

JAN 17 2014

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# A BILL FOR AN ACT

RELATING TO CONSERVATION.

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

1           SECTION 1. The legislature finds that the beaches and  
2 shorelines of Hawaii are among the State's most valuable natural  
3 assets. However, coastal erosion and beach loss have reached a  
4 level of high concern. Given the current trends of rising  
5 global sea levels and increased coastal development, coastal  
6 erosion is expected to continue to be an environmental,  
7 societal, cultural, and economic concern for the foreseeable  
8 future.

9           The legislature further finds that all beaches of the State  
10 require proper long-term, comprehensive management that will:

- 11           (1) Help to protect development from coastal hazards;  
12           (2) Conserve and protect the beaches;  
13           (3) Preserve recreational uses of coastal resources; and  
14           (4) Minimize future impacts to the coastal ecosystem.

15           With long-term sea-level rise and without necessary coastal  
16 management planning, these issues will become more critical.

17           The legislature also finds that accreted beach land, in the  
18 form of coastal dunes and dry beach area, is an integral part of



1 the State's beach system. Accreted land holds the fragile  
2 carbonate sands, which the active beach relies upon during  
3 periods of episodic erosion. These same lands will once again  
4 transition back into active beach area as the shoreline migrates  
5 and the sea-level rises.

6 The legislature finds that, as sand accumulates, plants  
7 adapted to the beach environment emerge, stabilizing the surface  
8 and promoting further dune formation. Coastal dunes act as  
9 flexible barriers to ocean storm surges and waves, protect low-  
10 lying backshore areas, and serve as sand reservoirs for beach  
11 nourishment. However, coastal dunes are highly sensitive to  
12 human activities and require limited interaction with humans to  
13 ensure their preservation.

14 The purpose of this Act is to require the department of  
15 land and natural resources to administer a permit program for  
16 grading and grubbing within shoreline areas of the State.

17 SECTION 2. Chapter 171, Hawaii Revised Statutes, is  
18 amended by adding a new section to be appropriately designated  
19 and to read as follows:

20 "§171- Grading and grubbing permit within shoreline  
21 area; bond; penalty. (a) The department shall administer a  
22 permit program for grading and grubbing within a shoreline area.



- 1        (b) No person shall commence or perform, within a  
2 shoreline area, any:
- 3        (1) Grading or stockpiling without a grading permit;  
4        (2) Grubbing without a grubbing permit, except where  
5        grubbing concerns land for which a grading permit has  
6        been issued; or
- 7        (3) Excavating or filling.
- 8        (c) An applicant for a grading or grubbing permit pursuant  
9 to this section shall submit the following to the department:
- 10       (1) If a coastal dune is located on the property, a  
11 written evaluation and a map determining the limits of  
12 the coastal dune prepared by a coastal scientist or an  
13 engineer with experience in coastal processes;  
14 provided that the determination of the limits of the  
15 coastal dune shall be subject to approval by the  
16 department;
- 17       (2) If a special management area permit is required by the  
18 county in which the property is located, a copy of the  
19 permit; and
- 20       (3) A plot plan clearly showing the limits of the  
21 shoreline setback area and the limits of the coastal  
22 dune; provided that the plot plan shall state that



1           grading of the coastal dune is prohibited pursuant to  
2           this section.

3           (d) A grading permit shall not be issued for any  
4           stockpiling involving quantities more than five hundred cubic  
5           yards or for work being done in increments of five hundred cubic  
6           yards or less that is part of a larger development unless the  
7           applicant first files a bond for the benefit of the State;  
8           provided that a bond shall not be required under this subsection  
9           if the proposed grading is to be performed under an approved  
10           subdivision plan and a subdivision bond has been filed. The  
11           applicant may file a bond guaranteed by a surety company duly  
12           authorized to transact business within the State or may deposit  
13           cash in lieu of a bond guaranteed by a surety company; provided  
14           that the State shall not pay interest on cash deposits.

