develop artesian water on or under any property owned by him in the district in which such well is situated and the right to enter the property for the purpose of capping or plugging such well. The county shall accept such well and such right and shall cap or properly plug such well. The county shall have the right to use the well and to lay and maintain pipes to draw water therefrom; provided that such use and the laying and maintenance of such pipes be made in such manner as to cause minimum inconvenience to the person owning the well before its transfer as provided herein. This section shall be inapplicable within the district of Honolulu.

Section 101-9. Inspection by board. For the more effectual carrying out of the provisions of this chapter, the board of land and natural resources or its designated agent may at all times enter without warrant the premises where an artesian well is situated or wherein artesian water is used in order to procure such information or for such other purpose as may be necessary.

Section 101-10. Appeals from decisions of the board. Except as otherwise provided in chapter 152, any person, firm, copartnership or corporation adversely affected thereby may appeal to the circuit court from

any ruling of the board of land and natural resources regulating the flow, manner of sealing or manner of repairing of any artesian well by filing, in writing, a notice of appeal within ten days after the date of the ruling with the clerk of the court and serving a copy thereof upon the board, stating the grounds therefor. The court shall have power to review and to affirm, modify or reverse any decision or order of the board so appealed from, in any matter of law or fact.”

SECTION 2. This Act shall take effect upon its approval.

(Approved May 17, 1963.) **H.B. 81.**
