

ACT 118

H. B. NO. 1089

A Bill for an Act Relating to Environmental Quality.

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

SECTION 1. Chapter 342, Hawaii Revised Statutes, is amended in the following particulars:

1. By amending section 342-1 to read:

“Sec. 342-1 Definitions. As used in this chapter, unless the context otherwise requires:

- (1) ‘Complaint’ means any written charge filed with or by the department that a person is violating any provision of this chapter or any rule, regulation, or order promulgated pursuant to this chapter.
- (2) ‘Department’ means the department of health.
- (3) ‘Director’ means the director of health.
- (4) ‘Party’ means each person or agency named as party or properly entitled to be a party in any court or agency proceeding.
- (5) ‘Permit’ means authorization to discharge waste which, when granted, takes into account the public interest and contains a schedule of abatement approved by the director; or authorization to construct, modify, or operate any air pollution source; or authorization to emit excessive noise; or authorization to operate a sanitary landfill or open dump.
- (6) ‘Person’ means any individual, partnership, firm, association, public or private corporation, the State or any of its political subdivisions, trust estate or any other legal entity.
- (7) ‘Pollution’ means air pollution, water pollution, or excessive noise as hereinafter defined.
- (8) ‘Treatment works’ means any plant or other facility used for the purpose of controlling pollution.
- (9) ‘Variance’ means authorization to discharge waste when, after public hearing the director finds that the continuance of the function or operation causing the waste discharge to be in the public interest, the value of the continuance to outweigh the harm caused by the waste discharge, and which does not require an immediate schedule of abatement.
- (10) ‘Waste’ means sewage, industrial and agricultural waste, excessive noise, and all other liquid, gaseous, or solid substance, including

radioactive substance, whether treated or not, which may pollute or tend to pollute the atmosphere, lands or waters of this State.”

2. By amending section 342-6 to read:

“**Sec. 342-6 Permits; procedures for.** (a) An application for any permit required under this chapter shall be in a form prescribed by the director.

(b) The department may require that applications for such permits shall be accompanied by plans, specifications, and such other information as it deems necessary in order for it to determine whether the proposed installation, alteration, or use will be in accord with applicable rules, regulations, and standards.

(c) The director shall issue a permit for any term, not exceeding five years, if he determines that such will be in the public interest; provided that the permit may be subject to such reasonable conditions as the director may prescribe. The director, on application, shall renew a permit from time to time for a term not exceeding five years if he determines that such is in the public interest. The director may, on application, modify the conditions of a permit in any manner consistent with the public interest. The director shall not deny an application for the issuance, renewal, or modification of a permit without affording the applicant a hearing in accordance with chapter 91.

The director may, on his own motion or the application of any person, modify, suspend, or revoke any permit if, after a hearing in accordance with chapter 91, he determines that:

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

The director shall insure that the public receive notice of each application for a permit to control water pollution. He may hold a public hearing before ruling on an application for a permit to control water pollution if he determines such public hearing to be in the public interest.

In determining the public interest, the director shall consider the environmental impact of the proposed action, any adverse environmental effects which cannot be avoided should the action be implemented, the alternatives to the proposed action, the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented, and any other factors which the director may by rule prescribe; provided that any determination of public interest shall promote the optimum balance between economic development and environmental quality.

(d) The failure of the director to act on an application for the issuance of a permit or an application by a permit holder for the modification or renewal thereof within one hundred eighty days of the receipt of such application shall be deemed a grant of such application so long as the applicant acts consistently with the application and all plans, specifications, and other information submitted as a part thereof.

(e) No applicant for a modification or renewal of a permit shall be held in violation of this chapter during the pendency of his application so long as he acts consistently with the permit previously granted, the application and all plans, specifications, and other information submitted as a part thereof.”

3. By amending section 342-7(e) to read:

“(e) Any variance granted pursuant to this section may be renewed from time to time on terms and conditions and for periods not exceeding ten years which would be appropriate on initial granting of a variance; provided that the applicant for renewal has met all of the conditions specified in the immediately preceding variance; and provided further, that the renewal, and the variance issued in pursuance thereof, shall provide for emission or discharge not greater than that attained pursuant to the terms of the immediately preceding variance at its expiration. No renewal shall be granted except on application thereof. Any such application shall be made at least one hundred eighty days prior to the expiration of the variance.”

