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**A BILL FOR AN ACT**

RELATING TO CONSERVATION BANKS.

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

1           SECTION 1. The legislature finds that the use of  
2 conservation banks to satisfy mitigation obligations for  
3 incidental take licensees with habitat conservation plans  
4 increases certainty that the mitigation obligation is complete,  
5 expedites project review, and makes project costs more  
6 predictable for incidental take licensees. Conservation banks  
7 provide long-term, landscape-scale protection to Hawaii's  
8 threatened, endangered, candidate, and proposed species  
9 ("protected species").

10           The purpose of this Act is to authorize the board of land  
11 and natural resources to approve the operation of public and  
12 private conservation banks that are established for the purpose  
13 of increasing numbers of protected species and protecting and  
14 enhancing protected species habitat, which then creates  
15 mitigation credits for purchase by incidental take licensees to  
16 satisfy their mitigation obligations.

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1 SECTION 2. Chapter 195D, Hawaii Revised Statutes, is  
2 amended by adding a new part to be appropriately designated and  
3 to read as follows:

4 "PART . CONSERVATION BANKING

5 §195D-A Definitions. As used in this part:

6 "Bank sponsor" means any public or private entity  
7 responsible for establishing or operating a conservation bank.

8 "Compensatory mitigation" means actions taken by an  
9 incidental take licensee to fulfill mitigation requirements  
10 pursuant to this chapter, or funding provided by an incidental  
11 take licensee for conservation, restoration, or preservation  
12 efforts carried out by others at a conservation bank.

13 "Conservation bank" means a site or suite of sites  
14 established under a conservation bank instrument for the  
15 purposes of restoring, creating, enhancing, or protecting  
16 populations of threatened, endangered, candidate, or proposed  
17 species and their habitats expressed as credits.

18 "Conservation bank instrument" means an agreement between  
19 the board and a bank sponsor that establishes a conservation  
20 bank and describes the terms and conditions of its operation,  
21 including a system for assessing and releasing credits to be  
22 used for compensatory mitigation.

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1 "Credit" means a value based on defined units representing  
2 the increase in numbers of individuals of a listed species or  
3 attainment of enhanced ecological functions or services  
4 essential for the survival of a listed species at a conservation  
5 bank and released as the conservation bank meets performance  
6 standards included in its conservation bank instrument.

7 "Credit stacking" means a single unit of a conservation  
8 bank that provides two or more credit types representing  
9 spatially overlapping ecosystem functions or services that can  
10 be unstacked and used as separate commodities to compensate for  
11 different permitted actions.

12 "Credit bundling" means a single unit of a conservation  
13 bank that provides two or more spatially overlapping ecosystem  
14 functions or services that are grouped together into a single  
15 credit type and used as a single commodity to compensate for a  
16 single permitted action.

17 "Long-term management plan" means a bank sponsor's long-  
18 term plan of how a conservation bank will be managed, including  
19 after performance standards have been achieved, to ensure long-  
20 term sustainability of the species identified in section 195D-  
21 B(b) (3). Long-term management plans may include descriptions of

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1 actions and monitoring, annual cost estimates for those needs,  
2 and funding mechanisms used to meet those needs.

3 "Maintenance plan" means a bank sponsor's short-term plan to  
4 ensure the conservation bank remains viable after construction  
5 and throughout the monitoring period. A maintenance plan may  
6 include infrastructure and ecological management components  
7 within the conservation bank, and identify regular or recurring  
8 actions needed for the upkeep of the conservation bank site  
9 until the conservation bank transitions into long-term  
10 management according to the long-term management plan.

11 "Mitigation" means actions taken or funding provided by an  
12 incidental take licensee to offset unavoidable negative impacts  
13 to threatened, endangered, candidate, or proposed species that  
14 meet the biological goals of a habitat conservation plan.

15 Mitigation may include, but is not limited to, restoration of  
16 degraded habitat, land preservation, creation of new habitat,  
17 reducing threats to affected species, translocation,  
18 repatriation, and compensatory mitigation.

