

JAN 24 2019

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 the coastal zone
2 management program was established as part of the coastal zone
3 management law under Act 188, Session Laws of Hawaii 1977. The
4 Act declared that it is state policy regarding scenic and open
5 space resources to protect, preserve, and where desirable,
6 restore or improve the quality of coastal scenic and open space
7 resources; regarding coastal ecosystems, to protect valuable
8 coastal ecosystems from disruption and minimize adverse impacts
9 on all coastal ecosystems; regarding coastal hazards, to reduce
10 hazards to life and property from tsunami, storm waves, stream
11 flooding, erosion, and subsidence; and regarding managing
12 development, to improve the development review process,
13 communication, and public participation in the management of
14 coastal resources and hazards.

15 The legislature further finds that a 2012 study by the
16 United States Geological Survey and University of Hawaii
17 researchers indicates that seventy per cent of beaches in Hawaii



1 are undergoing a trend of chronic sand loss and shoreline
2 retreat and over thirteen miles of beach have been completely
3 lost to erosion fronting seawalls and revetments. The Hawaii
4 sea level rise vulnerability and adaptation report, developed
5 under the leadership of the Hawaii climate change mitigation and
6 adaptation commission in 2017, finds that with just 1.1 feet of
7 sea level rise, many more miles of beach could be lost to
8 erosion (i.e. five miles on Kauai, seven miles on Oahu, and
9 eight miles on Maui) if widespread armoring is allowed. In
10 consideration of its findings, the commission recommends
11 enabling beaches to persist with sea level rise and suggests
12 integration of sea level rise considerations into the Hawaii
13 coastal zone management act.

14 The legislature further finds that the convergence of
15 development densification along shorelines and increasing
16 landward migration of shorelines due to sea level rise and other
17 human and natural impacts, as well as extensive beach loss
18 fronting shoreline armoring, necessitate updates to existing
19 policies and regulations to address critical shortcomings in
20 protecting beaches and other coastal environments from further
21 degradation while also reducing exposure of shorefront



1 communities to increasing erosion and flooding hazards with sea
2 level rise. In a recent study by the University of Hawaii
3 coastal geology group, primary causes for failure of coastal
4 zone management policy objectives were identified as being
5 related to the following:

6 (1) Current policies, ordinances, and practices that allow
7 hardening of shorelines in the case of demonstrated
8 hardship brought on by coastal erosion through a
9 variance process. The hardship variance also
10 inadvertently incentivizes the siting of structures
11 nearer to the coastline because it increases the
12 likelihood that shoreline hardening will be
13 authorized. This variance process, in conjunction
14 with increasing landward migration of the shoreline,
15 ensures that pressure on regulatory agencies to allow
16 shoreline armoring will continue to increase under
17 existing policies. Further, amplified erosion in
18 combination with the hardship variance spurs a
19 continuous cycle of hardening and flanking that can
20 extend along an entire beach. The University of
21 Hawaii study, which demonstrated this effect in a



1 section of northeast Oahu, reports that roughly forty-
2 five per cent of observed shoreline hardening was
3 implemented in response to adjacent hardening. This
4 combination of beach erosion and coastal policy that
5 has allowed widespread shoreline armoring has caused
6 narrowing or elimination of beaches such that they can
7 no longer be used for public recreation and cultural
8 practices.

9 (2) Current policies, ordinances, and practices allow for
10 renovation and expansion of single-family homes, which
11 extends building lifetimes indefinitely and allows for
12 virtually complete coverage of coastal parcels by
13 structures within erosion and flood-prone coastal
14 areas. The University of Hawaii study demonstrated
15 this policy weakness, reporting that the average
16 building surface area increased by twenty per cent
17 following implementation of the coastal zone
18 management act. As sea level continues to rise, the
19 concentrated shoreline development will be exposed to
20 coastal hazards, thus increasing the likelihood of



1 mass structural failure and deposition of debris on
2 public beach resources.

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

14 The purpose of this Act is to strengthen the policies of
15 the State to reduce residential exposure to coastal hazards and
16 to protect state beaches and update language for consistency
17 with other statutes.

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

20 "(b) Objectives.

