

---

---

# 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:

- 3 (1) Conform to Federal definitions and civil penalty  
4 amounts pursuant to the Clean Water Act;
- 5 (2) Consolidate separate water quality certification  
6 statutes into one section for clarity;
- 7 (3) Clarify the authority of the department of health to  
8 conduct water quality certifications; and
- 9 (4) Revise civil penalty amounts to ensure consistency  
10 within the department of health.

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

13 1. By adding three new definitions to be appropriately  
14 inserted and to read:

15 "Act" means the Clean Water Act (formally referred to as  
16 the Federal Water Pollution Control Act Amendments of 1972),  
17 P.L. 92-500, as amended (33 U.S.C. 1251 et seq).



1       "Water quality certification" or "certification" means a  
2 statement that asserts that a proposed discharge resulting from  
3 any activity, including but not limited to the construction or  
4 operation of facilities, will not violate applicable water  
5 quality standards, water quality related state laws, or water  
6 quality related provisions in sections 301, 302, 303, 306, and  
7 307 of the Act.

8       "Water quality standards" means provisions of state law  
9 that provide for a designated use or designated uses for state  
10 waters and water quality criteria for the waters based upon its  
11 uses. Water quality standards are to protect the public health  
12 or welfare, enhance the quality of water, and serve the purposes  
13 of the Act."

14       2. By amending the definition of "state waters" to read:

15       "State waters" means all waters, fresh, brackish, or salt,  
16 around and within the State; including[7] but not limited to[7]  
17 coastal waters, wetlands, streams, rivers, drainage ditches,  
18 ponds, reservoirs, canals, ground waters, and lakes; provided  
19 that drainage ditches, ponds, and reservoirs required as a part  
20 of a water pollution control system are excluded."



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

3 **"§342D-6 Permits; procedures for.** (a) An application for  
4 any permit required under this chapter shall be in a form  
5 prescribed by the director.

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

11 (c) The director shall issue a permit for any term, not  
12 exceeding five years, if the director determines that it will be  
13 in the public interest; provided that the permit may be subject  
14 to any reasonable conditions that the director may prescribe.  
15 The director may include conditions in permits or may issue  
16 separate permits for management practices for domestic sewage,  
17 sewage sludge, and recycled water, regardless of whether the  
18 practices cause water pollution. The director, on application,  
19 shall renew a permit from time to time, for a term not exceeding  
20 five years; if the director determines that it will be in the  
21 public interest. The director shall not grant or deny an



1 application for the issuance or renewal of a permit without  
2 affording the applicant and any person who commented on the  
3 proposed permit during the public comment period an opportunity  
4 for a hearing in accordance with chapter 91. A request for a  
5 hearing and any judicial review of the hearing shall not stay  
6 the effect of the issuance or renewal of a permit unless  
7 specifically ordered by the director or an environmental court.

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

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

20 The public interest excludes any reason less stringent than  
21 the causes for permit modification, revocation, and termination,



1 or revocation and reissuance identified in title 40 Code of  
2 Federal Regulations section 122.62 or 122.64.

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

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

17 (g) In determining the public interest regarding permit  
18 issuance or renewal, the director shall consider the  
19 environmental impact of the proposed action, any adverse  
20 environmental effects that cannot be avoided should the action  
21 be implemented, the alternatives to the proposed action, the



1 relationship between local short-term uses of the environment  
2 and the maintenance and enhancement of long-term productivity,  
3 any irreversible and irretrievable commitments of resources that  
4 would be involved in the proposed action should it be  
5 implemented, and any other factors that the director, by rule,  
6 may prescribe; provided that any determination of public  
7 interest shall promote the optimum balance between economic  
8 development and environmental quality.

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

15 ~~[(i) The department shall not require a water quality~~  
16 ~~certification pursuant to section 401 of the federal Clean Water~~  
17 ~~Act under this chapter for any applicant of the small scale~~  
18 ~~beach restoration program that has received notice of~~  
19 ~~authorization to proceed from the department of land and natural~~  
20 ~~resources' office of conservation and coastal lands.]"~~



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

3 "§342D-6.5 Hawaiian loko i'a. [~~a~~] The department shall  
4 process applications for permits and water quality  
5 certifications for the reconstruction, restoration, repair, or  
6 reuse of any loko i'a, or Hawaiian fishpond as defined in section  
7 183B-1, before all other permits and certifications. The  
8 director shall render a decision on the completeness of any  
9 application for that permit or water quality certification  
10 within thirty days of receipt. Applications for loko i'a  
11 reconstruction, restoration, or repair that are incomplete shall  
12 be denied without prejudice. The director shall render a  
13 decision on any complete application for a permit or water  
14 quality certification for any loko i'a within one hundred fifty  
15 days.

