

JAN 21 2022

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 many beachfront
2 homeowners in the State have built seawalls; sandbag walls,
3 known locally as "burritos"; or other shoreline hardening
4 structures, including geotextile fabric, to stave off local sea
5 level rise, strong wave action, and coastal flooding along the
6 coast. However, these structures accelerate coastal erosion in
7 the areas they are meant to protect and further cause increased
8 erosion in adjacent areas of the beach that do not have similar
9 structures.

10 The legislature further finds that some of these shoreline
11 hardening structures are built without permission, while others
12 are built with emergency permits from the department of land and
13 natural resources. Although these emergency permits are
14 typically limited to three years, they are often granted endless
15 extensions, and the temporarily permitted structures generally
16 are not removed after the expiration of the permit. What was
17 originally intended to be a stopgap measure to help beachfront



1 homeowners has instead become permanent permission to keep the
2 shoreline hardening structures in place.

3 The legislature recognizes that the State has a "no
4 tolerance" policy for new shoreline armoring. Although property
5 owners may still apply to build a seawall, the process is long
6 and onerous, and includes a formal environmental review and
7 public hearings, and requires approval from the department of
8 land and natural resources. Alternatively, an emergency permit
9 is comparatively simple, as there is not even a formal
10 application required. Due to the informal nature of the
11 process, some property owners and contractors do not take the
12 permit requirement seriously, nor do they appreciate the harm
13 that shoreline hardening structures are doing to accelerate
14 erosion. As the owner of a company that installs these
15 unauthorized structures stated: "We still have plenty of
16 beaches on this island that if you just let [a few beaches] go,
17 it's not going to affect anyone. We still have plenty of places
18 to go to the beach".

19 Accordingly, the purpose of this Act is to protect Hawaii's
20 beaches from accelerated erosion and negative impacts to beach
21 environments and alongshore public access caused by beach



1 narrowing and loss resulting from emergency erosion control
2 structures. Specifically, this Act:

3 (1) Requires an emergency shoreline hardening permit for
4 the construction, maintenance, or improvement of an
5 temporary erosion control structure

6 (2) Provides that each permit is valid for a maximum of
7 one year; provided that the lifetime of the structure
8 may be extended no more than an additional two and a
9 half years upon an applicant demonstrating a concerted
10 effort, as deemed acceptable by the board of land and
11 natural resources, to develop and implement a
12 long-term solution that will enable the removal of the
13 temporary erosion control structure;

14 (3) Establishes penalties for persons who build, improve,
15 or maintain a temporary erosion control structure
16 without a valid permit; and

17 (4) Requires the board of land and natural resources to
18 administer and enforce this Act.

19 SECTION 2. Section 183C-2, Hawaii Revised Statutes, is
20 amended by adding four new definitions to be appropriately
21 inserted and to read as follows:



1 "Concerted effort" means a bona fide planning effort
2 involving the employment of professional planners, engineers, or
3 consultants to develop and implement a long-term solution,
4 whether it involves relocation, abandonment, beach restoration,
5 or some other form of shoreline management.

6 "Emergency shoreline hardening" means the installation of
7 temporary erosion control structures, as authorized by the
8 chairperson of the board of land and natural resources by rule
9 that are designed to prevent land loss while long-term
10 management solutions are devised and implemented by the
11 landowner.

12 "Temporary erosion control structure" means any structure
13 or project intended to stabilize sediment and prevent erosion or
14 provide flood protection, including seawalls, revetements,
15 sandbags, and geotextile fabric.

16 "Unmanaged hazardous condition" means an imminently
17 dangerous situation of a duration greater than one year that
18 poses a substantial threat to public health and safety as
19 declared by the chairperson, or deputy director of the
20 department in the absence of the chairperson."



1 SECTION 3. Section 183C-6, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§183C-6 Permits and site plan approvals.** (a) The
4 department shall regulate land use in the conservation district
5 by the issuance of permits.

6 (b) The department shall render a decision on a completed
7 application for a permit within one hundred eighty days of its
8 acceptance by the department. If within one hundred eighty days
9 after acceptance of a completed application for a permit, the
10 department shall fail to give notice, hold a hearing, and render
11 a decision, the owner may automatically put the owner's land to
12 the use or uses requested in the owner's application. When an
13 environmental impact statement is required pursuant to chapter
14 343, or when a contested case hearing is requested pursuant to
15 chapter 91, the one hundred eighty days shall be extended an
16 additional ninety days beyond the time necessary to complete the
17 requirements of chapter 343 or chapter 91. Any request for
18 additional extensions by the applicant shall be subject to the
19 approval of the board.

20 (c) The department shall hold a public hearing in every
21 case involving the proposed use of land for commercial purposes,



1 at which hearing interested persons shall be afforded a
2 reasonable opportunity to be heard. Public notice of the time
3 and place of the hearing shall be given at least once statewide
4 and in the county in which the property is located. The notice
5 shall be given not less than twenty days prior to the date set
6 for the hearing. The hearing shall be held in the county in
7 which the land is located and may be delegated to an agent or
8 representative of the board as may otherwise be provided by law
9 and in accordance with rules adopted by the board. For the
10 purposes of its public hearing or hearings, the department shall
11 have the power to summon witnesses, administer oaths, and
12 require the giving of testimony. As used in this subsection,
13 the term "commercial purposes" shall not include the use of land
14 for utility purposes.

15 (d) The department shall regulate the construction,
16 reconstruction, demolition, or alteration of any structure,
17 building, or facility by the issuance of site plan approvals.

18 (e) Any permit for the reconstruction, restoration,
19 repair, or use of any Hawaiian fishpond exempted from the
20 requirements of chapter 343 under section 183B-2 shall provide
21 for compliance with the conditions of section 183B-2.



