

JAN 18 2023

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 climate change and
2 sea level rise pose current and long-term threats to the State's
3 economy, sustainability, and security, and its residents' way of
4 life. Comprehensive and appropriate sea level rise adaptation
5 strategies are required at the state level to consistently and
6 effectively safeguard critical assets in sea level rise exposure
7 areas and to maintain necessary balance between environmental
8 resources, economic interests, and public and private rights.

9 Act 32, Session Laws of Hawaii 2017, recognized climate
10 change as one of the legislature's priority issues, and
11 established the Hawaii climate change mitigation and adaptation
12 commission (Commission). The Commission's *2017 Hawaii Sea Level*
13 *Rise Vulnerability and Adaptation Report* (2017 Report) provides
14 recommendations for mitigating and adapting to future estimated
15 sea level rise. The 2017 Report highlights that climate science
16 and sea level rise projections continue to evolve, and that
17 changes in projections for sea level rise made in between the



1 Intergovernmental Panel on Climate Change's (IPCC) assessment
2 reports should be considered as they become available.

3 Using the IPCC's Fifth Assessment Report, the 2017 Report
4 estimates a potential 3.2 feet of sea level rise by 2100, the
5 upper limit of the IPCC's "business-as-usual" greenhouse gas
6 emissions scenario known as "RCP8.5." Of the four scenarios
7 used by the IPCC, RCP8.5 projects the highest levels of sea
8 level rise. The 2017 Report further notes that the "uncertainty
9 of the projections increases with time as indicated by the
10 increasing width [or range] of the projection after the year
11 2050" and that there is low confidence in the projections of the
12 upper bounds of RCP8.5 in 2100. The IPCC's Sixth Assessment
13 Report, published in 2022, found that RCP8.5 does not represent
14 a typical business-as-usual projection and is only useful as a
15 high-end, high-risk scenario.

16 The 2017 Report highlights that "for private properties
17 impacted by sea level rise, the impact would be tremendous for
18 families [as] well as county tax coffers." The extent of this
19 impact was not assessed in the 2017 Report. Additionally, the
20 2017 Report did not assess the secondary and tertiary impacts on
21 business and the tourism industry.



1 The legislature also finds that given the evolving nature
2 of sea level rise projections, particularly with respect to the
3 magnitude, timing, and likelihood of a particular level of sea
4 level rise, consistency and balance are essential throughout the
5 State. The use of high-end, high-risk scenarios, like RCP8.5,
6 for regulation and policies, such as retreat, may not be
7 appropriate in all contexts given the potential effects on
8 commercial, industrial, and private property, and is most
9 appropriate for critical infrastructure and public works.
10 Accordingly, the legislature finds that if sea level rise
11 predictions or models based on high-end, high-risk scenarios are
12 used for parcel-level regulation, their use must be balanced
13 with the constitutional rights and protections afforded to
14 property owners. The legislature also finds that limiting and
15 ameliorating the primary, secondary, and tertiary impacts of sea
16 level rise is in the public interest.

17 The legislature further finds that the State's department
18 of business, economic development, and tourism and office of
19 planning and sustainable development, coastal zone management
20 program's February 2019 *Assessing the Feasibility and*
21 *Implications of Managed Retreat Strategies for Vulnerable*



1 *Coastal Areas in Hawaii Final Report* (2019 Report) describes the
2 sea level rise adaptation strategy of retreat as a "wicked" and
3 complex problem that requires substantial further study. The
4 2019 Report found that "to rush haphazardly into retreat may
5 waste precious and limited state, county, and public sources of
6 funds and lands and cause undesirable litigation. There has not
7 yet been an agreement/consensus reached of what needs to be
8 retreated, where to retreat to and how much it will cost . . .
9 To act on retreat without a clear, deliberate plan may derail
10 retreat in the long-run to the severe and irreversible detriment
11 of the State, its precious natural resources and citizens."

12 Accordingly, the legislature additionally finds that long-
13 term sea level rise adaptation strategies, such as retreat, may
14 require major land use changes. These strategies should be
15 predicated on a study of potential impacts and should be fully
16 vetted to ensure that such strategies are consistent with the
17 State's land use policies and objectives. The legislature finds
18 that it should continue to provide leadership and direction to
19 the various counties to create a uniform, predictable, and
20 consistent framework for regulating coastal areas.



1 Given the many complexities associated with retreat and the
2 time that is required to better understand and develop consensus
3 around the issues, the legislature finds that other adaptation
4 strategies, such as accommodation, advance, and protection, may
5 be more appropriate strategies in the short and intermediate
6 terms (five to fifty years), especially where development that
7 is vital to the State's economic resources may be impacted.