16 [~~b~~] ~~The department shall waive the requirement to obtain~~  
17 ~~water quality certification under this chapter for any person~~  
18 ~~that has received notice of authorization to proceed from the~~  
19 ~~department of land and natural resources office of conservation~~  
20 ~~and coastal lands under the statewide programmatic general~~



1 ~~permit for the restoration, repair, maintenance, and operation~~  
2 ~~of loko i'a.~~

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

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

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

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

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



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



1 be taken and the time within which [~~such~~] the measures  
2 shall be taken to bring that person into compliance  
3 with this chapter, any rule adopted pursuant to this  
4 chapter, or any permit, water quality certification,  
5 or variance issued pursuant to this chapter;

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

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

19 (4) May impose penalties as provided in section 342D-31 by  
20 sending a notice in writing, either by certified mail



1 or by personal service, to the alleged violator or  
2 violators describing the violation."

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

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



1 (b) Any person who denies, obstructs, or hampers the  
 2 entrance or inspection by any duly authorized officer or  
 3 employee of the department of any building, place, or vehicle  
 4 that the officer or employee is authorized to enter and inspect  
 5 shall be fined not more than [~~\$10,000~~] \$25,000 for each day of  
 6 denial, obstruction, or hampering. Any action taken in  
 7 environmental court to impose or collect the penalty provided  
 8 for in this subsection shall be considered a civil action."

9 SECTION 7. Section 342D-50, Hawaii Revised Statutes, is  
 10 amended as follows:

11 1. By amending subsection (a) to read:

12 "(a) No person, including any public body, shall discharge  
 13 any water pollutant into state waters, or cause or allow any  
 14 water pollutant to enter state waters except in compliance with  
 15 this chapter, rules adopted pursuant to this chapter, or a  
 16 permit, water quality certification, or variance issued by the  
 17 director."

18 2. By amending subsection (d) to read:

19 "(d) No person, including any public body, shall violate  
 20 any rule adopted pursuant to this chapter or any permit, water



1 quality certification, or variance issued or modified pursuant  
2 to this chapter."

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

5 "~~[+]§342D-53[+]~~ Certifying agency[-] and water quality  
6 certification. (a) Water quality certification is required  
7 pursuant to section 401 of the Act for any applicant for a  
8 federal license or permit to conduct any activity, including the  
9 construction or operation of facilities which may result in any  
10 discharge into navigable waters.

11 (b) The director may act as a certifying agency, as  
12 defined in 40 Code of Federal Regulations [~~121.1(e) (1985)~~].  
13 "Certifying agency" as used in this section has the same meaning  
14 as "certifying authority" as defined in 40 Code of Federal  
15 Regulations.

16 (c) The director shall adopt and enforce administrative  
17 rules to administer the water quality certifications. Rules  
18 shall be adopted in conformity with chapter 91.

19 (d) The term of any water quality certification issued by  
20 the director shall not exceed five years.



1       (e) The director shall not require a person to apply for a  
2 water quality certification:

3       (1) If the person has received notice of authorization to  
4 proceed from the department of land and natural  
5 resources office of conservation and coastal lands  
6 under the statewide programmatic general permit for  
7 the restoration, repair, maintenance, and operation of  
8 loko ia; or

9       (2) If the person has received notice of authorization to  
10 proceed from the department of land and natural  
11 resources office of conservation and coastal lands  
12 under the small-scale beach restoration program."

13       SECTION 9. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15       SECTION 10. This Act shall take effect on July 1, 2050.



**Report Title:**

Water Pollution Control; Director of Health

**Description:**

Revises chapter 342D, Hawaii Revised Statutes, to add definitions that are consistent with federal Clean Water Act regulations. Clarifies the Director of Health's role as a certifying agency including enforcement of water quality certifications, and increases certain statutory civil penalties. Effective 7/1/2050. (SD1)

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

