

# S.B. NO. 1390

JAN 25 2023

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## A BILL FOR AN ACT

RELATING TO CLIMATE ADAPTATION.

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

1           SECTION 1. The legislature finds that climate change is  
2 real. Rising sea levels throughout the State will increasingly  
3 erode beaches, damage habitats, and be an existential threat to  
4 residential development and associated infrastructure in many  
5 shorefront and low-lying areas as described in the 2017 Hawaii  
6 Sea Level Rise Vulnerability and Adaptation Report and companion  
7 State of Hawaii Sea Level Rise Viewer. These impacts are being  
8 observed on our shorelines today throughout the State as  
9 exemplified by recent highly publicized erosion threats to  
10 development in West Maui, on the North Shore of Oahu, and  
11 elsewhere. The legislature finds that managed retreat will be  
12 an essential policy and programmatic approach for voluntarily  
13 relocating development and associated public infrastructure from  
14 areas that are critically impacted by coastal hazards including  
15 coastal erosion and flooding with sea level rise, particularly  
16 from areas with high natural ecosystem, cultural, and

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1 recreational public resource value and to reduce hazard to life  
2 and property from coastal hazards.

3       The purpose of this Act is to expand the authority of the  
4 State and the counties and develop funding to begin to utilize  
5 managed retreat as a climate adaptation and hazard avoidance  
6 option for voluntarily moving residential development and  
7 associated infrastructure away from critically vulnerable areas  
8 to locations outside of sea level rise and coastal flooding  
9 exposure areas.

10       SECTION 2. Chapter 171, Hawaii Revised Statutes, is  
11 amended by adding a new part to be appropriately designated and  
12 read as follows:

13       "PART . VOLUNTARY RELOCATION OF RESIDENTIAL DEVELOPMENT FROM  
14       SEA LEVEL RISE EXPOSURE AREAS INVOLVING STATE LANDS

15       §171- Definitions. For the purposes of this part:

16       "Land exchanges" means mechanisms to secure lands while  
17 compensating property owners in-kind through providing land or  
18 development rights. Land exchanges can provide a partial or  
19 full replacement alternative to financial compensation.

20       "Leaseback" means a transaction in which a property owner  
21 willingly sells the real property to the government or third  
22 party and leases the property back from that new owner until

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1 such time that the land is deemed unsafe due to increasing  
2 erosion or flooding hazards.

3 "Receiving area" means areas where additional growth and  
4 development can be accommodated from a sending area.

5 "Sending area" means areas where development is no longer  
6 encouraged due to exposure to increasing hazards with climate  
7 change and sea level rise.

8 "Transfer of development rights" means programs allowing  
9 land owners to transfer development rights from property in  
10 areas where development is no longer desirable or sustainable to  
11 areas that are. Transfer of development right programs may also  
12 allow developers to purchase development rights from property  
13 owners in areas where development is no longer desirable or  
14 sustainable and transfer those development rights to their own  
15 property.

16 §171- General powers. (a) In carrying out its functions  
17 under this part, the board and department may do all things  
18 necessary, useful, and convenient in connection with voluntary  
19 relocation of residential development and associated public  
20 utilities and infrastructure from locations that are or will be  
21 critically threatened by impacts related to climate change and

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1 sea level rise and have high natural resource value, including  
2 transfer of development rights, leasebacks, land exchanges, and  
3 restoration of coastal lands, subject to all applicable laws, so  
4 long as the public interest is served.

5 §171- Sea level rise voluntary relocation plan. The  
6 department, in cooperation with appropriate state and county  
7 agencies, shall prepare and, from time to time, revise plans for  
8 the implementation of a program to facilitate voluntary  
9 relocation of private residential development and associated  
10 public infrastructure from areas that are critically threatened  
11 by coastal erosion and flooding with sea level rise and that  
12 have high natural resource value to areas outside of the sea  
13 level rise exposure area as designated by the Hawaii climate  
14 change adaptation commission and special flood hazard areas.  
15 These plans shall guide the department with appropriate state  
16 and county agencies in identifying and prioritizing coastal  
17 lands that are critically threatened by coastal erosion and sea  
18 level rise and have high natural and community resource value,  
19 and in identifying and prioritizing potential sending and  
20 receiving areas for relocation of residential development and  
21 associated public utilities and infrastructure. In preparing  
22 these plans, the department may institute studies pertaining to

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1 the need for restoration of such lands to natural conditions and  
2 for public purposes and shall consider any plan relating to the  
3 restoration of such lands that has been prepared by any federal,  
4 state, county, or private agency or entity. The department may  
5 also institute other studies as necessary to support the  
6 development of voluntary relocation projects, including the  
7 development of environmental studies pertaining to relocation of  
8 development, cost-benefit analysis for project viability, and  
9 engineering studies.

