

DAVID Y. IGE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
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**Testimony of  
CARTY S. CHANG  
Interim Chairperson**

**Before the Senate Committees on  
HAWAIIAN AFFAIRS  
and  
HEALTH  
and  
WATER AND LAND  
Friday, March 20, 2015  
1:20 p.m.  
State Capitol, Conference Room 414**

**In consideration of  
HOUSE BILL 393 HOUSE DRAFT 2  
RELATING TO HAWAIIAN FISHPONDS**

House Bill 393, House Draft 2 proposes to require the Department of Health (DOH) to waive the requirement to obtain a water quality certification for any person that has received notice of authorization to proceed from the department of land and natural resources office of conservation and coastal lands under the statewide programmatic general permit for the restoration, repair, maintenance, and operation of Hawaiian fishponds. **The Department of Land and Natural Resources (Department) supports this measure.**

Hawai'i State Senate Resolution 86 (2012) urged the Department, the Office of Planning (OP), and DOH to streamline the permitting process for the restoration of Hawaiian fishponds. To this end, the Department has been working with other state, county, and federal agencies have been working to integrate the many permits needed for the repair, restoration, maintenance, and operation of traditional Hawaiian fishponds.

Agencies have taken the following actions in support of the resolution:

- April 2013 – OP issues a Coastal Zone Management Consistency Statement.
- October 2013 – The Department publishes a Final Programmatic Environmental Assessment for activities related to the repair, restoration, maintenance, and operation of traditional Hawaiian fishponds.

**CARTY S. CHANG**  
INTERIM CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**DANIEL S. QUINN**  
INTERIM FIRST DEPUTY

**W. ROY HARDY**  
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

- June 2014 – The Board of Land and Natural Resources approves a programmatic Conservation District Use Permit (CDUP) ST-3703 for the repair, restoration, maintenance, and operation of traditional Hawaiian fishponds (Ho’āla Loko I’a program).

Securing a Water Quality Certification for fishpond repair and restoration is the necessary final step towards creating a streamlined permitting regime.

The Department’s Ho’āla Loko I’a program contains best management practices and water quality monitoring protocols that are in compliance with the federal Clean Water Act and with Environmental Protection Agency guidelines, as well as with Section 10 of the Rivers and Harbors Act of 1899.

The Final Environmental Assessment reviewed the best available science, and concluded that repair, restoration, maintenance, and operation of traditional Hawaiian fishponds would have significant benefits to Hawaiian biocultural resources and long-term cumulative benefits to the State’s coastal ecosystems and water quality.

The Ho’āla Loko I’a program has been funded and/or supported by a network of governmental and non-governmental entities, such as Conservation International (CI), Kua’āina Ulu ‘Auamo (KUA), the National Oceanic Atmospheric Administration, traditional fishpond practitioners, and others, with no additional budgetary requirements for the Department. Once the program is fully operational, application processing will be managed by the Department’s Office of Conservation and Coastal Land and technical support for traditional fishpond practitioners (e.g., preparation of a guidebook, and water quality monitoring) will be supported by entities such as CI, KUA and others.



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P. O. Box 3378  
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**Testimony COMMENTING on H.B. 393 H.D.2  
RELATING TO HAWAIIAN FISHPONDS**

SENATOR MAILE S.L. SHIMABUKURO, CHAIR  
SENATOR BRICKWOOD GALUTERIA, VICE CHAIR  
SENATE COMMITTEE ON HAWAIIAN AFFAIRS

SENATOR JOSH GREEN, CHAIR  
SENATOR GLENN WAIKAI, VICE CHAIR  
SENATE COMMITTEE ON HEALTH

SENATOR LAURA H. THIELEN, CHAIR  
SENATOR BRICKWOOD GALUTERIA, VICE CHAIR  
SENATE COMMITTEE ON WATER AND LAND

Hearing Date: March 20, 2015  
1:20pm

Room Number: 414

1 **Fiscal Implications:** None.

2 **Department Testimony:** The Department of Health (DOH) supports the intent of this measure  
3 to streamline the permitting process for loko i'a projects, but has concerns that water pollution  
4 controls be maintained. This measure would waive the requirement to obtain a Section 401  
5 Water Quality Certification (WQC) if a project has received a notice of authorization to proceed  
6 by the Department of Land and Natural Resources (DLNR) under a Statewide Programmatic  
7 General Permit (SPGP) for the restoration, repair, maintenance, and operation of a traditional  
8 Hawaiian fishpond system (loko i'a).

