

JAN 22 2016

S.B. NO. 2353

A BILL FOR AN ACT

RELATING TO COASTAL ZONE MANAGEMENT.

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

1 SECTION 1. The legislature finds that currently shoreline
2 erosion rate data is available to the counties of Oahu, Maui,
3 and Kauai but is not presently available in the county of
4 Hawaii.

5 The purpose of this Act is to exempt a county from
6 establishing a shoreline setback line based on a long-term
7 annual shoreline erosion rate until the time when erosion rate
8 data is available.

9 SECTION 2. Section 205A-2, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "§205A-2 Coastal zone management program; objectives and
12 policies. (a) The objectives and policies in this section
13 shall apply to all parts of this chapter.

14 (b) Objectives.

15 (1) Recreational resources;

16 (A) Provide coastal recreational opportunities
17 accessible to the public.



- 1 (2) Historic resources;
- 2 (A) Protect, preserve, and, where desirable, restore
- 3 those natural and manmade historic and
- 4 prehistoric resources in the coastal zone
- 5 management area that are significant in Hawaiian
- 6 and American history and culture.
- 7 (3) Scenic and open space resources;
- 8 (A) Protect, preserve, and, where desirable, restore
- 9 or improve the quality of coastal scenic and open
- 10 space resources.
- 11 (4) Coastal ecosystems;
- 12 (A) Protect valuable coastal ecosystems, including
- 13 reefs, from disruption and minimize adverse
- 14 impacts on all coastal ecosystems.
- 15 (5) Economic uses;
- 16 (A) Provide public or private facilities and
- 17 improvements important to the State's economy in
- 18 suitable locations.
- 19 (6) Coastal hazards;
- 20 (A) Reduce hazard to life and property from tsunami,
- 21 storm waves, stream flooding, erosion,



1 subsidence, impacts related to projected sea
2 level rise and climate change, and pollution.

3 (7) Managing development;

4 (A) Improve the development review process,
5 communication, and public participation in the
6 management of coastal resources and planning for
7 coastal hazards.

8 (8) Public participation;

9 (A) Stimulate public awareness, education, and
10 participation in coastal management.

11 (9) Beach protection;

12 (A) Protect beaches and coastal dunes for public use,
13 ~~[and]~~ recreation~~[-]~~, environmental services, and
14 as natural barriers to coastal hazards.

15 (10) Marine resources;

16 (A) Promote the protection, use, and development of
17 marine and coastal resources to assure their
18 sustainability.

19 (c) Policies.

20 (1) Recreational resources;



- 1 (A) Improve coordination and funding of coastal
- 2 recreational planning and management; and
- 3 (B) Provide adequate, accessible, and diverse
- 4 recreational opportunities in the coastal zone
- 5 management area by:
 - 6 (i) Protecting coastal resources uniquely suited
 - 7 for recreational activities that cannot be
 - 8 provided in other areas;
 - 9 (ii) Requiring [~~replacement~~] restoration of
 - 10 coastal resources having significant
 - 11 recreational value including, but not
 - 12 limited to coral reefs, surfing sites,
 - 13 fishponds, and sand beaches, when such
 - 14 resources will be unavoidably damaged by
 - 15 development; or requiring reasonable
 - 16 monetary compensation to the State for
 - 17 recreation when [~~replacement~~] restoration is
 - 18 not feasible or desirable;
 - 19 (iii) Providing and managing adequate public
 - 20 access, consistent with conservation of



- 1 natural resources, to and along shorelines
- 2 with recreational value;
- 3 (iv) Providing an adequate supply of shoreline
- 4 parks and other recreational facilities
- 5 suitable for public recreation;
- 6 (v) Ensuring public recreational uses of county,
- 7 state, and federally owned or controlled
- 8 shoreline lands and waters having
- 9 recreational value consistent with public
- 10 safety standards and conservation of natural
- 11 resources;
- 12 (vi) Adopting water quality standards and
- 13 regulating point and nonpoint sources of
- 14 pollution to protect, and where feasible,
- 15 restore the recreational value of coastal
- 16 waters;
- 17 (vii) Developing new shoreline recreational
- 18 opportunities, where appropriate, such as
- 19 artificial lagoons, artificial beaches, and
- 20 artificial reefs for surfing and fishing;
- 21 and



- 1 (viii) Encouraging reasonable dedication of
- 2 shoreline areas with recreational value for
- 3 public use as part of discretionary
- 4 approvals or permits by the land use
- 5 commission, board of land and natural
- 6 resources, and county authorities; and
- 7 crediting such dedication against the
- 8 requirements of section 46-6;