10 §171- Sea level rise voluntary relocation fund. (a)

11 There is established in the state treasury a special fund to be  
12 designated as the "sea level rise voluntary relocation fund" to  
13 carry out the purposes of this part. The following moneys shall  
14 be deposited into the sea level rise voluntary relocation  
15 special fund:

16 (1) Appropriations made by the legislature for deposit  
17 into this fund;

18 (2) Appropriations made out of the climate change special  
19 fund;

20 (3) Donations and contributions made by private  
21 individuals or organizations for deposit into this  
22 fund;

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1 (4) Grants provided by government agencies or any other  
2 source;

3 (5) Proceeds from transfer of development rights,  
4 leasebacks, and land exchanges; and

5 (6) Proceeds from lawsuits holding industries accountable  
6 for climate change impacts that threaten Hawaii.

7 (b) The sea level rise voluntary relocation special fund  
8 may be used by the department for one or more of the following  
9 purposes:

10 (1) Planning, designing, developing, or implementing of  
11 climate change and sea level rise adaptation projects  
12 pursuant to this part including voluntary relocation  
13 of residential development and associated  
14 infrastructure through mechanisms, including but not  
15 limited to transfer of development rights, leasebacks,  
16 land exchanges, and restoration of coastal lands; and

17 (2) Acquiring, through eminent domain, private development  
18 at risk of exposure to sea level rise and flooding."

19 SECTION 3. Chapter 171, Hawaii Revised Statutes, is  
20 amended by adding a new section to be appropriately designated  
21 and read as follows:

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1           "§171-       Public lands suitable and available for transfer  
2 of development rights or land exchanges; inventory. The  
3 department shall complete and maintain a current inventory of  
4 all public lands and other high-priority private lands,  
5 regardless of zoning, which are located outside of the sea level  
6 rise exposure area as designated by the Hawaii climate change  
7 mitigation and adaptation commission and special flood hazard  
8 areas and are or may be suitable for relocation of residential  
9 development from areas that are critically threatened by coastal  
10 erosion and flooding with sea level rise and from areas that  
11 have high natural and community resource value according to the  
12 objectives and policies set forth in chapter 205A. This  
13 inventory shall be updated annually and contain the following  
14 information: the island and areas in which the land is situated,  
15 the acreage, development potential including but not limited to,  
16 nearest access to county or state roads, nearest access to  
17 public utilities including electrical and water, and such other  
18 information which the department determines may be necessary to  
19 identify and inventory the land for those purposes. The  
20 department shall submit a report detailing this initial  
21 inventory to the governor, legislature, and Hawaii climate  
22 change mitigation and adaptation commission no later than twenty

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1 days prior to the convening of the 2024 regular legislative  
2 session and every year thereafter."

3 SECTION 4. Section 171-50, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5 "(a) Purpose. No exchange of public land for private land  
6 shall be made except for public purposes, including but not  
7 limited to (1) consolidation of holdings of public lands; (2)  
8 straightening of boundaries of public lands; (3) acquisition of  
9 adequate access for landlocked public lands ~~[which]~~ that have  
10 development potential; ~~[or]~~ (4) acquisition of lands suitable  
11 for residential use~~[-]~~; or (5) relocation of private development  
12 away from high risk areas of coastal hazards, sea level rise,  
13 and flooding exposure, and expansion of public coastal areas and  
14 access. Exchanges shall be effected without public auction.

15 Public notice of any proposed exchange shall be given in  
16 accordance with the applicable provisions set forth in section  
17 171-16(d). All private lands conveyed to the State by way of  
18 exchanges shall thereafter become public lands."

19 SECTION 5. Section 226-109, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 "[+]§226-109[+] **Climate change adaptation priority**  
22 **guidelines.** Priority guidelines to prepare the State to address

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1 the impacts of climate change, including impacts to the areas of  
2 agriculture; conservation lands; coastal and nearshore marine  
3 areas; natural and cultural resources; education; energy; higher  
4 education; health; historic preservation; water resources; the  
5 built environment, such as housing, recreation, transportation;  
6 and the economy shall:

7 (1) Ensure that Hawaii's people are educated, informed,  
8 and aware of the impacts climate change may have on  
9 their communities;

10 (2) Encourage community stewardship groups and local  
11 stakeholders to participate in planning and  
12 implementation of climate change policies;

13 (3) Invest in continued monitoring and research of  
14 Hawaii's climate and the impacts of climate change on  
15 the State;

16 (4) Consider native Hawaiian traditional knowledge and  
17 practices in planning for the impacts of climate  
18 change;

19 (5) Encourage the preservation and restoration of natural  
20 landscape features, such as coral reefs, beaches and  
21 dunes, forests, streams, floodplains, and wetlands,

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1           that have the inherent capacity to avoid, minimize, or  
2           mitigate the impacts of climate change;

3           (6) Explore adaptation strategies that moderate harm or  
4           exploit beneficial opportunities in response to actual  
5           or expected climate change impacts to the natural and  
6           built environments;

