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 state policy 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 legislature further finds that a 2012 study by the United States Geological Survey and university of Hawaii researchers indicates that seventy per cent of beaches in the
State are undergoing a trend of chronic sand loss and shoreline retreat and more than thirteen miles of beach have been completely lost to erosion fronting seawalls and revetments. The Hawaii sea level rise vulnerability and adaptation report, accepted by the Hawaii climate change mitigation and adaptation commission in 2017, finds that with just 1.1 feet of sea level rise many more miles of beach could be lost to erosion (e.g., five miles on Kauai, seven miles on Oahu, and eight miles on Maui) if widespread armoring is allowed. In consideration of its findings, the report recommends enabling beaches to persist with sea level rise and suggests integration of sea level rise considerations into the Hawaii Coastal Zone Management Act (chapter 205A, Hawaii Revised Statutes).

The legislature further finds that the convergence of development densification along shorelines and increasing landward migration of shorelines due to sea level rise and other human and natural impacts, as well as extensive beach loss fronting shoreline armoring, has resulted in a situation where existing policies and regulations must be updated to address critical shortcomings to protect beaches and other coastal environments from further degradation while also reducing
exposure of shorefront communities to increasing erosion and flooding hazards with sea level rise. In a recent study by the University of Hawaii coastal geology group, primary causes for failure of coastal zone management policy objectives were identified as being related to the following:

(1) Current policies, ordinances, and practices allowing hardening of shorelines in the case of demonstrated hardship brought on by coastal erosion through a variance process. The hardship variance also inadvertently incentivizes the siting of structures nearer to the coastline owing to increased likelihood that shoreline hardening will be authorized. This variance process in conjunction with increasing landward migration of the shoreline, ensures that pressure on regulatory agencies to allow shoreline armoring will continue to increase under existing policies. Further, amplified erosion, known as "flanking" occurs on properties located adjacent to existing shoreline hardening. The amplified erosion in combination with the hardship variance spurs a continuous cycle of hardening and flanking that can
extend along an entire beach. The university of Hawaii study, which demonstrated this effect in a section of northeast Oahu, reports that roughly forty-five per cent of observed shoreline hardening was implemented in response to adjacent hardening. This combination of beach erosion and coastal policy that has allowed widespread shoreline armoring has caused narrowing or elimination of beaches to the extent that these beaches can no longer be used for public recreation and cultural practice.

(2) Current policies, ordinances, and practices allowing for renovation and expansion of single-family homes, extending building lifetimes indefinitely and allowing for virtually complete coverage of coastal parcels by structures within erosion and flood-prone coastal areas. The university of Hawaii study demonstrated this policy weakness, reporting that the average building surface area increased by twenty per cent following implementation of the Coastal Zone Management Act. As sea levels continue to rise, our concentrated shoreline development will be exposed to
coastal hazards, thus increasing the likelihood of mass structural failure and deposit of debris on public beach resources.

In response to the inadequacies of the current coastal zone management policies and regulations with respect to the protection of beaches, beach access and beach ecosystems, due primarily to sea level rise and other natural and human impacts, but also related to the inability of existing polices and regulations to reconcile development along dynamic beach systems while protecting these natural environments, the legislature finds that state coastal zone management policies must be strengthened to conserve beaches for present and future generations while also reducing hazard exposure to our shorefront communities.

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 to protect state beaches and to update language for consistency with other Hawaii Revised Statutes.

SECTION 2. Section 205A-2, Hawaii Revised Statutes, is amended to read as follows:
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, sea level rise, and pollution.

(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 use and recreation, ecosystem services, and as natural barriers to coastal hazards; and
(B) Improve coordination and funding of coastal resource planning and management.

