
A BILL FOR AN ACT

RELATING TO AQUATIC HABITATS.

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

1 SECTION 1. The legislature finds that in lieu-fee
2 mitigation is an effective mechanism to restore, create,
3 enhance, or preserve aquatic habitats or resources to recover
4 the ecological functions, services, and values of aquatic
5 resources lost by adverse impacts to other similar aquatic
6 habitats. In-lieu fee mitigation is widely used across the
7 United States to achieve ecologically valuable conservation.

8 The purpose of this Act is to:

9 (1) Authorize the department of land and natural resources
10 to use aquatic in-lieu fee mitigation to restore,
11 create, enhance, or preserve aquatic habitats or
12 resources as compensatory mitigation where a person is
13 required to provide compensatory mitigation
14 prospectively and the use of in-lieu fee mitigation is
15 approved by the agency requiring mitigation, or for
16 past damages to aquatic habitats or resources; and



1 (2) Establish an aquatic mitigation banking special fund
2 and aquatic in lieu-fee mitigation special fund.

3 SECTION 2. Chapter 187A, Hawaii Revised Statutes, is
4 amended by adding two new sections to part IV to be
5 appropriately designated and to read as follows:

6 "§187A-A Aquatic mitigation banking special fund;
7 established. (a) There is established in the state treasury
8 the aquatic mitigation banking special fund, which shall be
9 administered by the department.

10 (b) The following shall be deposited into the aquatic
11 mitigation banking special fund:

12 (1) Moneys received from the sale of aquatic mitigation
13 bank credits;

14 (2) Moneys collected or recovered from aquatic resource
15 violations, including damages to aquatic resources,
16 habitat restoration costs, penalties, fines, fees, and
17 administrative costs;

18 (3) Appropriations by the legislature to the special fund;

19 (4) Grants, awards, donations, gifts, transfers, or moneys
20 derived from public or private sources for the
21 purposes of supporting aquatic mitigation banking; and



1 (5) Moneys obtained from interest or other earnings from
2 investments of moneys set aside for carrying out the
3 purposes of this part.

4 (c) Moneys in the aquatic mitigation banking special fund
5 shall be used for the following purposes:

6 (1) Costs incurred in the selection, design, acquisition,
7 implementation, and management of aquatic mitigation
8 bank projects;

9 (2) Administrative costs, research, or scientific
10 monitoring expenses of the department in carrying out
11 aquatic mitigation banking; and

12 (3) Payroll for personnel of the department or the
13 awarding of grants-in-aid to or contracts with the
14 university of Hawaii or other qualified organizations
15 or individuals to develop or implement the program and
16 activities for aquatic mitigation banking.

17 (d) The proceeds of the aquatic mitigation banking special
18 fund shall not be used as security for, or pledged to the
19 payment of principal or interest on, any bonds or instruments of
20 indebtedness.



1 §187A-B Aquatic in-lieu fee mitigation special fund;
2 established. (a) There is established in the state treasury
3 the aquatic in-lieu fee mitigation special fund, which shall be
4 administered by the department.

5 (b) The following shall be deposited into the aquatic in-
6 lieu fee mitigation special fund:

7 (1) Moneys received from persons using aquatic in-lieu fee
8 mitigation;

9 (2) Moneys collected or recovered from aquatic resource
10 violations, including damages to aquatic resources,
11 habitat restoration costs, penalties, fines, fees, and
12 administrative costs;

13 (3) Appropriations by the legislature to the special fund;

14 (4) Grants, awards, donations, gifts, transfers, or moneys
15 derived from public or private sources for the
16 purposes of supporting aquatic in-lieu fee mitigation;
17 and

18 (5) Moneys obtained from interest or other earnings from
19 investments of moneys set aside for carrying out the
20 purposes of this part.



