

HOUSE COMMITTEE ON WATER & LAND
The Honorable Ryan I. Yamane, Chair
The Honorable Chris Todd, Vice Chair

H.B. NO. 2027, RELATING TO WATER QUALITY CERTIFICATION

Hearing: Wednesday, January 31, 2018, 10:00 a.m.

The Office of the Auditor has **no position** regarding H.B. No. 2027, which requires us to review the water quality certification process of the Department of Health, Clean Water Branch under section 401 of the federal Clean Water Act. **However, we have concerns about our ability to conduct the work required by H.B. No. 2027.**

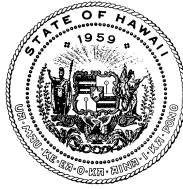
H.B. No. 2027 requires us to “conduct a review of the water quality certification process of the department of health clean water branch under section 401 of the federal Clean Water Act.” This review is to include an analysis of:

- (1) Whether the efficiency of water quality certification process would improve through the implementation of tiers reflecting the potential environmental impact and complexity of each activity and if so, recommendations on how those tiers should be structured and recommended fees for each tier; and*
- (2) How the water quality certification process in Hawaii differs from approaches taken by other states and recommendations on how approaches used in other states may be incorporated into the policies of the department of health to increase efficiency without sacrificing water quality protection.*

We can review and assess the Department of Health, Clean Water Branch’s water quality certification process, which may identify areas in the process where the branch can improve. That type of review and assessment is part of the typical performance audit that we perform.

However, we generally do not conduct the level of research into other jurisdictions’ approaches that the bill seems to require and likely do not possess the substantive expertise regarding water quality certification that may be needed to assess whether a tiered approach would improve program efficiency. We request an appropriation of no less than \$50,000 for the purpose of retaining a subject matter consultant to assist us on the substantive issues should the bill be passed by the committee.

Thank you for considering our testimony related to H.B. No. 2027.



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WRITTEN
TESTIMONY ONLY

**Testimony COMMENTING on HB 2027
RELATING TO WATER QUALITY CERTIFICATION**

REPRESENTATIVE RYAN I. YAMANE, CHAIR
HOUSE COMMITTEE ON WATER & LAND

Hearing Date: January 31, 2018
Time: 10:00 AM

Room Number: 325

1 **Fiscal Implications:** The Department of Health (DOH) is concerned that an audit may divert
2 limited existing resources.

3 **Department Testimony:** The DOH offers comments with reservation/suggestions on this bill
4 and respectfully request that the measure be held. The purpose of this bill is to require the state
5 auditor to review the Section 401 Water Quality Certification process and to recommend how the
6 process can be improved without decreasing the ability of the DOH, Clean Water Branch (CWB)
7 to protect Hawaii's water.

8 A Section 401 Water Quality Certification is required if a project/activity: 1) requires a
9 federal permit or license, and 2) may result in a water pollutant discharge into State waters. On
10 average, the DOH-CWB receives twenty-five (25) new Section 401 Water Quality Certification
11 applications per year.

12 The DOH-CWB has already taken two significant actions to streamline its Section 401
13 Water Quality Certification process. On August 31, 2015, DOH issued a blanket conditional
14 Section 401 Water Quality Certification for the most commonly utilized Department of the Army
15 2012 Nationwide Permits for the State of Hawaii. The blanket expired March 18, 2017. This
16 blanket approval was created to effectively streamline, facilitate, and shorten the application

1 process with a total turn-around time matching the Department of the Army's processing
2 deadlines.

3 The DOH-CWB is in the process of issuing another blanket Section 401 Water Quality
4 Certification for the most commonly utilized Department of the Army 2017 Nationwide
5 Permits. It is expected that more projects (approximately 85%) can be covered under this
6 blanket Section 401 Water Quality Certification. The new blanket Section 401 Water Quality
7 Certification is expected to be issued in February or March 2018.

8 Secondly, the DOH-CWB held a Kaizen event in 2015 to improve and streamline the
9 Section 401 Water Quality Certification program by collaborating with county, state, and federal
10 agencies to develop a streamlining strategy. The strategy would require frequent Section 401
11 Water Quality Certification applicants to coordinate with their design, construction, and contract
12 staff to create standardized Best Management Practices or pollution control measures for all their
13 specific activities. Several state and county agencies are currently working on their standardized
14 Best Management Practices. The Department of Transportation, Highways Division and Federal
15 Highways Administration have standardized Best Management Practices that have been accepted
16 by DOH. These standardized Best Management Practices have been used on seven (7) projects
17 requiring Section 401 Water Quality Certifications. The average processing time from receipt of
18 a complete application was nine (9) days.

19 The DOH-CWB and Environmental Protection Agency (EPA) are currently undertaking
20 a comprehensive evaluation of the DOH-CWB programs, including the Section 401 Water
21 Quality Certification. Results are expected in September 2018, and the implementation of
22 recommendations will be based on this evaluation.

23 Based on the above activities, a program audit would be premature and divert limited
24 resources away from the EPA evaluation. Participating in an audit would take DOH staff away
25 from their efforts to expedite Section 401 WQC decisions. Also, an audit is not necessary
26 because the DOH has already taken significant steps to streamline its decision-making.

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