
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 lost to erosion and coastal armoring over the past
8 century.

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



1 within the beach environment as an alternative to shoreline
2 armoring. However, to be effective, these restoration and
3 maintenance activities must be authorized in a streamlined
4 manner and on a recurring basis.

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

20 The legislature notes that section 401 of the federal Clean
21 Water Act requires a water quality certification for certain



1 licenses and permits. This section 401 certification adds to
2 the high cost of beach restoration and maintenance by requiring
3 that native marine sand collected from nearshore deposits be
4 dewatered before being placed on a beach and that strict beach
5 management practices and conditions be met before transferring
6 existing beach sand from one section of a beach to another.

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

18 The department of land and natural resources, in
19 conjunction with various state, county, and federal agencies, is
20 currently in the final stages of re-authorizing and extending a
21 small-scale beach restoration program. This program offers



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

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



1 legislature notes that it is not the intent of this Act to limit
2 or impede state environmental controls on water pollution.

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

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

10 "**§342D-6 Permits; procedures for.** (a) An application for
11 any permit required under this chapter shall be in a form
12 prescribed by the director.

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

18 (c) The director shall issue a permit for any term, not
19 exceeding five years, if the director determines that it will be
20 in the public interest; provided that the permit may be subject
21 to any reasonable conditions that the director may prescribe.



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

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

20 (1) There is a violation of any condition of the permit;



1 (2) The permit was obtained by misrepresentation[7] or
2 there was failure to disclose fully all relevant
3 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



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 of
5 the small-scale beach restoration program that has received
6 notice of authorization to proceed from the department of land
7 and natural resources' office of conservation and coastal
8 lands."

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.



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.
(SD1)

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not legislation or evidence of legislative intent.*

