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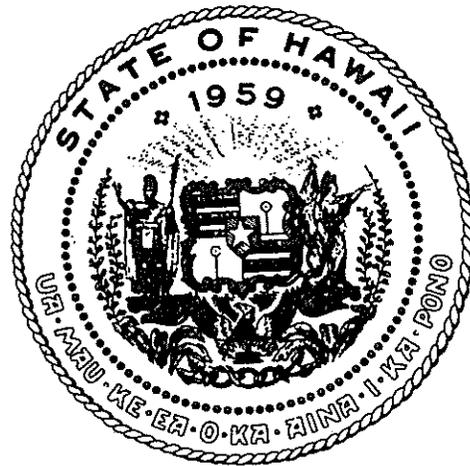
COMPRISING THE STATUTES
OF THE STATE OF HAWAII,
CONSOLIDATED, REVISED, AND ANNOTATED

VOLUME 3

1993 REPLACEMENT

(Including Acts of the 1993 Sessions)

TITLES 10-12, CHAPTERS 121-200D



[§179D-7] **Administrative and judicial review.** Any person who is aggrieved or adversely affected by an order or action of the board shall be entitled to administrative and judicial review in accordance with chapter 91. [L 1987, c 199, pt of §1]

[§179D-8] **Violations; penalties.** Any person violating any provision of this chapter or any permit condition or limitation established pursuant to this chapter or negligently or wilfully failing or refusing to comply with any final order of the board issued as provided herein, shall be liable for a civil penalty not to exceed \$500 for each day during which said violation continues. [L 1987, c 199, pt of §1]

[§179D-9] **Enactment of rules.** The department shall adopt the necessary rules not later than one and one-half years after June 6, 1987. [L 1987, c 199, pt of §1]

Revision Note

"June 6, 1987" substituted for "the effective date of this chapter".

**CHAPTER 180
SOIL AND WATER CONSERVATION DISTRICTS**

SECTION

- 180-1 DEFINITIONS
- 180-2 GENERAL POWERS AND DUTIES OF DEPARTMENT
- 180-3 ADDITIONAL POWERS AND DUTIES OF DEPARTMENT
- 180-4 CREATION OF SOIL AND WATER CONSERVATION DISTRICTS; PETITION
- 180-5 HEARING ON PETITION
- 180-6 REFERENDUM ON CREATION; ELECTION OF OFFICERS
- 180-7 DETERMINING FEASIBILITY OF OPERATION OF DISTRICT
- 180-8 ORGANIZATION OF DISTRICT
- 180-9 RENEWAL OF PETITION TO CREATE
- 180-10 ADDING TERRITORY; PETITION
- 180-11 CONSOLIDATING DISTRICTS; PETITION
- 180-12 APPOINTMENT, ELECTION, QUALIFICATIONS, AND TENURE OF DIRECTORS
- 180-13 POWERS OF DISTRICTS AND DIRECTORS
- 180-14 STATE AGENCIES TO COOPERATE
- 180-15 DISCONTINUANCE OF DISTRICTS
- 180-16 BUDGET
- 180-17 REPEALED

§180-1 Definitions. Whenever used in this chapter:

"Director" means a member of the governing body of a district;

"District" or "soil and water conservation district" means a governmental subdivision of this State, and a public body corporate and politic, organized in accordance with this chapter;

"Due notice" means notice given during a ten-day period by publication or if no means of publication is available by posting at a reasonable number of conspicuous places within the affected area;

"Land occupier" or "occupier of land" includes any person, firm, or corporation who leases or holds title to lands for agricultural designation or use within a district organized, or to be organized, under this chapter. [L 1947, c 191, §3; RL 1955, §28-2; am L Sp 1959 2d, c 1, §38; am L 1961, c 53, §1; HRS §180-1; am L 1991, c 94, §2]

CONSERVATION AND RESOURCES

§180-2 General powers and duties of department. [1993 amendment effective July 1, 1994.] The department of land and natural resources shall keep a record of its official actions, and may perform such acts, and promulgate such rules and regulations as may be necessary for the execution of its functions under this chapter. It may call upon the attorney general for legal services, or employ its own counsel in conformity with section 103D-209(b). It may delegate to any member, agent or employee, such powers and duties as it may deem proper. Upon request of the department, other agencies of the state government shall, insofar as available appropriations and resources will permit, assign staff members or personnel to the department, and make such reports, surveys, or studies as the department may request. [L 1947, c 191, pt of §4; RL 1955, §28-5; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; am L 1967, c 145, §§1, 2; HRS §180-2; am L Sp 1993, c 8, §53]