1 (c) Moneys in the aquatic in-lieu fee mitigation special
2 fund shall be used for the following purposes:

3 (1) Costs incurred in the selection, design, acquisition,
4 implementation, and management of aquatic in-lieu fee
5 mitigation projects;

6 (2) Administrative costs, research, or scientific
7 monitoring expenses of the department in carrying out
8 aquatic in-lieu fee mitigation; and

9 (3) Payroll for personnel of the department or the
10 awarding of grants-in-aid to or contracts with the
11 university of Hawaii or other qualified organizations
12 or individuals to develop or implement the program and
13 activities for aquatic in-lieu fee mitigation.

14 (d) The proceeds of the aquatic in-lieu fee mitigation
15 special fund shall not be used as security for, or pledged to
16 the payment of principal or interest on, any bonds or
17 instruments of indebtedness."

18 SECTION 3. Section 36-27, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

20 "(a) Except as provided in this section, and
21 notwithstanding any other law to the contrary, from time to



1 time, the director of finance, for the purpose of defraying the
2 prorated estimate of central service expenses of government in
3 relation to all special funds, except the:

- 4 (1) Special out-of-school time instructional program fund
5 under section 302A-1310;
- 6 (2) School cafeteria special funds of the department of
7 education;
- 8 (3) Special funds of the University of Hawaii;
- 9 (4) State educational facilities improvement special fund;
- 10 (5) Convention center enterprise special fund under
11 section 201B-8;
- 12 (6) Special funds established by section 206E-6;
- 13 (7) Aloha Tower fund created by section 206J-17;
- 14 (8) Funds of the employees' retirement system created by
15 section 88-109;
- 16 (9) Hawaii hurricane relief fund established under chapter
17 431P;
- 18 (10) Hawaii health systems corporation special funds and
19 the subaccounts of its regional system boards;
- 20 (11) Tourism special fund established under section 201B-
21 11;



- 1 (12) Universal service fund established under section 269-
2 42;
- 3 (13) Emergency and budget reserve fund under section 328L-
4 3;
- 5 (14) Public schools special fees and charges fund under
6 section 302A-1130;
- 7 (15) Sport fish special fund under section 187A-9.5;
- 8 [+](16) [+] Neurotrauma special fund under section 321H-4;
- 9 [+](17) [+] Glass advance disposal fee established by section
10 342G-82;
- 11 [+](18) [+] Center for nursing special fund under section 304A-
12 2163;
- 13 [+](19) [+] Passenger facility charge special fund established
14 by section 261-5.5;
- 15 [+](20) [+] Solicitation of funds for charitable purposes
16 special fund established by section 467B-15;
- 17 [+](21) [+] Land conservation fund established by section 173A-
18 5;
- 19 [+](22) [+] Court interpreting services revolving fund under
20 section 607-1.5;
- 21 [+](23) [+] Trauma system special fund under section 321-22.5;



- 1 [+] (24) [+] Hawaii cancer research special fund;
- 2 [+] (25) [+] Community health centers special fund;
- 3 [+] (26) [+] Emergency medical services special fund;
- 4 [+] (27) [+] Rental motor vehicle customer facility charge
- 5 special fund established under section 261-5.6;
- 6 [+] (28) [+] Shared services technology special fund under
- 7 section 27-43;
- 8 [+] (29) [+] Automated victim information and notification
- 9 system special fund established under section 353-136;
- 10 [+] (30) [+] Deposit beverage container deposit special fund
- 11 under section 342G-104;
- 12 [+] (31) [+] Hospital sustainability program special fund under
- 13 [+]section 346G-4 [+] ;
- 14 [+] (32) [+] Nursing facility sustainability program special
- 15 fund under [+]section 346F-4 [+] ;
- 16 [+] (33) [+] Hawaii 3R's school improvement fund under section
- 17 302A-1502.4;
- 18 [+] (34) [+] After-school plus program revolving fund under
- 19 section 302A-1149.5; [~~and~~]
- 20 [+] (35) [+] Civil monetary penalty special fund under section
- 21 321-30.2 [~~7~~];



1 (36) Aquatic mitigation banking special fund under section
2 187A-A; and

3 (37) Aquatic in-lieu fee mitigation special fund under
4 section 187A-B,

5 shall deduct five per cent of all receipts of all other special
6 funds, which deduction shall be transferred to the general fund
7 of the State and become general realizations of the State. All
8 officers of the State and other persons having power to allocate
9 or disburse any special funds shall cooperate with the director
10 in effecting these transfers. To determine the proper revenue
11 base upon which the central service assessment is to be
12 calculated, the director shall adopt rules pursuant to chapter
13 91 for the purpose of suspending or limiting the application of
14 the central service assessment of any fund. No later than
15 twenty days prior to the convening of each regular session of
16 the legislature, the director shall report all central service
17 assessments made during the preceding fiscal year."

