A BILL FOR AN ACT

RELATING TO THE ENVIRONMENT.

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

SECTION 1. The legislature finds that the coastal zone management program was established as part of the coastal zone management law under Act 188, Session Laws of Hawaii 1977. The Act declared that it is the State's objective regarding scenic and open space resources to protect, preserve, and, where desirable, restore or improve the quality of coastal scenic and open space resources; regarding coastal ecosystems, to protect valuable coastal ecosystems from disruption and minimize adverse impacts on all coastal ecosystems; regarding coastal hazards, to reduce hazards to life and property from tsunami, storm waves, stream flooding, erosion, and subsidence; and regarding managing development, to improve the development review process, communication, and public participation in the management of coastal resources and hazards.

The purpose of this Act is to amend chapter 205A, Hawaii Revised Statutes, to strengthen state policies to reduce residential exposure to coastal hazards and protect state
beaches and to update language for consistency with other Hawaii
Revised Statutes.

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

"Beach" means a coastal landform composed predominantly of
sand from eroded rock, coral, or shell material that is
established and shaped by wave action and tidal processes. Such
coastal landform encompasses sand deposits in nearshore
submerged areas, and sand dunes or upland beach deposits
landward of the shoreline, and provides benefits for public use
and recreation, for coastal ecosystems, and as a natural buffer
against coastal hazards.

"Coastal hazards" include tsunami, hurricanes, wind, waves,
storm surges, high tide, flooding, stream flooding, erosion, sea
level rise, subsidence, and point and nonpoint source
pollution."

SECTION 3. Section 205A-2, Hawaii Revised Statutes, is
amended to read as follows:
H.B. NO. 1848
H.D. 1

§205A-2 Coastal zone management program; objectives and policies. (a) The objectives and policies in this section shall apply to all parts of this chapter.

(b) Objectives.

(1) Recreational resources;

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

(2) Historic resources;

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

(3) Scenic and open space resources;

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

(4) Coastal ecosystems;

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

(5) Economic uses;

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

(6) Coastal hazards;

(A) Reduce hazard to life and property from [tsunami, storm waves, stream flooding, erosion, subsidence, and pollution.] coastal hazards.

(7) Managing development;

(A) Improve the development review process, communication, and public participation in the management of coastal resources and hazards.

(8) Public participation;

(A) Stimulate public awareness, education, and participation in coastal management.

(9) Beach protection;

(A) Protect beaches and coastal dunes for [public];

(i) Public use and recreation[ ];

(ii) Benefits of coastal ecosystems; and
(iii) Natural buffers against coastal hazards; and

(B) Coordinate and fund beach management and protection.

(10) Marine and coastal resources;

(A) Promote the protection, use, and development of marine and coastal resources to assure their sustainability.

(c) Policies.

(1) Recreational resources;

(A) Improve coordination and funding of coastal recreational planning and management; and

(B) Provide adequate, accessible, and diverse recreational opportunities in the coastal zone management area by:

(i) Protecting coastal resources uniquely suited for recreational activities that cannot be provided in other areas;

(ii) Requiring [replacement] restoration of coastal resources [having] that have significant recreational and ecosystem value, including[?] but not limited to coral
reefs, surfing sites, fishponds, [and] sand
beaches, and coastal dunes, when [such] these resources will be unavoidably damaged by development[+] or requiring [reasonable] monetary compensation to the State for recreation when [replacement] restoration is not feasible or desirable;

(iii) Providing and managing adequate public access, consistent with conservation of natural resources, to and along shorelines with recreational value;

(iv) Providing an adequate supply of shoreline parks and other recreational facilities suitable for public recreation;

(v) Ensuring public recreational uses of county, state, and federally owned or controlled shoreline lands and waters having recreational value consistent with public safety standards and conservation of natural resources;
(vi) Adopting water quality standards and regulating point and nonpoint sources of pollution to protect and, where feasible, restore the recreational value of coastal waters;

(vii) Developing new shoreline recreational opportunities, where appropriate, including but not limited to artificial lagoons, artificial beaches, and artificial reefs for surfing and fishing; and

(viii) Encouraging reasonable dedication of shoreline areas with recreational value for public use as part of discretionary approvals or permits by the land use commission, board of land and natural resources, and county authorities; and crediting this dedication against the requirements of section 46-6;