19 "Monitoring requirements" means a description of parameters  
20 to be monitored from actions described in a maintenance plan to  
21 determine if the conservation bank is on track to meet  
22 performance standards or if adaptive management is needed.

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1 "Performance standards" means ecologically based standards  
2 that are used to determine whether the conservation bank is  
3 achieving its objectives outlined in a resource management plan.  
4 Each performance standard shall describe the attribute to be  
5 measured, the level that constitutes success, and the time-  
6 period to achieve success.

7 "Site protection instrument" means an interest in real  
8 property that protects a conservation bank for either long-term  
9 stewardship or in perpetuity, such as a conservation easement,  
10 deed restriction, condition, or covenant.

11 **§195D-B Conservation banks.** (a) The department or other  
12 bank sponsor may seek board approval of a conservation bank  
13 instrument to establish and operate a conservation bank to  
14 provide for situations where a person or entity is required to  
15 provide mitigation to offset adverse impacts to threatened,  
16 endangered, candidate, or proposed species as part of an  
17 approved incidental take license and habitat conservation plan.

18 (b) Applications to establish and operate a conservation  
19 bank shall include a proposed conservation bank instrument that  
20 identifies:

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- 1           (1) The geographic area encompassed by the conservation  
2           bank and the ecosystems, natural communities, or  
3           habitat types within the conservation bank;
- 4           (2) The endangered, threatened, proposed, or candidate  
5           species that the conservation bank is established to  
6           restore, create, enhance, or protect;
- 7           (3) A resource management plan that includes:
- 8               (A) Goals and objectives;
- 9               (B) Baseline information of the presence or absence  
10              of any endangered or threatened species on the  
11              property including the species identified in  
12              paragraph (2);
- 13              (C) Performance standards;
- 14              (D) Monitoring requirements;
- 15              (E) A maintenance plan;
- 16              (F) A long-term management plan;
- 17              (G) An adaptive management strategy that specifies  
18              the actions to be taken if the resource  
19              management plan is not achieving its goals; and
- 20              (H) Any other information that the department  
21              requires in a rule adopted pursuant to section  
22              195D-C.

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1 (4) A system for assessing and releasing credits; and

2 (5) The measures for property protection.

3 (c) In addition to the requirements set forth in  
4 subsection (b), for applications from bank sponsors other than  
5 the department, the proposed conservation bank instrument shall  
6 contain:

7 (1) Assurances that the bank sponsor has the scientific  
8 and technical competence required to perform the  
9 necessary conservation actions for the species  
10 identified in subsection (b)(2);

11 (2) Financial assurances and proposed form of security,  
12 necessary to ensure the successful completion of  
13 habitat construction, management, monitoring, and  
14 remedial actions;

15 (3) A site protection instrument that prohibits  
16 incompatible uses; and

17 (4) A provision requiring the bank sponsor to submit to  
18 the department within ninety days of each fiscal year  
19 ending June 30 an annual report on the current status  
20 of the conservation bank.

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1 (d) After consultation with the endangered species  
2 recovery committee, the board may approve a conservation bank  
3 instrument if the board determines that:

4 (1) The conservation bank will further the purposes of  
5 this chapter by restoring, creating, enhancing, or  
6 protecting populations of threatened, endangered,  
7 candidate, or proposed species and their habitats;

8 (2) The system for assessing and releasing credits is  
9 based on the best available scientific information  
10 and, where there is any uncertainty about what  
11 constitutes the best available science, the rationale  
12 used for developing the system for assessing and  
13 releasing credits gives the benefit of the doubt to  
14 the species;

15 (3) For a conservation bank operated by a bank sponsor  
16 other than the department:

17 (A) The bank sponsor has the scientific and technical  
18 competence required to perform the necessary  
19 conservation actions for the species identified  
20 in subsection (b)(2);

21 (B) The bank sponsor's funding source is adequate to  
22 ensure the successful completion of habitat

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1 construction, management, monitoring, and  
2 remedial actions;