§180-3 Additional powers and duties of department. The department of land and natural resources may:

- (1) Offer appropriate assistance to the directors of districts in carrying out their powers and programs;
- (2) Keep districts informed of the activities of other such districts and facilitate cooperation between them;
- (3) Coordinate district programs so far as that may be done by advice and consultation;
- (4) Obtain the assistance of the United States and of other state agencies in the work of the districts;
- (5) Disseminate information throughout the State concerning district activities and programs and encourage the formation of districts in appropriate areas. [L 1947, c 191, pt of §4; RL 1955, §28-6; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; am L 1967, c 145, §§1, 2; HRS §180-3]

§180-4 Creation of soil and water conservation districts; petition. Occupiers of land representing a total of twenty-five or more votes lying within an area proposed to be organized into a district may file a petition with the department of land and natural resources asking that the district be organized. The department shall prescribe the form of the petitions, which shall state:

- (1) The proposed name of the district, and
- (2) A general description of the area proposed to be organized as a district.

Where more than one petition is filed covering parts of the same territory, the department may consolidate the petitions. The area of a district need not be contiguous but shall not include any of the area of any other district. [L 1947, c 191, pt of §5; RL 1955, §28-7; am L Sp 1959 2d, c 1, §22; am L 1961, c 53, §1 and c 132, §2; am L 1967, c 145, §§1, 2; HRS §180-4]

§180-5 Hearing on petition. Within thirty days after the filing of such a petition, the department of land and natural resources shall cause due notice to be given of a public meeting to consider the question of the need for the creation of the district, whether local public sentiment is in favor of its creation and the area that should be included within its boundaries. After such meeting, if the department determines that there is a need for the district and public sentiment favors its creation, it shall define the boundaries for the proposed district. Should the department deny any petition to organize a district, subsequent petitions covering the same or substantially the same area may be filed with the department after six months after the date of the denial of the petition. [L 1947, c 191, pt of §5; RL 1955, §28-8; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; am L 1967, c 145, §§1, 2; HRS §180-5]

§180-6 Referendum on creation; election of officers. After the department of land and natural resources has determined that there is need for and local public sentiment is in favor of the creation of a proposed district it shall, within a reasonable time, give due notice of and hold a referendum upon the question of the creation of the district, and, at the same time, hold an election to elect three directors for the district. Nominating petitions may be filed with the department to nominate candidates for directors but must be filed at least ten days prior to the election and must be subscribed by occupiers of lands representing a total of twenty-five or more votes within the proposed district. Land occupiers may sign more than one such petition.

Occupiers of lands lying within the proposed district shall be entitled to vote on the proposition of the creation of the district and in the election of district directors. Voting shall be by ballots on which shall appear the words "For Creation of the—Soil and Water Conservation District," and "Against Creation of the—Soil and Water Conservation District," with a square before each proposition and a direction to mark the square before one or the other of the propositions as favored by the voter. The names of candidates nominated for district directors shall also appear on ballots with a square before each name and a direction to mark the square before any three names to indicate the voter's preference; provided that if the number of candidates nominated for district directors does not exceed the number of vacancies, the department of land and natural resources shall certify the election of the candidates nominated. The department shall adopt rules and regulations relating to the conduct and payment of all expenses relating to the referenda and elections.

Any other provision contained in this chapter to the contrary notwithstanding, a referendum upon the question of the creation of the district need not be held if the petition asking for the organization of the district is signed by all of the land occupiers within the same. [L 1947, c 191, pt of §5; RL 1955, §28-9; am L 1959, c 39, §1; am L Sp 1959 2d, c 1, §22; am L 1961, c 53, §1 and c 132, §2; am L 1967, c 145, §§1, 2; HRS §180-6; am L 1969, c 140, §1]

§180-7 Determining feasibility of operation of district. The department of land and natural resources shall, within a reasonable time thereafter, determine whether the operation of the proposed district would be administratively practicable and feasible; provided that it shall not have the authority to determine in favor of the creation of the district unless at least a majority of the votes cast in the referendum shall have been cast in favor thereof. In making such determination and in determining the need for a proposed district, the department shall give due regard to the topography, composition of soils, distribution of erosion, prevailing land use practices within the proposed district, the probable expense of carrying on erosion control operations within the district and other relevant geographical, physical, economic, and social factors. If the department determines in favor of the creation of a district it shall make public the result of the election to elect directors. The three candidates who receive the largest number, respectively, of the votes cast in the election, shall be the elected directors for the district and the department shall appoint two directors to act with the three elected directors as the governing body of the district. [L 1947, c 191, pt of §5; RL 1955, §28-10; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; am L 1967, c 145, §§1, 2; HRS §180-7]

