A BILL FOR AN ACT

RELATING TO SEA LEVEL RISE.

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

PART I

SECTION 1. As reflected in the findings of Act 32, Session Laws of Hawaii 2017 (Act 32), the legislature recognizes that climate change is the overriding challenge of the twenty-first century. Climate change poses immediate and long-term threats to the State's economy, sustainability, security, and way of life.

Act 32 established the Hawaii climate change mitigation and adaptation commission and directed the commission to, as a first step, focus on and develop sea level rise vulnerability and adaptation reports that are required to include:

(1) Identification of the major areas of sea level rise impacts affecting the State and counties through 2050;

(2) Identification of expected impacts of sea level rise based on the latest scientific research for each area through 2050;
(3) Identification of the economic ramifications of sea level rise;

(4) Identification of applicable federal laws, policies, or programs that impact affected areas; and

(5) Recommendations for planning, management, and adaptation for hazards associated with increasing sea level rise.

The sea level rise vulnerability and adaptation report approved by the commission identifies, with maps at tax map key detail, areas that are susceptible to sea level rise impacts based on a 3.2-foot increase in sea level projected to occur by mid-century or earlier. These areas are designated as the sea level rise exposure area projection, which the commission recommends be adopted as a sea level rise exposure area overlay to guide state and county adaptation strategies and standards for development. Furthermore, the commission's report includes a recommendation to require mandatory disclosure for private properties and public offerings located in areas with potential exposure to sea level rise.

The legislature further finds that chapter 508D, Hawaii Revised Statutes, requires a written disclosure statement.
prepared by the seller, or at the seller's direction, that
purports to fully and accurately disclose all material facts
relating to residential real property being offered for sale. A
"material fact" is defined under section 508D-1, Hawaii Revised
Statutes, in pertinent part, to mean "any fact, defect, or
condition, past or present, that would be expected to measurably
affect the value to a reasonable person of the residential real
property being offered for sale." The value of property lying
within the boundaries of a sea level rise exposure area likely
will be affected over time, which is a material fact that should
be included in mandatory seller disclosure statements in real
property transactions.

The purpose of this Act is to require that mandatory seller
disclosures in real property transactions include identification
of residential real properties lying within a sea level rise
exposure area.

SECTION 2. Section 508D-15, Hawaii Revised Statutes, is
amended by amending subsection (a) to read as follows:
"(a) When residential real property lies:
(1) Within the boundaries of a special flood hazard area
as officially designated on Flood Insurance
Administration maps promulgated by the United States Department of Housing and Urban Development for the purposes of determining eligibility for emergency flood insurance programs;

(2) Within the boundaries of the noise exposure area shown on maps prepared by the department of transportation in accordance with Federal Aviation Regulation Part 150-Airport Noise Compatibility Planning (14 Code of Federal Regulations Part 150) for any public airport;

(3) Within the boundaries of the Air Installation Compatibility Use Zone of any Air Force, Army, Navy, or Marine Corps airport as officially designated by military authorities; [ex]

(4) Within the anticipated inundation areas designated on the department of defense's emergency management tsunami inundation maps; or

(5) Within a sea level rise exposure area as officially designated by the Hawaii climate change mitigation and adaptation commission or its successor;

subject to the availability of maps that designate the five areas by tax map key (zone, section, parcel), the seller
shall include such material fact information in the disclosure statement provided to the buyer subject to this chapter. Each county shall provide, where available, maps of its jurisdiction detailing the five designated areas specified in this subsection. The maps shall identify the properties situated within the designated areas by tax map key number (zone, section, parcel) and shall be of a size sufficient to provide information necessary to serve the purposes of this section. Each county shall provide legible copies of the maps and may charge a reasonable copying fee."

PART II

SECTION 3. Chapter 205A, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

"§205A- Establishment of shoreline setback lines. (a)
All lots shall have a shoreline setback line that is the greater of the distances from the shoreline as calculated under the methods listed below or the overlay of such distances:

(1) Twenty-five feet plus a distance of fifty times the annual erosion hazard rate from the shoreline;

(2) Based on the lot's depth as follows:
(A) A lot with an average lot depth of one hundred feet or less shall have a shoreline setback line twenty-five feet from the shoreline;

(B) A lot with an average lot depth of more than one hundred feet but less than one hundred sixty feet shall have a shoreline setback line forty feet from the shoreline; and

(C) A lot with an average lot depth of one hundred sixty feet or more shall have a shoreline setback line located at a distance from the shoreline equal to twenty-five per cent of the average lot depth, but not more than one hundred fifty feet; and

(3) For irregularly shaped lots, or where cliffs, bluffs, or other topographic features inhibit the safe measurement of boundaries or the shoreline, the shoreline setback line will be equivalent to twenty-five per cent of the lot's depth as determined by the department, to a maximum of one hundred fifty feet from the shoreline.
(b) Notwithstanding any provision of this section to the contrary, a lot shall have a shoreline setback line at a distance from the shoreline that provides for the minimum buildable depth; provided that in no case shall the shoreline setback line be less than twenty-five feet from the shoreline.

(c) Prior to commencement of grubbing, grading, or construction activities, the shoreline setback line shall be identified on the ground and posted with markers, posts, or other appropriate reference marks by a surveyor licensed in the State.

(d) As used in this section:

"Annual erosion hazard rate" means the annual rate of coastal erosion calculated according to the methodology developed by the University of Hawaii along transects placed at regular intervals of approximately sixty-six feet and as indicated on maps on file with the department.

"Department" means the department of land and natural resources.

"Shoreline" means the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves
occurs, usually evidenced by the edge of natural rather than
artificially-induced vegetation growth, or the upper limit of
debris left by the wash of the waves that has been certified by
the department within the preceding twelve months.

"Shoreline setback line" means that line running inland
from and parallel to the shoreline at a horizontal plane."

SECTION 4. Section 205A-43, Hawaii Revised Statutes, is
amended by amending subsection (a) to read as follows:

"(a) [Setbacks along shorelines are established of not
less than twenty feet and not more than forty feet inland from
the shoreline.] The department shall adopt rules pursuant to
chapter 91, and shall enforce the shoreline setbacks and rules
pertaining thereto[.]; provided that the rules shall, at a
minimum, meet the standards set forth in section 205A-__.

(b) The powers and duties of the department shall include,
but not be limited to:

(1) The department shall adopt rules under chapter 91
prescribing procedures for determining the shoreline
setback line; and

(2) The department shall review the plans of all
applicants who propose any structure, activity, or
facility that would be prohibited without a variance pursuant to this part. The department may require that the plans be supplemented by accurately mapped data and photographs showing natural conditions and topography relating to all existing and proposed structures and activities."

PART III

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on January 1, 2020; provided that part I shall take effect on November 1, 2019.
Report Title:
Real Estate Transactions; Mandatory Seller Disclosures; Sea
Level Rise Exposure Area; Shoreline Setback Restrictions

Description:
Requires that mandatory seller disclosures in real estate
transactions include identification of residential real
properties lying within a sea level rise exposure area.
Establishes shoreline setback restrictions.

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