9 DOH continues to support efforts to streamline the permit process for loko i'a projects.  
10 Currently, DOH is actively working on the implementation of blanket conditional Section 401  
11 WQC for the Department of the Army (DA) Nationwide Permits (NWP) for the state. If a  
12 blanket WQC is put in place, a majority of loko i'a projects would be covered and thereby would  
13 not be required by DOH to obtain a Section 401 WQC.

1           The proposed measure is a complete waiver of all Section 401 WQC requirements for  
2 loko i‘a projects including the requirement to comply with Water Quality Standards (WQS) in  
3 HAR 11-54. DOH believes that this proposed measure, with its current language, would waive  
4 the state’s rights and duty to assess and opine on the sufficiency of water pollution controls in  
5 place for loko i‘a projects. The bill should state that “this waiver of water quality certification  
6 does not exempt Hawaiian fishponds from requirements under HRS 342D and rules promulgated  
7 thereunder including Water Quality Standards, except on rules on Water Quality Certification.”

8           Thank you for the opportunity to testify on this measure.



**HB393 HD2**  
**RELATING TO HAWAIIAN FISHPONDS**  
Senate Committee on Hawaiian Affairs  
Senate Committee on Health  
Senate Committee on Water and Land

March 20, 2015

1:20 p.m.

Room 414

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The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB393 HD2, which seeks to promote the restoration, repair, maintenance, and operation of traditional Hawaiian fishponds by waiving Department of Health water certification permitting requirements for those projects that have been vetted through the statewide general programmatic fishpond permit process.

OHA commends the intent of this measure, in seeking to support the restoration and rejuvenation of our traditional Hawaiian fishponds. Traditional fishponds, or loko i‘a, were and continue to be important cultural resources to Native Hawaiians. Demonstrating advanced engineering and aquaculture technologies found nowhere else in the Pacific, loko i‘a still serve as a source of sustenance, and today offer a wide range of educational opportunities for Native Hawaiians and the larger community. In addition, fishpond restoration has become a major part of the Hawaiian cultural revival movement, with a number of groups across Hawai‘i taking on the kuleana of bringing once-forgotten fishponds back to life.

Unfortunately, the permitting and approval processes for fishpond restoration have proven cumbersome, hindering efforts to revive these cultural treasures. Accordingly, OHA has consistently supported state and federal agencies’ efforts, as well as those of fishpond practitioners and cultural nonprofit organizations, in streamlining these processes, when appropriate, into an interagency programmatic permit. OHA understands that this bill now seeks to remove a separate and time-consuming permitting process required under the Department of Health’s water quality rules. OHA notes that notwithstanding this waiver, substantive water quality standards and protections will be maintained via the best management practices and other conditions required under the general programmatic fishpond permit process.

Accordingly, OHA urges the Committees to **PASS** HB393 HD2.

Mahalo nui for the opportunity to testify on this measure.



**Department of Land and Natural Resources  
Aha Moku Advisory Committee  
State of Hawaii  
Post Office Box 621  
Honolulu, Hawaii 96809**

Testimony of  
Leimana DaMate  
Executive Director

Before the Senate Committees on  
HAWAIIAN AFFAIRS, HEALTH, and WATER AND LAND

Friday, March 20, 2015  
1:20 P.M.  
State Capitol, Conference Room 414

In **SUPPORT** of  
**House Bill 393 HD 2 - Relating to Hawaiian Fishponds**

House Bill 393 HD 2 waives the Department of Health water quality certification requirement for restoration, repair, and operation of Hawaiian loko'ia (fishponds) that are permitted under the Statewide Programmatic General Permit process, administered by the DLNR. **The Aha Moku supports this bill as it reflects the State's commitment to oversee the use and restoration of traditional Native Hawaiian fishponds.**

Prior to the arrival of guests from other lands, the Native Hawaiian population thrived upon the sustainability of their resources. Much of this depended on and centered on the loko 'iā, fishponds that served the needs of the community. Every ahupua'a on every island maintained, protected and sustained a fishpond for community subsistence needs. At one time, there were so many fishponds throughout the islands that they were a common sight and contributed to a healthy environment in which a vigorous Native Hawaiian people thrived. However, over the past two hundred years with the arrival of many western influences over the cultural and natural landscapes of the coastal areas, the maintenance of traditional fishponds became problematic. The permitting process for native Hawaiian loko'ia practitioners was problematic due to the difficulty in the necessary completion of numerous permits that are difficult to read or understand with agencies that had overlapping jurisdictions.

