



GOV. MSG. NO. 1264

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 1, 2021

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirty First State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirty First State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on July 1, 2021, the following bill was signed into law:

SB367 SD2 HD2 CD1

RELATING TO WATER QUALITY
ACT 162 (21)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

Approved by the Governor

on JUL 01 2021

THE SENATE
THIRTY-FIRST LEGISLATURE, 2021
STATE OF HAWAII

ACT 162
S.B. NO.

367
S.D. 2
H.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO WATER QUALITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that Hawaii is losing its
2 beaches at an alarming rate due to chronic beach erosion,
3 sediment deficiencies, sea-level rise, and shoreline armoring.
4 According to a 2012 study by the University of Hawaii and United
5 States Geological Survey, seventy per cent of beaches in Hawaii
6 are eroding, with more than thirteen miles of beach already lost
7 to erosion and coastal armoring over the past century.

8 The legislature further finds that the department of land
9 and natural resources is responsible for the conservation and
10 management of coastal resources, including beaches and dunes.
11 The department of land and natural resources also promotes
12 adaptive ecosystem-based management approaches to mitigate
13 erosion and beach loss in certain areas. Examples of these
14 approaches include beach restoration and maintenance projects
15 that use clean carbonate sand sourced from nearshore deposits
16 and sediment management projects that use existing native sand
17 within the beach environment as an alternative to shoreline
18 armoring. However, to be effective, these restoration and



1 maintenance activities must be authorized in a streamlined
2 manner and on a recurring basis.

3 The legislature notes that section 401 of the federal Clean
4 Water Act requires a water quality certification for certain
5 licenses and permits. This section 401 certification adds to
6 the cost of beach restoration and maintenance by requiring that
7 native marine sand collected from nearshore deposits be
8 dewatered before being placed on a beach and that strict beach
9 management practices and conditions be met before transferring
10 existing beach sand from one section of a beach to another.

11 The legislature believes that continued climate warming and
12 accelerating sea level rise will cause the rates of coastal
13 erosion and beach loss to increase in the coming decades. The
14 legislature also believes that prior legislative endeavors
15 exemplify the willingness and ability of the various
16 governmental, private, and community stakeholders to work
17 together to make the beach restoration permitting process more
18 efficient. For example, Act 230, Session Laws of Hawaii 2015,
19 revised the permitting process for repairing and restoring
20 Hawaiian loko ia, or fishponds, by waiving the section 401 water
21 quality certification requirement.



1 The legislature further finds that the department of land
2 and natural resources, in conjunction with various state,
3 county, and federal agencies, is currently in the final stages
4 of re-authorizing and extending a small-scale beach restoration
5 program. This program offers beach nourishment and sediment
6 management projects as viable ecosystem-based "soft" management
7 options to address coastal erosion and restore critical beach
8 resources. The department of land and natural resources will
9 accomplish this re-authorization using statewide programmatic
10 conservation district use permits. Additionally, the department
11 will enforce new permit conditions that are consistent with
12 those provisions of section 401 of the federal Clean Water Act
13 pertaining to beach restoration and water quality protection
14 measures.

15 The legislature finds that waiving the section 401 water
16 quality certification requirement for small-scale beach
17 restoration permit applicants that have met the conditions of
18 the small-scale beach restoration regulations and qualifying
19 criteria, and have received notice of authorization to proceed
20 from the department of land and natural resources, will ensure
21 that the program functions in an efficient and environmentally



1 responsible manner. Waiving the requirement of a section 401
2 water quality certification in these situations will result in
3 the State more efficiently administering water pollution control
4 during beach conservation and restoration projects. The
5 legislature notes that it is not the intent of this Act to limit
6 or impede state environmental controls on water pollution.

7 Accordingly, the purpose of this Act is to waive the
8 requirement to obtain a section 401 water quality certification
9 for beach restoration and management projects that have received
10 notice of authorization to proceed from the department of land
11 and natural resources' small-scale beach restoration program.

12 SECTION 2. Section 342D-6, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "§342D-6 Permits; procedures for. (a) An application for
15 any permit required under this chapter shall be in a form
16 prescribed by the director.

17 (b) The department may require that applications for
18 permits shall be accompanied by plans, specifications, and any
19 other information that it deems necessary [~~in order~~] to
20 determine whether the proposed installation, alteration, or use
21 will be in accord with applicable rules and standards.



