

ACT 53

H.B. NO. 3109-82

A Bill for an Act Relating to the Environment.

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

SECTION 1. Findings and declaration of necessity. The legislature finds that:

(a) Changes in the control and the sale of a substantial portion of the assets of publicly owned Hawaii corporations may have a substantial effect on the environment of Hawaii. Because the economy of Hawaii depends upon a limited number of industries, the change in control or the disposition of a substantial portion of the assets of a single publicly owned Hawaii corporation could have a substantial impact on the economy of Hawaii. Rapid changes in the manner in which these corporations do business in Hawaii could adversely affect the welfare of Hawaii citizens through loss of jobs and changes in land use. Particularly in the case of our agricultural industry a change in control or the sale of substantial assets could greatly accelerate the contractions in this industry which are already taking place.

(b) The Hawaii Constitution provides in Section 3 of Article XI that the State shall conserve and protect agricultural lands and requires a two-thirds vote of the responsible governmental body before agricultural land is reclassified to another use. To carry out this intent, it is essential that the public be informed of anticipated changes in the use of agricultural lands resulting from changes in the ownership of the stock or assets of publicly owned Hawaii corporations.

(c) The citizens of Hawaii owning stock in publicly owned Hawaii corporations should be made aware of significant changes in the ownership of the stock or the assets of publicly owned Hawaii corporations. The citizens of Hawaii can then make an informed judgment whether to sell or retain their ownership interests in these corporations or otherwise exercise their rights as stockholders and in so doing influence whether there will be changes in the environment of Hawaii.

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

“CHAPTER HAWAII ENVIRONMENTAL DISCLOSURE LAW

§ **Short title.** This chapter may be cited as the Hawaii Environmental Disclosure Act.

§ **Definitions.** As used in this chapter unless the context otherwise requires:

(a) “Affiliate” means any person controlling, controlled by, or under common control with another person.

(b) “Control” means either (1) holding fifty per cent or more of the outstanding voting securities of an issuer; or (2) having the power to direct or cause to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(c) “Entity” means any natural person, corporation, company, partnership, joint venture, association, joint-stock company, trust, institution, or other group organized for any purpose, whether incorporated or not, wherever located and of whatever citizenship.

(d) “Office” means office of environmental quality control.

(e) “Person” means an entity and all of its affiliates.

(f) "Voting securities" means any securities which at present or upon conversion entitle the owner or holder thereof to vote for the election of directors of the issuer, or any entity included within the same person as the issuer, with respect to unincorporated entities, individuals exercising similar functions.

§ **Filing.** No person owning beneficially ten per cent or more of any class of voting securities of any Hawaii corporation shall purchase or pay for more than an additional five per cent of any such security or five per cent or more of the assets of such Hawaii corporation during any twelve-month period without first complying with the following requirements:

(a) Filing a statement with the office in the form designated by the office which includes:

- (1) A complete and detailed description of the person, its organization, its capitalization, and its operations, including a breakdown of sales for each line of business activity according to the applicable four-digit-product-number listed in the most recent edition of the Standard Industrial Classification Manual published by the Executive Office of the President, Office of Management and Budget;
- (2) Copies of the person's audited financial statements, balance sheets, and income statements for the past five years;
- (3) A complete and detailed history of the person's prior compliance or non-compliance with all applicable environmental laws and regulations including those promulgated by the United States government, any state government or any municipal government of the United States;
- (4) A description of all judicial and administrative proceedings during the preceding five years to which the person was a party and which involved any issue concerning any environmental law or regulation.
- (5) A complete and detailed statement of all intentions by the person to influence the issuer of the voting security or any of its affiliates to take any action within the following five years which might require the filing of an environmental impact statement pursuant to chapter 343, Hawaii Revised Statutes; and

(b) Waiting for fifteen days after delivery of the above statement to the office or such longer time as the office may order pursuant to section or section

§ **Hearing.** (a) If the office has probable cause to believe that a statement filed by any persons pursuant to section is either incomplete, inadequate, or misleading in any way, the office may in its discretion issue an order extending the fifteen-day waiting period described in the previous section for no more than an additional forty-five days pending a hearing.

(b) The subject of the hearing shall be the adequacy, accuracy, and completeness of the filing made pursuant to the preceding section. The hearing must be commenced within thirty days of the filing at issue and must be concluded within fifty-five days of the filing. The hearing shall be public and any person with information relevant to the subject of the hearing shall be given an opportunity to testify either in person or in writing. Within five days of the conclusion of the hearing, the office shall issue a written, public opinion on the adequacy, completeness, and accuracy of the filing.

§ **Relevant documents.** The office in its discretion may require the person submitting the filing and any of its affiliates to produce to the office within a reasonable time not to exceed thirty days documents within the person's possession, custody, or control which are relevant to the adequacy, completeness and accuracy of the person's filing.

§ **Prohibition of further purchases.** In the event that any person refuses to file as required by section , to participate in a hearing or fails to produce relevant documents requested by the office in accordance with section , the office may in its discretion recommend to the attorney general that action be taken to prohibit such person from purchasing more than five per cent of the voting securities or the assets which are the subject of the filing within any subsequent twelve-month period. The prohibition shall not preclude such person from seeking to purchase additional securities or assets pursuant to a subsequent filing with the office.

§ **Amended filings.** Any amended filing which the office in its discretion deems significant shall be considered a subsequent filing, recommencing a new waiting period and an opportunity for a hearing. Any amended filing which the office in its discretion deems insignificant shall be considered part of the original filing and shall not recommence a new waiting period nor another opportunity for a hearing.

§ **Subsequent filings.** A subsequent filing by any persons shall be treated as a new filing. No determination of the office concerning a previous filing shall be binding on any subsequent filing. The adequacy, accuracy, completeness, and timeliness of each subsequent filing shall be evaluated independently.

§ **Exemptions.** The following transactions are exempt from the filing requirements of this chapter:

- (a) Purchases of any voting securities or assets by a person already owning fifty per cent or more of such voting securities or assets.
- (b) Purchases of voting securities or assets of a corporation having less than 100 stockholders of record.

§ **Enforcement and penalties.** (a) Whenever it appears to the office that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter, the office may in its discretion refer such evidence to the attorney general who may bring an action in any court of competent jurisdiction to enjoin such act or practice, to enforce compliance with this chapter, and to impose a civil penalty not to exceed \$100,000. Any aggrieved person including the corporation issuing the voting securities or owning the assets in question, any owner of such voting securities, and any person who sold such voting securities in a transaction violating this chapter also shall have standing to bring an action in any court of competent jurisdiction to enjoin any person from any act or practice which constitutes a violation of this chapter, and to obtain such other relief as the court may deem appropriate.

(b) Upon a proper showing, the court may (1) grant a permanent or temporary injunction or restraining order; (2) order rescission of any sales or purchases of voting securities or assets determined to be unlawful under this

chapter; (3) impose a civil penalty not to exceed \$100,000; and (4) award such other relief as it may deem just and proper, including directing the subject person to refuse to transfer such securities on its books and to refuse to recognize any vote with respect to such securities.

(c) A person who successfully brings an action under this section shall be entitled to recover reasonable costs and attorney's fees.

(d) The rights and remedies of this chapter are in addition to any other rights or remedies that may exist at law or equity.

§ **Saving clause.** In the event that any provision or application of this chapter shall be held illegal or invalid for any reason, such holding shall not affect the legality or validity of any other provision or application thereof."

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

(Approved April 28, 1982.)