

DAVID Y. IGE
GOVERNOR OF
HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
OCEAN, MARINE RESOURCES, & HAWAIIAN AFFAIRS**

**Wednesday, February 3, 2016
10:15 A.M
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 2145
RELATING TO BEACHES**

House Bill 2145 proposes to amend the definition of “water pollutant” as used in Chapter 342D Hawaii Revised Statutes (HRS), to exclude locally sourced beach sand. **The Department of Land and Natural Resources (Department) supports this measure and offers these comments.**

As you know, it is the mission of the Department to manage public lands and ocean resources, including beaches throughout the State. The Department is very much at the forefront of addressing impacts related to coastal erosion and beach loss in Hawai‘i. Beaches are central to our culture and economy, yet our beaches are being lost at alarming rates due natural processes and human impacts, threatening alongshore public access and upland development.

Following the Department’s Coastal Erosion Management Plan, staff is actively working with county governments and private landowners to facilitate “soft” solutions to erosion management instead of coastal armoring, which has been shown to have deleterious effects on beaches. These soft solutions include dune restoration, sand back-passing or bypassing, and stream mouth clearing. These sediment management projects utilize clean sand from a section of beach with a surplus of sand to restore a nearby eroded section of beach or dune, with careful consideration of seasonal variability and the beach and marine environment. These types of sediment management projects are currently inhibited from placing clean, locally-sourced sand below the high water line because it would be considered a discharge of a “water pollutant” triggering the lengthy Clean Water Act Section 401 Water Quality Certification (401 WQC) process. In many cases, proper restoration of a beach requires placing sand along the entire active beach profile, above and below the high water line.

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

There are plentiful examples in the State of projects that re-distribute or bypass sand without adverse water quality impacts: Kīkīaola Small Boat Harbor near Waimea, Kaua‘i and Kailua, Waikīkī, Mākaha, and North Shore beaches, O‘ahu, and other beaches throughout the State. These efforts are all potentially subject to State Water Quality permitting because natural beach sand is considered a “water pollutant” based on the definitions in Section 342D-1, HRS.

These types of sediment management projects are needed on beaches around the State. Often a dune restoration or sand back-passing project needs to be implemented in a matter of days or weeks in response to a sudden erosion event to restore a beach environment and protect public safety and infrastructure. It can be challenging or impossible to initiate a project in this rapid time frame because clean beach sand is considered a “water pollutant” when moved along the same beach and discharged in or near the water.

It is not the intent of the Department or this bill to undermine the provisions of the Federal Clean Water Act. In fact, sand used from an upland source or dredged from deeper off shore sand fields would continue to be regulated under the Section 401 Water Quality Certification (401 WQC) process.

The Department recognizes the vulnerability of our nearshore marine resources. In fact, the Department maintains its own environmental guidelines on sand compatibility for beach restoration projects through our Small Scale Beach Nourishment application program. We feel the State’s general interpretation of sand as a “water pollutant” in the definition in Section 342D-1, HRS, for “minor” or “non-controversial” beach management projects as described above is unjustified. A revision to the Statute through this bill will be very helpful in clarifying this interpretation and facilitating the State’s efforts to maintain and protect beach environments.

There may be alternatives to amending the definition for “water pollutant” in Section 342D-1, HRS, if the Committee has concerns. One alternative may be to allow for a waiver for minor and non-controversial projects.

The Department offers the following suggestion to the proposed statutory language for the definition of “Water pollutant” in SECTION 2 of this measure. Suggested material for removal is bracketed and stricken. Suggested material for inclusion is double underscored.

- (2) Utilized on the [adjacent] adjoining beach or littoral cell for the purposes of beach erosion mitigation, sediment management, beach restoration, erosion control, or dune restoration.

Thank you for the opportunity to testify on this measure.



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OCEAN, MARINE RESOURCES, & HAWAIIAN AFFAIRS
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HOUSE BILL 2145
RELATING TO BEACHES
10:15 A.M

By
HAWAII SHORE AND BEACH PRESERVATION ASSOCIATION

House Bill 2145 proposes to amend the definition of “water pollutant” as used in Chapter 342D HRS, to exclude locally sourced beach sand. House Bill 2145 provides that naturally occurring beach sand shall not be considered a “water pollutant” if used for beach erosion mitigation and certain related purposes. The bill proposes to amend Section 342D-1, Hawaii Revised Statutes, to exclude beach sand from the Definition of “water pollutant,” provided that it is 1) Naturally-occurring beach sand sourced from a beach stream mouth, or channel that is located in the State and 2) Is utilized on the adjacent beach for the purposes of beach erosion mitigation sediment management, beach restoration, erosion control or dune restoration. **The Hawaii Shore and Beach Preservation Association (HSBPA)* supports House Bill 2145.**

It can be very difficult to implement these types of minor beach restoration projects in a timely, cost-effective manner because clean naturally-occurring beach sand is considered a “water pollutant” by the State, even if the sand is moved from one area of a beach to another. The HSBPA feels that the State’s interpretation of clean beach sand as a “water pollutant” for the types of projects described above is an unnecessarily strict interpretation of the Federal Clean Water Act (CWA). As a result of this interpretation, these types of projects are required to go through a CWA Section 401 Water Quality Certification (401 WQC). This can be especially troublesome because these types of projects often need to be implemented in a matter of days to weeks in response to a sudden erosion episode. In practice, the 401 WQC process can take a year or more. Excluding clean beach sand from the Definition of “water pollutant,” as described above, or otherwise waiving these types of projects from the 401 WQC process, will support government and stakeholder efforts to effectively preserve and restore degraded beaches as an alternative to shoreline armoring.

