

ACT 123

S. B. NO. 1221-70

A Bill for an Act Relating to Artesian Wells.

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

SECTION 1. Chapter 178, Hawaii Revised Statutes, is amended as follows:

(a) By deleting from the title word “Artesian” so that the title, as amended, shall read “Wells, Generally”;

(b) By amending section 178-1 to read:

“**Sec. 178-1 Defined.** A well, for the purposes of this chapter, is defined to be any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed into the ground to or penetrating any aquifer or basin whether or not the intended use of such excavation is for the location, exploration, diversion, or for the acquisition of any ground water by natural pressure or artificial means, or, is for the diversion, injection, recharge, or disposal of any water or liquid waste into any underground formation.”

(c) By amending section 178-2 to read:

“**Sec. 178-2 Uncapped and flowing a common nuisance; persons responsible therefor.** A well through which water flows to the surface of the ground or to any porous substratum by natural pressure and is not capped, cased, equipped, or furnished with such control facilities as will readily and effectively arrest and prevent waste or unnecessary flow of any water from the 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.”

(d) By amending section 178-3 to read:

“**Sec. 178-3 Waste, defined.** For the purposes of this chapter, waste is defined to be causing, suffering, or permitting the water in any well to reach any porous substratum or to flow from the well upon any land, or directly into any stream, or other natural watercourse 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

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utilized afterwards for irrigation or other useful purposes. Except as otherwise provided the extent to which water of any 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.”

(e) By amending section 178-4 to read:

“**Sec. 178-4 Inspection.** Every 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.”

(f) By amending section 178-5 to read:

“**Sec. 178-5 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 well.”

(g) By amending section 178-6 to read:

“**Sec. 178-6 Well record to be kept and filed.** Any person constructing, or causing to be constructed, a well shall keep a complete and accurate record on forms provided by the board of land and natural resources of each well and within ninety days after the last day of construction or testing, shall file the record in the office of the board of land and natural resources, except as otherwise provided.”

(h) By amending section 178-7 to read:

“**Sec. 178-7 Violations; penalties.** Any person violating this chapter shall be fined not more than \$100; 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. For violations under sections 178-5 and 178-6, each day’s continuance of the same shall constitute a separate offense after 30 days have elapsed from the time of written notice of violations.”

(i) By amending section 178-8 to read:

“**Sec. 178-8 Person may relieve himself of liability.** Any person owning a well, drilled for water development purposes, through which water flows to the surface of the ground or to any porous substratum by natural pressure or is raised by artificial means, may relieve himself of further responsibility therefor by transferring it to the county in which it is situated and the exclusive right to develop water on or under any property owned by him in the district in which the well is situated and the right to enter the property for the purpose of capping or plugging the well. The county may, for conservation purposes, accept the well and the right and cap or properly plug the well as soon as practicable.

The county shall have the right to use the well and to lay and maintain pipes to draw water therefrom; provided that the use and the laying and maintenance of the pipes be made in such manner as to cause minimum inconvenience to the person owning the well before its transfer as provided herein.”

(j) By amending section 178-9 to read:

“**Sec. 178-9 Inspection by board.** For the more effectual carrying out of this chapter, the board of land and natural resources or its designated agent may at all times enter without warrant the premises where a well is situated or wherein a well is used in order to procure such information or for such other purpose as may be necessary.”

(k) By amending section 178-10 to read:

“**Sec. 178-10 Appeals from decisions of the board.** Any person, firm, co-partnership, 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 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.”

(l) By adding a new section 178-11 to read:

“**Sec. 178-11 County charters not impaired.** The provisions of this Act shall not be construed as amending or impairing the provisions of any county charter relating to boards or departments of water supply.”

SECTION 2. 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 3. This Act shall take effect upon its approval.

(Approved June 19, 1970.)