

JAN 25 2023

A BILL FOR AN ACT

RELATING TO WATER POLLUTION CONTROL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to modify sections
2 in chapter 342D, Hawaii Revised Statutes, to (1) conform with
3 Federal definitions and civil penalty amounts pursuant to the
4 Clean Water Act, (2) consolidate separate water quality
5 certification statutes into one section for clarity, (3) clarify
6 the authority of the department of health to conduct water
7 quality certifications, and (4) revise civil penalty amounts to
8 ensure consistency within the department.

9 SECTION 2. Section 342D-1, Hawaii Revised Statutes, is
10 amended as follows:

11 (1) By adding five new definitions to be appropriately
12 inserted and to read:

13 "Act" means the Clean Water Act (formally referred to as
14 the Federal Water Pollution Control Act or Federal Water
15 Pollution Control Act Amendments of 1972), P.L. 92-500, as
16 amended by P.L. 95-217, P.L. 95-483, P.L. 97-117, and P.L. 114-
17 115, (33 U.S.C. 1251 et seq).

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1 "Navigable waters" means the waters of the United States,
2 including the territorial seas.

3 "Territorial seas" means the belt of the seas measured from
4 the line of ordinary low water along that portion of the coast
5 which is in direct contact with the open sea and the line
6 marking the seaward limit of inland waters, and extending
7 seaward a distance of three miles.

8 "Water quality certification" or "certification" means a
9 statement that asserts that a proposed discharge resulting from
10 any activity, including, but not limited to, the construction or
11 operation of facilities, will not violate applicable water
12 quality standards, water quality related state laws, or water
13 quality related provisions in sections 301, 302, 303, 306, and
14 307 of the Act.

15 "Water quality standards" means provisions of state law
16 that provide for a designated use or designated uses for state
17 waters and water quality criteria for such waters based upon
18 such uses. Water quality standards are to protect the public
19 health or welfare, enhance the quality of water, and serve the
20 purposes of the Act."

21 (2) By amending the definition of "state waters" to read:

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1 ""State waters" means all waters, fresh, brackish, or salt,
2 around and within the State, including, but not limited to,
3 coastal waters, wetlands, streams, rivers, drainage ditches,
4 ponds, reservoirs, canals, ground waters, and lakes; provided
5 that drainage ditches, ponds, and reservoirs required as a part
6 of a water pollution control system are excluded."

7 SECTION 3. Section 342D-6, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§342D-6 Permits; procedures for.** (a) An application for
10 any permit required under this chapter shall be in a form
11 prescribed by the director.

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

17 (c) The director shall issue a permit for any term, not
18 exceeding five years, if the director determines that it will be
19 in the public interest; provided that the permit may be subject
20 to any reasonable conditions that the director may prescribe.
21 The director may include conditions in permits or may issue
22 separate permits for management practices for domestic sewage,

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1 sewage sludge, and recycled water, regardless of whether the
2 practices cause water pollution. The director, on application,
3 shall renew a permit from time to time, for a term not exceeding
4 five years, if the director determines that it will be in the
5 public interest. The director shall not grant or deny an
6 application for the issuance or renewal of a permit without
7 affording the applicant and any person who commented on the
8 proposed permit during the public comment period an opportunity
9 for a hearing in accordance with chapter 91. A request for a
10 hearing and any judicial review of the hearing shall not stay
11 the effect of the issuance or renewal of a permit unless
12 specifically ordered by the director or an environmental court.

13 (d) The director, on the director's own motion or the
14 application of any person, may modify, suspend, revoke, or
15 revoke and reissue any water pollution permit if, after
16 affording the permittee an opportunity for a hearing in
17 accordance with chapter 91, the director determines that:

- 18 (1) There is a violation of any condition of the permit;
19 (2) The permit was obtained by misrepresentation or there
20 was failure to disclose fully all relevant facts;

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1 (3) There is a change in any condition that requires
2 either a temporary or permanent reduction or
3 elimination of the permitted discharge; or

4 (4) It is in the public interest.

5 The public interest excludes any reason less stringent than
6 the causes for permit modification, revocation, and termination,
7 or revocation and reissuance identified in title 40 Code of
8 Federal Regulations section 122.62 or 122.64.

