

ACT 230

H.B. NO. 393

A Bill for an Act Relating to Hawaiian Fishponds.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the repair or restoration of Hawaiian loko i'a (fishponds) may require permits from the department of land and natural resources, department of health, office of planning, federal agencies, and county agencies. The legislature further finds that the permit process for repair or restoration of loko i'a may be time-consuming, complicated, confusing, and inconsistent across agencies. Burdensome regulations and permit requirements have historically prevented community organizations or native Hawaiian lawai'a (aquaculturalists) from initiating projects to restore, repair, or maintain loko i'a.

In practice, it has reportedly taken up to ten years to obtain the certifications and permits required for loko i'a restoration and repair by state and federal law, including the Clean Water Act and the Coastal Zone Management Act. For example, sections 401 and 404 of the Clean Water Act require first a water quality certification and permit from the department of health and then a permit from the Army Corps of Engineers before loko i'a activities may proceed.

Government and community interests have demonstrated their willingness and ability to work together to streamline the permit process for Hawaiian loko i'a. Pursuant to Senate Resolution No. 86 (2012), the department of land and natural resources, office of planning, and department of health have led these efforts, including coordination with cultural practitioners, community groups, and affected federal and county agencies.

The department of land and natural resources is in the final stages of implementing a statewide programmatic general permit and programmatic agreement that would allow most applicants for loko i'a restoration and repair permits to submit a single permit application for review by an interagency advisory group and relevant resource agencies instead of a series of single-agency applications. Upon the appropriate findings by the advisory group, the department

of land and natural resources would be able to issue the applicant an authorization to proceed. After a final thirty-day comment period, the permit would be issued and the applicant may conduct restoration and repair activities in compliance with existing environmental protection and other laws, including the Clean Water Act.

The purpose of this Act is to ensure that the statewide programmatic general permit and programmatic agreement function as intended by specifying that a permit applicant that has received notice of authorization to proceed from the department of land and natural resources is not required to obtain additional water quality certification from the department of health. The legislature finds that the intent of this Act is to improve state government efficiency and response time in the administration of water pollution control. It is not the intent of the legislature to limit or impede state environmental controls on water pollution.

SECTION 2. Section 342D-6.5, Hawaii Revised Statutes, is amended to read as follows:

~~“[§342D-6.5] Hawaiian fishponds, loko i‘a. (a)~~ The department shall process applications for permits and water quality certifications for the reconstruction, restoration, repair, or reuse of any loko i‘a, or Hawaiian fishpond as defined in section 183B-1, before all other permits and certifications. The director shall render a decision on the completeness of any application for that permit or water quality certification within thirty days of receipt. Applications for ~~fishpond~~ loko i‘a reconstruction, restoration, or repair that are incomplete shall be denied without prejudice. The director shall render a decision on any complete application for a permit or water quality certification for any ~~fishpond~~ loko i‘a within one hundred fifty days.

(b) The department shall waive the requirement to obtain water quality certification under this chapter 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 loko i‘a.

(c) For purposes of this section:

“Water quality certification” means state certification pursuant to section 401 of the federal Clean Water Act.”

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

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

(Approved July 13, 2015.)