4. By amending section 342-8(c) to read:

“(c) Any violation of an order issued by the director may at the discretion of the director subject the violator or violators to the penalties specified in section 342-11 and the injunction remedies specified in section 342-12.

“The director is authorized to impose the penalty specified in section 342-11(a) and section 342-11(c) and may institute a civil action in the name of the State to recover the civil penalty which shall be a government realization.

“In any proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, the civil penalty was imposed, and that the penalty remains unpaid.”

5. By amending section 342-10 to read:

“**Sec. 342-10 Inspection of premises.** The director may in accordance with law enter and inspect any building or place, for the purpose of investigating an actual or suspected source of water, air, noise or other pollution and ascertaining compliance or noncompliance with this part, any rule, regulation or standard promulgated by the department, any permit or other approval granted by the department and to make reasonable tests in connection therewith. No confidential information secured pursuant to this section by any official or employee of the department within the scope and course of his employment in the prevention, control, or abatement of water, air, noise, or other pollution shall be disclosed by the official or employee except as it relates directly to air, water, noise, and other pollution and then, only in connection with his official duties and within the scope and course of his employment.”

6. By amending section 342-11 to read:

“**Sec. 342-11 Violations.** (a) Any person who violates this chapter or any rule or regulation promulgated by the department pursuant to this chapter shall be fined not more than \$10,000 for each separate offense. Each day of violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.

(b) Any person who wilfully or negligently violates part III of this chap-

ter or any rule or regulation promulgated by the department pursuant to part III of this chapter shall be punished by a fine of not less than \$2,500 nor more than \$25,000, per day of violation or by imprisonment for not more than one year, or by both.

(c) Any person who denies, obstructs, or hampers the entrance and inspection by any duly authorized officer or employee of the department of any building or place which he is authorized to enter and inspect shall be fined not more than \$500. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action."

7. By amending section 342-31 to read:

"Sec. 342-31 Definitions. As used in this part, unless the context otherwise requires:

- (1) 'Coastal waters' means all waters surrounding the islands of the State from the coast of any island to a point three miles seaward from the coast, and, in the case of streams, rivers, and drainage ditches, to a point three miles seaward from their point of discharge into the sea and includes those brackish waters, fresh waters and salt waters that are subject to the ebb and flow of the tide.
- (2) 'Drainage ditch' means that facility used to carry storm run-off only.
- (3) 'Effluent' means the discharge of any substance into state waters, including, but not limited to, sewage, waste, garbage, feculent matter, offal, filth, refuse, any animal, mineral, or vegetable matter or substance, and any liquid, gaseous, or solid substances.
- (4) 'Effluent sources' include, but are not limited to, sewage outfalls, refuse systems and plants, water systems and plants, and industrial plants.
- (5) 'Sewerage system' means pipelines or conduits, pumping stations, and force mains, and all other structures, devices, appurtenances, and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal.
- (6) 'State waters' means all waters, fresh, brackish, or salt, around and within the State, including, but not limited to, coastal waters, streams, rivers, drainage ditches, ponds, reservoirs, canals, ground waters, and lakes; provided that drainage ditches, ponds, and reservoirs required as a part of a pollution control system are excluded.
- (7) 'Water pollution' means:
 - (A) Such contamination or other alteration of the physical, chemical or biological properties of any state waters, including change in temperature, taste, color, turbidity, or odor of the waters, or
 - (B) Such discharge of any liquid, gaseous, solid, radioactive, or other substances into any state waters, as will or is likely to create a nuisance or render such waters unreasonably harmful, detrimental or injurious to public health, safety or welfare, including harm, detriment, or injury to public water supplies, fish and aquatic life and wildlife, recreational purposes and agricultural and industrial research and scientific uses of such waters or as will or is likely to violate any water quality standards, ef-

fluent standards, treatment and pretreatment standards or standards of performance for new sources promulgated by the department.