(2) Historic resources;

(A) Identify and analyze significant archaeological resources;
(B) Maximize information retention through preservation of remains and artifacts or salvage operations; and

(C) Support state goals for protection, restoration, interpretation, and display of historic resources;

(3) Scenic and open space resources;

(A) Identify valued scenic resources in the coastal zone management area;

(B) Ensure that new developments are compatible with their visual environment by designing and locating [such] these developments to minimize the alteration of natural landforms and existing public views to and along the shoreline;

(C) Preserve, maintain, and, where desirable, improve and restore shoreline open space and scenic resources; and

(D) Encourage those developments that are not coastal dependent to locate in inland areas;

(4) Coastal ecosystems;
(A) Exercise an overall conservation ethic, and practice stewardship in the protection, use, and development of marine and coastal resources;

(B) Improve the technical basis for natural resource management;

(C) Preserve valuable coastal ecosystems, including reefs, beaches, and coastal dunes, of significant biological or economic importance;

(D) Minimize disruption or degradation of coastal water ecosystems by effective regulation of stream diversions, channelization, and similar land and water uses, recognizing competing water needs; and

(E) Promote water quantity and quality planning and management practices that reflect the tolerance of fresh water and marine ecosystems and maintain and enhance water quality through the development and implementation of point and nonpoint source water pollution control measures;

(5) Economic uses;
(A) Concentrate coastal dependent development in appropriate areas;

(B) Ensure [that coastal dependent development such as harbors and ports,] residential and commercial development, transportation infrastructure, and coastal related development [such as], including but not limited to visitor industry facilities and energy generating facilities,[such as]:

(i) Are located, designed, and constructed to minimize exposure to coastal hazards; and

(ii) Minimize adverse social, visual, and environmental impacts in the coastal zone management area; and

(C) Direct the location and expansion of coastal dependent developments to areas [presently] designated and used for [such] these developments and permit reasonable long-term growth at [such] these areas, and permit coastal dependent development outside of [presently] designated areas when:
(i) Use of [presently] designated locations is not feasible;

(ii) Adverse environmental effects and risks from coastal hazards are minimized; and

(iii) The development is important to the State’s economy;

(6) Coastal hazards;

(A) Develop and communicate adequate information about [storm wave, tsunami, flood, erosion, subsidence, and point and nonpoint source pollution] risks of coastal hazards;

(B) Control development, including planning and zoning control, in areas subject to [storm wave, tsunami, flood, erosion, hurricane, wind, subsidence, and point and nonpoint source pollution] coastal hazards;

(C) Ensure that developments comply with requirements of the [Federal] National Flood Insurance Program; and

(D) Prevent coastal flooding from inland projects;

(7) Managing development;
(A) Use, implement, and enforce existing law effectively to the maximum extent possible in managing present and future coastal zone development;

(B) Facilitate timely processing of applications for development permits and resolve overlapping or conflicting permit requirements; and

(C) Communicate the potential short and long-term impacts of proposed significant coastal developments early in their life cycle and in terms understandable to the public to facilitate public participation in the planning and review process;

(8) Public participation;

(A) Promote public involvement in coastal zone management processes;

(B) Disseminate information on coastal management issues by means of educational materials, published reports, staff contact, and public workshops for persons and organizations concerned
with coastal issues, developments, and government
activities; and

(C) Organize workshops, policy dialogues, and site-
specific mediations to respond to coastal issues
and conflicts;

(9) Beach protection;

(A) Locate new structures inland from the shoreline
setback to conserve open space, minimize
interference with natural shoreline processes,
and minimize loss of improvements [due to]
because of erosion;

(B) Prohibit construction of private [erosion-
protection] shoreline hardening structures
[seaward of the shoreline, except when they
result in improved aesthetic and engineering
solutions to erosion] such as seawalls and
revetments, at [the] sites [and do not] with
beaches and at sites where shoreline hardening
structures interfere with existing recreational
and waterline activities;
(C) Minimize the construction of public erosion-protection shoreline hardening structures [seaward of the shoreline], such as seawalls and revetments at sites with beaches and at sites where shoreline hardening structures interfere with existing recreational and waterline activities;

(D) Minimize grading of and damage to coastal dunes;