9 (e) The director, on the director's own motion or the
10 application of any person, may modify, suspend, revoke, or
11 revoke and reissue any sludge permit after affording the
12 permittee an opportunity for a hearing in accordance with
13 chapter 91, and consistent with title 40 Code of Federal
14 Regulations section 501.15(c)(2) and (3) and (d)(2).

15 (f) The director shall ensure that the public receives
16 notice of each application for a permit to control water
17 pollution. The director may hold a public hearing before ruling
18 on an application for a permit to control water pollution if the
19 director determines the public hearing to be in the public
20 interest. In determining whether a public hearing would be in
21 the public interest, the director shall be guided by title 40
22 Code of Federal Regulations section 124.12(a).

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1 (g) In determining the public interest regarding permit
2 issuance or renewal, the director shall consider the
3 environmental impact of the proposed action, any adverse
4 environmental effects that cannot be avoided should the action
5 be implemented, the alternatives to the proposed action, the
6 relationship between local short-term uses of the environment
7 and the maintenance and enhancement of long-term productivity,
8 any irreversible and irretrievable commitments of resources that
9 would be involved in the proposed action should it be
10 implemented, and any other factors that the director, by rule,
11 may prescribe; provided that any determination of public
12 interest shall promote the optimum balance between economic
13 development and environmental quality.

14 (h) No applicant for a modification or renewal of a permit
15 shall be held in violation of this chapter during the pendency
16 of the applicant's application so long as the applicant acts
17 consistently with the permit previously granted, the application
18 and all plans, specifications, and other information submitted
19 as part thereof.

20 ~~[(i) The department shall not require a water quality~~
21 ~~certification pursuant to section 401 of the federal Clean Water~~
22 ~~Act under this chapter for any applicant of the small-scale~~

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1 ~~beach restoration program that has received notice of~~
2 ~~authorization to proceed from the department of land and natural~~
3 ~~resources' office of conservation and coastal lands.] "~~

4 SECTION 4. Section 342D-6.5, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§342D-6.5 Hawaiian loko i'a. ~~[(a)]~~ The department shall
7 process applications for permits and water quality
8 certifications for the reconstruction, restoration, repair, or
9 reuse of any loko i'a, or Hawaiian fishpond as defined in section
10 183B-1, before all other permits and certifications. The
11 director shall render a decision on the completeness of any
12 application for that permit or water quality certification
13 within thirty days of receipt. Applications for loko i'a
14 reconstruction, restoration, or repair that are incomplete shall
15 be denied without prejudice. The director shall render a
16 decision on any complete application for a permit or water
17 quality certification for any loko i'a within one hundred fifty
18 days.

19 ~~[(b)] The department shall waive the requirement to obtain~~
20 ~~water quality certification under this chapter for any person~~
21 ~~that has received notice of authorization to proceed from the~~
22 ~~department of land and natural resources office of conservation~~

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1 ~~and coastal lands under the statewide programmatic general~~
2 ~~permit for the restoration, repair, maintenance, and operation~~
3 ~~of loko i'a.~~

4 ~~(c) For purposes of this section:~~

5 ~~"Water quality certification" means state certification~~
6 ~~pursuant to section 401 of the federal Clean Water Act.] "~~

7 SECTION 5. Section 342D-9, Hawaii Revised Statutes, is
8 amended by amending subsection (a) and (b) to read as follows:

9 "(a) If the director determines that any person has
10 violated or is violating this chapter, any rule adopted pursuant
11 to this chapter, or any permit, water quality certification, or
12 variance issued pursuant to this chapter, the director:

13 (1) Shall cause written notice to be served upon the
14 alleged violator or violators. The notice shall
15 specify the alleged violation and may contain an order
16 specifying a reasonable time during which that person
17 shall be required to take any measures that may be
18 necessary to correct the violation and to give
19 periodic progress reports; provided that if all
20 attempts of service of process upon the alleged
21 violator or violators are unsuccessful by personal
22 [~~delivery~~] service and by certified[~~, registered, or~~

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1 ~~express~~] mail, notice may be given via a posting on a
2 searchable government website and a sign conspicuously
3 posted on the property, if appropriate.