18 SECTION 4. Section 36-30, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

20 "(a) Each special fund, except the:



H.B. NO. 789

- 1 (1) Special out-of-school time instructional program fund
2 under section 302A-1310;
- 3 (2) School cafeteria special funds of the department of
4 education;
- 5 (3) Special funds of the University of Hawaii;
- 6 (4) State educational facilities improvement special fund;
- 7 (5) Special funds established by section 206E-6;
- 8 (6) Aloha Tower fund created by section 206J-17;
- 9 (7) Funds of the employees' retirement system created by
10 section 88-109;
- 11 (8) Hawaii hurricane relief fund established under chapter
12 431P;
- 13 (9) Convention center enterprise special fund established
14 under section 201B-8;
- 15 (10) Hawaii health systems corporation special funds and
16 the subaccounts of its regional system boards;
- 17 (11) Tourism special fund established under section 201B-
18 11;
- 19 (12) Universal service fund established under section 269-
20 42;



- 1 (13) Emergency and budget reserve fund under section 328L-
- 2 3;
- 3 (14) Public schools special fees and charges fund under
- 4 section 302A-1130;
- 5 (15) Sport fish special fund under section 187A-9.5;
- 6 [+] (16) [+] Neurotrauma special fund under section 321H-4;
- 7 [+] (17) [+] Center for nursing special fund under section 304A-
- 8 2163;
- 9 [+] (18) [+] Passenger facility charge special fund established
- 10 by section 261-5.5;
- 11 [+] (19) [+] Court interpreting services revolving fund under
- 12 section 607-1.5;
- 13 [+] (20) [+] Trauma system special fund under section 321-22.5;
- 14 [+] (21) [+] Hawaii cancer research special fund;
- 15 [+] (22) [+] Community health centers special fund;
- 16 [+] (23) [+] Emergency medical services special fund;
- 17 [+] (24) [+] Rental motor vehicle customer facility charge
- 18 special fund established under section 261-5.6;
- 19 [+] (25) [+] Shared services technology special fund under
- 20 section 27-43;



1 [+] (26) [+] Nursing facility sustainability program special
2 fund established pursuant to [+]section 346F-4[+];
3 [+] (27) [+] Automated victim information and notification
4 system special fund established under section 353-136;
5 [+] (28) [+] Hospital sustainability program special fund under
6 [+]section 346G-4[+]; [and]
7 [+] (29) [+] Civil monetary penalty special fund under section
8 321-30.2[7];
9 (30) Aquatic mitigation banking special fund under section
10 187A-A; and
11 (31) Aquatic in-lieu fee mitigation special fund under
12 section 187A-B,
13 shall be responsible for its pro rata share of the
14 administrative expenses incurred by the department responsible
15 for the operations supported by the special fund concerned."

16 SECTION 5. Chapter 187A, part IV, Hawaii Revised Statutes,
17 is amended by amending its title to read as follows:

18 " [+] PART IV. [+] **AQUATIC MITIGATION [BANKS] BANKING AND AQUATIC**
19 **IN-LIEU FEE MITIGATION**"

20 SECTION 6. Section 187A-41, Hawaii Revised Statutes, is
21 amended to read as follows:



H.B. NO. 789

Report Title:

Aquatic Mitigation Banking; Aquatic In-Lieu Fee Mitigation

Description:

Authorizes the Department of Land and Natural Resources to use in-lieu fee mitigation to restore, create, enhance, or preserve aquatic habitats or resources as compensatory mitigation.

Establishes an aquatic mitigation bank special fund and aquatic in-lieu fee mitigation special fund.

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