[E] Prohibit private property owners from creating a public nuisance by inducing or cultivating the private property owner's vegetation in a beach transit corridor; and

[F] Prohibit private property owners from creating a public nuisance by allowing the private property owner's unmaintained vegetation to interfere or encroach upon a beach transit corridor; and

(10) Marine and coastal resources;

(A) Ensure that the use and development of marine and coastal resources are ecologically and
environmentally sound and economically beneficial;

(B) Coordinate the management of marine and coastal resources and activities to improve effectiveness and efficiency;

(C) Assert and articulate the interests of the State as a partner with federal agencies in the sound management of ocean resources within the United States exclusive economic zone;

(D) Promote research, study, and understanding of ocean and coastal processes, the impacts of climate change and sea level rise, marine life, and other ocean resources to acquire and inventory information necessary to understand how coastal development activities relate to and impact upon ocean and coastal resources; and

(E) Encourage research and development of new, innovative technologies for exploring, using, or protecting marine and coastal resources."
SECTION 4. Section 205A-22, Hawaii Revised Statutes, is amended by amending the definitions of "department" and "development" to read as follows:

""Department means the planning department [in] of the counties of Kauai, Maui, and Hawaii and the department of [land utilization] planning and permitting in the city and county of Honolulu, or other appropriate agency as designated by the county councils.

"Development" means any of the uses, activities, or operations on land or in or under water within a special management area that are included below:

(1) Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;

(2) Grading, removing, dredging, mining, or extraction of any materials;

(3) Change in the density or intensity of use of land, including but not limited to the division or subdivision of land;

(4) Change in the intensity of use of water, ecology related thereto, or of access thereto; and
Construction, reconstruction, [demolition,] or alteration of the size of any structure.

"Development" does not include the following:

(1) Construction or reconstruction of a single-family residence that is less than seven thousand five hundred square feet of floor area, is not situated on a shoreline parcel or a parcel that is impacted by waves, storm surges, high tide, or shoreline erosion, and is not part of a larger development;

(2) Repair or maintenance of roads and highways within existing rights-of-way;

(3) Routine maintenance dredging of existing streams, channels, and drainage ways;

(4) Repair and maintenance of underground utility lines, including but not limited to water, sewer, power, and telephone and minor appurtenant structures such as pad mounted transformers and sewer pump stations;

(5) Zoning variances, except for height, density, parking, and shoreline setback;

(6) Repair, maintenance, or interior alterations to existing structures;
(7) Demolition or removal of structures, except those structures located on any historic site as designated in national or state registers;

(8) Use of any land for the purpose of cultivating, planting, growing, and harvesting plants, crops, trees, and other agricultural, horticultural, or forestry products or animal husbandry, or aquaculture or mariculture of plants or animals, or other agricultural purposes;

(9) Transfer of title to land;

(10) Creation or termination of easements, covenants, or other rights in structures or land;

(11) Final subdivision approval; provided that in counties that may automatically approve tentative subdivision applications as a ministerial act within a fixed time of the submission of a preliminary plat map, unless the director takes specific action, a special management area use permit if required, shall be processed concurrently with an application for tentative subdivision approval or after tentative
subdivision approval and before final subdivision approval;

(12) Subdivision of land into lots greater than twenty acres in size;

(13) Subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed; provided that any land that is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels;

(14) Installation of underground utility lines and appurtenant aboveground fixtures less than four feet in height along existing corridors;

(15) Structural and nonstructural improvements to existing single-family residences, where otherwise permissible;

(16) Nonstructural improvements to existing commercial structures; and

(17) Construction, installation, maintenance, repair, and replacement of emergency management warning or signal devices and sirens[†]
provided that whenever the authority finds that any excluded
use, activity, or operation may have a cumulative impact, or a
significant environmental or ecological effect on a special
management area, that use, activity, or operation shall be
defined as "development" for the purpose of this part]."
SECTION 5. Section 205A-26, Hawaii Revised Statutes, is
amended to read as follows:
"§205A-26 Special management area guidelines. In
implementing this part, the authority shall adopt the following
guidelines for the review of developments proposed in the
special management area:

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

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

(B) Adequate and properly located public recreation
areas and wildlife preserves are reserved;
Provisions are made for solid and liquid waste treatment, disposition, and management [which] that will minimize adverse effects upon special management area resources; and

Alterations to existing land forms and vegetation, except crops, and construction of structures shall cause minimum adverse effect to water resources, beaches, and coastal dunes, and scenic and recreational amenities and [minimum danger of] minimize impacts from floods, wind damage, storm surge, landslides, erosion, sea level rise, siltation, or failure in the event of earthquake.