- 9 (2) Historic resources;

- 10 (A) Identify and analyze significant archaeological
- 11 resources;

- 12 (B) Maximize information retention through
- 13 preservation of remains and artifacts or salvage
- 14 operations; and

- 15 (C) Support state goals for protection, restoration,
- 16 interpretation, and display of historic
- 17 resources;

- 18 (3) Scenic and open space resources;

- 19 (A) Identify valued scenic resources in the coastal
- 20 zone management area;



- 1 (B) Ensure that new developments are compatible with
- 2 their visual environment by designing and
- 3 locating such developments to minimize the
- 4 alteration of natural landforms and existing
- 5 public views to and along the shoreline;
- 6 (C) Preserve, maintain, and, where desirable, improve
- 7 and restore shoreline open space and scenic
- 8 resources; and
- 9 (D) Encourage those developments that are not coastal
- 10 dependent to locate in inland areas;
- 11 (4) Coastal ecosystems;
- 12 (A) Exercise an overall conservation ethic, and
- 13 practice stewardship in the protection, use, and
- 14 development of marine and coastal resources;
- 15 (B) Improve the technical basis for natural resource
- 16 management;
- 17 (C) Preserve valuable coastal ecosystems, including
- 18 reefs, of significant biological or economic
- 19 importance;
- 20 (D) Minimize disruption or degradation of coastal
- 21 water ecosystems by effective regulation of



1 stream diversions, channelization, and similar
2 land and water uses, recognizing competing water
3 needs; and
4 (E) Promote water quantity and quality planning and
5 management practices that reflect the tolerance
6 of fresh water and marine ecosystems and maintain
7 and enhance water quality through the development
8 and implementation of point and nonpoint source
9 water pollution control measures;
10 (5) Economic uses;
11 (A) Concentrate coastal dependent development in
12 appropriate areas;
13 (B) Ensure that coastal dependent development such as
14 harbors and ports, and coastal related
15 development such as transportation
16 infrastructure, residential and commercial
17 development, visitor industry facilities and
18 energy generating facilities, are [located,]
19 planned, designed, and constructed to minimize
20 exposure to coastal hazards, including impacts
21 related to projected sea level rise, and minimize



- 1 adverse social, visual, and environmental impacts
2 in the coastal zone management area; and
- 3 (C) Direct the location and expansion of coastal
4 [~~dependent developments~~] development to areas
5 presently designated and used for such
6 developments and permit reasonable long-term
7 growth at such areas, and permit coastal
8 [~~dependent~~] development outside of presently
9 designated areas when:
- 10 (i) Use of presently designated locations is not
11 feasible;
- 12 (ii) Adverse environmental effects are minimized;
13 and
- 14 (iii) The development is important to the State's
15 economy;
- 16 (6) Coastal hazards;
- 17 (A) Develop and communicate adequate information
18 about [~~storm wave,~~] tsunami, [~~flood,~~] hurricanes,
19 wind, storm waves, flooding, erosion, impacts
20 related to projected sea level rise, subsidence,
21 and point and nonpoint source pollution hazards;



- 1 (B) [~~Control~~] Minimize development in areas subject
- 2 to [~~storm wave,~~] tsunami, [~~flood,~~] hurricanes,
- 3 wind, storm waves, flooding, erosion, impacts
- 4 related to projected sea level rise, subsidence,
- 5 and point and nonpoint source pollution hazards;
- 6 (C) Ensure that developments comply with requirements
- 7 of the [~~Federal~~] National Flood Insurance
- 8 Program; [~~and~~]
- 9 (D) Prevent coastal flooding from inland projects;
- 10 and
- 11 (E) Avoid grading of and damage to coastal dunes;
- 12 (7) Managing development;
- 13 (A) Use, implement, and enforce existing law
- 14 effectively to the maximum extent possible in
- 15 managing present and future coastal zone
- 16 development;
- 17 (B) Facilitate timely processing of applications for
- 18 development permits and resolve overlapping or
- 19 conflicting permit requirements; and
- 20 (C) Communicate the potential short and long-term
- 21 impacts of proposed significant coastal



