
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 Hawai'i 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 Hawai'i and the
5 United States Geological Survey, seventy per cent of beaches in
6 Hawai'i 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 notes that section 401 of the federal Clean
6 Water Act requires a water quality certification for certain
7 licenses and permits. This section 401 certification adds to
8 the cost of beach restoration and maintenance by requiring that
9 native marine sand collected from nearshore deposits be
10 dewatered before being placed on a beach and that strict beach
11 management practices and conditions be met before transferring
12 existing beach sand from one section of a beach to another.

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



1 Hawaiian loko ia, or fishponds, by waiving the section 401 water
2 quality certification requirement.

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

17 The legislature finds that waiving the section 401 water
18 quality certification requirement for small-scale beach
19 restoration permit applicants that have met the conditions of
20 the small-scale beach restoration regulations and qualifying
21 criteria, and have received notice of authorization to proceed



1 from the department of land and natural resources, will ensure
2 that the program functions in an efficient and environmentally
3 responsible manner. Waiving the requirement of a section 401
4 water quality certification in these situations will result in
5 the State more efficiently administering water pollution control
6 during beach conservation and restoration projects. The
7 legislature notes that it is not the intent of this Act to limit
8 or impede state environmental controls on water pollution.

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

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

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

19 (b) The department may require that applications for
20 permits shall be accompanied by plans, specifications, and any
21 other information that it deems necessary [~~in order~~] to



1 determine whether the proposed installation, alteration, or use
2 will be in accord with applicable rules and standards.

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



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

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

7 (2) The permit was obtained by misrepresentation[7] or
8 there was failure to disclose fully all relevant
9 facts;

10 (3) There is a change in any condition that requires
11 either a temporary or permanent reduction or
12 elimination of the permitted discharge; or

13 (4) It is in the public interest.

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

18 (e) The director, on the director's own motion or the
19 application of any person, may modify, suspend, revoke, or
20 revoke and reissue any sludge permit after affording the
21 permittee an opportunity for a hearing in accordance with



1 chapter 91, and consistent with 40 Code of Federal Regulations
2 section 501.15(c)(2) and (3) and (d)(2).

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

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



1 determination of public interest shall promote the optimum
2 balance between economic development and environmental quality.

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

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

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

17 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.
(SD2)

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not legislation or evidence of legislative intent.*

