

ACT 60

H. B. 485.

A Bill for an Act Relating to Air Pollution Control and Amending Chapter 47, Revised Laws of Hawaii 1955, as Amended.

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

SECTION 1. This Act is hereby declared to be an urgency measure deemed necessary in the public interest within the meaning of section 11 of Article III of the Constitution of the State of Hawaii.

The following is a statement of the facts constituting such urgency:

In November of last year, President Johnson signed into law the Air Quality Act of 1967, Public Law 90-148, amending the Clean Air Act, as amended (42 U.S.C. 1857 et seq.).

Sec. 102.(a) of the Act provides, in relevant part:

“The Secretary [of Health, Education and Welfare] shall encourage cooperative activities by the States and local governments for the prevention and control of air pollution; encourage the enactment of improved and, so far as practicable in the light of varying conditions and needs, uniform State and local laws relating to the prevention and control of air pollution . . .”

Under Sec. 108.(c) of the Act, there is provision for:

“. . . the establishment by the States of ambient air quality standards and a plan for their enforcement and implementation.

“Paragraph (1) requires the Governor of a State to file a letter of intent, adopt air quality standards, and adopt a plan for their implementation and enforcement, all within 15 months.

“Approval by the Secretary of the State standards and plan is to be contingent upon whether (1) the State standards are consistent with the air quality criteria and the recommended control techniques issued by him . . . [and] the State plan is consistent with the purposes of the act and assures achieving the air quality standards within a reasonable time . . .”

—Report of the Committee on Public Works, United States Senate, to Accompany S. 780, p. 44 (U. S. Government Printing Office, Washington, D. C.: 1967).

In a letter to Governor Burns, dated November 22, 1967 John W. Gardner, Secretary of Health, Education and Welfare, stated, in part:

“I hope you will take immediate steps to establish the necessary statutory base and administrative machinery to carry out this responsibility.”

It is, therefore, immediately necessary in the public interest that legislation be enacted to carry out the purpose and intent of the Air Quality Act of 1967, aforesaid.

SECTION 2. The Air Pollution Control Law, part V of chapter 47, Revised Laws of Hawaii 1955, as amended, is further amended to read as follows:

a. By adding to section 47-61 the following definition:

“Person” means any individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the State, trust, estate or any other legal entity.”

b. By adding to section 47-64, next following subsection (h), two new subsections to be designated “(i)” and “(j)”, respectively, to read:

“(i) To establish ambient air quality standards for the State as a whole or for any part thereof.

(j) To require the installation, use and proper maintenance of air pollution control equipment for motor vehicles.”

c. By amending section 47-65 to read:

“The department may provide, and, from time to time, change, by rule or regulation a schedule of fees not exceeding the estimated cost of issuing permits and inspection pertaining to such issuance to be paid for the issuance of permits. Every person or agency applying for a permit shall pay the fee required by such schedule. Such fees shall revert to the general fund.”

d. By amending subsection (c) of section 47-67 to read:

“(c) All rules or regulations of strictly local application, before they are adopted by the department, shall be submitted to the county air pollution control association if one shall have been appointed of the county affected, for discussion and, within 30 days after submission, a report thereon.”

e. By deleting in its entirety section 47-68, and by adding a new section to be numbered and to read as follows:

“**§ 47-68. Variances.** The department shall, upon application and after public hearing, grant such variances as are required to avoid inequitable hardship to the applicant; provided, however, that no such variance shall be granted unless the department finds that human health and safety will not be or tend to be endangered thereby.”

f. By amending section 47-69 to read:

“**Enforcement.** (a) In case any written complaint is filed with the department, or the department has cause to believe, that any person is violating any rule or regulation promulgated by the department, the department shall cause to be issued and served a written notice, together with a copy of a complaint made by it, or a copy of the complaint made to it, requiring the person so complained against to answer the charges of such complaint at a hearing before the department or before a master or masters appointed by it, at a time not less than 30 days after service of the notice and at a place to be specified in such notice.

(b) Such hearing shall be in accordance with chapter 6C, sections 9, 10, 11, 12 and 13.

(c) Any information as to secret processes or methods of manufacture or production shall not be disclosed in public hearing before the board, insofar as practicable, and shall be kept confidential.

(d) The department, at the request of any respondent to a complaint made by it, or to it, pursuant to this part, shall subpoena and compel the attendance of such witnesses as the respondent may designate and require the production for examination of any papers relating to any matter under investigation in any such hearing.”

g. By amending section 47-71 to read:

“If such preventive or corrective measures are not taken in accordance with the order of the department, the department may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent any further violation of such code, rule or regulation. The court shall have power to grant such relief in accordance with the Hawaii Rules of Civil Procedure.”

SECTION 3. This Act shall take effect upon its approval.

(Approved May 9, 1968.)