- 1 developments early in their life cycle and in
2 terms understandable to the public to facilitate
3 public participation in the planning and review
4 process;
- 5 (8) Public participation;
- 6 (A) Promote public involvement in coastal zone
7 management processes;
- 8 (B) Disseminate information on coastal management
9 issues by means of educational materials,
10 published reports, staff contact, and public
11 workshops for persons and organizations concerned
12 with coastal issues, developments, and government
13 activities; and
- 14 (C) Organize workshops, policy dialogues, and site-
15 specific mediations to respond to coastal issues
16 and conflicts;
- 17 (9) Beach protection;
- 18 (A) Locate new structures inland from the shoreline
19 [setback] area to conserve open space, minimize
20 interference with natural shoreline processes,
21 and minimize loss of improvements due to erosion;



- 1 (B) Prohibit construction of private erosion-
2 protection structures seaward of the shoreline,
3 except when they result in improved aesthetic and
4 engineering solutions to erosion at the sites and
5 do not interfere with existing recreational and
6 waterline activities;
- 7 (C) Minimize the construction of public erosion-
8 protection structures seaward of the shoreline;
- 9 (D) Prohibit private property owners from creating a
10 public nuisance by inducing or cultivating the
11 private property owner's vegetation in a beach
12 transit corridor; and
- 13 (E) Prohibit private property owners from creating a
14 public nuisance by allowing the private property
15 owner's unmaintained vegetation to interfere or
16 encroach upon a beach transit corridor;
- 17 (10) Marine resources;
- 18 (A) Ensure that the use and development of marine and
19 coastal resources are ecologically and
20 environmentally sound and economically
21 beneficial;



- 1 (B) Coordinate the management of marine and coastal
2 resources and activities to improve effectiveness
3 and efficiency;
- 4 (C) Assert and articulate the interests of the State
5 as a partner with federal agencies in the sound
6 management of ocean resources within the United
7 States exclusive economic zone;
- 8 (D) Promote research, study, and understanding of
9 ocean processes, marine life, and other ocean
10 resources to acquire and inventory information
11 necessary to understand how ocean development
12 activities relate to and impact ~~upon~~ ocean and
13 coastal resources; and
- 14 (E) Encourage research and development of new,
15 innovative technologies for exploring, using, or
16 protecting marine and coastal resources."

17 SECTION 3. Section 205A-22, Hawaii Revised Statutes, is
18 amended by amending the definitions of "department",
19 "development", "special management area emergency permit", and
20 "structure" to read as follows:



1 "Department" means the planning department in the counties
2 of Kauai, Maui, and Hawaii, and the department of [~~land~~
3 ~~utilization~~] planning and permitting in the city and county of
4 Honolulu, or other appropriate agency as designated by the
5 county councils.

6 "Development" means any of the uses, activities, or
7 operations on land or in or under water within a special
8 management area that are included below:

- 9 (1) Placement or erection of any solid material or any
10 gaseous, liquid, solid, or thermal waste;
- 11 (2) Grading, removing, dredging, mining, or extraction of
12 any materials;
- 13 (3) Change in the density or intensity of use of land,
14 including but not limited to the division or
15 subdivision of land;
- 16 (4) Change in the intensity of use of water, ecology
17 related thereto, or of access thereto; and
- 18 (5) Construction, reconstruction, [~~demolition,~~] or
19 alteration of the size of any structure.

20 "Development" does not include the following:



- 1 (1) Construction or reconstruction of a single-family
2 residence that is less than seven thousand five
3 hundred square feet of floor area and is not part of a
4 larger development;
- 5 (2) Repair or maintenance of roads and highways within
6 existing rights-of-way;
- 7 (3) Routine maintenance dredging of existing streams,
8 channels, and drainage ways;
- 9 (4) Repair and maintenance of underground utility lines,
10 including but not limited to water, sewer, power, and
11 telephone and minor appurtenant structures such as pad
12 mounted transformers and sewer pump stations;
- 13 (5) Zoning variances, except for height, density, parking,
14 and shoreline setback;
- 15 (6) Repair, maintenance, or interior alterations to
16 existing structures;
- 17 (7) Demolition or removal of structures, except those
18 structures located on any historic site as designated
19 in national or state registers;
- 20 (8) Use of any land for the purpose of cultivating,
21 planting, growing, and harvesting plants, crops,



- 1 trees, and other agricultural, horticultural, or
2 forestry products or animal husbandry, or aquaculture
3 or mariculture of plants or animals, or other
4 agricultural purposes;
- 5 (9) Transfer of title to land;
- 6 (10) Creation or termination of easements, covenants, or
7 other rights in structures or land;
- 8 (11) Final subdivision approval; provided that in counties
9 that may automatically approve tentative subdivision
10 applications as a ministerial act within a fixed time
11 of the submission of a preliminary plat map, unless
12 the director takes specific action, a special
13 management area use permit if required, shall be
14 processed concurrently with an application for
15 tentative subdivision approval or after tentative
16 subdivision approval and before final subdivision
17 approval;
- 18 (12) Subdivision of land into lots greater than twenty
19 acres in size;
- 20 (13) Subdivision of a parcel of land into four or fewer
21 parcels when no associated construction activities are