§180-8 Organization of district. To complete the organization of the district, the department of land and natural resources shall present to the lieutenant governor a statement setting out the name of the district and its boundaries, and certifying that the procedures prescribed in this chapter for the organization of a

district have been fully complied with in organizing this district. The statement shall request the lieutenant governor to issue a certificate of organization to the district. The lieutenant governor shall record the statement in the lieutenant governor's office and shall issue to the directors of the district a certificate, under the seal of the State, of the due organization of the district. [L 1947, c 191, pt of §5; RL 1955, §28-11; am L Sp 1959 2d, c 1, §§9, 22; am L 1961, c 132, §2; am L 1967, c 145, §§1, 2; HRS §180-8; gen ch 1985]

§180-9 Renewal of petition to create. After six months after the date of a determination by the department of land and natural resources that the operation of a proposed district would not be administratively practicable and feasible, subsequent petitions covering the same or substantially the same territory may be filed as aforesaid. [L 1947, c 191, pt of §5; RL 1955, §28-12; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; am L 1967, c 145, §§1, 2; HRS §180-9]

§180-10 Adding territory; petition. Petitions for adding territory to an existing district may be filed with the department of land and natural resources and the proceedings herein provided for the organization of a district shall be observed in such case. Where the number of land occupier votes in the area proposed to be added is less than twenty-five, the petition may be filed when signed by a majority of such occupiers and in such case no referendum need be held. [L 1947, c 191, pt of §5; RL 1955, §28-13; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; am L 1967, c 145, §§1, 2; HRS §180-10]

§180-11 Consolidating districts; petition. Petitions for the consolidation of two or more districts may be filed with the department of land and natural resources. The petitions must be signed by a majority of the members of the governing body, or by twenty-five or more land occupier votes in, each district proposed to be consolidated. In such event the procedures herein provided for organizing districts shall be observed, insofar as they are applicable; provided that the votes cast in the referendum on the question of consolidation shall be counted separately for each district and the department shall not have authority to determine in favor of the proposed consolidation unless a majority of the votes cast with respect to each separate district shall have been cast in favor thereof. The provisions of sections 180-6 to 180-8 governing the selection of district governing bodies and the completion of the organization of districts shall apply to the selection of a governing body for and the completion of the organization of any new district resulting from a consolidation of districts. The terms of office of the directors of the consolidating districts shall expire and the terms of office of the directors of the new consolidated district shall commence, upon the issuance by the lieutenant governor of a certificate of the due organization of the consolidated district. Upon such a consolidation, all the property rights and liabilities of the several consolidating districts shall be vested in and assumed by the consolidated district. [L 1947, c 191, pt of §5; RL 1955, §28-14; am L Sp 1959 2d, c 1, §§9, 22; am L 1961, c 132, §2; am L 1967, c 145, §§1, 2; HRS §180-11]

§180-12 Appointment, election, qualifications, and tenure of directors. The terms of office of the two district directors appointed pursuant to section 180-7 shall be three years, except that those first appointed shall be for one and two years, respectively. The terms of the three elected directors shall be three years. Unexpired terms shall be filled by a majority vote of the district's remaining directors. Successors to full terms shall be appointed or elected, as originally selected. The

directors shall either live or work in the districts they represent. The districts shall conduct their own elections and submit the results to the department for certification. Land occupiers representing individual farms, ranches, or plantations are eligible to have one vote for each one hundred acres or less lying within a district. Each acreage can be accounted for only once, with priority voting in order of land occupier, and land owner, respectively; provided that to be eligible to vote, a land occupier shall first provide the district with its name, address, and information clearly identifying the acreage. The directors shall designate a chairperson and may, from time to time, change the designation. A majority of the directors shall constitute a quorum and the concurrence of a majority upon any official matter shall be necessary. Directors shall receive no compensation for their services, but shall be entitled to necessary expenses. They may employ and fix the compensation of such officers and employees as they may require, and shall provide for surety bonds for employees or officers who are entrusted with funds. Directors shall keep a record of proceedings, resolutions, rules, and orders issued or adopted, and accounts of receipts and disbursements, and shall furnish to the department copies of such documents, instruments, or information concerning their activities as the department may request. [L 1947, c 191, §6; RL 1955, §28-15; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; am L 1967, c 145, §§1, 2; HRS §180-12; am L 1991, c 94, §3]