21 (1) Recreational resources;



- 1 (A) Provide coastal recreational opportunities
- 2 accessible to the public.
- 3 (2) Historic resources;
- 4 (A) Protect, preserve, and, where desirable, restore
- 5 those natural and manmade historic and
- 6 prehistoric resources in the coastal zone
- 7 management area that are significant in Hawaiian
- 8 and American history and culture.
- 9 (3) Scenic and open space resources;
- 10 (A) Protect, preserve, and, where desirable, restore
- 11 or improve the quality of coastal scenic and open
- 12 space resources.
- 13 (4) Coastal ecosystems;
- 14 (A) Protect valuable coastal ecosystems, including
- 15 reefs, beaches, and coastal dunes from disruption
- 16 and minimize adverse impacts on all coastal
- 17 ecosystems.
- 18 (5) Economic uses;
- 19 (A) Provide public or private facilities and
- 20 improvements important to the State's economy in
- 21 suitable locations.



- 1 (6) Coastal hazards;
- 2 (A) Reduce hazard to life and property from tsunami,
- 3 storm waves, stream flooding, erosion,
- 4 subsidence, sea level rise, and pollution.
- 5 (7) Managing development;
- 6 (A) Improve the development review process,
- 7 communication, and public participation in the
- 8 management of coastal resources and hazards.
- 9 (8) Public participation;
- 10 (A) Stimulate public awareness, education, and
- 11 participation in coastal management.
- 12 (9) Beach protection;
- 13 (A) Protect beaches and coastal dunes for public use
- 14 and recreation[-], for ecosystem services, and as
- 15 natural barriers to coastal hazards.
- 16 (10) Marine resources;
- 17 (A) Promote the protection, use, and development of
- 18 marine and coastal resources to assure their
- 19 sustainability.
- 20 (c) Policies.
- 21 (1) Recreational resources;



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- 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 [~~replacement~~] protection of
10 coastal resources having significant
11 recreational and ecosystem value
12 including[~~7~~] but not limited to coral reefs,
13 surfing sites, fishponds, [~~and~~] sand
14 beaches, [~~when such resources will be~~
15 ~~unavoidably damaged by development, or~~
16 ~~requiring reasonable monetary compensation~~
17 ~~to the State for recreation when replacement~~
18 ~~is not feasible or desirable;~~] and coastal
19 dunes;
- 20 (iii) Providing and managing adequate public
21 access, consistent with conservation of



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- 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 such 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 such 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, including
18 reefs, beaches, and dunes of significant
19 biological or economic importance;
- 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 such
14 as residential and commercial development,
15 transportation infrastructure, harbors and ports,
16 and coastal related development such as visitor
17 industry facilities and energy generating
18 facilities, are located, designed, and
19 constructed to minimize exposure to coastal
20 hazards including projected impacts from sea
21 level rise, and minimize adverse social, visual,



1 and environmental impacts in the coastal zone
2 management area; and
3 (C) Direct the location and expansion of coastal
4 [~~dependent developments~~] development to areas
5 presently designated and used for such
6 developments and permit reasonable long-term
7 growth at such areas, and permit coastal
8 [~~dependent~~] development outside of presently
9 designated areas when:
10 (i) Use of presently designated locations is not
11 feasible;
12 (ii) Adverse environmental effects and risks from
13 coastal hazards and sea level rise are
14 minimized; and
15 (iii) The development is important to the State's
16 economy;
17 (6) Coastal hazards;
18 (A) Develop and communicate adequate information
19 about [~~storm~~] high wave [~~7~~] events, hurricanes,
20 tsunami, flood, erosion, subsidence, sea level



- 1 rise, and point and nonpoint source pollution
- 2 hazards;
- 3 (B) ~~[Control]~~ Minimize risks to development in areas
- 4 subject to storm wave, tsunami, flood, sea level
- 5 rise, erosion, hurricane, wind, subsidence, and
- 6 point and nonpoint source pollution hazards;
- 7 (C) Establish zoning controls to minimize hazards
- 8 exposure of residential and commercial
- 9 development in areas subject to impacts related
- 10 to sea level rise, including erosion, wave
- 11 inundation, and high tide flooding;
- 12 ~~[(C)]~~ (D) Ensure that developments comply with
- 13 requirements of the ~~[Federal]~~ National Flood
- 14 Insurance Program; ~~[and~~
- 15 ~~[(D)]~~ (E) Prevent coastal flooding from inland
- 16 projects; and
- 17 (F) Avoid grading of and damage to coastal dunes.
- 18 (7) Managing development;
- 19 (A) Use, implement, and enforce existing law
- 20 effectively to the maximum extent possible in



