

ACT 162

S.B. NO. 367

A Bill for an Act Relating to Water Quality.

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

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

The legislature further finds that the department of land and natural resources is responsible for the conservation and management of coastal resources, including beaches and dunes. The department of land and natural resources also promotes adaptive ecosystem-based management approaches to mitigate erosion and beach loss in certain areas. Examples of these approaches include beach restoration and maintenance projects that use clean carbonate sand sourced from nearshore deposits and sediment management projects that use existing native sand within the beach environment as an alternative to shoreline armoring. However, to be effective, these restoration and maintenance activities must be authorized in a streamlined manner and on a recurring basis.

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

The legislature believes that continued climate warming and accelerating sea level rise will cause the rates of coastal erosion and beach loss to increase in

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

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

The legislature finds that waiving the section 401 water quality certification requirement for small-scale beach restoration permit applicants that have met the conditions of the small-scale beach restoration regulations and qualifying criteria, and have received notice of authorization to proceed from the department of land and natural resources, will ensure that the program functions in an efficient and environmentally responsible manner. Waiving the requirement of a section 401 water quality certification in these situations will result in the State more efficiently administering water pollution control during beach conservation and restoration projects. The legislature notes that it is not the intent of this Act to limit or impede state environmental controls on water pollution.

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

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

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

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

(c) The director shall issue a permit for any term, not exceeding five years, if the director determines that it will be in the public interest; provided that the permit may be subject to any reasonable conditions that the director may prescribe. The director may include conditions in permits or may issue separate permits for management practices for domestic sewage, sewage sludge, and recycled water, regardless of whether [~~or not~~] the practices cause water pollution. The director, on application, shall renew a permit from time to time, for a term not exceeding five years, if the director determines that it will be in the public interest. The director shall not grant or deny an application for the issuance or renewal of a permit without affording the applicant and any person who commented on the proposed permit during the public comment period an opportunity for a hearing in accordance with chapter 91. A request for a hearing and any judicial review of the hearing shall not stay the effect of the issuance or renewal

of a permit unless specifically ordered by the director or [an] environmental court.

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

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

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

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

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

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

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

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

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 1, 2021.)