1 proposed; provided that any land that is so subdivided
2 shall not thereafter qualify for this exception with
3 respect to any subsequent subdivision of any of the
4 resulting parcels; provided further that any future
5 development on any of the resulting parcels would not
6 be located in areas significantly affected by
7 projected sea level rise over the typical lifespan of
8 the structure or facility, or fifty years, whichever
9 is later;

10 (14) Installation of underground utility lines and
11 appurtenant aboveground fixtures less than four feet
12 in height along existing corridors;

13 (15) Structural and nonstructural improvements to existing
14 single-family residences, where otherwise permissible;

15 (16) Nonstructural improvements to existing commercial
16 structures; and

17 (17) Construction, installation, maintenance, repair, and
18 replacement of emergency management warning or signal
19 devices and sirens;

20 provided that whenever the authority finds that any excluded
21 use, activity, or operation may have a cumulative impact, or a



1 significant environmental or ecological effect on a special
2 management area, that use, activity, or operation shall be
3 defined as "development" for the purpose of this part.

4 "Special management area emergency permit" means an action
5 by the authority authorizing development in cases of emergency
6 requiring immediate action to prevent substantial physical harm
7 to persons or property or to allow the reconstruction of
8 structures damaged by natural hazards to their original form;
9 provided that such structures were previously found to be legal
10 and in compliance with requirements of the [~~Federal~~] National
11 Flood Insurance Program.

12 "Structure" includes but is not limited to any building,
13 road, pipe, flume, conduit, siphon, aqueduct, telephone line,
14 [~~and~~] electrical power transmission and distribution line[-],
15 wall, revetment, and groin."

16 SECTION 4. Section 205A-26, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "§205A-26 Special management area guidelines. In
19 implementing this part, the authority shall adopt the following
20 guidelines for the review of developments proposed in the
21 special management area:



- 1 (1) All development in the special management area shall
- 2 be subject to reasonable terms and conditions set by
- 3 the authority in order to ensure:
- 4 (A) Adequate public access, by dedication or other
- 5 means, to publicly owned or used beaches,
- 6 recreation areas, and natural reserves is
- 7 provided to the extent consistent with sound
- 8 conservation principles;
- 9 (B) Adequate and properly located public recreation
- 10 areas and wildlife preserves are reserved;
- 11 (C) Provisions are made for solid and liquid waste
- 12 treatment, disposition, and management which will
- 13 minimize adverse effects upon special management
- 14 area resources; and
- 15 (D) Alterations to existing land forms and
- 16 vegetation, except crops, and construction of
- 17 structures shall cause minimum adverse effect to
- 18 water resources and scenic and recreational
- 19 amenities and minimum danger of floods, wind
- 20 damage, wave damage, storm surge, landslides,

1 erosion, siltation, or failure in the event of
2 earthquake.

3 (2) No development shall be approved unless the authority
4 has first found:

5 (A) That the development will not have any
6 ~~[substantial]~~ significant adverse environmental
7 or ecological effect, except as such adverse
8 effect is minimized to the extent practicable and
9 clearly outweighed by public health, safety, or
10 compelling public interests. Such adverse
11 effects shall include, but not be limited to, the
12 potential cumulative impact of individual
13 developments, each one of which taken in itself
14 might not have a substantial adverse effect, and
15 the elimination of planning options;

16 (B) That the development is consistent with the
17 objectives, policies, and special management area
18 guidelines of this chapter and any guidelines
19 enacted by the legislature; ~~[and]~~

20 (C) That the development is consistent with the
21 county general plan and zoning. Such a finding



- 1 of consistency does not preclude concurrent
2 processing where a general plan or zoning
3 amendment may also be required[-]; and
- 4 (D) That the development is not located in areas
5 significantly affected by projected sea level
6 rise over the typical lifespan of the structure
7 or facility, or fifty years, whichever is later.
- 8 (3) The authority shall seek to minimize, where
9 reasonable:
- 10 (A) Dredging, filling, or otherwise altering any bay,
11 estuary, salt marsh, river mouth, slough or
12 lagoon;
- 13 (B) Any development which would reduce the size of
14 any beach or other area usable for public
15 recreation;
- 16 (C) Any development which would reduce or impose
17 restrictions upon public access to tidal and
18 submerged lands, beaches, portions of rivers and
19 streams within the special management areas and
20 the mean high tide line where there is no beach;



