
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.

17 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.



1 PART III

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

4 **"§247-2 Basis and rate of tax.** The tax imposed by section
5 247-1 shall be based on the actual and full consideration
6 (whether cash or otherwise, including any promise, act,
7 forbearance, property interest, value, gain, advantage, benefit,
8 or profit), paid or to be paid for all transfers or conveyance
9 of realty or any interest therein, that shall include any liens
10 or encumbrances thereon at the time of sale, lease, sublease,
11 assignment, transfer, or conveyance, and shall be at the
12 following rates:

- 13 (1) Except as provided in paragraph (2):
 - 14 (A) Ten cents per \$100 for properties with a value of
 - 15 less than \$600,000;
 - 16 (B) Twenty cents per \$100 for properties with a value
 - 17 of at least \$600,000, but less than \$1,000,000;
 - 18 (C) Thirty cents per \$100 for properties with a value
 - 19 of at least \$1,000,000, but less than \$2,000,000;
 - 20 (D) Fifty cents per \$100 for properties with a value
 - 21 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[~~r~~]; 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."



1 PART IV

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

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

- 12 (1) Stabilization of shoreline erosion by the moving of
13 sand entirely on public lands;
- 14 (2) Protection of a legal structure costing more than
15 \$20,000; provided that the structure is at risk of
16 immediate damage from shoreline erosion[+] and the
17 proposed construction shall not artificially fix the
18 shoreline;
- 19 (3) Other structures or activities; provided that no
20 person or agency has requested a public hearing within



1 twenty-five calendar days after public notice of the
2 application; or

3 (4) Maintenance, repair, reconstruction, and minor
4 additions or alterations of legal boating, maritime,
5 or watersports recreational facilities, which result
6 in little or no interference with natural shoreline
7 processes."

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

10 "**§205A-44 Prohibitions.** (a) The mining or taking of
11 sand, dead coral or coral rubble, rocks, soil, or other beach or
12 marine deposits from the shoreline area is prohibited with the
13 following exceptions:

14 (1) The inadvertent taking from the shoreline area of the
15 materials, such as those inadvertently carried away on
16 the body, and on clothes, toys, recreational
17 equipment, and bags;

18 (2) Where the mining or taking is authorized by a variance
19 pursuant to this part;

20 (3) The clearing of these materials from existing drainage
21 pipes and canals and from the mouths of streams



- 1 including clearing for the purposes under section
2 46-11.5; provided that the sand removed shall be
3 placed on adjacent areas unless the placement would
4 result in significant turbidity;
- 5 (4) The cleaning of the shoreline area for state or county
6 maintenance purposes, including the clearing for
7 purposes under section 46-12; provided that the sand
8 removed shall be placed on adjacent areas unless the
9 placement would result in significant turbidity;
- 10 (5) The taking of driftwood, shells, beach glass, glass
11 floats, or seaweed;
- 12 (6) The exercise of traditional cultural practices as
13 authorized by law or as permitted by the department
14 pursuant to article XII, section 7, of the Hawaii
15 State Constitution; or
- 16 (7) For the response to a public emergency or a state or
17 local disaster.
- 18 (b) Except as provided in this section, structures are
19 prohibited in the shoreline area without a variance pursuant to
20 this part. Structures in the shoreline area shall not need a
21 variance if:



- 1 (1) They were completed prior to June 22, 1970;
- 2 (2) They received either a building permit, board
3 approval, or shoreline setback variance prior to
4 June 16, 1989;
- 5 (3) They are outside the shoreline area when they receive
6 either a building permit or board approval;
- 7 (4) They are necessary for or ancillary to continuation of
8 existing agriculture or aquaculture in the shoreline
9 area on June 16, 1989;
- 10 (5) They are minor structures permitted under rules
11 adopted by the department [~~which~~] that do not affect
12 beach processes or artificially fix the shoreline and
13 do not interfere with public access or public views to
14 and along the shoreline; or
- 15 (6) Work being done consists of maintenance, repair,
16 reconstruction, and minor additions or alterations of
17 legal boating, maritime, or watersports recreational
18 facilities, [~~which~~] that are publicly owned, and
19 [~~which~~] that result in little or no interference with
20 natural shoreline processes;