(10) Marine 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 protection of coastal resources having significant recreational and ecosystem value including, but not limited to coral reefs, surfing sites, fishponds, and sand beaches, when
such] these resources will be unavoidably
damaged by development; or requiring
reasonable monetary compensation to the
State for recreation when replacement 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 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], including but not limited to residential and
commercial development, transportation infrastructure, harbors and ports, and coastal related development [such as], including but not limited to visitor industry facilities and energy generating facilities, are located, designed, and constructed to minimize exposure to coastal hazards including projected impacts from sea level rise, and minimize adverse social, visual, and environmental impacts in the coastal zone management area; and

(C) Direct the location and expansion of coastal [dependent developments] development 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 and sea level rise are minimized; and

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

(6) Coastal hazards;

(A) Develop and communicate adequate information about [storm] high wave, tsunami, flood, events and hazards related to hurricanes, tsunamis, floods, erosion, subsidence, sea level rise, and point and nonpoint source pollution hazards;

(B) Minimize risks to development in areas subject to [storm] high wave, tsunami, flood, events and hazards related to tsunamis, floods, erosion, [hurricane] hurricanes, wind, subsidence, sea level rise, and point and nonpoint source pollution hazards;

(C) Establish zoning controls to minimize hazards and exposure of residential and commercial development in areas subject to impacts related
to sea level rise, including erosion, wave
inundation, and high tide flooding;

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

(E) Prevent coastal flooding from inland
projects; and

(F) Avoid grading of and damage to coastal dunes.

(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 erosion;

(B) Prohibit construction of private erosion-protection structures [seaward of the shoreline],
including but not limited to seawalls and rock revetments, except [when they result in improved aesthetic and engineering solutions to erosion] at [the] sites [and do not] where they do not interfere with beach processes and existing recreational and waterline activities;

(C) Minimize the construction of public coastal erosion-protection structures [seaward of the shoreline], including but not limited to seawalls and rock revetments;

(D) 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

(E) 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;

(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, 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 3. 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;

(C) Provisions are made for solid and liquid waste treatment, disposition, and management [which] that will minimize adverse effects upon special management area resources; and

(D) 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 minimize impacts from floods, wind
damage, storm surge, landslides, erosion, sea
level rise, siltation, or failure in the event of
earthquake.

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

(A) That the development will not have any [substantial] significant adverse environmental or ecological effect, except as any adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interests. 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 [substantial] significant adverse effect, and the elimination of planning options;

(B) That the development is consistent with the objectives, policies, and special management area
1 guidelines of this chapter and any guidelines
2 enacted by the legislature; and
3 (C) That the development is consistent with the
4 county general plan, community plan, and zoning.
5 [Such an] A finding of consistency does not
6 preclude concurrent processing where a general
7 plan, community plan, or zoning amendment may
8 also be required.
9 (3) The authority shall seek to minimize, where
10 reasonable:
11 (A) Dredging, filling or otherwise altering any bay,
12 estuary, salt marsh, river mouth, slough or
13 lagoon;
14 (B) Any development [which] that would reduce the
15 size of any beach or other area usable for public
16 recreation;
17 (C) Any development [which] that would reduce or
18 impose restrictions upon public access to tidal
19 and submerged lands, beaches, portions of rivers
20 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 4. Section 205A-29, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) No agency authorized to issue permits pertaining to any development within the special management area shall authorize any development unless approval is first received in accordance with the procedures adopted pursuant to this part. For the purposes of this subsection, county general plan, state land use district boundary amendments, and zoning changes are
not permits. This section shall not apply to permits for uses within the state land use conservation district."

SECTION 5. 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 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) [Temporary protection] **Temporary protection** of a legal structure [costing more than $20,000;] or **public facility** (excluding shore protection structures), under an emergency authorization issued by the authority; provided that the structure or facility is at risk of immediate damage from shoreline erosion[;] and the authorization does not exceed three years;

(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 7.** Section 205A-44, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(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

For the response to a public emergency or a state or local disaster."

SECTION 8. 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] that will neither adversely affect beach processes [nor artificially fix the shoreline], result in flanking of adjacent properties, or curtail public access;

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 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] the action will neither adversely affect beach processes, result in flanking of adjacent properties, nor curtail public access unless it is clearly in the public interest[7], for example, in the case of an imminent
threat of a road or highway failure, or to other critical public infrastructure; provided further that the authority may consider hardship that will result to the applicant if the facilities or improvements are not allowed within the shoreline area; 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 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect on July 1, 2100.
Report Title:
Climate Change; Sea Level Rise; Barriers; Flooding; Coastal Zone Management

Description:
Requires new developments to plan for the impacts of projected sea level rise and prohibits development in areas significantly affected by projected sea level rise. (HB549 HD1)

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