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DEPARTMENT OF HEALTH
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In reply, please refer to:
File:

**Testimony in SUPPORT of HB1079 HD2
RELATING TO WATER POLLUTION CONTROL**

SENATOR LORRAINE R. INOUE, CHAIR
SENATE COMMITTEE ON WATER AND LAND

Hearing Date: 03/15/23

Room Number: 229

1 **Fiscal Implications:** None.

2 **Department Testimony:** The Department of Health (Department) strongly supports this
3 measure as it will strengthen and clarify State water pollution control requirements.

4 The proposed measure will ensure consistency with federal definitions. The inclusion of
5 “wetlands” into the definition of “State waters” is consistent with the revised definition of
6 “Waters of the United States” published on Wednesday, January 18, 2023 in the Federal Register
7 (Vol. 88, No. 11). The proposed “water quality certification” definition is consistent with
8 Section 401 of the Federal Clean Water Act.

9 The proposed amendments to water quality certification statutes will clarify the Director
10 of Health’s authority to act as a certifying agency. It will also provide clarity for the public and
11 regulated entities, and improve ease of reference.

12 The Department recommends restoring the civil penalty amounts proposed in HB1079
13 HD1, \$59,973 for Section 342D-30(a), Hawaii Revised Statutes (HRS) (page 11, line 14) and
14 \$25,000 for Section 342D-30(b), HRS (page 12, line 12). Updating the maximum statutory civil
15 penalty in Section 342D-30(a), HRS, which was last updated in 1997, to match the federal
16 inflation adjusted penalty amount will deter and compensate the State when persons violate State
17 water pollution control laws. Increasing the penalty maximum in Section 342D-30(b), HRS for
18 water pollution with the penalty maximum in Section 342B-47(d), HRS for air pollution will
19 ensure that the Department will have the same penalty for water and air pollution control for

1 those who obstruct, deny, or hamper authorized inspectors from entering authorized areas for
2 inspection.

3 Thank you for the opportunity to testify.

4 **Offered Amendments:** The Department respectfully suggests the following revisions to the
5 proposed HRS amendments. Additions appear as underlined and deletions appear as bracketed
6 strikeouts.

7 In SECTION 2, page 2, line 16 and page 3, line 2, respectively:

8 “Water quality certification” or “certification” means a statement that asserts that a
9 proposed discharge resulting from any activity, including but not limited to the construction or
10 operation of facilities, will not violate applicable water quality standards, water quality related
11 state laws, or water quality related provisions in sections 301, 302, 303, 306, and 307 of the
12 [~~Aet~~]act.

13 “Water quality standards” means provisions of state law that provide for a designated use
14 or designated uses for state waters and water quality criteria for the waters based upon these
15 uses. Water quality standards are to protect the public health or welfare, enhance the quality of
16 water, and serve the purposes of the [~~Aet~~]act.”

17 In SECTION 8, page 13, line 13 and page 14, line 15, respectively:

18 “§342D-53 Certifying agency and water quality certification. (a) Water quality
19 certification shall be required pursuant to section 401 of the [~~Aet~~]act for any applicant for a
20 federal license or permit to conduct any activity, including the construction or operation of
21 facilities that may cause any discharge into navigable waters.

22 (f) As used in this section, “certifying agency” has the same meaning as “certifying
23 authority” as defined in title 40 Code of Federal Regulations 121.1(e).”

HB-1079-HD-2

Submitted on: 3/14/2023 11:54:19 AM

Testimony for WTL on 3/15/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Ted Bohlen	Testifying for Hawaii Reef and Ocean Coalition	Support	In Person

Comments:

Hawaii Reef and Ocean Coalition **Strongly Supports** this measure and proposes an amendment to the blank civil penalty amount.

I served as a Deputy Attorney General representing the DOH on water pollution matters for 15 years.

This bill is needed for effective water pollution regulation and enforcement. In particular, the civil penalties have not kept pace with inflation and need to be raised. The appropriate maximum amount of civil penalties is the \$59,973 used by EPA and passed by the Committee and the Senate in SB1377 SD1. We ask that the Committee substitute this amount for the current blank amount.

Please pass this bill with this amendment. Mahalo!