

SB2245 SD1

Measure Title: RELATING TO BEACHES.

Report Title: Beach Restoration; Water Pollutant; Sand

Description: Amends the definition of "water pollutant" as used in chapter 342D, HRS, to exclude locally sourced beach sand that meets certain conditions. (SD1)

Companion: [HB2145](#)

Package: None

Current Referral: WLA/EET, CPH

Introducer(s): KEITH-AGARAN, BAKER, ENGLISH, INOUYE, NISHIHARA, TOKUDA, Dela Cruz, Galuteria, Kidani, Shimabukuro



**SB2245 SD1
RELATING TO BEACHES**

Senate Committee on Commerce, Consumer Protection, and Health

February 26, 2016

10:30 a.m.

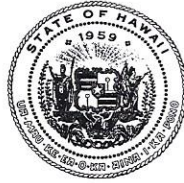
Room 229

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on SB2245 SD1. This measure which would facilitate the maintenance of our shoreline areas and beaches, by exempting locally-sourced sand from water quality regulations, when used for restoration- and erosion mitigation- related activities on adjoining beaches.

Hawai'i's beaches and shoreline areas provide numerous benefits to the Native Hawaiian community and the public, that are critical to our cultural values and kama'āina way of life. Our beaches and shoreline areas provide a place to bond with 'ohana and friends, help to foster positive youth development and an early appreciation for our natural resources, and provide for a variety of recreational activities, such as surfing and fishing, that have been staples of local life for generations. Moreover, access to the shoreline and the resources of the nearshore environment is critical to the perpetuation of many Native Hawaiian traditional and customary and subsistence practices. Accordingly, OHA appreciates the intent of this measure, to facilitate the maintenance of our beach areas using appropriately-sourced sand.

OHA understands that the use of sand from stream and channel mouths to nourish adjoining beaches may, in many cases, ensure the greatest chance of success for beach mitigation and maintenance efforts, while minimizing the potential extent of adverse physical, biological, or chemical impacts. OHA can also appreciate the difficulties that may be encountered in the Department of Health's regulatory processes for water quality protection and pollutant discharge. However, in some instances, the use of sand, even from adjacent stream or channel mouths, to nourish beach areas may potentially result in adverse and unnecessary impacts to coastal water quality and the nearshore environment. For example, fine silt or sand deposited along shorelines with high erosion rates may result in the smothering of coral and other benthic life; contaminants concentrated near the mouths of streams running through or by urban areas and landfills may be spread to less-impacted areas along the adjacent coast; and "naturally occurring" sand near stream or channel mouths may in fact contain a range of sediment characteristics that are not the most optimal for beach nourishment. **Accordingly, OHA urges the Committee to seek and consider the input of erosion control experts, aquatic biologists, and health safety officials with regards to additional safeguards or standards it may wish to incorporate in this bill.**

Mahalo nui for the opportunity to testify on this measure.



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**WRITTEN
TESTIMONY ONLY**

**Testimony in OPPOSITION to S.B. 2245 S.D.1
RELATING TO BEACHES**

SENATOR ROSALYN H. BAKER, CHAIR
SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

Hearing Date: February 26, 2016
Time: 10:30 am

Room Number: 229

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 adjoining beach or littoral cell for the purposes of beach erosion mitigation,
7 sediment 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 The CWA recognizes that sand mining and placement can have significant environmental
14 impacts. Moving and mining sand alters the physical environment and raises ecological and
15 erosion concerns. The placement of sand alters the biological and chemical environment. This
16 may adversely affect the ecosystem and water quality where the sand is placed.

17 Beach sand sourced from a beach, stream mouth, or channel has a high potential to
18 contain contaminants from stream sediment and flood borne contaminants that may cause
19 diseases. Commonly, sediments accumulated on sand adjacent to stream or channel contain other

1 pollutants such as dirt, municipal water waste, agricultural wastes, and industrial wastes. Sand
2 that is dredged or excavated from stream mouth contains a multitude of pollutants from
3 upstream-sources.

4 Moreover, recent studies, including one conducted by the University of Hawai'i,
5 Department of Civil and Environmental Engineering in June 2013, have reported high levels of
6 fecal indicator enterococci in Hawai'i's beach sand. These studies show that the enterococcus-
7 laden sand serves as a potential source of contamination for beach water and may cause illnesses.

8 We would like to emphasize that the DOH has been involved with a variety of
9 approaches to expedite Section 401 Water Quality Certifications (WQC).

- 10 • Sand excavated during a stream mouth clearing activity that meets applicable State Water
11 Quality Standards is allowed to be placed above the high tide line (HTL)/ordinary high
12 water mark (OHWM) without additional Department of the Army (DA) permitting
13 requirements. Thus, no WQC from the DOH is required.
- 14 • The Department of Land and Natural Resources (DLNR), Office of Conservation and
15 Coastal Land (OCCL) can request from the DA, a State Programmatic General Permit
16 (SPGP) for all Small-Scale Beach Nourishment (SSBN) projects. DOH could then
17 process a single Section 401 WQC that would cover all SSBN projects regulated by
18 DLNR.
- 19 • Government and private entities can develop standardized Best Management Practices
20 (BMP) for their beach erosion mitigation and beach restoration activities. Following a
21 recent DOH Kaizen event, several state and county agencies are working on standardized
22 BMPs for select activities to help expedite the Section 401 WQC process.

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

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

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 Senate Committee on
COMMERCE, CONSUMER PROTECTION, AND HEALTH**

**Friday, February 26, 2016
10:30 A.M
State Capitol, Conference Room 229**

**In consideration of
SENATE BILL 2245, SENATE DRAFT 1
RELATING TO BEACHES**

Senate Bill 2245, Senate Draft 1 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.**

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.

Thank you for the opportunity to testify on this measure.



Testimony Presented Before the
SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH
Friday, February 26, 2016
10:30am
State Capitol, Conference Room 229

By Chris Conger, President
Hawaii Shore and Beach Preservation Association

In consideration of
SENATE BILL 2245 SD 1 RELATING TO BEACHES

Senate Bill 2245 SD 1 clarifies that beach sand is not a “water pollutant.” The bill proposes to amend Section 342D, Hawaii Revised Statutes, to exclude native beach sand from the Definition of “water pollutant,” provided that it is naturally-occurring beach sand utilized on an adjoining 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 Senate Bill 2245 SD 1. Government agencies, coastal land owners, and other stakeholders involved in beach management share a common interest in supporting innovative and environmentally-friendly solutions for managing coastal erosion to preserve our beaches and shoreline environments. Beach erosion is a problem throughout our state. Adaptive sediment management techniques such as beach scraping, stream mouth clearing, and sand bypassing and back-passing can be effective means for addressing beach erosion problems and threats to coastal infrastructure when surplus sand is available on a nearby section of beach.

It can be very difficult to implement these types of beach and dune 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 section of a beach to another and placed below the high water line. 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 type of “beach maintenance” projects are required to go through a CWA Section 401 Water Quality Certification (401 WQC) which adds significant cost and time to the project. Often, these projects need to be implemented in a matter of days to weeks in response to a sudden erosion episode. The lengthy 401 WQC process, administered by the Department of Health, can take months to years making implementation of these types of environmentally benign projects time and cost-prohibitive and historically kills these efforts. Excluding clean, naturally occurring beach sand from the Definition of “water pollutant,” as described above, will support government and stakeholder efforts to manage and preserve our beaches.

*The Hawaii Shore and Beach Preservation Association (HSBPA, <https://sites.google.com/site/hisbpa/>), 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 the bill.