§180-13 Powers of districts and directors. A district organized under this chapter, and the directors thereof, shall have, in addition to other powers granted in this chapter, the power to:

- (1) Provide for and encourage surveys, investigations, and research relating to soil and water conservation, and publish and disseminate information concerning such subjects;
- (2) Provide for and encourage demonstrations relative to control and prevention of erosion and conservation of soil and water resources, and carry out preventive and control measures, on publicly owned lands within the district with the consent of the agency having jurisdiction thereof, and on other lands with the consent of the occupier of the lands;
- (3) Cooperate or enter into agreements with, and furnish financial or other aid, including machinery, equipment, fertilizer, seeds, and other material, to any agency or any occupier of lands within the district, for carrying on soil and water control conservation and operations, subject to such conditions as the directors may deem necessary;
- (4) Acquire property, real or personal, or rights or interest therein; maintain, administer, and improve the property, receive income from it, and expend the income in carrying out the purposes of this chapter; and sell, lease, or otherwise dispose of any of such property;
- (5) Construct, improve, and maintain any structures necessary for carrying out the purposes of this chapter;
- (6) Develop plans for conservation of soil and water resources and control and prevention of erosion within the district, and publish or otherwise bring them to the attention of district land occupiers;
- (7) Accept contributions in money, services, materials or otherwise from any source, and use or expend them in carrying out its operations;
- (8) Sue and be sued; have a seal, which seal shall be judicially noticed; and make and execute any necessary contracts or other instruments;
- (9) As a condition to the extending of benefits, or the performance of work upon lands under this chapter, require land occupiers to contribute

- money, services, materials, or otherwise to any operations conferring such benefits, and impose any other reasonable conditions therefor;
- (10) Form associations to coordinate their policies, objectives, and actions, with power to create staffs, set policies, obtain and administer soil and water conservation district program funds, provide surety bonds, coordinate soil and water conservation district projects, and conduct director training. Other powers shall require the approval of the districts; and
- (11) Appoint associate directors to aid districts, but without director voting powers. [L 1947, c 191, §7; RL 1955, §28-16; HRS §180-13; am L 1991, c 94, §4]

§180-14 State agencies to cooperate. Agencies of the state government, or other governmental subdivisions of the State, which have jurisdiction over publicly owned lands lying within any soil and water conservation district, may cooperate with the district in the effectuation of programs and operations of the district. District directors shall be given access to enter and perform work upon the lands. [L 1947, c 191, §8; RL 1955, §28-17; am L 1961, c 53, §1; HRS §180-14]

Attorney General Opinions

Cooperative agreement with Hawaii county held authorized. Att. Gen. Op. 63-9.

§180-15 Discontinuance of districts. At any time after five years after the organization of a district under this chapter, any occupiers of land representing twenty-five or more votes lying within the district may petition the department of land and natural resources to terminate the existence of the district. The department may conduct such meetings and hearings upon the petition as may be necessary and, within sixty days after the filing of such a petition, shall hold a referendum upon the proposal. All occupiers of lands within the district shall be eligible to vote in the referendum.

After such referendum the department shall determine whether the continued operation of the district is necessary or practicable and feasible. The department shall not have authority to determine in favor of the continued operation of the district unless a majority of the votes cast in the referendum were in favor of the continued operation. If the department determines in favor of the discontinuance of the district, it shall certify such determination to the district directors and to the lieutenant governor. The lieutenant governor shall issue to the directors a certificate of dissolution and record a copy of the certificate in the lieutenant governor's office. Upon receipt of the certificate the directors shall terminate the affairs of the district. The directors shall dispose of all property belonging to the district at public auction and pay over the proceeds into the state treasury, and render to the department, a full accounting of the properties and proceeds of the sale. All contracts theretofore entered into, to which the district is a party, shall remain in force and effect for the period provided in the contracts. The department shall be substituted for the district as party to the contracts. The department shall not entertain petitions for the discontinuance of any district more often than once in five years. [L 1947, c 191, §9; RL 1955, §28-18; am L Sp 1959 2d, c 1, §§9, 22; am L 1961, c 132, §2; am L 1967, c 145, §§1, 2; HRS §180-15; gen ch 1985]

§180-16 Budget. The department of land and natural resources shall submit to the director of finance, annually the budgetary estimates and information required by chapter 37, and shall include therein estimates of the financial requirements of the department. All contributions, moneys, and funds received by any district shall be

deposited to the credit of the state general fund. [L 1947, c 191, §10; RL 1955, §28-19; am L Sp 1959 1st, c 13, §2; am L Sp 1959 2d, c 1, §§14, 22; am L 1961, c 132, §2; am L 1963, c 114, §1; am L 1967, c 145, §§1, 2; HRS 180-16; am L 1993, c 280, §51]

§180-17 REPEALED. L 1993, c 280, §52.

