

**ACT 169**

**S.B. NO. 350**

**A Bill for an Act for Mandatory Certification of Operating Personnel in Wastewater Treatment Facilities.**

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

**SECTION 1. Purpose.** The purpose of this Act is to protect the public health and to conserve and protect the water resources of the State; to provide for the classifying of all public and private wastewater treatment plants; to require the examination of operating personnel and certification of their competency to

operate and supervise the operation of such systems and facilities; to create a board of certification of wastewater treatment plant operators; to prescribe the powers and duties of the board of certification in these matters; to provide for the promulgation of rules and regulations; to provide for reciprocal arrangements; and to prescribe penalties for violation of the Act.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately numbered and to read as follows:

**“CHAPTER  
HAWAII LAW FOR MANDATORY CERTIFICATION OF  
OPERATING PERSONNEL IN WASTEWATER TREAT-  
MENT PLANTS**

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

- (1) “Person” means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, municipality, or any other legal entity.
- (2) “Operator” means any individual who operates a wastewater treatment plant, or a major segment of a wastewater treatment plant.
- (3) “Supervisor” means, where shift operation is not required, any individual who has direct responsibility for the operation of a wastewater treatment plant or who supervises operators of such a plant. Where shift operation is required, “supervisor” means any individual who has direct responsibility for active daily on-site technical and administrative supervision, and active daily on-site charge of an operating shift, or a major segment of a wastewater treatment plant.
- (4) “Wastewater treatment plant” means the various facilities used in the treatment of wastewater, including a wastewater reclamation plant, but excluding a private sewage treatment plant with actual flows greater than 2.0 million gallons per day, with a valid discharge permit issued pursuant to chapter 342, and without a record of adjudged violations of any permit conditions at any time for the life of the permit.
- (5) “Association of boards of certification for operating personnel in water and wastewater utilities” means that organization which serves as an information center for certification activities, recommends minimum standards and guidelines for the classification of potable water supply and wastewater systems and facilities and for certification of operators, facilitates reciprocity between state programs, and assists authorities in establishing new certification programs and upgrading existing programs.
- (6) “Director” means the director of health.
- (7) “Board” means the board of certification established by section -4.

**Sec. -2 Classification.** The board shall classify all wastewater treatment plants. Cesspool and septic tank facilities connected to an individual household

shall be exempt from classification. Industrial facilities for treatment of process water from oil refineries and sugar mills shall be exempt from classification provided such waste streams contain no domestic component and further provided that they do not discharge to a municipal collection, treatment, or disposal system. Application for exemption from classification of other industrial wastewater treatment facilities may be made to the director. In classifying or exempting from classification wastewater treatment, the board shall consider the applicable provisions in chapter 38 of the department of health regulations regarding wastewater treatment facilities and any rules and regulations of the department of health pertaining to the control of underground injection of wastewater. The classification shall take due regard to size and type, character of wastewater to be treated, other physical conditions affecting such wastewater treatment plants, and the skill, knowledge and experience required of an operator.

**Sec. -3 Certification.** (a) Upon board approval the director shall issue certificates entitling qualified individuals to operate wastewater treatment plants. Each certificate shall indicate the class of wastewater treatment plant for which the individual is qualified.

(b) The director shall issue a certificate to each applicant who, on the effective date of this chapter, holds a valid certificate issued to him pursuant to the voluntary program, conducted by the Hawaii water pollution control association for certification of operators of wastewater treatment plants in this State; provided that such applicant files an application with the director within one hundred eighty days immediately following the effective date of this chapter.

(c) The director may issue a certificate, without requiring a qualifying examination therefor, to an applicant who is an operator satisfactorily operating a wastewater treatment plant on the effective date of this chapter; provided that such certificate shall be valid only for the operation of that wastewater treatment plant or a similar wastewater treatment plant.

**Sec. -4 Board of certification.** (a) A state board of certification of nine members, shall be appointed by the governor to carry out this chapter. The board shall be placed, for administrative purposes, in the department of health. The board shall consist of the following:

- (1) Four individuals who shall be employed in a wastewater treatment plant either as a certified operator or certified supervisor of a wastewater treatment plant. Three of the individuals must be employed in the outer island counties; one individual from the county of Hawaii, one from the county of Kauai, and one from the county of Maui.
- (2) One individual who is an active member of the Hawaii water pollution control association.
- (3) One individual who is a professional engineer in private practice, preferably specializing in sanitary engineering.
- (4) One individual who is a member of the engineering (environmental or sanitary) faculty of a university or college in the State.
- (5) One individual from the state agency responsible for the State's water quality program.

(6) One individual from the private sector interested in the field of water pollution control.

(b) The foregoing members shall serve for four-year terms except that of the initial appointments, one shall be for one year, two shall be for two years, two shall be for three years, and four shall be for four years.

