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# A BILL FOR AN ACT

RELATING TO COASTAL ZONE MANAGEMENT.

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

1 PART I

2 SECTION 1. The legislature finds that beaches in the State  
3 are critically important to the local economy, ecosystems, and  
4 way of life. The coastal zone management program, established  
5 pursuant to Act 188, Session Laws of Hawaii 1977, declared that  
6 it is state policy to:

- 7 (1) Protect, preserve, and where desirable, restore or  
8 improve the quality of coastal scenic and open space  
9 resources;
- 10 (2) Protect valuable coastal ecosystems from disruption  
11 and minimize adverse impacts on all coastal  
12 ecosystems;
- 13 (3) Reduce hazards to life and property from tsunami,  
14 storm waves, stream flooding, erosion, and subsidence;  
15 and



1 (4) Improve the development review process, communication,  
2 and public participation in the management of coastal  
3 resources and hazards.

4 The legislature finds that sea level rise and shoreline  
5 erosion have accelerated in recent decades, threatening private  
6 property, public infrastructure, cultural practices, and public  
7 trust resources including beaches and wetlands. As coastlines  
8 erode and the mean high water line moves mauka, formerly dry  
9 lands, if unimpeded, will naturally pass into the public trust.  
10 Article XI, section 1 of the state constitution clearly states  
11 that "[a]ll public natural resources are held in trust by the  
12 State for the benefit of the people"; this includes marine  
13 resources.

14 Facing loss of their property, however, owners of land that  
15 abuts the shoreline have responded to coastal erosion by  
16 erecting shoreline hardening structures, including seawalls and  
17 revetments, which accelerate coastal erosion in adjacent areas,  
18 restrict the natural landward movement of the shoreline, stem  
19 the natural increase of public trust land, impede the State's  
20 ability to protect the coastal zone, and deprive the people of  
21 Hawaii of the benefits of increased public trust lands.



1           The legislature finds that the Hawaii Sea Level Rise  
2 Vulnerability and Adaptation Report predicts that 3.2 feet of  
3 sea level rise will compromise or destroy six thousand five  
4 hundred structures across the State, leaving twenty thousand  
5 displaced residents in need of a new home. The legislature also  
6 finds that the State must acquire private, shoreline-adjacent  
7 lands to ensure that space exists for the survival of the  
8 beaches and dune systems in the State. Further, the acquisition  
9 of shoreline-adjacent land will enable the State to allow  
10 continued public access to Hawaii's beaches, a right protected  
11 under the state constitution. Acquiring shoreline-adjacent  
12 property will also create a buffer between the shoreline and  
13 developed areas, protecting the State from any potential future  
14 natural disasters. Doing this before permanent inundation or  
15 chronic flooding will be easier and cheaper for the State.

16           The purpose of this Act is to ensure the preservation of  
17 Hawaii's beaches for future generations by:

- 18           (1) Establishing the Hawaii beach preservation revolving  
19               fund within the state treasury;
- 20           (2) Creating a low-interest contingent mortgage financing  
21               pilot program to encourage certain shoreline property



- 1 owners to relocate mauka of expected sea level rise
- 2 and erosion hazard zones;
- 3 (3) Appropriating funds for the Hawaii beach preservation
- 4 revolving fund, to be used for the contingent mortgage
- 5 financing pilot program;
- 6 (4) Increasing the conveyance tax rate for oceanfront
- 7 properties with a value of \$10,000,000 or higher and
- 8 for which the purchaser is ineligible for a county
- 9 homeowner's exemption on property tax and further
- 10 allocating one hundred per cent of taxes collected on
- 11 those properties for deposit into the Hawaii beach
- 12 preservation revolving fund; and
- 13 (5) Prohibiting, without exception, the construction or
- 14 repair of any shoreline hardening structures,
- 15 including seawalls and revetments, that would impede
- 16 the natural landward movement of public trust lands.