1 (c) The director shall issue a permit for any term, not
2 exceeding five years, if the director determines that it will be
3 in the public interest; provided that the permit may be subject
4 to any reasonable conditions that the director may prescribe.
5 The director may include conditions in permits or may issue
6 separate permits for management practices for domestic sewage,
7 sewage sludge, and recycled water, regardless of whether [~~e~~
8 ~~ne~~] the practices cause water pollution. The director, on
9 application, shall renew a permit from time to time, for a term
10 not exceeding five years, if the director determines that it
11 will be in the public interest. The director shall not grant or
12 deny an application for the issuance or renewal of a permit
13 without affording the applicant and any person who commented on
14 the proposed permit during the public comment period an
15 opportunity for a hearing in accordance with chapter 91. A
16 request for a hearing and any judicial review of the hearing
17 shall not stay the effect of the issuance or renewal of a permit
18 unless specifically ordered by the director or [an] environmental
19 court.

20 (d) The director, on the director's own motion or the
21 application of any person, may modify, suspend, revoke, or



1 revoke and reissue any water pollution permit if, after
2 affording the permittee an opportunity for a hearing in
3 accordance with chapter 91, the director determines that:

- 4 (1) There is a violation of any condition of the permit;
- 5 (2) The permit was obtained by misrepresentation[7] or
6 there was failure to disclose fully all relevant
7 facts;
- 8 (3) There is a change in any condition that requires
9 either a temporary or permanent reduction or
10 elimination of the permitted discharge; or
- 11 (4) It is in the public interest.

12 The public interest excludes any reason less stringent than
13 the causes for permit modification, revocation, and termination,
14 or revocation and reissuance identified in title 40 Code of
15 Federal Regulations section 122.62 or 122.64.

16 (e) The director, on the director's own motion or the
17 application of any person, may modify, suspend, revoke, or
18 revoke and reissue any sludge permit after affording the
19 permittee an opportunity for a hearing in accordance with
20 chapter 91, and consistent with title 40 Code of Federal
21 Regulations section 501.15(c)(2) and (3) and (d)(2).



1 (f) The director shall ensure that the public receives
2 notice of each application for a permit to control water
3 pollution. The director may hold a public hearing before ruling
4 on an application for a permit to control water pollution if the
5 director determines the public hearing to be in the public
6 interest. In determining whether a public hearing would be in
7 the public interest, the director shall be guided by title 40
8 Code of Federal Regulations section 124.12(a).

9 (g) In determining the public interest regarding permit
10 issuance or renewal, the director shall consider the
11 environmental impact of the proposed action, any adverse
12 environmental effects [~~which~~] that cannot be avoided should the
13 action be implemented, the alternatives to the proposed action,
14 the relationship between local short-term uses of the
15 environment and the maintenance and enhancement of long-term
16 productivity, any irreversible and irretrievable commitments of
17 resources [~~which~~] that would be involved in the proposed action
18 should it be implemented, and any other factors [~~which~~] that the
19 director, by rule, may prescribe; provided that any
20 determination of public interest shall promote the optimum
21 balance between economic development and environmental quality.



1 (h) No applicant for a modification or renewal of a permit
2 shall be held in violation of this chapter during the pendency
3 of the applicant's application so long as the applicant acts
4 consistently with the permit previously granted, the application
5 and all plans, specifications, and other information submitted
6 as part thereof.

7 (i) The department shall not require a water quality
8 certification pursuant to section 401 of the federal Clean Water
9 Act under this chapter for any applicant of the small-scale
10 beach restoration program that has received notice of
11 authorization to proceed from the department of land and natural
12 resources' office of conservation and coastal lands."

13 SECTION 3. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 4. This Act shall take effect upon its approval.

APPROVED this 01 day of JUL, 2021

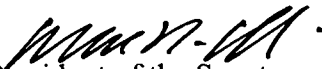



GOVERNOR OF THE STATE OF HAWAII

THE SENATE OF THE STATE OF HAWAI‘I

Date: April 27, 2021
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirty-First Legislature of the State of Hawai‘i, Regular Session of 2021.


President of the Senate


Clerk of the Senate

SB No. 367, SD 2, HD 2, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 27, 2021
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-First Legislature of the State of Hawaii, Regular Session of 2021.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives