

Act 234: Hawaii's Climate Change Law

HSBA 2013 Bar Convention
Climate Change Litigation and Policy in Hawaii

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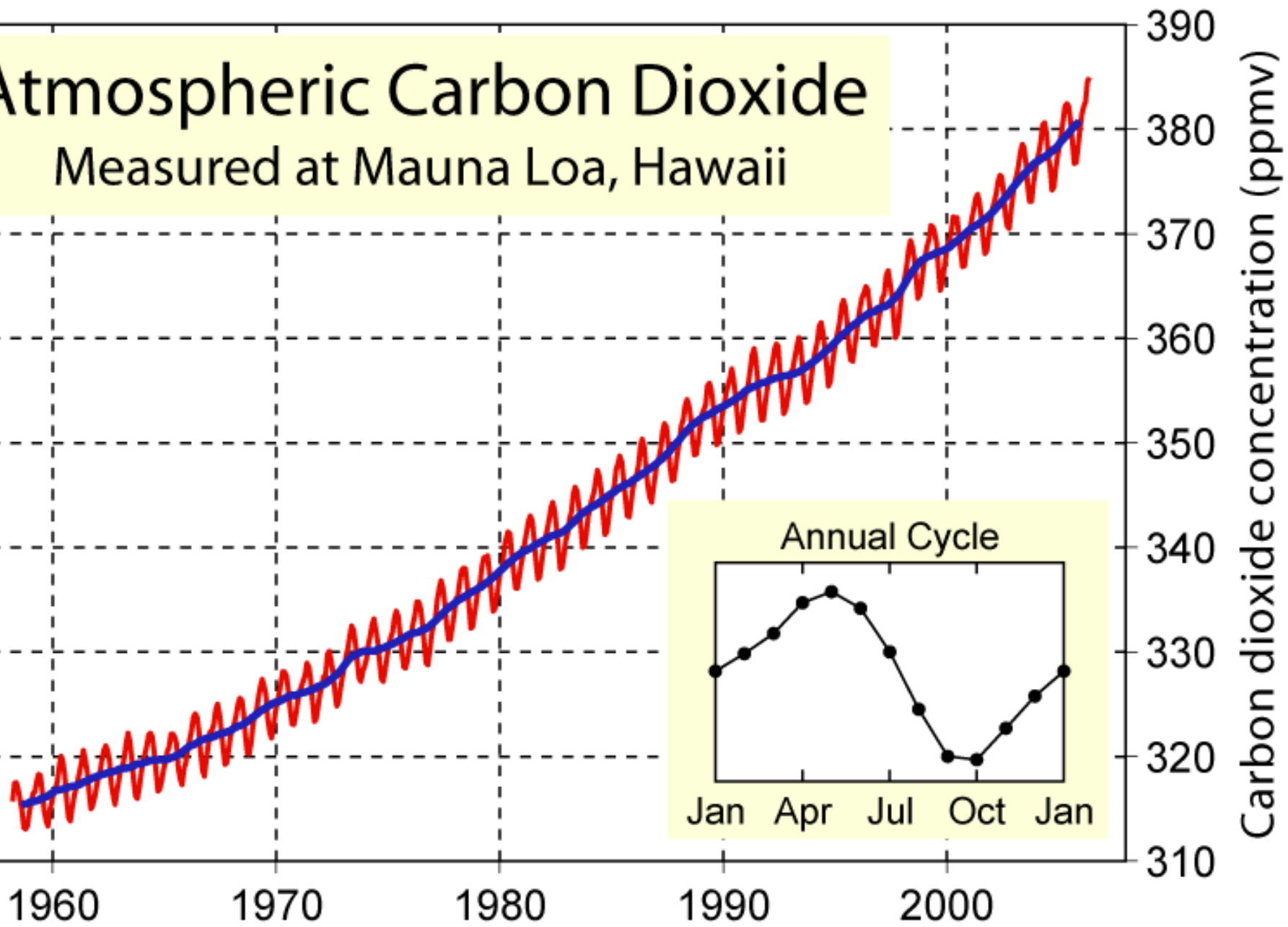






Atmospheric Carbon Dioxide

Measured at Mauna Loa, Hawaii



Act 234

Findings and Declarations

- * Climate change has emerged as one of the most significant environmental and economic issues of our time
- * In 2007, declaring that “climate change poses a serious threat to the economic well-being, public health, natural resources, and the environment of Hawaii,” the Hawaii Legislature passed major climate change legislation known as Act 234
- * Act 234 is among the first in the nation to require statewide reduction of GHG emissions to 1990 levels by the year 2020

Hawaii's Law is Among First in Nation

- * Act 234 based upon the current science of climate change
- * Dynamic array of international, federal, regional, state, and county laws
 - * Kyoto Protocol entered into force Feb. 2005
 - * Lieberman-Warner Climate Security Act sent to full Senate for vote in Nov. 2007
 - * Congress funds US EPA for mandatory GHG reporting by June 2009
- * Congress failed to pass major federal legislation
- * State and local government continues to drive development of climate change law and policy in the United States