PART II

18 SECTION 2. Chapter 171, Hawaii Revised Statutes, is  
 19 amended by adding two new sections to part VIII to be  
 20 appropriately designated and to read as follows:



1        "§171-A Hawaii beach preservation revolving fund;  
 2 established; uses. (a) There is established within the state  
 3 treasury the Hawaii beach preservation revolving fund, to be  
 4 administered by the department, into which shall be deposited:

- 5        (1) Legislative appropriations to the fund;
- 6        (2) Moneys received as repayment of loan and interest  
 7        payments;
- 8        (3) Fees collected by the department pursuant to this  
 9        section or section 171-B;
- 10       (4) Gifts, donations, and grants from any public or  
 11       private entities;
- 12       (5) All interest earned or accrued on moneys deposited  
 13       into the fund; and
- 14       (6) Moneys paid to or allotted to the fund from other  
 15       sources.

16       (b) Moneys from the fund shall be expended by the  
 17 department to provide a low-interest mortgage loan to any owner  
 18 of a qualifying private residential shoreline property in an  
 19 expected sea level rise hazard zone or erosion hazard zone who:

- 20       (1) Relinquishes the shoreline property to the State; and



1       (2) Uses the mortgage loan offered pursuant to section  
2           171-B to acquire or build a residential property mauka  
3           of expected sea level rise and erosion hazard zones;  
4 provided that any mortgage loan offered shall be equal to the  
5 property's current value as appraised in accordance with rules  
6 adopted by the department pursuant to chapter 91.

7       §171-B Contingent mortgage financing pilot program;  
8 established. (a) There is established the contingent mortgage  
9 financing pilot program, to be administered by the department,  
10 to provide a low-interest mortgage loan to any owner of a  
11 qualifying private residential shoreline property in an expected  
12 sea level rise hazard zone or erosion hazard zone who:

13       (1) Relinquishes the shoreline property to the State; and

14       (2) Uses the mortgage loan offered to acquire or build a  
15           residential property mauka of expected sea level rise  
16           and erosion hazard zones.

17       (b) Mortgage loans offered pursuant to this section shall  
18 be offered:

19       (1) To any owner of a private single-family residence;  
20           provided that the private single-family residence is a  
21           qualifying private residential shoreline property in



1           an expected sea level rise hazard zone or erosion  
 2           hazard zone in accordance with rules adopted by the  
 3           department pursuant to chapter 91; provided further  
 4           that the contingent mortgage financing pilot program  
 5           shall be available for up to one hundred qualified  
 6           single-family residences; and

7           (2) To any owner of a private condominium property regime  
 8           established pursuant to chapter 514B; provided that  
 9           the private condominium property regime is a  
 10           qualifying private residential shoreline property in  
 11           an expected sea level rise hazard zone or erosion  
 12           hazard zone in accordance with rules adopted by the  
 13           department pursuant to chapter 91; provided further  
 14           that the contingent mortgage financing pilot program  
 15           shall be available for up to ten qualified condominium  
 16           property regimes; and

17           (3) Using funds from the Hawaii beach preservation  
 18           revolving fund.

19           (e) The department, or another agency as determined by the  
 20           governor, shall manage all lands and property acquired pursuant  
 21           to this section. Lands acquired pursuant to this section shall



1 remain public in perpetuity or until natural processes transform  
2 the land into public trust lands.

3 (d) The department shall submit an annual report to the  
4 legislature regarding the contingent mortgage financing pilot  
5 program, including the number of mortgage loans issued pursuant  
6 to the program, recommendations, and any proposed legislation,  
7 no later than twenty days prior to the convening of the regular  
8 session of 2021 and each regular session thereafter.

9 (e) The department shall adopt rules pursuant to chapter  
10 91 to effectuate the purposes of this section; provided that the  
11 rules required by this subsection shall be adopted no later than  
12 December 31, 2019."

13 SECTION 3. There is appropriated out of the general  
14 revenues of the State of Hawaii the sum of \$ or so much  
15 thereof as may be necessary for fiscal year 2019-2020 and the  
16 same sum or so much thereof as may be necessary for fiscal year  
17 2020-2021 for the Hawaii beach preservation revolving fund, to  
18 be used for the contingent mortgage financing pilot program.

19 The sums appropriated shall be expended by the department  
20 of land and natural resources for the purposes of this Act.