- 1 managing present and future coastal zone
2 development;
- 3 (B) Facilitate timely processing of applications for
4 development permits and resolve overlapping or
5 conflicting permit requirements; and
- 6 (C) Communicate the potential short and long-term
7 impacts of proposed significant coastal
8 developments early in their life cycle and in
9 terms understandable to the public to facilitate
10 public participation in the planning and review
11 process;
- 12 (8) Public participation;
- 13 (A) Promote public involvement in coastal zone
14 management processes;
- 15 (B) Disseminate information on coastal management
16 issues by means of educational materials,
17 published reports, staff contact, and public
18 workshops for persons and organizations concerned
19 with coastal issues, developments, and government
20 activities; and



- 1 (C) Organize workshops, policy dialogues, and site-
2 specific mediations to respond to coastal issues
3 and conflicts;
- 4 (9) Beach protection;
- 5 (A) Locate new structures inland from the shoreline
6 setback to conserve open space, minimize
7 interference with natural shoreline processes,
8 and minimize loss of improvements due to erosion;
- 9 (B) Prohibit construction of private erosion-
10 protection structures [~~seaward of the~~
11 ~~shoreline,~~], such as seawalls and rock
12 revetments, except [~~when they result in improved~~
13 ~~aesthetic and engineering solutions to erosion]~~
14 at [~~the~~] sites [~~and~~] where they do not interfere
15 with beach processes and existing recreational
16 and waterline activities;
- 17 (C) Minimize the construction of public coastal
18 erosion-protection structures [~~seaward of the~~
19 ~~shoreline,~~], such as seawalls and rock
20 revetments;



1 (D) Prohibit private property owners from creating a
2 public nuisance by inducing or cultivating the
3 private property owner's vegetation in a beach
4 transit corridor; and

5 (E) Prohibit private property owners from creating a
6 public nuisance by allowing the private property
7 owner's unmaintained vegetation to interfere or
8 encroach upon a beach transit corridor;

9 (10) Marine and coastal resources;

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

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

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



1 (D) Promote research, study, and understanding of
2 ocean and coastal processes, climate change and
3 sea level rise, marine life, and other ocean
4 resources to acquire and inventory information
5 necessary to understand how [ocean] coastal
6 development activities relate to and impact upon
7 ocean and coastal resources; and

8 (E) Encourage research and development of new,
9 innovative technologies for exploring, using, or
10 protecting marine and coastal resources."

11 SECTION 3. Section 205A-26, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§205A-26 Special management area guidelines.** In
14 implementing this part, the authority shall adopt the following
15 guidelines for the review of developments proposed in the
16 special management area:

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

20 (A) Adequate access, by dedication or other means, to
21 publicly owned or used beaches, recreation areas,



- 1 and natural reserves is provided to the extent
2 consistent with sound conservation principles;
- 3 (B) Adequate and properly located public recreation
4 areas and wildlife preserves are reserved;
- 5 (C) Provisions are made for solid and liquid waste
6 treatment, disposition, and management which will
7 minimize adverse effects upon special management
8 area resources; and
- 9 (D) Alterations to existing land forms and
10 vegetation, except crops, and construction of
11 structures shall cause minimum adverse effect to
12 water resources, beaches and coastal dunes, and
13 scenic and recreational amenities and [~~minimum~~
14 ~~danger of~~] minimize impacts from floods, wind
15 damage, storm surge, landslides, erosion, sea
16 level rise, siltation, or failure in the event of
17 earthquake.
- 18 (2) No development shall be approved unless the authority
19 has first found:
- 20 (A) That the development will not have any
21 [~~substantial~~] significant adverse environmental



1 or ecological effect, except as such adverse
2 effect is minimized to the extent practicable and
3 clearly outweighed by public health, safety, or
4 compelling public interests. Such adverse
5 effects shall include, but not be limited to, the
6 potential cumulative impact of individual
7 developments, each one of which taken in itself
8 might not have a [~~substantial~~] significant
9 adverse effect, and the elimination of planning
10 options;