Ho'ala Loko I'a is a Statewide Programmatic General Permit for the repair, restoration, maintenance and operation of traditional fishpond systems in Hawai'i. It provides cultural practitioners with a single application and permit, The DLNR-Office of Conservation and Coastal Lands enables Native Hawaiians who have generational knowledge of loko I'a in their specific ahupua'a and moku to restore and maintain important fishponds that can benefit their 'ohana and communities. It also allows the traditional Native Hawaiian knowledge, methodology and cultural attachment to a fishpond to be perpetuated and shared - an important part of the sustainability of a Hawaiian ecosystem.

We support HB 393 HD 2 and ask that this measure be passed. Mahalo.

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**Subject:** Submitted testimony for HB393 on Mar 20, 2015 13:20PM  
**Date:** Wednesday, March 18, 2015 9:59:58 AM

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**HB393**

Submitted on: 3/18/2015

Testimony for HWN/HTH/WTL on Mar 20, 2015 13:20PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
David Z. Arakawa	Land Use Research Foundation of Hawaii	Support	No

Comments: The Land Use Research Foundation of Hawaii SUPPORTS HB 393, HD2, RELATING TO HAWAIIAN FISHPONDS, which waives Department of Health water quality certification requirement for restoration, repair, and operation of Hawaiian loko i'a (fishponds) that are permitted under the Statewide Programmatic General Permit process, administered by the DLNR. (HB 393 HD2)

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March 20, 2015

**To the Honorable Members of the Hawai'i State Senate**

**IN SUPPORT OF HB 393 RELATING TO HAWAIIAN FISHPONDS**

Aloha mai kākou,

You have already heard much on the deep traditional cultural significance and modern value of loko i'a on the Hawaiian landscape, so I will not take your time with further background<sup>1</sup>.

On the island of Lāna'i, we are engaging our community in place-based education, where Lāna'i serves as the living class room, inspiring stewardship of legacy resources, cultural literacy and STEM related subject matter. Loko i'a are significant traditional resources and living class rooms in our long-term plan for returning a balanced sustainability on our island home. The work spans the island landscape from mountain top to the reefs, and **PASSAGE OF HB 393** is important to the long term vision of cultural stewardship on Lāna'i.

One of the many native narratives describing the importance of the matter before you today was penned by preeminent native historian S.M. Kamakau in 1869:

Dekemaba 2, 1869 (aoao 1)  
Nupepa Ke Au Okoa

**No ka mahi loko ia ana.** O na loko ia, oia kekahi mau mea hooihiluhilu o ka aina, a ua kapaia he aina momona no ka nui o na loko ia, he mea kahiko loa no loko ia...

[Translation]

**Pertaining to the cultivation of fish in ponds.** Fishponds were things that beautified the land, and a land with many fishponds was called a "fat" land (*'aina momona*). They date from very ancient times...

We on Lāna'i encourage your positive action on this Bill, and thank you in advance.

Me ka ha'aha'a,



Kepā Maly  
Executive Director – Lāna'i Culture & Heritage Center  
Sr. VP – Culture & Historic Preservation, Pūlama Lāna'i

P.O. Box 631500  
Lāna'i City, Hawai'i 96763

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<sup>1</sup> In 2003 Onaona Pomroy Maly and myself, prepared a 2000 page ethnographic study on the history of Hawaiian fisheries and fishponds. Titled *Ka Hana Lawai'a a me Nā Ko'a o Nā Kai 'Ewalu*, A History of Fishing Practices and Marine Fisheries of the Hawaiian Islands. Compiled from Native Hawaiian Traditions. Volume 1: Archival Research, compiled from Native Hawaiian traditions, historical accounts, government communications, *kama'āina* testimony and ethnography. Volume 2: Oral history interviews, compiled from oral history interviews with *kūpuna* and *kama'āina*. Prepared by Kumu Pono Associates. Extensive background on the history of loko i'a may be found in the study.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
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**HB393**

Submitted on: 3/20/2015

Testimony for HWN/HTH/WTL on Mar 20, 2015 13:20PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Raytan K. Vares	Democratic Party of Hawaii Hawaiian Affairs Caucus	Support	No