This bill will not lessen the intentions or effectiveness of the Federal Clean Water Act. Beach nourishment projects using sand from an outside source would still be subject to a 401 WQC.

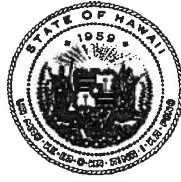


The amendments in this bill are intended to address smaller restoration and sediment management projects using clean, locally-sourced sand from the active beach that will have no substantial impact on marine water quality. Projects should follow sand compatibility guidelines and best management practices provided by the Department of Land and Natural Resources.

*The Hawaii Shore and Beach Preservation Association (HSBPA, <http://www.hawaiishoreandbeach.org/>), formed in 2014, is an organization of private sector, academic, and government professionals, students and local community members dedicated to the preservation and restoration of Hawaii's beaches and coastal environments. The HSBPA aims to bring together various members of the coastal community to foster dialogue and cooperation on beach and coastal resource conservation, management, and regulation; supporting professional development of chapter members; and providing education to students and community members on Hawaii's beaches and coastal environments.

Thank you for considering our testimony on this bill. Please consider HSBPA a resource should you have any questions or want more information about beach preservation and restoration. We can be reached at aloha@hawaiishoreandbeach.org.

DAVID Y. IGE
GOVERNOR OF HAWAII



VIRGINIA PRESSLER, M.D.
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**Testimony in OPPOSITION to H.B. 2145
RELATING TO BEACHES**

REPRESENTATIVE KANIELA ING, CHAIR
HOUSE COMMITTEE ON OCEAN, MARINE RESOURCES, AND HAWAIIAN AFFAIRS
REPRESENTATIVE CHRIS LEE, CHAIR
HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION
REPRESENTATIVE KARL RHOADS, CHAIR
HOUSE COMMITTEE ON JUDICIARY

Hearing Date: February 3, 2016
10:15 AM

Room Number: 325

1 **Fiscal Implications:** None.

2 **Department Testimony:** The Department of Health respectfully opposes this measure. The
3 purpose of this measure is to amend the Hawaii Revised Statutes, Section 342D-1 definition of
4 “water pollutant” by specifying that sand shall not be considered a water pollutant if it is
5 naturally-occurring beach sand sourced from a Hawaiian beach, stream mouth, or channel, and
6 utilized on the adjacent beach for the purposes of beach erosion mitigation, sediment
7 management, beach restoration, erosion control or dune restoration.

8 All States are required to comply with Federal Clean Water Act (CWA) requirements.
9 Pursuant to federal regulations, all states, including Hawai‘i’s “Water Pollution” statutes are
10 required to be at least as stringent as the federal standards prescribed by the CWA. CWA,
11 §502(6) defines “sand” as a “pollutant” and it does not provide exclusions for any particular
12 types of sand.

13 CWA, Section 502 states:

14 “Except as otherwise specifically provided, when used in this Act:

15 (6) The term “pollutant” means dredged spoil, solid waste, incinerator residue, sewage,
16 garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive

1 materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial,
2 municipal, and agricultural waste discharged into water. This term does not mean (A)
3 “sewage from vessels or a discharge incidental to the normal operation of a vessel of the
4 Armed Forces” within the meaning of section 312 of this Act; or (B) water, gas, or other
5 material which is injected into a well to facilitate production of oil or gas, or water
6 derived in association with oil or gas production and disposed of in a well, if the
7 well-used either to facilitate production or for disposal purpose is approved by authority
8 of the State in which the well is located, and if such State determines that such injection
9 or disposal will not result in the degradation of ground or surface water resources.”

10 The CWA recognizes that sand mining and placement can have significant environmental
11 impacts. Moving and mining sand alters the physical environment and raises ecological and
12 erosion concerns. The placement of sand alters the biological and chemical environment. This
13 may adversely affect the ecosystem and water quality where the sand is placed. Naturally
14 occurring beach sand sourced from a beach, stream mouth, or channel has a high potential to
15 contain contaminants from stream sediment and flood borne contaminants that may cause
16 diseases. Commonly, sediments accumulated on sand adjacent to stream or channel contain other
17 pollutants such as dirt, municipal water waste, agricultural wastes, and industrial wastes. Sand
18 that is dredged or excavated from stream mouth contains a multitude of pollutants from
19 upstream-sources. Moreover, recent studies, including one conducted by the University of
20 Hawai‘i, Department of Civil and Environmental Engineering in June 2013, have reported high
21 levels of fecal indicator enterococci in Hawai‘i’s beach sand. These studies show that the
22 enterococcus-laden sand serves as potential sources of contamination for beach water and may
23 cause illnesses.

24 For these reasons, it is prudent for the State to continue to regulate sand mining and
25 placement activities to prevent water pollution and to ensure that these activities comply with
26 Hawaii Administrative Rules, Chapter 11-54 Water Quality Standards, including the stream
27 bottom criteria.

28 Thank you for the opportunity to testify on this measure.