1 (D) Any development which would substantially
2 interfere with or detract from the line of sight
3 toward the sea from the state highway nearest the
4 coast; and

5 (E) Any development which would adversely affect
6 water quality, existing areas of open water free
7 of visible structures, existing and potential
8 fisheries and fishing grounds, wildlife habitats,
9 or potential or existing agricultural uses of
10 land."

11 SECTION 5. Section 205A-41, Hawaii Revised Statutes, is
12 amended by adding a new definition to be appropriately inserted
13 and to read as follows:

14 "Department" means the planning department in the counties
15 of Kauai, Maui, and Hawaii, and the department of planning and
16 permitting in the city and county of Honolulu, or other
17 appropriate agency as designated by the county councils."

18 SECTION 6. Section 205A-43, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§205A-43 Establishment of shoreline setbacks and duties
21 and powers of the department. (a) [~~Setbacks along shorelines~~



1 ~~are established of not less than twenty feet and not more than~~
2 ~~forty feet inland from the shoreline.]~~ No later than January 1,
3 2019, in each county where shoreline erosion rate data is
4 available, the shoreline setback line shall be established using
5 a method, including but not limited to a long-term annual
6 shoreline erosion rate and shall be at least sixty feet from the
7 shoreline for a new development. The department shall adopt
8 rules pursuant to chapter 91[7] prescribing procedures for
9 determining the shoreline setback line and shall enforce the
10 shoreline setbacks and rules pertaining thereto. For purposes
11 of this subsection, "long-term" means not less than fifty years.

12 (b) The powers and duties of the department shall
13 include[7] but not be limited to[+]

14 ~~(1) The department shall adopt rules under chapter 91~~
15 ~~prescribing procedures for determining the shoreline~~
16 ~~setback line; and~~

17 ~~(2) The department shall review]~~ reviewing the plans of
18 all applicants who propose any structure, activity, or
19 facility that would be prohibited without a variance
20 pursuant to this part. The department may require
21 that the plans be supplemented by accurately mapped



1 data and photographs showing natural conditions and
2 topography relating to all existing and proposed
3 structures and activities.

4 (c) Any exemption or waiver to the shoreline setback line
5 by a county or the State shall include a covenant prohibiting
6 future armoring of the shoreline or other improvements that
7 interfere with the natural coastal process."

8 SECTION 7. Section 205A-46, Hawaii Revised Statutes, is
9 amended by amending subsection (c) to read as follows:

10 "(c) No variance shall be granted unless appropriate
11 conditions are imposed:

- 12 (1) To maintain safe lateral access to and along the
13 shoreline or adequately compensate for its loss;
- 14 (2) To minimize risk of adverse impacts on beach
15 processes;
- 16 (3) To minimize risk of structures failing and becoming
17 loose rocks or rubble on public property; [~~and~~]
- 18 (4) To minimize adverse impacts on public views to, from,
19 and along the shoreline[-]; and
- 20 (5) To minimize adverse environmental or ecological
21 impacts to coastal ecosystems and marine resources."



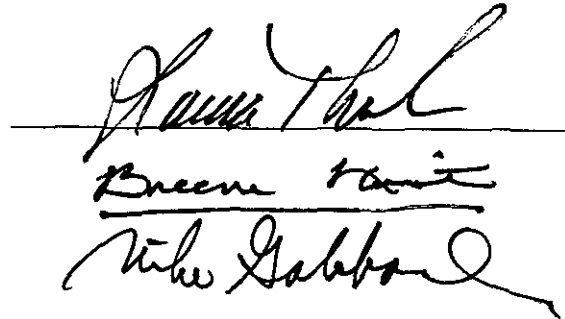
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1 SECTION 8. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 9. This Act shall take effect on July 1, 2016.

4

INTRODUCED BY:





S.B. NO. 2353

Report Title:

Coastal Zone Management; Projected Sea Level Rise Impacts

Description:

Requires new developments to plan for the impacts of projected sea level rise and prohibits development in areas significantly affected by projected sea level rise. Transitions to long-term annual shoreline erosion based setback by 1/1/2019 for counties with erosion rate data and requires the setback to be sixty feet from the shoreline for a new development.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