Greenhouse Gas Emissions Limit

- * Act 234 became effective July 1, 2007
- * Hawaii among first states to pass Kyoto Protocol-like law with a GHG emissions reduction limit
- * California, Washington, New Jersey and Florida adopted similar laws
- * “By January 1, 2020, the State of Hawaii shall reduce statewide GHG emissions to levels at or below the best estimations and updates of the inventory of GHG emissions estimates for 1990.”
- * Administrative rules required by December 31, 2011

Task Force

- * Act 234 established “greenhouse gas emissions reduction task force”
- * Ten members from government, business, and environmental organizations
- * DBEDT, DOH, UH Manoa Climate Change Commission, members from “affected business sectors,” environmental organizations
- * Must develop work plan for administrative rules

Emissions Inventory

- * Establishing 1990 emissions was critical first step
- * Under section 3 of the Act, by December 31, 2008, DBEDT and DOH were required to update 1997 inventory of emission sources
- * Public notice and comment on emissions amounts
- * Refineries and transportation among larger GHG emitters in Hawaii

Work Plan

- * No later than December 1, 2009 the Task Force was required to prepare a “work plan” and “regulatory scheme”
- * “Maximum practically and technically feasible and cost effective” reductions in GHG emissions from “sources or categories of sources”
- * Work Plan required to address thirteen specific objectives

Work Plan Objectives

- * Under Act 234, work plan is to recommend emission reduction measures, “market-based compliance mechanisms,” and monetary and non-monetary incentives
- * Cost/benefit analytical tools, economic models, and scientific methods are to be investigated and developed
- * Minimum threshold; mobile sources; other “progressive efforts”; minimize “leakage”

Final Work Plan

- * Task Force adopted consultant ICF International's final work plan dated Sept. 30, 2009
- * Act 234 requires emissions reduction to 13,660 kilotons CO₂e by 2020
- * Work Plan 1: Hawaii Clean Energy Initiative
- * Work Plan 2: Carbon Tax
- * Work Plan 3: Federal cap and trade system
- * All predicted to reduce GHG emissions by approx. 39%





Chapter 342B

Hawaii Revised Statutes



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GHG Emissions Limit

HRS 342B-71

- * Section 342B-71, “Statewide greenhouse gas emissions limit; adoption”
- * Establishes statewide GHG emissions limit, equal to or below 1990 levels, to be achieved by 2020
- * Emissions from airplanes shall not be included
- * Airplane emissions excluded based on concerns over U.S. Constitution commerce clause
- * Potential impact on tourism industry

Rules

HRS 342B-72

- * Section 342B-72, “Greenhouse gas emissions limits; rules”
- * Rules shall be adopted by Dec. 31, 2011 to establish limits on “sources or categories of sources”
- * Rules shall ensure reductions are “real, permanent, quantifiable, verifiable, and enforceable”
- * Rules may be modified and new rules may be added as needed

Rules – Current Status

- * Amendments to ch. 11-60.1, Haw. Admin. Rules
- * Subchapters 1, 4, 5, 6, 7 and 11
- * Focus on stationary (power plants, refineries, landfills) not mobile sources (cars, planes, ships)
- * Aligns with EPA GHG Tailoring Rule
- * 2020 cap on 25 largest emitters - 100,000 CO₂e TPY
- * GHG Reduction Plan within 9 months for baseline
 - * Baseline, control measures, facility-wide cap
- * Covered sources pay annual fee of 12 cents/ton CO₂e

Fees

HRS 342B-73

- * Section 342B-73, “Schedule of fees; establishment”
- * Department of Health may adopt rules that specify a schedule of fees
- * Fees paid by sources of GHG emissions
- * Revenues deposited in Clean Air Special Fund under HRS 342B-32

Enforcement

HRS 342B, Part IV

- * Citizens suit provision allows suits by “any person” against State or permit holder
- * Plaintiff must give 60 days’ notice prior to filing suit
- * Authorizes court to award attorneys’ fees
- * State and counties can enforce HRS 342B
- * Civil, administrative and criminal penalties
- * Penalty of up to \$25,000 per offense, per day

Recent Federal Developments

- * Focus on regulation, not legislation
- * Pres. Obama's Climate Action Plan (June 2013)
 - * Carbon pollution standards for new power plants
 - * 20% renewables by 2020, energy review, fuel economy standards, cut CFCs and methane, reforestation, climate resilience, UN treaty by 2015
- * EPA draft rules limiting power plant CO₂ emissions
- * 60 day comment period
- * Legal challenges, *Mass v. EPA*, Clean Air Act

Conclusions

- * Act 234 placed Hawaii at forefront of GHG regulation
- * Requires 1990 levels of GHG emissions by 2020
- * Forthcoming rules will require enforceable GHG emissions reduction plan
- * Citizens suit provision may be used to enforce Hawaii's climate change law
- * Federal law developments may shape implementation of Hawaii climate change law

Mahalo

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