Comments: Aloha, The Democratic Party of Hawaii Hawaiian Affairs Caucus supports HB 383 HD2, Relating to Hawaiian Fishponds that proposes to waive DOH water quality certification requirement for restoration, repair, and operation of Hawaiian loko i'a (fishponds) that are permitted under the Statewide Programmatic General Permit process, administered by the DLNR. The current permitting and approval processes for fishpond restoration have proven cumbersome, hindering efforts to revive fishponds. This bill is a step forward to support the restoration of Hawaiian fishponds. We urge your passage of this measure. Mahalo

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## **Association of Hawaiian Civic Clubs**

P. O. Box 1135

Honolulu, Hawai`i 96807

### **JOINT SENATE COMMITTEES ON HAWAIIAN AFFAIRS, HEALTH and WATER & LAND**

#### **HB393H2 RELATING TO HAWAIIAN FISHPONDS**

Friday, 3/20/15; 1:20 pm; Room 414

Aloha Madam Chair Shimabukuro, Chairman Green and Madam Chair Thielen of the joint Senate committees on Hawaiian Affairs, Health and Water and Land.

The Association of Hawaiian Civic Clubs supports this bill as it expedites the restoration and use of Hawaiian lokoia without compromising environmental issues. Restoration of lokoia could, and should, be a very important part of the State's food sustainability attempts.

We watched with dismay as productive fishponds became marshes, swamps, bird sanctuaries and even training grounds for amphibious vehicles, all neatly justified as creating bird nests. Where kupuna once went to catch dinner for the family became relegated to a "Swamp Romp" and "Mud Fun".

We have hopes that with knowledge comes acknowledgement that Hawaiian fishponds were an ingenious method of fish farming and can be again with no more damage to the environment than amphibious vehicles.

Thank you for the opportunity to testify in support of this bill.

Contact: [Jalna.keala2@hawaiiantel.net](mailto:Jalna.keala2@hawaiiantel.net)

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**Subject:** Submitted testimony for HB393 on Mar 20, 2015 13:20PM  
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**HB393**

Submitted on: 3/18/2015

Testimony for HWN/HTH/WTL on Mar 20, 2015 13:20PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
James Gauer	Individual	Support	No

Comments: Support because it is counter productive and discouraging for groups to go through complex processes to righteously restore native lands. One application reviewed and commented by interagency panel is efficient and smart legislation

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**Date:** Thursday, March 19, 2015 8:12:22 AM

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**HB393**

Submitted on: 3/19/2015

Testimony for HWN/HTH/WTL on Mar 20, 2015 13:20PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kama Hopkins	Individual	Support	No

Comments:

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38 responsibilities to protect the quality of its waters. As such, the 401 certification process  
39 may be triggered by any Federal permit for an activity that has the...

- 40 (a) potential to discharge (“flowing or issuing out”)
- 41 (b) into a water of the US
- 42 (c) from a point source

43 Note that the activity does not need to have either a discharge (merely a potential) or a  
44 pollutant. Also note that the CWA definition of discharge (“flowing or issuing out”) differs  
45 from the USACE definition for purposes of the Section 404 permit. The absence of a 404  
46 discharge does not necessarily mean there is no potential for a flowing or issuing out  
47 (discharge) of a potential pollutant from a point source. While the large majority of 401  
48 certifications are triggered by Section 404, dredge and fill, permits, any federal permit  
49 may trigger a 401 certification.

50 Some, but not all, nationwide CORPs permits are immune to individual project specific  
51 401 certification requirements; they are “pre-certified” by construction category type. In  
52 Hawaii there is no special category for work on Hawaiian Fish Ponds

53 If the 401 certification process is triggered by the potential of a point source discharge  
54 then the States have the right to determine whether or not the discharge would violate  
55 any of the following sections of the CWA

56 Sec 301 – Sets effluent limitation standards for pollutants and makes it unlawful to  
57 discharge any pollutant by any person.

58 Sec 302 – Sets water quality related effluent limitations. Whenever discharges of  
59 pollutant would interfere with the attainment or maintenance of water quality, the  
60 effluent, limitation will be established.

61 Sec 303 – Sets Water quality standards and implementation plans

- 62 (a) – any state-established water quality standard will remain in effect
- 63 (b) - standards will be established and published
- 64 (c) – public hearings to review standards every 3 years
- 65 (d) – water quality limited segments will be identified and TMDLs established
- 66 (e) – a continuous planning process will be established

67 Sec 306 – National standards of performance regulations will be published  
68 regarding the best available demonstrated control technology for listed pollutant  
69 source categories (pulp mills, manufacturers, etc.)