(c) The members of the board shall meet for an organizational meeting at the call of the director, within forty-five days of their appointment and thereafter at least twice a year at such time and place as may be provided by rules and regulations adopted by them. The members of the board shall annually elect one of the board members to serve as chairperson. Additional meetings may be called by the chairperson as deemed necessary. Notice of such meeting shall be given all members in writing at least ten days prior to the date of the meeting.

(d) The governor shall fill any vacancy in the board and may remove any member for cause.

(e) Board members shall be reimbursed for expenses incurred in the performance of their duties.

**Sec. -5 Association of certification authorities.** The board may, when taking action pursuant to sections -2, -3, and -7 of this chapter, consider generally applicable criteria and guidelines developed by the association of boards of certification for operating personnel in water and wastewater utilities.

**Sec. -6 Certification requirement.** All classified wastewater treatment plants whether publicly or privately owned, used or intended for use by the public or private persons, shall at all times be under the direct supervision of an individual whose competency is certified to by the director in a classification corresponding to the classification of the wastewater treatment plant to be supervised.

**Sec. -7 Regulations.** The board shall adopt such rules and regulations as may be necessary for the administration of this chapter, and which shall include at least the following provisions:

- (1) The basis for classification of wastewater treatment plants as required by section -2;
- (2) Criteria for the qualification of applicants for operator certification corresponding to each of the classifications referred to in paragraph (1) of this section;
- (3) Procedures for examination of candidates and renewal of certificates; and
- (4) Procedures for the revocation of certificates.

**Sec. -8 Prohibited acts.** It shall be unlawful:

- (1) For any wastewater treatment plant to be operated unless the operator is duly certified under this chapter;
- (2) For any individual to perform the duties of an operator without being duly certified under this chapter.

**Sec. -9 Injunctions and civil penalty.** Any person who violates any provision of this chapter, or any rules, regulations, criterion, procedure, or certificate issued hereunder may, in a legal action commenced by the board:

- (1) Be enjoined from continuing such violation; and
- (2) Be subject to a civil penalty of not less than \$100 a day and not greater than \$200 a day for each day of continuing violation.

**Sec. -10 Criminal penalties.** Any individual who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter, or by any rule or regulation adopted under this chapter shall be guilty of a petty misdemeanor.

**Sec. -11 Powers and duties of the board.** To carry out the provisions and purposes of this chapter, the board shall:

- (1) Perform any and all acts and adopt, amend, or repeal such rules and regulations as it finds necessary or appropriate;
- (2) Enter into agreements, contracts, or cooperative arrangements, under such terms and conditions as deemed appropriate with other state, federal, or interstate agencies, municipalities, educational institutions, or other organizations or individuals;
- (3) Receive financial and technical assistance from the federal government and other public or private agencies;
- (4) Participate in related programs of the federal government, other states, interstate agencies, or other public or private agencies or organizations;
- (5) Furnish upon request to federal, state or interstate agencies, municipalities, educational institutions and other organizations and individuals, reports, information and materials relating to the certification program authorized by this chapter;
- (6) Revoke, suspend, or refuse to renew any certificate of any individual following a hearing before the board of the individual or his designated representative, when it is determined that the individual has practiced fraud or deception; that reasonable care, judgment, or the application of his knowledge or ability was not used in the performance of his duties; or that the individual is incompetent or unable to properly perform his duties; provided that the board gives the person concerned notice and hearing in conformity with chapter 91;
- (7) Delegate those duties and responsibilities the board may deem appropriate for the purpose of administering requirements of this chapter;
- (8) Establish and collect such fees for application, conduct examinations, issue or renew certificates as are necessary for the support of this chapter, and deposit all fees collected into the State's general fund; and
- (9) Oversee the development and implementation of a continuous training program if that is necessary to carry out this chapter.

**Sec. -12 Annual report.** Within twelve months from the effective date of this chapter, and annually thereafter, the board shall submit to the governor, through the director, a report summarizing the actions taken under this chapter, and the effectiveness of such actions and such information and recommendations, including legislative recommendations, as deemed appropriate.

**Sec. -13 Reciprocity.** (a) On or after the effective date of this chapter,

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certification of operators by any state which, as determined by the board, accepts certifications made or certification requirements deemed satisfactory pursuant to this chapter, shall be accorded reciprocal treatment and shall be recognized as valid and sufficient within the purview of this chapter, if in the judgment of the board the certification requirements of such state are substantially equivalent to the requirements of this chapter or any rules or regulations adopted hereunder and providing further that reciprocal privileges are granted to certified operators of this State.

(b) In making determinations pursuant to subsection (a) of this section, the board may consider any generally applicable criteria and guidelines developed by the association of boards of certification for operating personnel in water and wastewater utilities.”

SECTION 3. The provisions of this Act are intended to supersede existing laws of this State insofar as they relate to the matters included in this Act.

SECTION 4. Severability. The provisions of this Act are severable. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions of applications of this Act which can be given effect without regard to the invalid provision or application.

SECTION 5. Effective date. This Act shall take effect upon approval; provided that the provisions of sections -6 and -8 in Section 2 shall take effect two years from the effective date of this Act.

(Approved June 2, 1978.)