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

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

8 (1) Temporary non-structural erosion prevention measures
9 shall be utilized;

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

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

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

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

20 "(a) [A] Except as provided in subsection 205A-44(d),
21 variance may be granted for a structure or activity otherwise



1 prohibited in this part if the authority finds in writing, based
2 on the record presented, that the proposed structure or activity
3 is necessary for or ancillary to:

4 (1) Cultivation of crops;

5 (2) Aquaculture;

6 (3) Landscaping; provided that the authority finds that
7 the proposed structure or activity will not adversely
8 affect beach processes and will not artificially fix
9 the shoreline;

10 (4) Drainage;

11 (5) Boating, maritime, or watersports recreational
12 facilities;

13 (6) Facilities or improvements by public agencies or
14 public utilities regulated under chapter 269;

15 (7) Private facilities or improvements that are clearly in
16 the public interest;

17 (8) Private facilities or improvements which will neither
18 adversely affect beach processes nor artificially fix
19 the shoreline; provided that the authority also finds
20 that hardship will result to the applicant if the



1 facilities or improvements are not allowed within the
2 shoreline area; or

3 ~~[(9) Private facilities or improvements that may~~
4 ~~artificially fix the shoreline; provided that the~~
5 ~~authority also finds that shoreline erosion is likely~~
6 ~~to cause hardship to the applicant if the facilities~~
7 ~~or improvements are not allowed within the shoreline~~
8 ~~area, and the authority imposes conditions to prohibit~~
9 ~~any structure seaward of the existing shoreline unless~~
10 ~~it is clearly in the public interest; or~~

11 ~~(10)]~~ (9) Moving of sand from one location seaward of the
12 shoreline to another location seaward of the
13 shoreline; provided that the authority also finds that
14 moving of sand will not adversely affect beach
15 processes, will not diminish the size of a public
16 beach, and will be necessary to stabilize an eroding
17 shoreline.

18 (b) Hardship shall be defined in rules adopted by the
19 authority under chapter 91. Hardship shall not be determined as
20 a result of county zoning changes, planned development permits,
21 cluster permits, or subdivision approvals after June 16, 1989,



1 or as a result of any other permit or approval listed in rules
2 adopted by the authority[-], or sea level rise."

3 PART V

4 SECTION 9. This Act does not affect rights and duties that
5 matured, penalties that were incurred, and proceedings that were
6 begun before its effective date.

7 SECTION 10. In codifying the new sections added by section
8 2 of this Act, the revisor of statutes shall substitute
9 appropriate section numbers for the letters used in designating
10 the new sections in this Act.

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

13 SECTION 12. This Act shall take effect on July 1, 2019;
14 provided that sections 2 and 3 of this Act shall be repealed on
15 June 30, 2024, and all unencumbered balances remaining in the
16 Hawaii beach preservation revolving fund on that date shall
17 lapse to the credit of the general fund.

18

INTRODUCED BY:

Lynn A. Code

[Signature]
Tim W. Kelly
[Signature]



H.B. NO. 1564

Report Title:

DLNR; Department of Business, Economic Development, and Tourism; Coastal Zone Management; Sea Level Rise; Managed Retreat; Hawaii Beach Preservation Revolving Fund; Contingent Mortgage Financing Pilot Program; Established; 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. Increases the conveyance tax rates for oceanfront properties with a value of \$10,000,000 or higher and for which the purchaser is ineligible for a county homeowner's exemption on property tax. Allocates for deposit into the Hawaii beach preservation revolving fund 100% of conveyance tax revenues collected on oceanfront property that is not owner-occupied. Amends coastal zone management laws to further protect against impacts of sea level rise and coastal erosion. Appropriates funds.

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