8 The purpose of this Act is to:

- 9 (1) Include the establishment of a consistent and balanced
10 framework for developing and implementing sea level
11 rise adaptation strategies as an objective of the
12 coastal zone management program;
- 13 (2) Include the promotion of research, study, and
14 understanding of the suitability and impacts of
15 different sea level rise adaptations as a policy of
16 the coastal zone management program;
- 17 (3) Include the maintenance of a balance between public
18 and private interests in implementing sea level rise
19 adaptation and consideration of all appropriate sea
20 level rise adaptations as policies of the coastal zone
21 management program;



- 1 (4) Include as a policy of the coastal zone management
2 program that any construction on shoreline be allowed
3 if it is determined to preserve, protect, or
4 rehabilitate the beach or be considered vital
5 development;
- 6 (5) Require the county planning commission to allow
7 proposed development within the shoreline area and
8 within the sea level rise exposure area under certain
9 circumstances;
- 10 (6) Prohibit any policy or guideline for setting special
11 area use permit application procedures that has the
12 effect of a rule without complying with the rulemaking
13 process;
- 14 (7) Preempt any rule, policy, or guideline inconsistent
15 with the special management area guidelines;
- 16 (8) Allow counties to require that shoreline setback lines
17 be established at greater distances in certain
18 circumstances; and
- 19 (9) Provide that no variance be denied for maintenance,
20 renovation, or repair of a lawful nonconforming
21 structure with exceptions.



1 SECTION 2. Section 205A-22, Hawaii Revised Statutes, is
2 amended by adding five new definitions to be appropriately
3 inserted and to read as follows:

4 "Accommodate sea level rise" means to design or improve a
5 structure in a manner that increases the structure's resiliency
6 to sea level rise. "Accommodate" includes actions such as
7 elevating structures or critical equipment, floodproofing,
8 retrofitting or repurposing at or below-grade spaces, and using
9 structures or materials to increase the strength of development
10 to handle additional wave and flooding impacts, such as
11 floodwalls and structures that can easily be removed during
12 storms.

13 "Habitable structure" means a dwelling, as defined by
14 applicable zoning ordinances.

15 "Rebuilding" means the reconstruction of a lawfully
16 existing structure when the reconstruction is valued by a
17 licensed professional engineer or architect at more than fifty
18 per cent of the replacement cost of the structure.

19 "Repair" means the fixing, renovation, improvement, or
20 restoration of any part of a lawfully existing structure, but
21 not the entire structure, solely for the purpose of its



1 maintenance and which does not result in an addition to, or
2 enlargement or expansion of, the lawfully existing structure.
3 "Repair" includes, but is not limited to alterations of floors,
4 roofs, walls, or the supporting structure of a building or the
5 rearrangement of any of its component parts. "Repair" does not
6 include a repair or cumulative series of repairs to a structure
7 over a two-year period, where the cumulative cost exceeds fifty
8 per cent of the market value of the structure before the start
9 of construction of the first improvement during that two-year
10 period, excluding those repairs required for health, safety, or
11 sanitation.

12 "Sea level rise exposure area" means the area mapped and
13 otherwise used in peer-reviewed literature such as the Hawaii
14 climate change mitigation and adaptation commission's 2017
15 Hawaii Sea Level Rise Vulnerability and Adaptation Report or its
16 most current iteration, as accessible within the Hawaii sea
17 level rise viewer hosted by the Pacific Islands ocean observing
18 system, and as may be updated to reflect best available
19 science."



1 SECTION 3. Section 205A-1, Hawaii Revised Statutes, is
2 amended by amending the definition of "agency" to read as
3 follows:

4 "Agency" means any agency, board, commission, department,
5 or officer of a county government or the state government,
6 including the authority as defined [~~in part II.~~] in this
7 section."

8 SECTION 4. Section 205A-2, Hawaii Revised Statutes, is
9 amended by amending subsections (b) and (c) to read as follows:

10 "(b) Objectives.

11 (1) Recreational resources;

12 (A) Provide coastal recreational opportunities
13 accessible to the public.

14 (2) Historic resources;

15 (A) Protect, preserve, and, where desirable, restore
16 those natural and manmade historic and
17 prehistoric resources in the coastal zone
18 management area that are significant in Hawaiian
19 and American history and culture.