No development shall be approved unless the authority has first found:

That the development will not have any [substantial significant] adverse environmental or ecological effect, except as [such] any adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interests. [Such] The adverse
effects shall include but not be limited to the potential cumulative impact of individual developments, each one of which taken in itself might not have a significant adverse effect, and the elimination of planning options;

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

(C) That the development is consistent with the county general plan, community plan, and zoning. Such a finding of consistency does not preclude concurrent processing where a general plan, community plan, or zoning amendment may also be required.

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

(A) Dredging, filling or otherwise altering any bay, estuary, salt marsh, river mouth, slough or lagoon;
(B) Any development [which] that would reduce the size of any beach or other area usable for public recreation;

(C) Any development [which] that would reduce or impose restrictions upon public access to tidal and submerged lands, beaches, or portions of rivers and streams within the special management areas and the mean high tide line where there is no beach;

(D) Any development [which] that would substantially interfere with or detract from the line of sight toward the sea from the state highway nearest the coast; and

(E) Any development [which] that would adversely affect water quality, existing areas of open water free of visible structures, existing and potential fisheries and fishing grounds, wildlife habitats, or potential or existing agricultural uses of land."

SECTION 6. Section 205A-29, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:
"(a) The authority in each county, upon consultation with
the central coordinating agency, shall adopt rules under
chapter 91 setting the special management area use permit
application procedures, conditions under which hearings must be
held, and the time periods within which the hearing and action
for special management area use permits shall occur. The
authority shall provide for adequate notice to individuals whose
property rights may be adversely affected and to persons who
have requested in writing to be notified of special management
area use permit hearings or applications. The authority shall
also provide public notice [statewide] that is at minimum
circulated throughout the county and at least twenty days in
advance of the hearing. The authority may require a reasonable
filing fee which shall be used for the purposes set forth
herein.

Any rule adopted by the authority shall be consistent with
the objectives, policies, and special management area guidelines
provided in this chapter. Action on the special management
permit shall be final unless otherwise mandated by court order."

SECTION 7. 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."

SECTION 8. 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+] or a public facility, which does not fix the shoreline, under an emergency authorization issued by the authority; provided that the structure or public
facility is at risk of immediate damage from shoreline erosion;

(3) Other structures or activities; provided that no person or agency has requested a public hearing within twenty-five calendar days after public notice of the application; or

(4) Maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime, or watersports recreational facilities, [which] that result in little or no interference with natural shoreline processes."

SECTION 9. Section 205A-44, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(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 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 are publicly owned, and which result in little or no interference with natural shoreline processes;

provided that permitted structures may be repaired, but shall not be enlarged, rebuilt, or replaced within the shoreline area without a variance."

SECTION 10. Section 205A-46, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:
"(a) A 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], excluding seawalls and revetments, that will neither adversely affect beach processes [nor artificially fix the shoreline], nor result in flanking shoreline erosion;
provided that the authority [also finds that] may
consider hardship that will result to the applicant if
the facilities or improvements are not allowed within
the shoreline area;

(9) Private facilities or improvements that may
artificially fix the shoreline; provided that the
authority [also finds that shoreline erosion is likely
to cause] may consider hardship that will result 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]; provided further that a
variance to artificially fix the shoreline shall not
be granted in areas with sand beaches and in areas
where artificially fixing the shoreline may interfere
with existing recreational and waterline activities;
or

(10) 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."

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, 2050.
Report Title:
Climate Change; Sea Level Rise; Barriers; Flooding; Coastal Zone Management; Shoreline Hardening

Description:
Requires new developments to plan for the impacts of projected sea level rise and restricts development in areas significantly affected by projected sea level rise. Amends policies and objectives related to coastal zone management to reduce residential exposure to coastal hazards and protect state beaches and public shoreline access. Defines "beach" and "coastal hazards." Increases the minimum shoreline setback. Takes effect on 7/1/2050. (HD1)

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