

**ACT 80**

S.B. NO. 2268-86

A Bill for an Act Relating to Attorneys' Fees.

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

**SECTION 1.** The legislature finds that article XI, section 9, of the Constitution of the State of Hawaii has given the public standing to use the

courts to enforce laws intended to protect the environment. However, the legislature finds that the public has rarely used this right and that there have been increasing numbers of after-the-fact permits for illegal private development. Although the legislature notes that some government agencies are having difficulty with the full and timely enforcement of permit requirements against private parties, after-the-fact permits are not a desirable form of permit streamlining. For these reasons, the legislature concludes that to improve the implementation of laws to protect health, environmental quality, and natural resources, the impediment of high legal costs must be reduced for public interest groups by allowing the award of attorneys' fees, in cases involving illegal development by private parties.

SECTION 2. Chapter 607, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§607- Actions based on failure to obtain government permit or approvals; attorney’s fees and costs.** (a) As used in this section, “development” includes:

- (1) The placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;
- (2) The grading, removing, dredging, mining, pumping, or extraction of any liquid or solid materials; or
- (3) The construction or enlargement of any structure requiring a discretionary permit.

(b) As used in this section, “development” does not include:

- (1) The transfer of title, easements, covenants, or other rights in structures or land;
- (2) The repair and maintenance of existing structures;
- (3) The placement of a portable structure costing less than \$500; or
- (4) The construction of a structure which only required a building permit and for which a building permit could be granted without any discretionary agency permit or approval.

(c) For purposes of this section, the permits or approvals required by law shall include compliance with the requirements for permits or approvals established by chapters 6E, 46, 54, 171, 176D, 177, 180C, 183, 184, 195, 195D, 205, 205A, 266, 342, and 343 and ordinances or rules adopted pursuant thereto under chapter 91.

(d) For purposes of this section, compliance with the procedural requirements established by chapter 343 and rules pursuant to chapter 343 constitute a discretionary agency approval for development.

(e) In any civil action in this State where a private party sues for injunctive relief against another private party who has been or is undertaking any development without obtaining all permits or approvals required by law from government agencies:

- (1) The court may award reasonable attorneys' fees and costs of the suit to the prevailing party.
- (2) The court shall award reasonable attorneys' fees and costs of the suit to the prevailing party if the party bringing the civil action:
  - (A) Provides written notice, not less than forty days prior to the filing of the civil action, of any violation of a requirement for a permit or approval to:
    - (i) The government agency responsible for issuing the permit or approval which is the subject of the civil action;

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- (ii) The party undertaking the development without the required permit or approval; and
  - (iii) Any party who has an interest in the property at the development site recorded at the bureau of conveyances.
- (B) Posts a bond in the amount of \$2,500 to pay the attorneys' fees and costs provided for under this section if the party undertaking the development prevails.
- (3) Notwithstanding any provision to the contrary in this section, the court shall not award attorneys' fees and costs to any party if the party undertaking the development without the required permit or approval failed to obtain the permit or approval due to reliance in good faith upon a written statement, prepared prior to the suit on the development, by the government agency responsible for issuing the permit or approval which is the subject of the civil action, that the permit or approval was not required to commence the development. The party undertaking the development shall provide a copy of the written statement to the party bringing the civil action not more than thirty days after receiving the written notice of any violation of a requirement for a permit or approval.
- (4) Notwithstanding any provision to the contrary in this section, the court shall not award attorney's fees and costs to any party if the party undertaking the development applies for the permit or approval which is the subject of the civil action within thirty days after receiving the written notice of any violation of a requirement for a permit or approval and the party undertaking the development shall cease all work until the permit or approval is granted."

SECTION 3. This Act shall not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun and finally adjudicated, before its effective date.

SECTION 4. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect upon approval.

(Approved April 22, 1986.)

#### Note

1. Edited pursuant to HRS §23G-16.5.