20 (3) Scenic and open space resources;



1 (A) Protect, preserve, and, where desirable, restore
2 or improve the quality of coastal scenic and open
3 space resources.

4 (4) Coastal ecosystems;

5 (A) Protect valuable coastal ecosystems, including
6 reefs, beaches, and coastal dunes, from
7 disruption and minimize adverse impacts on all
8 coastal ecosystems.

9 (5) Economic uses;

10 (A) Provide public or private facilities and
11 improvements important to the State's economy in
12 suitable locations.

13 (6) Coastal hazards;

14 (A) Reduce hazard to life and property from coastal
15 hazards [-]; and

16 (B) Establish a consistent and balanced framework for
17 developing and implementing sea level rise
18 adaptation strategies.

19 (7) Managing development;



- 1 (A) Improve the development review process,
2 communication, and public participation in the
3 management of coastal resources and hazards.
- 4 (8) Public participation;
- 5 (A) Stimulate public awareness, education, and
6 participation in coastal management.
- 7 (9) Beach and coastal dune protection;
- 8 (A) Protect beaches and coastal dunes for:
9 (i) Public use and recreation;
10 (ii) The benefit of coastal ecosystems; and
11 (iii) Use as natural buffers against coastal
12 hazards; and
- 13 (B) Coordinate and fund beach management and
14 protection.
- 15 (10) Marine and coastal 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 restoration of coastal resources
 - 10 that have significant recreational and
 - 11 ecosystem value, including but not limited
 - 12 to coral reefs, surfing sites, fishponds,
 - 13 sand beaches, and coastal dunes, when these
 - 14 resources will be unavoidably damaged by
 - 15 development; or requiring monetary
 - 16 compensation to the State for recreation
 - 17 when restoration is not feasible or
 - 18 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 that 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 those 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 of
- 18 significant biological or economic importance,
- 19 including reefs, beaches, and dunes;
- 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 and
14 coastal related development are located,
15 designed, and constructed to minimize exposure to
16 coastal hazards and adverse social, visual, and
17 environmental impacts in the coastal zone
18 management area; and
- 19 (C) Direct the location and expansion of coastal
20 development to areas designated and used for that
21 development and permit reasonable long-term



- 1 growth at those areas, and permit coastal
2 development outside of designated areas when:
- 3 (i) Use of designated locations is not feasible;
 - 4 (ii) Adverse environmental effects and risks from
5 coastal hazards are minimized; and
 - 6 (iii) The development is important to the State's
7 economy;
- 8 (6) Coastal hazards;
- 9 (A) Develop and communicate adequate information
10 about the risks of coastal hazards;
 - 11 (B) Promote research, study, and understanding of the
12 suitability and impacts of different sea level
13 rise adaptation strategies, including how to
14 balance social, environmental, economic, and
15 legal impacts;
 - 16 ~~(B)~~ (C) Control development, including planning and
17 zoning control, in areas subject to coastal
18 hazards;
 - 19 ~~(C)~~ (D) Ensure that developments comply with
20 requirements of the National Flood Insurance
21 Program; and



- 1 ~~[(D)]~~ (E) Prevent coastal flooding from inland
2 projects;
- 3 (7) Managing development;
- 4 (A) Use, implement, and enforce existing law
5 effectively to the maximum extent possible in
6 managing present and future coastal zone
7 development;
- 8 (B) Facilitate timely processing of applications for
9 development permits and resolve overlapping or
10 conflicting permit requirements; ~~[and]~~
- 11 (C) Communicate the potential short and long-term
12 impacts of proposed significant coastal
13 developments early in their life cycle and in
14 terms understandable to the public to facilitate
15 public participation in the planning and review
16 process;
- 17 (D) Maintain a balance between public and private
18 interests when implementing sea level rise
19 adaptation strategies; and



- 1 (E) Consider all appropriate sea level rise
- 2 adaptation strategies, such as accommodation,
- 3 advance, and protection;
- 4 (8) Public participation;
- 5 (A) Promote public involvement in coastal zone
- 6 management processes;
- 7 (B) Disseminate information on coastal management
- 8 issues by means of educational materials,
- 9 published reports, staff contact, and public
- 10 workshops for persons and organizations concerned
- 11 with coastal issues, developments, and government
- 12 activities; and
- 13 (C) Organize workshops, policy dialogues, and site-
- 14 specific mediations to respond to coastal issues
- 15 and conflicts;
- 16 (9) Beach protection;
- 17 (A) Locate new structures inland from the shoreline
- 18 setback to conserve open space, minimize
- 19 interference with natural shoreline processes,
- 20 and minimize loss of improvements due to erosion;