15           (e) All grading, grubbing, and stockpiling activities  
16           within a shoreline area shall adhere to best management  
17           practices to the maximum extent practicable to prevent damage by  
18           sedimentation to streams, watercourses, natural areas, and the  
19           property of others. It shall be the permittee's and the  
20           property owner's responsibility to ensure that the best  
21           management practices are satisfactorily implemented.



1        (f) Grading of a coastal dune or frontal dune within a  
2 shoreline area shall be prohibited, except that:

3        (1) Sand may be imported and placed on the area of a  
4 coastal dune mauka of the shoreline, with a grading  
5 permit issued pursuant to this section, for the  
6 purpose of rebuilding or enhancing the protective  
7 capacity and environmental quality of the coastal  
8 dune; and

9        (2) Upon prior approval by the department, sand that is  
10 blocking a drainage outlet may be removed to the  
11 minimum depth necessary to allow for the passage of  
12 flood waters; provided that any sand removed shall be  
13 placed on the adjacent shoreline.

14        (g) Violation of any provision of this section shall be  
15 punishable by a fine not exceeding \$1,000 or by imprisonment not  
16 exceeding one year, or both. Each day of each violation shall  
17 constitute a separate offense.

18        (h) Any county may adopt rules or ordinances that place  
19 stricter limitations on grading or grubbing within a shoreline  
20 area than restrictions provided in this section.

21        (i) The board shall adopt rules pursuant to chapter 91 to  
22 implement this section.



1           (j) For the purposes of this section:  
2           "Best management practices" means activities, practices,  
3 facilities, and procedures that, when implemented pursuant to  
4 rules adopted by the board, to the maximum extent practicable,  
5 shall prevent pollutants, including sediment and other  
6 contaminants, in discharges from a construction site. Best  
7 management practices include treatment requirements, operating  
8 procedures, and practices to control site runoff, spillage or  
9 leaks, waste disposal, or drainage from raw storage. Best  
10 management practices may include a schedule of activities, the  
11 prohibition of practices, maintenance procedures, and other  
12 management practices to prevent or reduce the pollution of  
13 waters of the State.

14           "Coastal dune" means one of several continuous or nearly  
15 continuous mounds or ridges of unconsolidated sand contiguous  
16 and parallel to the beach, situated so that it may be accessible  
17 to storm waves and seasonal waves for release to the beach or  
18 offshore waters.

19           "Excavating" means any act by which soil, sand, gravel,  
20 rock, or any similar material is cut into, dug, uncovered,  
21 removed, displayed, relocated, or bulldozed.



1       "Filling" means any act by which soil, sand, gravel, rock,  
2 or any other material is deposited, placed, pushed, dumped,  
3 transported, or moved to a new location.

4       "Frontal dune" means the first dune encountered mauka of  
5 the beach.

6       "Grubbing" means any act by which vegetation, including  
7 trees, timber, shrubbery, and plants, is uprooted and removed  
8 from the surface of the ground.

9       "Shoreline area" shall have the same meaning as defined in  
10 section 205A-41.

11       "Stockpiling" means the open storage of earth materials  
12 upon any premises exposed to wind or water and not inside a  
13 building."

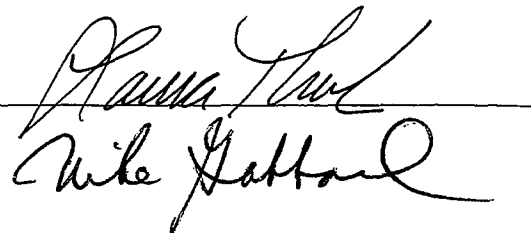
14       SECTION 3. This Act does not affect rights and duties that  
15 matured, penalties that were incurred, and proceedings that were  
16 begun before its effective date.

17       SECTION 4. New statutory material is underscored.

18       SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY:





# S.B. NO. 2272

**Report Title:**

DLNR; Shoreline; Conservation; Permit; Grading; Grubbing;  
Penalties

**Description:**

Requires the DLNR to administer a permit program for grading and grubbing within shoreline areas of the State. Establishes penalties.

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