PART III

SECTION 4. Section 247-2, Hawaii Revised Statutes, is amended to read as follows:

**"§247-2 Basis and rate of tax.** The tax imposed by section 247-1 shall be based on the actual and full consideration (whether cash or otherwise, including any promise, act, forbearance, property interest, value, gain, advantage, benefit, or profit), paid or to be paid for all transfers or conveyance of realty or any interest therein, that shall include any liens or encumbrances thereon at the time of sale, lease, sublease, assignment, transfer, or conveyance, and shall be at the following rates:

(1) Except as provided in paragraph (2):

- (A) Ten cents per \$100 for properties with a value of less than \$600,000;
- (B) Twenty cents per \$100 for properties with a value of at least \$600,000, but less than \$1,000,000;
- (C) Thirty cents per \$100 for properties with a value of at least \$1,000,000, but less than \$2,000,000;
- (D) Fifty cents per \$100 for properties with a value of at least \$2,000,000, but less than \$4,000,000;



- 1 (E) Seventy cents per \$100 for properties with a
- 2 value of at least \$4,000,000, but less than
- 3 \$6,000,000;
- 4 (F) Ninety cents per \$100 for properties with a value
- 5 of at least \$6,000,000, but less than
- 6 \$10,000,000; and
- 7 (G) One dollar per \$100 for properties with a value
- 8 of \$10,000,000 or greater; and
- 9 (2) For the sale of a condominium or single family
- 10 residence for which the purchaser is ineligible for a
- 11 county homeowner's exemption on property tax:
- 12 (A) Fifteen cents per \$100 for properties with a
- 13 value of less than \$600,000;
- 14 (B) Twenty-five cents per \$100 for properties with a
- 15 value of at least \$600,000, but less than
- 16 \$1,000,000;
- 17 (C) Forty cents per \$100 for properties with a value
- 18 of at least \$1,000,000, but less than \$2,000,000;
- 19 (D) Sixty cents per \$100 for properties with a value
- 20 of at least \$2,000,000, but less than \$4,000,000;



- 1 (E) Eighty-five cents per \$100 for properties with a  
2 value of at least \$4,000,000, but less than  
3 \$6,000,000;
- 4 (F) One dollar and ten cents per \$100 for properties  
5 with a value of at least \$6,000,000, but less  
6 than \$10,000,000; and
- 7 (G) One dollar and twenty-five cents per \$100 for  
8 properties with a value of \$10,000,000 or  
9 greater[7]; provided that for oceanfront  
10 properties under this subsection with a value of  
11 \$10,000,000 or more, the rate shall be one dollar  
12 and fifty cents per \$100,
- 13 of such actual and full consideration; provided that in the case  
14 of a lease or sublease, this chapter shall apply only to a lease  
15 or sublease whose full unexpired term is for a period of five  
16 years or more, and in those cases, including (where appropriate)  
17 those cases where the lease has been extended or amended, the  
18 tax in this chapter shall be based on the cash value of the  
19 lease rentals discounted to present day value and capitalized at  
20 the rate of six per cent, plus the actual and full consideration  
21 paid or to be paid for any and all improvements, if any, that



1 shall include on-site as well as off-site improvements,  
2 applicable to the leased premises; and provided further that the  
3 tax imposed for each transaction shall be not less than \$1."

4 SECTION 5. Section 247-7, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "§247-7 **Disposition of taxes.** All taxes collected under  
7 this chapter shall be paid into the state treasury to the credit  
8 of the general fund of the State, to be used and expended for  
9 the purposes for which the general fund was created and exists  
10 by law; provided that of the taxes collected each fiscal year:

11 (1) Ten per cent or \$6,800,000, whichever is less, shall  
12 be paid into the land conservation fund established  
13 pursuant to section 173A-5; [~~and~~]

14 (2) Fifty per cent or \$38,000,000, whichever is less,  
15 shall be paid into the rental housing revolving fund  
16 established by section 201H-202[-]; and

17 (3) One hundred per cent of the taxes collected on the  
18 sale of oceanfront property pursuant to section  
19 247-2(2)(G) shall be paid into the Hawaii beach  
20 preservation revolving fund established by section  
21 171-A."