1 (B) Prohibit construction of private shoreline
2 hardening structures, including seawalls and
3 revetments, at sites having sand beaches and at
4 sites where shoreline hardening structures
5 interfere with existing recreational and
6 waterline activities[+], unless those structures
7 are determined to preserve, protect, or
8 rehabilitate the beach or vital development such
9 as soft or hybrid shoreline protection
10 structures;

11 (C) Minimize the construction of public shoreline
12 hardening structures, including seawalls and
13 revetments, at sites having sand beaches and at
14 sites where shoreline hardening structures
15 interfere with existing recreational and
16 waterline activities[+], unless those structures
17 are determined to preserve, protect, or
18 rehabilitate the beach or vital development such
19 as soft or hybrid shoreline protection
20 structures;



- 1 (D) Where conditions are suitable, and where
- 2 appropriate, to allow for the construction of
- 3 beach stabilization structures (such as, groins
- 4 or soft or hybrid shoreline protection structures
- 5 and other activities (such as beach nourishment)
- 6 for the protection, preservation, or
- 7 rehabilitation of beaches or vital development;
- 8 [~~(D)~~] (E) Minimize grading of and damage to coastal
- 9 dunes;
- 10 [~~(E)~~] (F) Prohibit private property owners from
- 11 creating a public nuisance by inducing or
- 12 cultivating the private property owner's
- 13 vegetation in a beach transit corridor; and
- 14 [~~(F)~~] (G) Prohibit private property owners from
- 15 creating a public nuisance by allowing the
- 16 private property owner's unmaintained vegetation
- 17 to interfere or encroach upon a beach transit
- 18 corridor; and
- 19 (10) Marine and coastal resources;
- 20 (A) Ensure that the use and development of marine and
- 21 coastal resources are ecologically and



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

20 SECTION 5. Section 205A-26, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§205A-26 Special management area guidelines. In
2 implementing this part, the authority shall adopt the following
3 guidelines for the review of developments proposed in the
4 special management area:

5 (1) All development in the special management area shall
6 be subject to reasonable terms and conditions set by
7 the authority in order to ensure:

8 (A) Adequate access, by dedication or other means, to
9 publicly owned or used beaches, recreation areas,
10 and natural reserves is provided to the extent
11 consistent with sound conservation principles;

12 (B) Adequate and properly located public recreation
13 areas and wildlife preserves are reserved;

14 (C) Provisions are made for solid and liquid waste
15 treatment, disposition, and management that will
16 minimize adverse effects upon special management
17 area resources; and

18 (D) Alterations to existing land forms and
19 vegetation, except crops, and construction of
20 structures shall cause minimum adverse effect to
21 water resources, beaches, coastal dunes, and



1 scenic and recreational amenities and minimize
2 impacts from floods, wind damage, storm surge,
3 landslides, erosion, sea level rise, siltation,
4 or failure in the event of earthquake.

5 (2) No development shall be approved unless the authority
6 has first found:

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

18 (B) That the development is consistent with the
19 objectives, policies, and special management area
20 guidelines of this chapter and any guidelines
21 enacted by the legislature; and



- 1 (C) That the development is consistent with the
- 2 county general plan, community plan, and zoning;
- 3 provided that a finding of consistency shall not
- 4 preclude concurrent processing where a general
- 5 plan, community plan, or zoning amendment may
- 6 also be required.

- 7 (3) The authority shall seek to minimize, where
- 8 reasonable:

 - 9 (A) Dredging, filling or otherwise altering any bay,
 - 10 estuary, salt marsh, river mouth, slough or
 - 11 lagoon;
 - 12 (B) Any development that would reduce the size of any
 - 13 beach or other area usable for public recreation;
 - 14 (C) Any development that would reduce or impose
 - 15 restrictions upon public access to tidal and
 - 16 submerged lands, beaches, portions of rivers and
 - 17 streams within the special management areas and
 - 18 the mean high tide line where there is no beach;
 - 19 (D) Any development that would substantially
 - 20 interfere with or detract from the line of sight



1 toward the sea from the state highway nearest the
2 coast; and

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

9 (4) The authority shall allow proposed development in the
10 special management area under the following criteria:

11 (A) Within the shoreline area:

12 (i) For development related to existing
13 structures that have not been damaged by
14 coastal hazards development, including
15 repairs and rebuilding, development is
16 allowed as permitted under part III of this
17 chapter;