4 (2) May require that the alleged violator or violators
5 appear before the director for a hearing at a time and
6 place specified in the notice and answer the charges
7 complained of; and

8 (3) May impose penalties as provided in section 342D-31 by
9 sending written notice, either by certified mail or by
10 personal service, to the alleged violator or violators
11 describing the violation.

12 (b) If the director determines that any person is
13 continuing to violate this chapter, any rule adopted pursuant to
14 this chapter, or any permit, water quality certification, or
15 variance issued pursuant to this chapter after having been
16 served notice of violation, the director:

17 (1) Shall cause written notice to be served upon the
18 alleged violator or violators. The notice shall
19 specify the alleged violation and shall contain an
20 order requiring that person to submit a written
21 schedule within thirty days specifying the measures to
22 be taken and the time within which such measures shall

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1 be taken to bring that person into compliance with
2 this chapter, any rule adopted pursuant to this
3 chapter, or any permit, water quality certification,
4 or variance issued pursuant to this chapter;

5 (2) Shall accept or modify the submitted schedule within
6 thirty days of receipt of the schedule. Any schedule
7 not acted upon after thirty days of receipt by the
8 director shall be deemed accepted by the director;

9 (3) Shall issue to the alleged violator or violators a
10 cease and desist order against the activities that
11 violate this chapter, any rule adopted pursuant to
12 this chapter, or any permit, water quality
13 certification, or variance issued pursuant to this
14 chapter if that person does not submit a written
15 schedule to the director within thirty days. This
16 order shall remain in effect until the director
17 accepts the written schedule; and

18 (4) May impose penalties as provided in section 342D-31 by
19 sending a notice in writing, either by certified mail
20 or by personal service, to the alleged violator or
21 violators describing the violation."

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1 SECTION 6. Section 342D-30, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§342D-30 Civil penalties. (a) Any person who violates
4 this chapter, any rule, or any term or condition of a permit,
5 water quality certification, or variance issued pursuant to this
6 chapter shall be fined not more than [~~\$25,000~~]\$59,973 for each
7 separate offense. Each day of each violation shall constitute a
8 separate offense. Any action taken in environmental court to
9 impose or collect the penalty provided for in this section shall
10 be considered a civil action. In determining the amount of a
11 civil penalty the environmental court shall consider the
12 seriousness of the violation or violations, the economic
13 benefit, if any, resulting from the violation, any history of
14 these violations, any good-faith efforts to comply with the
15 applicable requirements, the economic impact of the penalty on
16 the violator, and any other matters that justice may require.
17 It shall be presumed that the violator's economic and financial
18 conditions allow payment of the penalty, and the burden of proof
19 of the contrary is on the violator.

20 (b) Any person who denies, obstructs, or hampers the
21 entrance or inspection by any duly authorized officer or
22 employee of the department of any building, place, or vehicle

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1 that the officer or employee is authorized to enter and inspect
2 shall be fined not more than [~~\$10,000~~]\$25,000 for each day of
3 denial, obstruction, or hampering. Any action taken in
4 environmental court to impose or collect the penalty provided
5 for in this subsection shall be considered a civil action."

6 SECTION 7. Section 342D-50, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§342D-50 Prohibition.** (a) No person, including any
9 public body, shall discharge any water pollutant into state
10 waters, or cause or allow any water pollutant to enter state
11 waters except in compliance with this chapter, rules adopted
12 pursuant to this chapter, or a permit, water quality
13 certification, or variance issued by the director.

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

20 (c) No person, including any industrial user, shall
21 discharge any water pollutant or effluent into a publicly owned
22 treatment works or sewerage system in violation of:

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1 (1) A pretreatment standard established by the department
2 or the publicly owned treatment works; or

3 (2) A pretreatment condition in a permit issued by the
4 department or a publicly owned treatment works.

5 (d) No person, including any public body, shall violate
6 any rule adopted pursuant to this chapter or any permit, water
7 quality certification, or variance issued or modified pursuant
8 to this chapter."