7           (7) Promote sector resilience in areas such as water,  
8           roads, airports, and public health, by encouraging the  
9           identification of climate change threats, assessment  
10          of potential consequences, and evaluation of  
11          adaptation options;

12          (8) Foster cross-jurisdictional collaboration between  
13          county, state, and federal agencies and partnerships  
14          between government and private entities and other  
15          nongovernmental entities, including nonprofit  
16          entities;

17          (9) Use management and implementation approaches that  
18          encourage the continual collection, evaluation, and  
19          integration of new information and strategies into new  
20          and existing practices, policies, and plans; ~~and~~

21          (10) Encourage planning and management of the natural and

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1 built environments that effectively integrate climate  
2 change policy[-]; and

3 (11) Identify and prioritize climate change and sea level  
4 rise adaptation sending areas facing the greatest  
5 threats from increasing impacts from coastal erosion  
6 and flooding, and identify and prioritize potential  
7 receiving areas for relocation of residential  
8 development and public infrastructure from locations  
9 that are or will be critically threatened by those  
10 impacts."

11 SECTION 6. There is appropriated out of the sea level rise  
12 voluntary relocation fund the sum of \$20,000,000, or so much  
13 thereof as may be necessary for fiscal year 2023-2024, to carry  
14 out the purpose of this Act. The sum appropriated shall be  
15 expended by the department of land and natural resources.

16 SECTION 7. This Act does not affect rights and duties that  
17 matured, penalties that were incurred, and proceedings that were  
18 begun before its effective date.

19 SECTION 8. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.

21 SECTION 9. This Act shall take effect upon its approval.

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INTRODUCED BY:           *Wm. N. Miller*          

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BY REQUEST

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**Report Title:**

Managed Retreat; Voluntary Relocation of Beachfront Residential Shoreline Development; Sea Level Rise Exposure Area

**Description:**

Expands the authority of the State and the counties and develops funding to begin utilizing managed retreat as an option for voluntarily moving residential development and associated infrastructure away from critically vulnerable areas to locations outside of sea level rise and coastal flooding exposure areas, including through a pilot program on the North Shore of Oahu.

*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. 1390**

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO CLIMATE ADAPTATION.

PURPOSE: To expand the authority of the State and the counties and develop funding to begin utilizing managed retreat as an option for voluntarily moving residential development and associated infrastructure away from critically vulnerable areas to locations outside of sea level rise and coastal flooding exposure areas.

MEANS: Add a new part and section to chapter 171 and amend sections 171-50(a) and 226-109, Hawaii Revised Statutes (HRS). Appropriate out of the sea level rise voluntary relocation fund the sum of \$20,000,000.

JUSTIFICATION: A 2012 study by University of Hawaii Researchers for the United States Geological Survey found that over 13 miles of public beaches have already been lost to beach erosion and construction of coastal armoring including seawalls and revetments. Beach loss and threats to shorefront development will increase exponentially in coming decades with expected accelerating sea level rise if managed retreat is not implemented proactively, especially in high-value natural resource areas where beach protection is prioritized. These impacts are being observed on our shorelines today throughout the State as exemplified by recent highly publicized erosion threats to development in West Maui, on the North Shore of Oahu, and elsewhere.

The State of Hawaii, through the Office of Planning and Sustainable Development, has studied the feasibility and implications of managed retreat and identified next steps and recommendations for the State to develop

a managed retreat plan and program for Hawaii.

Through Act 223, Session Laws of Hawaii 2022 (Act 223), the State recognized the existential threat of sea level rise to real property and that transferring development rights and land exchanges are useful techniques to achieve community objectives of voluntarily shifting development away from areas that are critically threatened by sea level rise.

This proposal would further expand on Act 223 and act on recommendations from the Office of Planning and Sustainable Development toward making managed retreat a viable option for improving community resilience and conserving beaches and coastal ecosystems.

Impact on the public: The bill would improve resilience of shorefront communities and conserve public trust beaches and coastal ecosystems and public shoreline access.

Impact on the department and other agencies: This bill is an effort to provide alternatives to temporary and permanent shoreline armoring. As such, it will reduce the enforcement burden for unauthorized shoreline erosion control structures on both the Department's Office of Conservation and Coastal Lands, Division of Conservation and Resources Enforcement, and the Board of Land and Natural Resources. The bill will require development and administration of plans and programs for voluntary relocation of residential development from vulnerable shoreline areas in cooperation with other relevant state and county agencies.

GENERAL FUND:           None.

OTHER FUNDS:           \$20,000,000.

PPBS PROGRAM  
DESIGNATION: LNR 101.

OTHER AFFECTED  
AGENCIES: Department of Business, Economic  
Development, and Tourism - Office of  
Planning and Sustainable Development, county  
planning and permitting departments.

EFFECTIVE DATE: Upon approval.