- (8) 'Standard of performance' means a standard for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction which the director determines to be achievable through application of the best demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.
- (9) 'New source' means any source the construction of which is commenced after the adoption of regulations prescribing a standard of performance which will be applicable to such source."
8. By amending section 342-32 to read:

"Sec. 342-32 Powers and duties, specific. In addition to any other power or duty prescribed by law and in this part, the director shall prevent, control, and abate water pollution in the State. In the discharge of this duty, the director may:

- "(1) Establish by rule or regulation water quality standards, effluent standards, treatment and pretreatment standards, and standards of performance for specific areas and types of discharges in the control of water pollution, thereby allowing for varying local conditions;
- (2) Appoint a master or masters to conduct investigations and hearings;
- (3) Consult with and advise any person engaged or intending to be engaged in any business or undertaking whose waste, sewage, or drainage is polluting or may tend to pollute state waters;
- (4) Conduct and supervise research programs for the purpose of determining the causes, effects, and hazards of water pollution, the purity and potability of water and the means to monitor the quality of water, or to effect the proper disposal of sewage, drainage, and waste;
- (5) Conduct and supervise state educational and training programs on water pollution prevention, control, and abatement, including the preparation and distribution of information relating to water pollution;
- (6) Consult and advise persons intending to alter or to extend any system of drainage, sewage, or water supply;
- (7) Require complete and detailed plans or reports, on existing works, systems, or plants, and of any proposed addition to, modification of or alteration of any such works, system or plant which contain the information requested by the director in the form prescribed by him; which plans or reports shall be made by a competent person acceptable to the director and at the expense of such applicant or owner;
- (8) With the approval of the governor, cooperate with, and receive money from the federal government, or any political subdivision of the State or from private sources for the study and control of water pollution;
- (9) Receive or initiate complaints of water pollution, hold hearings in connection with water pollution, and institute legal proceedings in

the name of the State for the prevention, control, or abatement of water pollution.

- (10) Require the owner or operator of any effluent source or any discharger of effluent to (A) establish and maintain records; (B) make reports; (C) install, use and maintain monitoring equipment or methods; (D) sample effluent and state waters; and (E) provide such other information as the department may require.
- (11) Require any permittee or holder of a variance to permit the director or his authorized representative upon the presentation of his credentials:
 - (A) To enter upon permittee's premises in which an effluent source is located or in which any records are required to be kept under the terms and conditions of the permit or variance; and
 - (B) To inspect any monitoring equipment or method required in the permit; and
 - (C) To sample any discharge of pollutants."

9. By amending section 342-33 to read:

"Sec. 342-33 Prohibition. No person, including any public body, shall use any state waters for the disposal of waste, engage in activity which causes state waters to become polluted, or violate any water quality permit or term or condition thereof without first securing approval in writing from the director.

No person, including any public body, shall knowingly establish, extend, or alter any system of drainage, sewage, or water supply, or undertake any project in sewage outfall areas where there may be a possibility of alteration of currents depended upon for dilution without first securing approval in writing from the director."

10. By amending section 342-34 to read:

"Sec. 342-34 Treatment works; construction grants. The director may make grants to any state or county agency of state funds as authorized and appropriated by the legislature for the construction of necessary treatment works to prevent the discharge of untreated or inadequately treated sewage or other waste into any state waters. He shall coordinate the granting of state funds with available federal funds for the same purpose. No grant shall be made for any project unless (1) the project conforms with the state water pollution control plan, (2) the project is certified by the director as entitled to priority over other eligible projects on the basis of financial as well as water pollution control needs, and (3) the application for the grant contains reasonable assurances that the applicant will provide for the proper and efficient operation and maintenance of the treatment works after its construction. If federal funds are available, the applicant shall be required to pay at least fifteen per cent of the estimated reasonable cost of such approved treatment works as defined by PL 92-500. If federal funds are not available, the director may make grants up to one hundred per cent of the estimated reasonable cost of the project."

11. By adding a new section to read:

"Sec. 342-35 Board membership. Notwithstanding any law to the contrary, no individual, board or body of this State which grants permits required

under this part shall be or include, as a member, any person who receives or has during the previous two years received, a significant portion of his income directly or indirectly from permit holders or applicants for a permit; provided that for the purposes of this section, no agency, board or body of the State shall be considered a permit holder or applicant for a permit.”

SECTION 2. The director of health is hereby ordered and directed to make a grant of State funds, from funds already appropriated and authorized by Act 202, Session Laws of Hawaii 1972, part III, section 4, A-1, to the city and county of Honolulu for the construction of facilities necessary to divert sewage now entering Kaneohe Bay from the Kaneohe waste water treatment plant. Such grant shall be for such sums, not to exceed \$12,000,000, as may be necessary to successfully complete the construction of the needed diversionary facility, including mains and outfall. Any grant of State funds made by the director for this purpose is contingent upon the city and county of Honolulu meeting fifteen per cent of the cost of this project.

SECTION 3. **Severability.** If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 4. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

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

(Approved May 17, 1973.)

*Edited accordingly.