1 (f) The department may issue permits for emergency
2 shoreline hardening to install temporary erosion control
3 structures. Emergency shoreline hardening permits shall not be
4 authorized for shoreline erosion control, except in response to
5 situations in which an actively eroding shoreline poses an
6 imminent threat of loss of an inhabited dwelling or a public
7 facility critical to public health and safety, including public
8 roads. Emergency shoreline hardening permits approved by the
9 department shall not be valid for longer than one year from the
10 date of issuance.

11 (g) Except as provided in subsection (h), a temporary
12 erosion control structure shall not remain for more than one
13 year.

14 (h) The lifetime of a temporary erosion control structure
15 permitted by the department may be extended for more than one
16 year; provided that:

17 (1) The imminently dangerous situation has extended beyond
18 the initial one-year time period;

19 (2) The board has classified the temporary erosion control
20 structure as an unmanaged hazardous condition;



- 1 (3) The permittee has applied to the board to extend the
2 lifetime of the temporary erosion control structure;
- 3 (4) The board may only approve an extension if an
4 applicant demonstrates a concerted effort, as deemed
5 acceptable by the board, to develop and implement a
6 long-term solution that will enable the removal of the
7 temporary erosion control structure;
- 8 (5) The board may require the permittee to obtain a surety
9 bond or provide other legal or financial assurance to
10 guarantee removal of temporary land uses at the
11 expiration of the permitted time period; and
- 12 (6) The board shall not approve an extension that exceeds
13 an additional period of two and a half years.
- 14 (i) The board shall strictly enforce:
- 15 (1) The one-year maximum period for an emergency shoreline
16 hardening permit for a temporary erosion control
17 structure, unless the board has approved an extension
18 pursuant to subsection (h); or
- 19 (2) The lifetime of a temporary erosion control structure,
20 as extended pursuant to subsection (h),



1 and shall require the removal of the structure after the
2 applicable time period has expired.

3 (i) This section shall not apply to any federal, state, or
4 county agency or any independent non-governmental regulated
5 public utility that is conducting repair, maintenance, or
6 operations for a public purpose use; provided that the agency or
7 utility, within thirty days of the date of an emergency repair,
8 shall provide the department with a post-emergency repair report
9 describing the work that was conducted."

10 SECTION 4. Section 183C-7, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§183C-7 Penalty for violation.** (a) The department shall
13 prescribe administrative procedures as it deems necessary for
14 the enforcement of this chapter and any zoning rule adopted in
15 accordance therewith. These rules may be enforced by court
16 order at the suit of the department or of the owner or owners of
17 real estate directly affected by the rules. The provisions of
18 section 607-25 shall apply to this chapter.

19 (b) Any person violating this chapter or any rule adopted
20 in accordance with this chapter shall be fined not more than
21 \$15,000 per violation in addition to administrative costs, costs



1 associated with land or habitat restoration, and damages to
2 public land or natural resources, or any combination thereof.
3 After written or verbal notification from the department, wilful
4 violation of this chapter or any rule adopted in accordance with
5 this chapter may incur an additional fine of up to \$15,000 per
6 day per violation for each day in which the violation persists.
7 The board may set, charge, and collect the fine based on the
8 value of the natural resource that is damaged, the market value
9 of the natural resource damaged, and any other factor it deems
10 appropriate, such as the loss of the natural resource to its
11 natural habitat and environment and the cost of restoration or
12 replacement. The remedies provided for in this subsection are
13 cumulative and in addition to any other remedies allowed by law.

14 (c) No person shall build, construct, erect, make,
15 manufacture, assemble, or maintain any temporary erosion control
16 structure without a valid emergency shoreline hardening permit
17 approved by the department. Any person that violates this
18 subsection shall be subject to a fine pursuant to
19 subsection (b). Each day that the unpermitted work continues or
20 the unpermitted temporary erosion control structure remains in
21 place shall constitute a separate violation. In addition to the



1 fines specified in subsection (b), the department may impose
 2 additional fines, which may include administrative costs, costs
 3 associated with land or habitat restoration, damages to public
 4 land or natural resources, or any combination thereof.

5 [~~e~~] (d) This section shall not be construed to prohibit
 6 any person from exercising native Hawaiian gathering rights or
 7 traditional cultural practices as authorized by law or as
 8 permitted by the department pursuant to article XII, section 7,
 9 of the Hawaii constitution."

10 SECTION 5. The department of land and natural resources
 11 shall adopt rules, pursuant to chapter 91, Hawaii Revised
 12 Statutes, necessary for the enforcement of this Act. The office
 13 of conservation and coastal lands and the division of
 14 conservation and resources enforcement within the department of
 15 land and natural resources shall be responsible for the
 16 administration and enforcement of this Act.

17 SECTION 6. Statutory material to be repealed is bracketed
 18 and stricken. New statutory material is underscored.

19 SECTION 7. This Act shall take effect upon its approval.

20

INTRODUCED BY: 



S.B. NO. 2519

Report Title:

Conservation; Beaches; Erosion Control Structures; Permits

Description:

Requires an emergency shoreline hardening permit for the construction, maintenance, or improvement of a temporary erosion control structure. Provides that each permit is valid for a maximum of one year; provided that the lifetime of the structure may be extended no more than an additional two and a half years upon an applicant demonstrating a concerted effort, as deemed acceptable by the Board of Land and Natural Resources, to develop and implement a long-term solution which will enable the removal of the temporary erosion control structure. Establishes penalties for persons who build, improve, or maintain a temporary erosion control structure without a valid permit. Requires the Board to administer and enforce this Act.

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