## PART IV

SECTION 6. Section 205A-43.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Prior to action on a variance application, the authority shall hold a public hearing under chapter 91. By adoption of rules under chapter 91, the authority may delegate responsibility to the department. Public and private notice, including reasonable notice to abutting property owners and persons who have requested this notice, shall be provided, but a public hearing may be waived prior to action on a variance application for:

(1) Stabilization of shoreline erosion by the moving of sand entirely on public lands;

(2) [~~Protection~~] Temporary protection of a legal structure [costing more than \$20,000;] or public facility (excluding shore protection structures), under an emergency authorization issued by the authority; provided that the structure or facility is at risk of immediate damage from shoreline erosion[;], the proposed construction shall not artificially fix the



1 shoreline, and the authorization does not exceed three  
2 years;

3 (3) Other structures or activities; provided that no  
4 person or agency has requested a public hearing within  
5 twenty-five calendar days after public notice of the  
6 application; or

7 (4) Maintenance, repair, reconstruction, and minor  
8 additions or alterations of legal boating, maritime,  
9 or watersports recreational facilities, ~~[which]~~ that  
10 result in little or no interference with natural  
11 shoreline processes."

12 SECTION 7. Section 205A-44, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 **"§205A-44 Prohibitions.** (a) The mining or taking of  
15 sand, dead coral or coral rubble, rocks, soil, or other beach or  
16 marine deposits from the shoreline area is prohibited with the  
17 following exceptions:

18 (1) ~~[The inadvertent taking from the shoreline area of the~~  
19 ~~materials, such as those inadvertently carried away on~~  
20 ~~the body, and on clothes, toys, recreational~~  
21 ~~equipment, and bags;~~



1       ~~(2)~~] Where the mining or taking is authorized by a variance  
2               pursuant to this part;

3       ~~[(3)]~~ (2) The clearing of these materials from existing  
4               drainage pipes and canals and from the mouths of  
5               streams including clearing for the purposes under  
6               section 46-11.5; provided that the sand removed shall  
7               be placed on adjacent areas unless the placement would  
8               result in significant turbidity;

9       ~~[(4)]~~ (3) The cleaning of the shoreline area for state or  
10              county maintenance purposes, including the clearing  
11              for purposes under section 46-12; provided that the  
12              sand removed shall be placed on adjacent areas unless  
13              the placement would result in significant turbidity;

14       ~~[(5)]~~ (4) The taking of driftwood, shells, beach glass,  
15              glass floats, or seaweed;

16       ~~[(6)]~~ (5) The exercise of traditional cultural practices as  
17              authorized by law or as permitted by the department  
18              pursuant to article XII, section 7, of the Hawaii  
19              State Constitution; or

20       ~~[(7)]~~ (6) For the response to a public emergency or a state  
21              or local disaster.



- 1 (b) Except as provided in this section, structures are  
2 prohibited in the shoreline area without a variance pursuant to  
3 this part. Structures in the shoreline area shall not need a  
4 variance if:
- 5 (1) They were completed prior to June 22, 1970;
- 6 (2) They received either a building permit, board  
7 approval, or shoreline setback variance prior to  
8 June 16, 1989;
- 9 (3) They are outside the shoreline area when they receive  
10 either a building permit or board approval;
- 11 (4) They are necessary for or ancillary to continuation of  
12 existing agriculture or aquaculture in the shoreline  
13 area on June 16, 1989;
- 14 (5) They are minor structures permitted under rules  
15 adopted by the department [~~which~~] that do not affect  
16 beach processes or artificially fix the shoreline and  
17 do not interfere with public access or public views to  
18 and along the shoreline; or
- 19 (6) Work being done consists of maintenance, repair,  
20 reconstruction, and minor additions or alterations of  
21 legal boating, maritime, or watersports recreational





1 facilities, [~~which~~] that are publicly owned, and  
2 [~~which~~] that result in little or no interference with  
3 natural shoreline processes;

4 provided that permitted structures may be repaired, but shall  
5 not be enlarged within the shoreline area without a variance.

6 (c) The construction of shoreline hardening structures  
7 within the shoreline setback area, including seawalls, groins,  
8 revetments, and geotextile shore protection projects, shall be  
9 prohibited; provided that when public infrastructure is  
10 imminently threatened by coastal erosion:

11 (1) Temporary non-structural erosion prevention measures  
12 shall be utilized;

13 (2) Shoreline hardening methods shall not be utilized; and

14 (3) Any public infrastructure temporarily protected  
15 pursuant to this subsection shall be moved mauka as  
16 soon as possible, after which all temporary non-  
17 structural erosion prevention measures shall be  
18 immediately removed.