18 (ii) For development related to existing
19 structures that have been damaged by coastal
20 hazards if the damage caused by coastal
21 hazards is fifty per cent or less of the



1 replacement cost of the structure as of the
2 time the damage occurred, then repairs are
3 permitted under part III of this chapter or
4 if the damage caused by coastal hazards is
5 greater than fifty per cent of the
6 replacement costs of the structure as of the
7 time the damage occurred, then rebuilding or
8 repair is permitted only if the structure is
9 reasonably adapted to accommodate sea level
10 rise; and

11 (iii) For development related to new structures
12 within the shoreline area, development is
13 allowed as permitted under part III of this
14 chapter; provided that habitable structures
15 are reasonably adapted to accommodate sea
16 level rise;

17 (B) Within the sea level rise exposure area, the
18 authority shall discourage development of new
19 habitable structures; provided that development
20 shall be allowed if an applicant demonstrates
21 that the risks of damage to the proposed new



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1 habitable structure are substantially mitigated
2 by showing one or more of the following:
3 (i) That the shoreline fronting the proposed new
4 habitable structure is not erodible because
5 of natural or manmade shoreline protection,
6 including but not limited to shorelines with
7 rocky headlands, rock cliffs, and permitted
8 structures;
9 (ii) The proposed new habitable structure is, or
10 will be, adapted to accommodate sea level
11 rise; or
12 (iii) The proposed new habitable structure is not
13 likely to be substantially adversely
14 impacted or damaged by sea level rise during
15 its useful life; and
16 (C) Within the special management area, development
17 is allowed as permitted under part II of this
18 chapter. This subsection shall not preclude or
19 diminish existing constitutional rights and
20 protections, including the right to seek just
21 compensation for taking of property."



1 SECTION 6. Section 205A-29, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) The authority in each county, upon consultation with
4 the central coordinating agency, shall adopt rules under chapter
5 91 setting the special management area use permit application
6 procedures, conditions under which hearings must be held, and
7 the time periods within which the hearing and action for special
8 management area use permits shall occur. The authority shall
9 provide for adequate notice to individuals whose property rights
10 may be adversely affected and to persons who have requested in
11 writing to be notified of special management area use permit
12 hearings or applications. The authority shall also provide
13 public notice that is, at a minimum, circulated throughout the
14 county at least twenty days in advance of the hearing. The
15 authority may require a reasonable filing fee which shall be
16 used for the purposes set forth herein.

17 Any rule adopted by the authority shall be consistent with
18 the objectives, policies, and special management area guidelines
19 provided in this chapter. No policy or guideline that has the
20 effect of a rule shall be adopted without complying with the
21 applicable rulemaking process. Any rule, policy, or guideline



1 adopted that is inconsistent with the objectives, policies, and
2 special management area guidelines provided in the chapter is
3 expressly preempted. Action on the special management permit
4 shall be final unless otherwise mandated by court order."

5 SECTION 7. Section 205A-44, Hawaii Revised Statutes, is
6 amended by amending subsection (b) to read as follows:

7 "(b) Except as provided in this section, structures are
8 prohibited in the shoreline area without a variance pursuant to
9 this part. Structures in the shoreline area shall not need a
10 variance if:

- 11 (1) They were completed prior to June 22, 1970;
- 12 (2) They received either a building permit, board
13 approval, or shoreline setback variance prior to June
14 16, 1989;
- 15 (3) They are outside the shoreline area when they receive
16 either a building permit or board approval;
- 17 (4) They are necessary for or ancillary to continuation of
18 existing agriculture or aquaculture in the shoreline
19 area on June 16, 1989;
- 20 (5) They are minor structures permitted under rules
21 adopted by the department which do not affect beach



1 processes or artificially fix the shoreline and do not
 2 interfere with public access or public views to and
 3 along the shoreline; or

4 (6) Work being done consists of maintenance, repair, and
 5 minor additions or alterations of legal boating,
 6 maritime, or watersports recreational facilities,
 7 which are publicly owned, and which result in little
 8 or no interference with natural shoreline processes;

9 provided that permitted structures, including lawful
 10 nonconforming structures, may be repaired, renovated, and
 11 maintained, but shall not be enlarged, rebuilt, or replaced
 12 within the shoreline area without a variance[-] and any permit
 13 required under part II of this chapter."

