A BILL FOR AN ACT

RELATING TO COASTAL ZONE MANAGEMENT.

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

PART I

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

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

(2) Protect valuable coastal ecosystems from disruption and minimize adverse impacts on all coastal ecosystems;

(3) Reduce hazards to life and property from tsunami, storm waves, stream flooding, erosion, and subsidence; and
(4) Improve the development review process, communication, and public participation in the management of coastal resources and hazards.

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

Facing loss of their property, however, owners of land that abuts the shoreline have responded to coastal erosion by erecting shoreline hardening structures, including seawalls and revetments, which accelerate coastal erosion in adjacent areas, restrict the natural landward movement of the shoreline, stem the natural increase of public trust land, impede the State's ability to protect the coastal zone, and deprive the people of Hawaii of the benefits of increased public trust lands.
The legislature finds that the Hawaii Sea Level Rise Vulnerability and Adaptation Report predicts that 3.2 feet of sea level rise will compromise or destroy six thousand five hundred structures across the State, leaving twenty thousand displaced residents in need of a new home. The legislature also finds that the State must acquire private, shoreline-adjacent lands to ensure that space exists for the survival of the beaches and dune systems in the State. Further, the acquisition of shoreline-adjacent land will enable the State to allow continued public access to Hawaii's beaches, a right protected under the state constitution. Acquiring shoreline-adjacent property will also create a buffer between the shoreline and developed areas, protecting the State from any potential future natural disasters. Doing this before permanent inundation or chronic flooding will be easier and cheaper for the State.

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

(1) Establishing the Hawaii beach preservation revolving fund within the state treasury;

(2) Creating 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;

(3) Appropriating funds for the Hawaii beach preservation
revolving fund, to be used for the contingent mortgage
financing pilot program;

(4) Increasing the conveyance tax rate 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 and further
allocating one hundred per cent of taxes collected on
those properties for deposit into the Hawaii beach
preservation revolving fund; and

(5) Prohibiting, without exception, the construction or
repair of any shoreline hardening structures,
including seawalls and revetments, that would impede
the natural landward movement of public trust lands.

PART II

SECTION 2. Chapter 171, Hawaii Revised Statutes, is
amended by adding two new sections to part VIII to be
appropriately designated and to read as follows:
§171-A Hawaii beach preservation revolving fund;
established; uses. (a) There is established within the state
treasury the Hawaii beach preservation revolving fund, to be
administered by the department, into which shall be deposited:

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

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

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

§171-B **Contingent mortgage financing pilot program;**

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

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

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

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

(1) To any owner of a private single-family residence; provided that the private single-family residence is a qualifying private residential shoreline property in
an expected sea level rise hazard zone or erosion
hazard zone in accordance with rules adopted by the department pursuant to chapter 91; provided further that the contingent mortgage financing pilot program shall be available for up to one hundred qualified single-family residences; and

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

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

(e) The department, or another agency as determined by the governor, shall manage all lands and property acquired pursuant to this section. Lands acquired pursuant to this section shall
remain public in perpetuity or until natural processes transform
the land into public trust lands.

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

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

SECTION 3. There is appropriated out of the general
revenues of the State of Hawaii the sum of $ or so much
thereof as may be necessary for fiscal year 2019-2020 and the
same sum or so much thereof as may be necessary for fiscal year
2020-2021 for the Hawaii beach preservation revolving fund, to
be used for the contingent mortgage financing pilot program.
The sums appropriated shall be expended by the department
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;
(E) Seventy cents per $100 for properties with a value of at least $4,000,000, but less than $6,000,000;

(F) Ninety cents per $100 for properties with a value of at least $6,000,000, but less than $10,000,000; and

(G) One dollar per $100 for properties with a value of $10,000,000 or greater; and

(2) For the sale of a condominium or single family residence for which the purchaser is ineligible for a county homeowner's exemption on property tax:

(A) Fifteen cents per $100 for properties with a value of less than $600,000;

(B) Twenty-five cents per $100 for properties with a value of at least $600,000, but less than $1,000,000;

(C) Forty cents per $100 for properties with a value of at least $1,000,000, but less than $2,000,000;

(D) Sixty cents per $100 for properties with a value of at least $2,000,000, but less than $4,000,000;
(E) Eighty-five cents per $100 for properties with a value of at least $4,000,000, but less than $6,000,000;

(F) One dollar and ten cents per $100 for properties with a value of at least $6,000,000, but less than $10,000,000; and

(G) One dollar and twenty-five cents per $100 for properties with a value of $10,000,000 or greater; provided that for oceanfront properties under this subsection with a value of $10,000,000 or more, the rate shall be one dollar and fifty cents per $100, of such actual and full consideration; provided that in the case of a lease or sublease, this chapter shall apply only to a lease or sublease whose full unexpired term is for a period of five years or more, and in those cases, including (where appropriate) those cases where the lease has been extended or amended, the tax in this chapter shall be based on the cash value of the lease rentals discounted to present day value and capitalized at the rate of six per cent, plus the actual and full consideration paid or to be paid for any and all improvements, if any, that
shall include on-site as well as off-site improvements,
applicable to the leased premises; and provided further that the
tax imposed for each transaction shall be not less than $1."

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

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

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

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

(3) One hundred per cent of the taxes collected on the
sale of oceanfront property pursuant to section
247-2(2)(G) shall be paid into the Hawaii beach
preservation revolving fund established by section
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 of a legal structure costing more than $20,000; provided that the structure is at risk of immediate damage from shoreline erosion and the proposed construction shall not artificially fix the shoreline;

(3) Other structures or activities; provided that no person or agency has requested a public hearing within
(4) Maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime, or watersports recreational facilities, which result in little or no interference with natural shoreline processes."

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

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

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

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

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

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

(5) The taking of driftwood, shells, beach glass, glass floats, or seaweed;

(6) The exercise of traditional cultural practices as authorized by law or as permitted by the department pursuant to article XII, section 7, of the Hawaii State Constitution; or

(7) For the response to a public emergency or a state or local disaster.

(b) Except as provided in this section, structures are prohibited in the shoreline area without a variance pursuant to this part. Structures in the shoreline area shall not need a variance if:
(1) They were completed prior to June 22, 1970;

(2) They received either a building permit, board approval, or shoreline setback variance prior to June 16, 1989;

(3) They are outside the shoreline area when they receive either a building permit or board approval;

(4) They are necessary for or ancillary to continuation of existing agriculture or aquaculture in the shoreline area on June 16, 1989;

(5) They are minor structures permitted under rules adopted by the department [which] that do not affect beach processes or artificially fix the shoreline and do not interfere with public access or public views to and along the shoreline; or

(6) Work being done consists of maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime, or watersports recreational facilities, [which] that are publicly owned, and [which] that result in little or no interference with natural shoreline processes;
provided that permitted structures may be repaired, but shall not be enlarged within the shoreline area without a variance.

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

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

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

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

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

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

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

(1) Cultivation of crops;
(2) Aquaculture;
(3) Landscaping; provided that the authority finds that the proposed structure or activity will not adversely affect beach processes and will not artificially fix the shoreline;
(4) Drainage;
(5) Boating, maritime, or watersports recreational facilities;
(6) Facilities or improvements by public agencies or public utilities regulated under chapter 269;
(7) Private facilities or improvements that are clearly in the public interest;
(8) Private facilities or improvements which will neither adversely affect beach processes nor artificially fix the shoreline; provided that the authority also finds that hardship will result to the applicant if the
facilities or improvements are not allowed within the
shoreline area; or

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

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

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

PART V

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

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

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

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

INTRODUCED BY:
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.

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