



STATE OF HAWAII
DEPARTMENT OF HEALTH
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In reply, please refer to:
File:

**Testimony in SUPPORT of SB1377 SD1
RELATING TO WATER POLLUTION CONTROL**

REPRESENTATIVE LINDA ICHIYAMA, CHAIR
HOUSE COMMITTEE ON WATER & LAND
REPRESENTATIVE NICOLE E. LOWEN, CHAIR
HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

Hearing Date: 3/16/23

Room Number: 325

1 **Fiscal Implications:** None.

2 **Department Testimony:** The Department of Health (Department) strongly supports this
3 measure with recommendations as it will ensure consistency with federal definitions, clarify the
4 Director of Health's authority to act as a certifying agency, update the maximum statutory civil
5 penalty in Section 342D-30(a), Hawaii Revised Statutes (HRS) to match the federal inflation
6 adjusted penalty amount to deter and compensate the State when persons violate State water
7 pollution control laws.

8 The inclusion of "wetlands" into the definition of "State waters" is consistent with the
9 revised definition of "Waters of the United States" published on Wednesday, January 18, 2023 in
10 the Federal Register (Vol. 88, No. 11). The proposed "water quality certification" definition is
11 consistent with Section 401 of the Federal Clean Water Act.

12 The Department recommends restoring the definitions of "navigable waters" and
13 "territorial seas" as proposed in SB1377. The water quality certification is applicable to
14 navigable waters. The proposed definitions of navigable waters and territorial seas in SB1377
15 were from the CWA, subsections 502(7) and 502(8), respectively. The term "navigable waters"
16 is used in SECTION 8, page 13, line 10. The term "territorial seas" is used in the definition of
17 "navigable waters."

18 Thank you for the opportunity to testify and provide recommendations.

1 **Offered Amendments:** The Department respectfully suggests the following revisions to the
2 proposed HRS amendments. Additions appear as underlined and deletions appear as bracketed
3 strikeouts.

4 In SECTION 2, page 2, lines 7 and 13:

5 “Water quality certification” or “certification” means a statement that asserts that a
6 proposed discharge resulting from any activity, including but not limited to the construction or
7 operation of facilities, will not violate applicable water quality standards, water quality related
8 state laws, or water quality related provisions in sections 301, 302, 303, 306, and 307 of the
9 ~~[Act]~~act.

10 “Water quality standards” means provisions of state law that provide for a designated use
11 or designated uses for state waters and water quality criteria for the waters based upon these
12 uses. Water quality standards are to protect the public health or welfare, enhance the quality of
13 water, and serve the purposes of the ~~[Act]~~act.”

14 In SECTION 8, page 13, lines 7, 12, and 14:

15 SECTION 8. Section 342D—53, Hawaii Revised Statutes, is amended to read as follows:

16 “§342D-53 Certifying agency and water quality certification. (a) Water quality
17 certification is required pursuant to section 401 of the ~~[Act]~~act for any applicant for a federal
18 license or permit to conduct any activity, including the construction or operation of facilities that
19 may cause any discharge into navigable waters.

20 (b) The director may act as a certifying agency, as defined in title 40 Code of Federal
21 Regulations. “Certifying agency” as used in this section has the same meaning as “certifying
22 authority” as defined in title 40 Code of Federal Regulations.

23 In SECTION 8, page 14, line 8:

24 (e) The director shall not require a person to apply for a water quality certification:

25 (1) If the person has received notice of authorization to proceed from the department of
26 land and natural resources office of conservation and coastal lands under the
27 statewide programmatic general permit for the restoration, repair, maintenance, and
28 operation of loko ~~[ia]~~ia; or ...

SB-1377-SD-1

Submitted on: 3/10/2023 9:52:45 PM

Testimony for WAL on 3/16/2023 9:05:00 AM

Submitted By	Organization	Testifier Position	Testify
Dana Keawe	Individual	Support	Written Testimony Only

Comments:

support