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# A BILL FOR AN ACT

RELATING TO CONSERVATION OF THREATENED AND ENDANGERED SPECIES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Section 195D-2, Hawaii Revised Statutes, is  
2 amended by adding three new definitions to be appropriately  
3 inserted and to read as follows:

4           "Certificate of inclusion" means a type of license that is  
5 used to enroll interested landowners into a programmatic safe  
6 harbor agreement or programmatic habitat conservation plan and  
7 extends coverage of an incidental take license to those  
8 landowners identified in the agreement or plan and who  
9 subsequently enroll in the agreement or plan.

10           "Habitat conservation plan" means a plan that covers single  
11 or multiple landowners, or a class of landowners such as in a  
12 programmatic plan, and may include a single property or extend  
13 over a wide area or region.

14           "Safe harbor agreement" means an agreement that covers  
15 single or multiple landowners, or a class of landowners such as  
16 in a programmatic agreement, and may include a single property  
17 or extend over a wide area or region."



1 SECTION 2. Section 195D-4, Hawaii Revised Statutes, is  
2 amended by amending subsections (g), (h), and (i) to read as  
3 follows:

4 "(g) After consultation with the endangered species  
5 recovery committee, the board may issue a temporary license as a  
6 part of a habitat conservation plan or programmatic habitat  
7 conservation plan to allow a take otherwise prohibited by  
8 subsection (e) if the take is incidental to, and not the purpose  
9 of, the carrying out of an otherwise lawful activity; provided  
10 that:

- 11 (1) The applicant, to the maximum extent practicable,  
12 shall minimize and mitigate the impacts of the take;
- 13 (2) The applicant shall guarantee that adequate funding  
14 for the plan will be provided;
- 15 (3) The applicant shall post a bond, provide an  
16 irrevocable letter of credit, insurance, or surety  
17 bond, or provide other similar financial tools,  
18 including depositing a sum of money in the endangered  
19 species trust fund created by section 195D-31, or  
20 provide other means approved by the board, adequate to  
21 ensure monitoring of the species by the State and to



1 ensure that the applicant takes all actions necessary  
2 to minimize and mitigate the impacts of the take;

3 (4) The plan shall increase the likelihood that the  
4 species will survive and recover;

5 (5) The plan takes into consideration the full range of  
6 the species on the island so that cumulative impacts  
7 associated with the take can be adequately assessed;

8 (6) The measures, if any, required under section 195D-  
9 21(b) shall be met, and the department has received  
10 any other assurances that may be required so that the  
11 plan may be implemented;

12 (7) The activity, which is permitted and facilitated by  
13 issuing the license to take a species, does not  
14 involve the use of submerged lands, mining, or  
15 blasting;

16 (8) The cumulative impact of the activity, which is  
17 permitted and facilitated by the license, provides net  
18 environmental benefits; and

19 (9) The take is not likely to cause the loss of genetic  
20 representation of an affected population of any  
21 endangered, threatened, proposed, or candidate plant  
22 species.



1 Board approval shall require an affirmative vote of not less  
2 than two-thirds of the authorized membership of the board after  
3 holding a public hearing on the matter on the affected island.  
4 The department shall notify the public of a proposed license  
5 under this section through publication in the periodic bulletin  
6 of the office of environmental quality control and make the  
7 application and proposed license available for public review and  
8 comment for not less than sixty days prior to approval. A  
9 programmatic habitat conservation plan may also provide for  
10 issuance of certificates of inclusion after review and approval  
11 by the endangered species recovery committee to extend the  
12 coverage of the incidental take license to landowners enrolling  
13 in the programmatic plan at a later date.

14 (h) Licenses or certificates of inclusion issued pursuant  
15 to this section may be suspended or revoked for due cause, and  
16 if issued pursuant to a habitat conservation plan or safe harbor  
17 agreement, shall run with the land for the term agreed to in the  
18 plan or agreement and shall not be assignable or transferable  
19 separate from the land. Any person whose license or certificate  
20 of inclusion has been revoked shall not be eligible to apply for  
21 another license or certificate of inclusion until the expiration  
22 of two years from the date of revocation.



1 (i) The department shall work cooperatively with federal  
2 agencies in concurrently processing habitat conservation plans,  
3 safe harbor agreements, [~~and~~] incidental take licenses, and  
4 certificates of inclusion pursuant to the Endangered Species  
5 Act. After notice in the periodic bulletin of the office of  
6 environmental quality control and a public hearing on the  
7 islands affected, which shall be held jointly with the federal  
8 agency, if feasible, whenever a landowner seeks both a federal  
9 and a state safe harbor agreement, habitat conservation plan, or  
10 incidental take license, the board, by a two-thirds majority  
11 vote, may approve the federal agreement, plan, or license  
12 without requiring a separate state agreement, plan, or license  
13 if the federal agreement, plan, or license satisfies, or is  
14 amended to satisfy, all the criteria of this chapter. All state  
15 agencies, to the extent feasible, shall work cooperatively to  
16 process applications for habitat conservation plans and safe  
17 harbor agreements on a consolidated basis including concurrent  
18 processing of any state land use permit application that may be  
19 required pursuant to chapter 183C or 205, so as to minimize  
20 procedural burdens upon the applicant."