9 SECTION 8. Section 342D-53, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "[~~f~~]§342D-53[~~f~~] Certifying agency[~~-~~] and water quality
12 certification. (a) Water quality certification is required
13 pursuant to section 401 of the Act for any applicant for a
14 federal license or permit to conduct any activity, including the
15 construction or operation of facilities which may result in any
16 discharge into navigable waters.

17 (b) The director may act as a certifying agency, as
18 defined in 40 Code of Federal Regulations [~~121.1(e) (1985)~~].
19 "Certifying agency" as used in this section has the same meaning
20 as "certifying authority" as defined in 40 Code of Federal
21 Regulations.

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Report Title:

Water Pollution Control

Description:

Revises chapter 342D, Hawaii Revised Statutes, to add wetlands to the definition of State waters, clarifies the Director of Health's role as a certifying agency including enforcement of water quality certifications, and increases certain statutory civil penalties.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

SB. NO. 1377

JUSTIFICATION SHEET

DEPARTMENT: HEALTH

TITLE: A BILL FOR AN ACT RELATING TO WATER POLLUTION.

PURPOSE: The purpose of this bill is to amend sections in chapter 342D, Hawaii Revised Statutes (HRS), by: (1) adding definitions that are consistent with the federal Clean Water Act regulations; (2) consolidating the current water quality certification statutes into one section - 342D-53, HRS; (3) clarifying the Director of Health's authority to address violations of the water quality certification statutes; (4) increasing the maximum statutory penalty amount contained in section 342D-30(a), HRS, to match the federal penalty amount and to clarify applicable civil penalties; and (5) increasing the penalty for obstructing, denying, or hampering the entry of authorized inspectors to match the penalty enacted in section 342B-47(d), HRS.

MEANS: Amend chapter 342D, HRS.

JUSTIFICATION: The Department of Health has been authorized by the United States Environmental Protection Agency (EPA) to administer the National Pollution Discharge Elimination System (NPDES) program and section 401 Water Quality Certification (WQC) of the federal Clean Water Act (CWA). This authority has been incorporated into chapter 342D, HRS.

To effectively administer the NPDES program and WQC, the definitions and penalties in 342D, HRS, must be consistent with the regulations of the CWA. This Act adds and conforms the necessary definitions to 342D-1, HRS, and updates the amount of administrative fines in 342D-30(a), HRS, to correspond with CWA regulations.

Currently, WQC requirements and exemptions are included in sections 342D-6 and 342D-6.5, HRS. To provide clarity for the public and regulated entities, and for ease of reference, the existing WQC certifying statute, 342D-53, HRS, is amended to include the WQC requirements and exemptions in 342D-6, HRS, and 342D-6.5, HRS, and provide details regarding the Director of Health's authority to act as a certifying agency.

This Act amends 342D-9, HRS, and 342D-50, HRS, to include violations of water quality certification as actions that are enforceable by the Department of Health. This amendment will enable the department to consistently enforce and impose penalties for violations of NPDES permits, water quality certifications, and NPDES permit variances.

The penalty in 342D-30, HRS is increased to match the penalty found in section 342B-47(d), HRS to enable the Department of Health to administer consistent penalties for the offense of obstructing, denying, or hampering the entry of authorized inspectors in both air and water pollution matters.

Impact on the public: Improved clarity and consistency of water quality enforcement.

Impact on the department and other agencies: Improved clarity and consistency of water quality enforcement.

GENERAL FUND: None.

OTHER FUNDS: Penalties collected under chapter 342D, HRS, are currently deposited into the environmental response revolving fund established by section 128D-2, HRS. Funds deposited into the fund will increase when a penalty is assessed pursuant to section 342D-30, HRS.

PPBS PROGRAM

DESIGNATION: HTH 840.

OTHER AFFECTED
AGENCIES:

Enforcing agencies, including the EPA and the Department of Agriculture. All government agencies that are required to obtain certifications.

Other agencies that violate the State's water pollution control law will be subject to higher statutory maximum penalties in the same way the general public will be affected. Beyond that, no other agency implements this statute and all other agencies complying with chapter 342D, HRS, are not affected by this proposed change.

EFFECTIVE DATE: Upon approval.