19 (d) No existing shoreline hardening structure shall be  
20 altered, repaired, or replaced."



1 SECTION 8. Section 205A-46, Hawaii Revised Statutes, is  
2 amended by amending subsections (a) and (b) to read as follows:

3 "(a) [A] Except as provided in subsection 205A-44(d),  
4 variance may be granted for a structure or activity otherwise  
5 prohibited in this part if the authority finds in writing, based  
6 on the record presented, that the proposed structure or activity  
7 is necessary for or ancillary to:

- 8 (1) Cultivation of crops;
- 9 (2) Aquaculture;
- 10 (3) Landscaping; provided that the authority finds that  
11 the proposed structure or activity will not adversely  
12 affect beach processes and will not artificially fix  
13 the shoreline;
- 14 (4) Drainage;
- 15 (5) Boating, maritime, or watersports recreational  
16 facilities;
- 17 (6) Facilities or improvements by public agencies or  
18 public utilities regulated under chapter 269;
- 19 (7) Private facilities or improvements that are clearly in  
20 the public interest;



- 1 (8) Private facilities or improvements ~~[which]~~ that will  
2 neither adversely affect beach processes ~~[nor~~  
3 ~~artificially fix the shoreline,]~~ result in flanking  
4 of adjacent properties, or curtail public access;  
5 provided that the authority ~~[also finds that]~~ may  
6 consider hardship that will result to the applicant if  
7 the facilities or improvements are not allowed within  
8 the shoreline area;
- 9 (9) Private facilities or improvements that may  
10 artificially fix the shoreline; provided that the  
11 authority also finds that ~~[shoreline erosion is likely~~  
12 ~~to cause hardship to the applicant if the facilities~~  
13 ~~or improvements are not allowed within the shoreline~~  
14 ~~area, and the authority imposes conditions to prohibit~~  
15 ~~any structure seaward of the existing shoreline]~~ the  
16 action will neither adversely affect beach processes,  
17 result in flanking of adjacent properties, nor curtail  
18 public access unless it is clearly in the public  
19 interest ~~[+]~~ , for example, in the case of an imminent  
20 threat of a road or highway failure, or to other  
21 critical public infrastructure; provided further that



1           the authority may consider hardship that will result  
 2           to the applicant if the facilities or improvements are  
 3           not allowed within the shoreline area; or

4        (10) Moving of sand from one location seaward of the  
 5           shoreline to another location seaward of the  
 6           shoreline; provided that the authority also finds that  
 7           moving of sand will not adversely affect beach  
 8           processes, will not diminish the size of a public  
 9           beach, and will be necessary to stabilize an eroding  
 10          shoreline.

11       (b) Hardship shall be defined in rules adopted by the  
 12          authority under chapter 91. Hardship shall not be determined as  
 13          a result of county zoning changes, planned development permits,  
 14          cluster permits, or subdivision approvals after June 16, 1989,  
 15          or as a result of any other permit or approval listed in rules  
 16          adopted by the authority[-], or as a result of sea level rise."

17                                          PART V

18        SECTION 9. This Act does not affect rights and duties that  
 19          matured, penalties that were incurred, and proceedings that were  
 20          begun before its effective date.



1 SECTION 10. In codifying the new sections added by section  
2 2 of this Act, the revisor of statutes shall substitute  
3 appropriate section numbers for the letters used in designating  
4 the new sections in this Act.

5 SECTION 11. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

7 SECTION 12. This Act shall take effect on July 1, 2100;  
8 provided that sections 2 and 3 of this Act shall be repealed on  
9 June 30, 2024, and all unencumbered balances remaining in the  
10 Hawaii beach preservation revolving fund on that date shall  
11 lapse to the credit of the general fund.



**Report Title:**

Coastal Zone Management; Sea Level Rise; Managed Retreat;  
Revolving Fund; Appropriation

**Description:**

Establishes the Hawaii Beach Preservation Revolving Fund within the State Treasury. Establishes a low-interest Contingent Mortgage Financing Pilot Program to encourage certain shoreline property owners to relocate mauka of expected sea level rise and erosion hazard zones. Amends coastal zone management laws to further protect against impacts of sea level rise and coastal erosion. Appropriates funds. (HB1564 HD1)

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