21 SECTION 3. Section 195D-5, Hawaii Revised Statutes, is  
22 amended by amending subsection (b) to read as follows:



1           "(b) The office of the governor shall review other  
2 programs administered by the department and, to the extent  
3 practicable, [~~utilize~~] use such programs in furtherance of the  
4 purposes of this chapter. The governor or the governor's  
5 authorized representative shall also encourage all federal  
6 agencies to [~~utilize~~] use their authority in furtherance of the  
7 purposes of this chapter. All other state agencies shall use  
8 their authority in furtherance of the purposes of this chapter  
9 by:

- 10           (1) Carrying out programs for the protection of threatened  
11 and endangered species; and  
12           (2) Taking such action as may be necessary to ensure that  
13 actions authorized, funded, or carried out by them do  
14 not jeopardize the continued existence of threatened  
15 or endangered species.

16           In carrying out programs authorized by this chapter, the  
17 department may enter into agreements with federal agencies,  
18 counties, private landowners, and organizations for the  
19 administration and management of any area or facility  
20 established under section 195D-21 or 195D-22, or public lands  
21 [~~utilized~~] used for conserving, managing, enhancing, or



1 protecting indigenous aquatic life, wildlife, land plants,  
2 threatened and endangered species, and their habitat."

3 SECTION 4. Section 195D-21, Hawaii Revised Statutes, is  
4 amended by amending subsection (d) to read as follows:

5 "(d) Notwithstanding any other law to the contrary, the  
6 board shall suspend or revoke the approval of any habitat  
7 conservation plan or individual landowner's portion thereof  
8 approved under this section if the board determines that:

9 (1) Any parties to the plan, or their successors, have  
10 breached their obligations under the plan or under any  
11 agreement implementing the plan and have failed to  
12 cure the breach in a timely manner, and the effect of  
13 the breach is to diminish the likelihood that the plan  
14 will achieve its goals within the time frames or in  
15 the manner set forth in the plan;

16 (2) The plan no longer has the funding source specified in  
17 subsection (a) or another sufficient funding source to  
18 ensure the measures or actions specified in subsection  
19 (b) are undertaken in accordance with this section; or

20 (3) Continuation of the permitted activity would  
21 appreciably reduce the likelihood of survival or



1 recovery of any threatened or endangered species in  
2 the wild."

3 SECTION 5. Section 195D-22, Hawaii Revised Statutes, is  
4 amended as follows:

5 1. By amending subsection (a) to read:

6 "(a) To encourage landowners to voluntarily engage in  
7 efforts that benefit endangered, threatened, proposed, and  
8 candidate species, except as otherwise provided by law, the  
9 board, upon approval by not less than two-thirds of the board's  
10 authorized membership, after a public hearing on the island  
11 affected, may enter into a safe harbor agreement with one or  
12 more landowners to create, restore, or improve habitats or to  
13 maintain currently unoccupied habitats that threatened or  
14 endangered species can be reasonably expected to use, if the  
15 board determines that the cumulative activities, if any,  
16 contemplated to be undertaken within the areas covered by the  
17 agreement are environmentally beneficial. In the event the  
18 board votes to enter into a safe harbor agreement for which the  
19 majority of the endangered species recovery committee  
20 recommended disapproval, the board may not enter into the safe  
21 harbor agreement unless the agreement is approved by a two-  
22 thirds majority vote of both houses of the legislature. The





1 board shall notify the public of the proposed safe harbor  
2 agreement through the periodic bulletin of the office of  
3 environmental quality control and make the proposed agreement  
4 available for public review and comment not less than sixty days  
5 prior to approval. A programmatic safe harbor agreement may  
6 also provide for issuance of certificates of inclusion after  
7 review and approval by the endangered species recovery committee  
8 to extend the coverage of the incidental take license to  
9 landowners enrolling in the programmatic agreement at a later  
10 date."

11 2. By amending subsection (c) to read:

12 "(c) Notwithstanding any other law to the contrary, the  
13 board shall suspend or rescind any safe harbor agreement or  
14 individual landowner's portion thereof approved under this  
15 section if the board determines that:

16 (1) Any parties to the safe harbor agreement, or their  
17 successors, have breached their obligations under the  
18 safe harbor agreement or under any other agreement  
19 implementing the safe harbor agreement and have failed  
20 to cure the breach in a timely manner, and the effect  
21 of the breach is to diminish the likelihood that the



1 agreement will achieve its goals within the time  
2 frames or in the manner set forth in the agreement;  
3 (2) To the extent that funding is or will be required, the  
4 funding source specified in subsection (b) no longer  
5 exists and is not replaced by another sufficient  
6 funding source to ensure that the measures or actions  
7 specified in subsection (b) are undertaken in  
8 accordance with this section; or  
9 (3) Continuation of the permitted activity would  
10 appreciably reduce the likelihood of survival or  
11 recovery of any threatened or endangered species in  
12 the wild."

13 SECTION 6. This Act does not affect rights and duties that  
14 matured, penalties that were incurred, and proceedings that were  
15 begun, before its effective date.

16 SECTION 7. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 8. This Act shall take effect on June 20, 2020.



**Report Title:**

Endangered Species

**Description:**

Authorizes the development and use of programmatic safe harbor agreements and programmatic habitat conservation plans that cover multiple landowners or a class of landowners or extend over a wide area or region. (HB1144 HD1)