**[CHAPTER 180C]
SOIL EROSION AND SEDIMENT CONTROL**

SECTION

- 180C-1 DEFINITIONS
- 180C-2 EROSION AND SEDIMENT CONTROL
- 180C-3 LIMITATION OF ENACTMENT OF ORDINANCES
- 180C-4 DEPARTMENT OF HEALTH

[§180C-1] Definitions. "Conservation plan" or "plan" means a plan for the control of soil erosion and sediment resulting from a land disturbing activity.

"Conservation standards" or "standards" means standards adopted within ninety days of the passage of this chapter by the department of health.

"County" means all the county governments of Honolulu, Maui, Kauai, or Hawaii.

"Department of health" or "department" shall mean the department of health of the State of Hawaii.

"Land disturbing activity" means any land change which may result in soil erosion from water or wind and the movement of sediment into state waters or onto lands in the State including, but not limited to, tilling, clearing, grading, excavating, transporting, and filling of land other than federal lands, except that the term shall not include such minor land disturbing activities as home gardens and individual home landscaping, repairs, and maintenance work.

"Persons" means any individual, partnership, firm, association, joint-venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, municipality, and other political subdivisions of the State, any interstate body or any other legal entity.

"Soil and water conservation districts" or "district" means a governmental subdivision of this State, and a public body corporate and politic, organized under chapter 180.

"State waters" means all waters, fresh, brackish or salt, around and within the State, including, but not limited to, coastal waters, streams, rivers, drainage ditches, ponds, reservoirs, canals, ground waters, and lakes; provided that drainage ditches, ponds, and reservoirs required as a part of a pollution control system are excluded. [L 1974, c 249, pt of §2]

Revision Note

Numeric designations deleted and definitions rearranged.

[§180C-2] Erosion and sediment control. (a) The county governments, in cooperation with the soil and water conservation districts and other appropriate state and federal agencies, shall enact ordinances for the purpose of controlling soil erosion and sediment.

(b) The ordinance for erosion and sediment control shall include but not be limited to the following:

- (1) Be based on relevant physical and developmental information concerning the watersheds and drainage basins of the county and/or State including but not limited to data relating to land use, soil, hydrology and geology, size of land area being disturbed, approximate water bodies and their characteristics, transportation, and public facilities and services.
- (2) Include such survey of land and waters as may be deemed appropriate by the county or required by any applicable law to identify areas including multi-jurisdictional and watershed areas with critical erosion and sediment problems.
- (3) Contain standards for various types of soil and land uses, which standards shall include criteria, techniques, and methods for the control of erosion and sediment resulting from land disturbing activities.
- (4) Include a provision whereby standards shall be deemed met if it can be shown that the land is being managed in accordance with soil conservation practices acceptable to the applicable soil and water conservation district directors, and that a comprehensive conservation program is being actively pursued. [L 1974, c 249, pt of §2]

[§180C-3] Limitation of enactment of ordinances. The counties shall enact ordinances within one year from June 15, 1974. [L 1974, c 249, pt of §2]

Revision Note

"June 15, 1974" substituted for "the date of this law".

[§180C-4] Department of health. The department of health shall adopt conservation standards within ninety days after passage of this chapter. Upon the failure of any county or counties to enact soil erosion and sediment control ordinances within one year from the date of this bill, the department of health shall then, promulgate rules and regulations within one hundred eighty days, to be effective within those counties failing to enact such ordinances. [L 1974, c 249, pt of §2]

SUBTITLE 3. MINING AND MINERALS

CHAPTER 181 STRIP MINING

SECTION

- 181-1 DEFINITIONS
- 181-2 POWERS OF BOARD
- 181-3 PROHIBITIONS
- 181-4 APPLICATION FOR PERMIT; FEE
- 181-5 BOND
- 181-6 RECLAMATION
- 181-7 TERMINATION, REVOCATION OF PERMIT; RELEASE
- 181-8 APPEAL
- 181-9 PENALTY; INJUNCTION
- 181-10 FUNDS

§181-1 Definitions. Whenever used in this chapter, unless a different meaning is plainly required by the context:

"Board" means the board of land and natural resources.

"Mineral" or "minerals" means any or all of the oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boeh-