70 Sec 307 – The state will publish a list of toxic pollutants and effluent limit standards  
71 for each.

72 Once Section 401 certification is triggered and one of the above sections of the CWA  
73 deemed to be potentially violated, then the certifying agency (DOH) may develop  
74 additional conditions and limitations on the activity as a whole that may extend well  
75 beyond the scope of Sections 301,302, 303, 306 and 307. How far afield these conditions  
76 may extend appears to vary greatly between states. Hawaii appears to extend the scope  
77 of its review farther than most other states.

## 78 **TRENDS IN THE 401 APPLICATION PROCESS ACROSS STATES**

79 There is a wide variation in how different states apply the 401 certification process. Two  
80 digitally available key reports that survey 401 programs across a number of states are:

- 81 1. Environmental Law Institute, 2008. State by State Summaries of  
82 401-Certification Programs
- 83 2. Association of State Wetland Managers, 2012. Section 401  
84 Certification Best Practices in Dredge and Fill Permit Programs  
85

86 In general, states have found that providing comprehensive and detailed information in  
87 certifications, guidance on the certification review process, and standards of review allows  
88 401 certification to serve as an effective water quality protection tool while minimizing  
89 administrative costs and maximizing public transparency. The primary procedural  
90 differences between states include the use of other state authorities (i.e. wetland  
91 commission) to manage water quality, the use of a tiered approach depending upon  
92 project type, time limits set for review of the application, and the use of structured  
93 application fees for different permit levels.

94 The Federal agency (not the State) determines what it believes to be a reasonable period  
95 for review and this period must be at least 60 days but less than one year. Many states  
96 have periods that range from 60-90 days depending upon the type of activity being  
97 permitted by the Federal agency. The States, however, retain the authority to determine  
98 when an application is "complete" and may re-start the application period if any fault is  
99 found with the application. North Carolina has one of the shortest clocks with 60 days  
100 upon completion of the application to issue a decision. Tennessee has 90 days and  
101 Washington State has 180 days upon receipt of the application to reach a decision.  
102 Similarly, some states including Idaho, Nevada, and Oregon, enforce a one-year  
103 maximum total processing period from the completion of an application after which  
104 applications are automatically waived.

105 At least 12 states, including Texas, Oregon, North Carolina, and California have adopted  
106 a tiered approach to 401 certification. In response to budgetary constraints, Texas  
107 adopted a two-tiered approach, and defers authority for all Tier 1 certifications to the  
108 Corps. Tier 1 is defined as projects impacting less than 1500 linear feet of stream, 3 acres

109 of waters of the US (or combination of the two) and that do not affect rare or ecologically  
110 significant wetlands. Tier 1 projects fall under the impact threshold reviewed by the state  
111 agency. These project are reviewed solely by the USACE which requires that the  
112 applicant self-selects one BMP from each of the three classes plus any additional project  
113 specific requirement set by the USACE. Tier 2 is defined as projects which affect  
114 ecologically significant wetlands of any size, more than 1500 linear feet of stream, more  
115 than 3 acres of water of the US or otherwise not appropriate for Tier 1. Texas does not  
116 have any program fees and the Corps requires fees of \$10 and \$100. They have a well  
117 established certification process and are looking to work with the Corps to provide the  
118 staff capacity that is needed to regulate more complicated procedures in terms of streams  
119 and delineation.

120 Oregon classifies projects in 5 different tiers. Tier 1 projects are usually small, less  
121 complicated projects that require minimal review time. Tiers 2A, 2B, and 3 progress until  
122 Tier 4 projects are large, complex projects. The Department of Environmental Quality  
123 review only a few (<10) Tier 4 projects per year. The tiers are based on the amount of  
124 review time necessary, in addition to several other properties such as water quality  
125 impacts and required amount of public involvement. The associated fees increase with  
126 each tier. The fee for Tier 1 projects is \$985 and the fee for Tier 4 projects is \$14,020 per  
127 month.

128 North Carolina separates projects into major and minor projects. Minor projects are  
129 considered those that affect less than one acre of wetlands/waters and less than 150 feet  
130 of stream. Major projects are considered projects that affect greater than or equal to one  
131 acre of wetlands/waters and/or greater than or equal to 150 feet of steam. Fees are based  
132 solely on the scope of impact in addition to application fees associated with the 401  
133 certification (Minor: \$240 Major: \$570). North Carolina spends a significant amount of  
134 time on internal training for their large staff (30) as well as time coordinating with clients  
135 and agencies.

