

JAN 25 2023

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A BILL FOR AN ACT

RELATING TO REAL PROPERTY DISCLOSURES WITHIN SHORELINE AREAS.

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

1           SECTION 1. As reflected in Act 32, Session Laws of  
2 Hawaii 2017 (Act 32), the legislature recognizes that not only  
3 is climate change real, but it is also the overriding challenge  
4 of the twenty-first century and one of the priority issues of  
5 the legislature. Climate change poses immediate and long-term  
6 threats to the State's economy, sustainability, security, and  
7 its residents' way of life.

8           The legislature recognized the existential threat of sea  
9 level rise to real property and amended section 508D-15, Hawaii  
10 Revised Statutes, to require mandatory seller disclosures in  
11 real property transactions to include indication that a  
12 residential real property lies within the sea level rise  
13 exposure area. Research published by the Intergovernmental  
14 Panel on Climate Change and the National Aeronautics and Space  
15 Administration shows that sea levels in Hawaii will continue to  
16 rise yet sea level rise has no detectable effect on valuations  
17 or sales data on real property. The lack of a sea level rise

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1 discount indicates that purchasers may be under-prepared for  
2 the future challenges and implications of sea level rise and the  
3 ancillary effects of coastal erosion, future flooding,  
4 inundation and storm surges.

5 The purpose of this Act is to further strengthen purchaser  
6 protection by clearly outlining the impacts of climate change by  
7 requiring disclosure of permitted and unpermitted erosion  
8 control structures on parcels for real estate transactions  
9 involving ocean-front property, requiring disclosure of the  
10 erosion rate for the property and of the current actual setback  
11 from the shoreline of all structures on the property.

12 SECTION 2. Section 508D-15, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "§508D-15 Notification required; ambiguity. (a) When  
15 residential real property lies:

16 (1) Within the boundaries of a special flood hazard area  
17 as officially designated on Flood Insurance  
18 Administration maps promulgated by the United States  
19 Department of Housing and Urban Development for the  
20 purposes of determining eligibility for emergency  
21 flood insurance programs;

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- 1           (2) Within the boundaries of the noise exposure area shown  
2           on maps prepared by the department of transportation  
3           in accordance with Federal Aviation Regulation part  
4           150, Airport Noise Compatibility Planning (14 C.F.R.  
5           part 150), for any public airport;
- 6           (3) Within the boundaries of the Air Installation  
7           Compatible Use Zone of any Air Force, Army, Navy, or  
8           Marine Corps airport as officially designated by  
9           military authorities;
- 10          (4) Within the anticipated inundation areas designated on  
11          the department of defense's emergency management  
12          tsunami inundation maps; or
- 13          (5) Within the sea level rise exposure area as designated  
14          by the Hawaii climate change mitigation and adaptation  
15          commission or its successor,
- 16 subject to the availability of maps that designate the  
17 five areas by tax map key (zone, section, parcel), the seller  
18 shall include the material fact information in the disclosure  
19 statement provided to the buyer subject to this chapter. Each  
20 county shall provide, where available, maps of its jurisdiction  
21 detailing the five designated areas specified in this  
22 subsection. The maps shall identify the properties situated

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1 within the five designated areas by tax map key number (zone,  
2 section, parcel) and shall be of a size sufficient to provide  
3 information necessary to serve the purposes of this  
4 section. Each county shall provide legible copies of the maps  
5 and may charge a reasonable copying fee.

6 (b) When residential real property lies within the  
7 shoreline area as identified by official tax maps, the seller  
8 shall disclose all permitted and unpermitted erosion control  
9 structures on the parcel or on state land adjacent to the  
10 parcel, including expiration dates of permitted structures and  
11 any notices of alleged violation and fines for expired permits  
12 or unpermitted structures; and shall disclose the annual coastal  
13 erosion rate for the zoning lot as determined by historical  
14 analysis and shown on the Hawaii Shoreline Study web map, or its  
15 successors, and the current actual distance from the shoreline,  
16 as defined in section 205A-1, of all structures on the parcel.

17 ~~[(b)]~~ (c) When it is questionable whether residential real  
18 property lies within any of the designated areas referred to in  
19 subsection (a) due to the inherent ambiguity of boundary lines  
20 drawn on maps of large scale, the ambiguity shall be construed  
21 in favor of the seller; provided that a good faith effort has

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1 been made to determine the applicability of subsection (a) to  
2 the subject real property.

3 [~~e~~] (d) Except as required under subsections (a) [~~and~~],  
4 (b), and (c) and as required under section 508D-3.5, the seller  
5 shall have no duty to examine any public record when preparing a  
6 disclosure statement."

7 SECTION 3. This Act does not affect rights and duties that  
8 matured, penalties that were incurred, and proceedings that were  
9 begun before its effective date.

10 SECTION 4. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

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

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INTRODUCED BY: 

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BY REQUEST

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**Report Title:**

Residential Real Property Transactions; Mandatory Seller Disclosures; Sea Level Rise Exposure Area

**Description:**

Requires mandatory disclosure of all existing permitted and unpermitted shoreline erosion control structures, the annual erosion rate, and the current actual setback of all structures for shoreline properties prior to real estate transactions.

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

JUSTIFICATION SHEET

**SB. NO. 1389**

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO REAL PROPERTY DISCLOSURES WITHIN SHORELINE AREAS.

PURPOSE: To require mandatory disclosure of all existing permitted and unpermitted shoreline erosion control structures, the annual erosion rate, and the current actual setback of all structures for shoreline properties prior to real estate transactions.

MEANS: Amend section 508D-15, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Section 508D-15, HRS, was amended in 2021 to require mandatory disclosure of properties located within the sea level rise exposure area during real estate transactions. The disclosure provides advance notice to buyers of future hazards on the property. This amendment would further inform buyers of existing hazards and encroachments from their property onto state lands. Shoreline property owners maintain erosion control structures, constructed of sandbags and burritos, and in some cases, unpermitted seawalls as erosion control. These erosion control structures are largely unpermitted or remain under expired permits far beyond their allotted authorization. Unpermitted and illegal structures present an enforcement challenge when the shoreline property changes ownership.

This bill would require the disclosure of all permitted and unpermitted erosion control structures, along with the expiration dates for permitted structures and notices of alleged violations and fines for unpermitted or expired permits prior to the real estate transaction for all shoreline properties.

Payment of existing fines and/or rental fees for occupancy of state land would be required prior to the sale of the property, and continued responsibility for the erosion control structures would be explicitly passed to the buyer.

The bill further requires disclosure of the annual coastal erosion rate as determined by historical analysis and disclosure of the actual distance from the shoreline of all buildings, or setback, prior to sale. Coupled with the existing Sea Level Rise Exposure Area (SLR-XA) disclosure, official erosion rate disclosure and knowledge of the setback provides the buyer with actionable information regarding the future migration of the shoreline and transition of land below the upper reach of the high wash of the waves to state ownership held in the public trust.

Impact on the public: The bill would support informed consent and actual notice to all parties of a real estate transaction regarding the location of the shoreline and would result in the removal of harmful and dangerous unpermitted erosion control structures from state lands, thereby improving access to public trust resources.

Impact on the department and other agencies: This bill is an effort to provide greater accountability for private property owners adjacent to state lands for the removal of unpermitted encroachments. As such, it will reduce the enforcement burden on both the Department's Office of Conservation and Coastal Lands and Division of Conservation and Resources Enforcement.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: LNR 101.



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OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: Upon approval.