

JAN 22 2021

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 the
5 United States Geological Survey, seventy per cent of beaches in
6 Hawaii are eroding, with more than thirteen miles of beach
7 already being lost to erosion and coastal armoring over the past
8 century. The legislature believes that continued climate
9 warming and accelerating sea level rise will cause the rates of
10 coastal erosion and beach loss to increase in the coming
11 decades.

12 The legislature further finds that the department of land
13 and natural resources is responsible for conservation and
14 management of coastal resources, including beaches and dunes.
15 The department of land and natural resources also promotes
16 adaptive ecosystem-based management approaches to mitigate
17 erosion and beach loss in certain areas. Examples of these



1 approaches include beach restoration and maintenance projects
2 that use clean carbonate sand sourced from nearshore deposits
3 and sediment management projects that use existing native sand
4 within the beach environment as an alternative to shoreline
5 armoring. However, in order to be effective these restoration
6 and maintenance activities must be authorized in a streamlined
7 manner and often on a recurring basis.

8 The legislature also finds that burdensome regulations and
9 permit requirements for the beach restoration and maintenance
10 projects discourage and prevent individuals, community
11 organizations, and government agencies from initiating beach
12 restoration projects. Further, restoration of Hawaii beaches
13 using appropriate carbonate sands may require permits and
14 certifications from the department of land and natural
15 resources, department of health, office of planning, and various
16 federal and county agencies. This permit process may be
17 prohibitively time-consuming, complicated, costly, and
18 inconsistent across agencies. Additionally, uncertain permit
19 approval timeframes; related costs; and requirements from eight
20 separate state, county, and federal authorizations result in



S.B. NO. 367

1 potential carbonate sand users opting to instead use shoreline
2 armoring to mitigate erosion.

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

11 The legislature also believes that prior legislative
12 endeavors exemplify the willingness and ability of the various
13 governmental, private, and community stakeholders to work
14 together to make the beach restoration permitting process more
15 efficient. For example, Act 230, Session Laws of Hawaii 2015,
16 revised the permitting process for repairing and restoring
17 Hawaiian loko ia, or fishponds, by waiving the section 401 water
18 quality certification requirement.

19 The department of land and natural resources, in
20 conjunction with various state, county, and federal agencies, is
21 currently in the final stages of re-authorizing and extending a



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

12 The legislature believes that waiving the section 401 water
13 quality certification requirement for small scale beach
14 restoration permit applicants that have met the conditions of
15 the small scale beach restoration regulations and qualifying
16 criteria, and have received notice of authorization to proceed
17 from the department of land and natural resources, will ensure
18 that the program functions in an efficient and environmentally
19 responsible manner. The legislature also finds that waiving the
20 requirement of a section 401 water quality certification in
21 these situations will result in the State more efficiently



1 administering water pollution control during beach conservation
2 and restoration projects. The legislature notes that it is not
3 the intent of this Act to limit or impede state environmental
4 controls on water pollution.

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

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

12 **"§342D-6 Permits; procedures for.** (a) An application for
13 any permit required under this chapter shall be in a form
14 prescribed by the director.

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

20 (c) The director shall issue a permit for any term, not
21 exceeding five years, if the director determines that it will be



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

17 (d) The director, on the director's own motion or the
18 application of any person, may modify, suspend, revoke, or
19 revoke and reissue any water pollution permit if, after
20 affording the permittee an opportunity for a hearing in
21 accordance with chapter 91, the director determines that:



S.B. NO. 367

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

8 The public interest excludes any reason less stringent than
9 the causes for permit modification, revocation, and termination,
10 or revocation and reissuance identified in 40 Code of Federal
11 Regulations section 122.62 or 122.64.

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

18 (f) The director shall ensure that the public receives
19 notice of each application for a permit to control water
20 pollution. The director may hold a public hearing before ruling
21 on an application for a permit to control water pollution if the



1 director determines the public hearing to be in the public
2 interest. In determining whether a public hearing would be in
3 the public interest, the director shall be guided by 40 Code of
4 Federal Regulations section 124.12(a).

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

18 (h) No applicant for a modification or renewal of a permit
19 shall be held in violation of this chapter during the pendency
20 of the applicant's application so long as the applicant acts
21 consistently with the permit previously granted, the application



S.B. NO. 367

1 and all plans, specifications, and other information submitted
2 as part thereof.

3 (i) The department shall not require a section 401 water
4 quality certification under this chapter for any applicant that
5 has received notice of authorization to proceed from the
6 department of land and natural resources, office of conservation
7 and coastal lands under the small scale beach restoration
8 program."

9 SECTION 3. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

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

12

INTRODUCED BY: 



S.B. NO. 367

Report Title:

Department of Land and Natural Resources; Department of Health;
Water Quality Certification; Clean Water Act; Small Scale Beach
Restoration Program

Description:

Waives the requirement for section 401 water quality
certification for certain small scale beach restoration projects
authorized by the Department of Land and Natural Resources.

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not legislation or evidence of legislative intent.*