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

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



- 1 (3) The authority shall seek to minimize, where
2 reasonable:
- 3 (A) Dredging, filling or otherwise altering any bay,
4 estuary, salt marsh, river mouth, slough or
5 lagoon;
- 6 (B) Any development which would reduce the size of
7 any beach or other area usable for public
8 recreation;
- 9 (C) Any development which would reduce or impose
10 restrictions upon public access to tidal and
11 submerged lands, beaches, portions of rivers and
12 streams within the special management areas and
13 the mean high tide line where there is no beach;
- 14 (D) Any development which would substantially
15 interfere with or detract from the line of sight
16 toward the sea from the state highway nearest the
17 coast; and
- 18 (E) Any development which would adversely affect
19 water quality, existing areas of open water free
20 of visible structures, existing and potential
21 fisheries and fishing grounds, wildlife habitats,



1 or potential or existing agricultural uses of
2 land."

3 SECTION 4. Section 205A-29, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§205A-29 Special management area use permit procedure.**

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

19 Any rule adopted by the authority shall be consistent with
20 the objectives, policies, and special management area guidelines



1 provided in this chapter. Action on the special management
2 permit shall be final unless otherwise mandated by court order.

3 (b) No agency authorized to issue permits pertaining to
4 any development within the special management area shall
5 authorize any development unless approval is first received in
6 accordance with the procedures adopted pursuant to this part.
7 For the purposes of this subsection, county general plan, state
8 land use district boundary amendments, and zoning changes are
9 not permits.

10 (c) This section shall not apply to permits for uses
11 within the conservation district."

12 SECTION 5. Section 205A-43, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

14 "(a) Setbacks along shorelines are established of not less
15 than [~~twenty feet and not more than~~] forty feet inland from the
16 shoreline. The department shall adopt rules pursuant to chapter
17 91, and shall enforce the shoreline setbacks and rules
18 pertaining thereto."

19 SECTION 6. Section 205A-43.5, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:



1 "(a) Prior to action on a variance application, the
2 authority shall hold a public hearing under chapter 91. By
3 adoption of rules under chapter 91, the authority may delegate
4 responsibility to the department. Public and private notice,
5 including reasonable notice to abutting property owners and
6 persons who have requested this notice, shall be provided, but a
7 public hearing may be waived prior to action on a variance
8 application for:

- 9 (1) Stabilization of shoreline erosion by the moving of
10 sand entirely on public lands;
- 11 (2) [~~Protection~~] Temporary protection of a legal structure
12 [~~costing more than \$20,000;~~] or public facility,
13 excluding shore protection structures, under an
14 emergency authorization issued by the authority;
15 provided the structure or facility is at risk of
16 immediate damage from shoreline erosion[;] and the
17 authorization does not exceed three years;
- 18 (3) Other structures or activities; provided that no
19 person or agency has requested a public hearing within
20 twenty-five calendar days after public notice of the
21 application; or



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

6 SECTION 7. Section 205A-46, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

8 "(a) A variance may be granted for a structure or activity
9 otherwise prohibited in this part if the authority finds in
10 writing, based on the record presented, that the proposed
11 structure or activity is necessary for or ancillary 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;



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- 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 which will neither
6 adversely affect beach processes [~~nor artificially fix~~
7 ~~the shoreline; provided that the authority also finds~~
8 ~~that hardship will result to the applicant if the~~
9 ~~facilities or improvements are not allowed within the~~
10 ~~shoreline area;], result in flanking of adjacent
11 properties, or curtail public access;~~
- 12 (9) Private facilities or improvements that may
13 artificially fix the shoreline; provided that the
14 authority also finds that [~~shoreline erosion is likely~~
15 ~~to cause hardship to the applicant if the facilities~~
16 ~~or improvements are not allowed within the shoreline~~
17 ~~area, and the authority imposes conditions to prohibit~~
18 ~~any structure seaward of the existing shoreline] the
19 action will neither adversely affect beach processes,
20 result in flanking of adjacent properties, or curtail
21 public access unless it is clearly in the public~~



1 interest[+], such as in the case of an imminent threat
2 of a road or highway failure, or other critical public
3 infrastructure; or

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

11 SECTION 8. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 9. This Act shall take effect upon its approval.

14

INTRODUCED BY:



S.B. NO. 1113

Report Title:

Coastal Management Zone; Projected Sea Level Rise Impacts

Description:

Amends policies and objectives related to coastal zone management to reduce residential exposure to coastal hazards and protect state beaches and public shoreline access.

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