136 California approaches water quality certification in a unique way. The State Water  
137 Resources Control Board (SWRCB) reviews water quality certification applications for  
138 projects that require a Federal Energy Regulatory Commission (FERC) license or large  
139 projects that extend between any two or more districts. Projects that do not require a  
140 FERC license and do not cross regional bounds have applications reviewed by Regional  
141 Water Quality Control Board (RWQCB). The SWRCB generally issues between two and  
142 five 401 certifications per year. The number of certifications issued by the RWQCB varies  
143 from region to region. Boards are allowed up to one year upon receipt of a completed  
144 application to issue a decision. The review of an application may take longer for projects  
145 that are less environmentally friendly versus projects that involve conservation. In order  
146 to expedite the review process applicants are encouraged to consult with the board during  
147 early stages of project planning.

148

149 **SUMMARY**

150 The Section 401 certification process is an important tool that allows the State to maintain  
151 water quality in the face of federally permitted projects. Exclusions to the certification  
152 should be carefully weighed and there is a process defined to accomplish this.  
153 Unfortunately, the State of Hawaii has not taken full advantage of their authority to design  
154 a review process that differentiates between different types of projects and the degree of  
155 review necessary to protect water quality while avoiding un-due restrictions and loss of  
156 time. The 401 certification approaches taken by Texas, Oregon, North Carolina and  
157 California may provide useful examples to propose useful modifications to the current 401  
158 certification system in Hawaii. The tiered approach, particularly associated with a tiered  
159 application fee, appears to offer the simplest solution. The fee and review time associated  
160 with each tier level will reflect the project's environmental impacts and necessary time  
161 commitments. Having fees range both above and below the current \$1000 filing fee could  
162 potentially help fund the program and allow the DOH to designate more staff members to  
163 401 certifications that truly have the capacity to impact water quality. The increase in staff  
164 members would also help prevent postponing applications. The tiered approach would  
165 also allow staff to allocate more time to the larger projects that could have more significant  
166 consequences. It is likely that any of the above changes would require changes to the  
167 HRS.

168 Certain types of activities or projects of a common or repetitive nature such as the repair  
169 and maintenance of Hawaiian Fish Ponds could be "pre-approved" possibly contingent  
170 upon the use of a defined set of BMP's as has been outlined in the Programmatic CDUP  
171 for fishpond revitalization. It is within the purview of the Department of Health to revise  
172 its program to allow for categorical exclusions, such as for work on Hawaiian Fish Ponds,  
173 but this has not occurred.

174 The processing time for 401 certifications could be reduced by either limiting the total  
175 processing time to one year or by limiting the time for review and comment for each draft  
176 to 60 days. A shorter waiver deadline (60-days) would help move applications through  
177 the submit/resubmit cycle and would not require any revision to the HRS.

178 **RECOMMENDATION**

179 The legislature should allow a temporary 401 certification waiver for specific fishpond  
180 projects identified by the Office of Coastal Lands under the condition that these projects  
181 follow the specified guidelines offered by the Programmatic CDUP for these activities.  
182 The DOH should be urged to review its processes to allow for consideration of waivers,  
183 exclusions, or alternative analyses processes for projects with different potentials to  
184 adversely impact water quality. The State of Hawaii Section 401 water quality certification  
185 program appears to be stricter in the application of the 401 process to a broader  
186 classification of project types, extends their review well beyond the sections of the CWA

187 triggering the certification and also appears to need a longer period for processing as  
188 compared to other similar states. There are a number of approaches taken to this  
189 certification process by other states that may be applicable and may improve the  
190 processing efficiency without decreasing the ability of the program to protect water quality  
191 in Hawaii. A review of these processes and how they may best be applied to the Hawaii  
192 State Department of Health Clean Water Branch may be most efficiently conducted by  
193 the State Auditor's Office.

194 This testimony respectfully offered

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A handwritten signature in black ink, appearing to read "R. Bourke", is written over the line for line 195.

Robert E. Bourke

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
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**Subject:** Submitted testimony for HB393 on Mar 20, 2015 13:20PM  
**Date:** Thursday, March 19, 2015 1:55:51 PM

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**HB393**

Submitted on: 3/19/2015

Testimony for HWN/HTH/WTL on Mar 20, 2015 13:20PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Walter Ritte	Individual	Support	Yes

Comments: I am in strong support of HB 393.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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