14 SECTION 8. Section 205A-45, Hawaii Revised Statutes, is
 15 amended by amending subsection (a) to read as follows:

16 "(a) The several counties through rules adopted pursuant
 17 to chapter 91 or ordinance may require that shoreline setback
 18 lines be established at distances greater than that established
 19 in this part[-]; provided that all shoreline setback lines shall
 20 be measured from the certified shoreline, as determined pursuant
 21 to part II of this chapter, and shall not be based on any



1 projection or model relating to sea level rise; provided further
2 that shoreline setback lines may be calculated from the
3 certified shoreline using historic data such as historic erosion
4 rates."

5 SECTION 9. Section 205A-46, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "§205A-46 Variances. (a) A variance may be granted for a
8 structure or activity otherwise prohibited in this part if the
9 authority finds in writing, based on the record presented, that
10 the proposed structure or activity is necessary for or ancillary
11 to:

- 12 (1) Cultivation of crops;
- 13 (2) Aquaculture;
- 14 (3) Landscaping; provided that the authority finds that
15 the proposed structure or activity will not adversely
16 affect beach processes and will not artificially fix
17 the shoreline;
- 18 (4) Drainage;
- 19 (5) Boating, maritime, or watersports recreational
20 facilities;



- 1 (6) Facilities or improvements by public agencies or
2 public utilities regulated under chapter 269;
- 3 (7) Private facilities or improvements that are clearly in
4 the public interest;
- 5 (8) Private facilities or improvements that will not
6 adversely affect beach processes, result in flanking
7 shoreline erosion, or artificially fix the shoreline;
8 provided that the authority may consider any hardship
9 that will result to the applicant if the facilities or
10 improvements are not allowed within the shoreline
11 area;
- 12 (9) Private facilities or improvements that may
13 artificially fix the shoreline; provided that the
14 authority may consider hardship to the applicant if
15 the facilities or improvements are not allowed within
16 the shoreline area; provided further that a variance
17 to artificially fix the shoreline shall not be granted
18 in areas with sand beaches or where artificially
19 fixing the shoreline may interfere with existing
20 recreational and waterline activities unless the



1 granting of the variance is clearly demonstrated to be
2 in the interest of the general public; or

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

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

16 (c) No variance shall be granted unless appropriate
17 conditions are imposed:

18 (1) To maintain safe lateral access to and along the
19 shoreline or adequately compensate for its loss;

20 (2) To minimize risk of adverse impacts on beach
21 processes;



1 (3) To minimize risk of structures failing and becoming
2 loose rocks, sharp or otherwise dangerous debris, or
3 rubble on public property; and

4 (4) To minimize adverse impacts on public views to, from,
5 and along the shoreline.

6 (d) No variance shall be denied for the maintenance,
7 renovation, or repair of a lawful nonconforming structure unless
8 the authority finds that the proposed maintenance, renovation,
9 or repair would substantially adversely affect public health or
10 safety and the effects cannot reasonably be mitigated."

11 SECTION 10. Section 205A-49, Hawaii Revised Statutes, is
12 amended to read as follows:

13 **"§205A-49 Adoption of rules.** Each agency charged with
14 carrying out this part shall adopt rules necessary to implement
15 or comply with this part by July 1, 1990. All rules shall be
16 adopted under chapter 91. No agency shall adopt policies or
17 guidelines that have the effect of rules without complying with
18 rulemaking process under chapter 91."

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

21



S.B. NO. 69

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

2

INTRODUCED BY: *Spencer A. Houser*



S.B. NO. 69

Report Title:

Coastal Zone Management; Sea Level Rise; Adaptation Strategies

Description:

Includes the establishment of a consistent and balanced framework for developing and implementing sea level rise adaptation strategies as an objective of the Coastal Zone Management Program. Includes the promotion of research, study, and understanding of the suitability and impacts of different sea level rise adaptation as a policy of the Coastal Zone Management Program. Includes the maintenance of a balance between public and private interests in implementing sea level rise adaptation and consideration of all appropriate sea level rise adaptations as policies of the Coastal Zone Management Program. Includes as a policy of the Coastal Zone Management Program that any construction on shoreline be allowed if it is determined to preserve, protect, or rehabilitate the beach of be considered vital development. Requires the County Planning Commission to allow proposed development within the shoreline area and within the sea level rise exposure area under certain circumstances. Prohibits any policy or guideline for setting special area use permit application procedures that has the effect of a rule without complying with the rulemaking process. Preempts any rule, policy, or guideline inconsistent with the Special Management Area Guidelines. Allows counties to require that shoreline setback lines be established at greater distances in certain circumstances. Provides that no variance be denied for maintenance, renovation, or repair of a lawful nonconforming structure with exceptions.

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