3 (C) The nature and duration of the site protection  
4 instrument is adequate to ensure the successful  
5 completion of habitat construction, management,  
6 monitoring, and remedial actions; and

7 (D) The conservation bank instrument shall run with  
8 the land for the term specified in the site  
9 protection instrument and shall not be assignable  
10 or transferable separate from the land;

11 (4) For a conservation bank operated by the department,  
12 the conservation bank shall be established on land  
13 managed by the department; and

14 (5) The conservation bank instrument satisfies all the  
15 requirements in subsection (b) and, for applications  
16 from bank sponsors other than the department,  
17 subsection (c).

18 Board approval shall require an affirmative vote of not less  
19 than two-thirds of the authorized membership of the board. The  
20 board shall not approve a conservation bank instrument that the  
21 majority of the endangered species recovery committee  
22 recommended for disapproval.

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1           (e) The board's approval of a conservation bank instrument  
2 for a conservation bank operated by a bank sponsor other than  
3 the department does not relieve the bank sponsor of its  
4 obligation to secure any applicable temporary license pursuant  
5 to section 195D-4, if applicable to its operation or other  
6 activities.

7           (f) After a conservation bank has created a credit  
8 following the system for assessing and releasing credits  
9 identified in the conservation bank instrument, the bank sponsor  
10 may transfer or sell the credit to an incidental take licensee  
11 for use of an approved conservation bank as compensatory  
12 mitigation, provided that:

13           (1) The use of the credit as compensatory mitigation for  
14 incidental take of threatened or endangered species is  
15 identified in an approved habitat conservation plan  
16 and satisfies incidental take license requirements in  
17 section 195D-4(g) and habitat conservation plan  
18 requirements in section 195D-21(b);

19           (2) Credit stacking is prohibited;

20           (3) Credit bundling may be used to compensate for all or a  
21 subset of the functions or services included in the  
22 credit type but shall be used only once; and

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1 (4) Once a credit is transferred or sold, that credit is  
2 retired and cannot be used again.

3 (g) Notwithstanding any other law to the contrary, the  
4 board shall suspend or revoke the approval of any conservation  
5 bank instrument approved under this section if the board  
6 determines that:

7 (1) The bank sponsor or its successor has breached its  
8 obligations under the conservation bank instrument and  
9 has failed to cure the breach in a timely manner, and  
10 the effect of the breach is to diminish the likelihood  
11 that the conservation bank will achieve its goals  
12 within the time frames or in the manner set forth in  
13 the conservation bank instrument;

14 (2) For a conservation bank operated by a bank sponsor  
15 other than the department, the conservation bank no  
16 longer has the funding source specified in subsection  
17 (d)(3)(B) or another sufficient funding source to  
18 ensure the successful completion of the habitat  
19 construction, management, monitoring, and remedial  
20 actions in accordance with the conservation bank  
21 instrument; or

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1           (3) Continued operation of the conservation bank would  
2           appreciably reduce the likelihood of survival or  
3           recovery of any threatened or endangered species in  
4           the wild.

5 If approval of a conservation bank instrument is suspended, then  
6 the bank sponsor shall not sell or transfer any credits from  
7 that conservation bank, until such time as the conservation bank  
8 instrument is reinstated. Any bank sponsor whose conservation  
9 bank instrument has been revoked shall not be eligible to apply  
10 to operate another conservation bank.

11           (h) An approved conservation bank instrument may be  
12 amended through administrative amendment or major amendment.

13           (1) Administrative amendments are changes to the bank  
14 sponsor's name, address, or contact information. The  
15 department may process administrative amendments  
16 without recommendation from the endangered species  
17 recovery committee and without approval from the  
18 board.

19           (2) Major amendments are changes that are not  
20 administrative amendments. Major amendments include,  
21 but are not limited to, changes to the bank sponsor,  
22 the species that the conservation bank is established

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1 to protect, the resource management plan, the  
2 financial assurances, the system for assessing and  
3 releasing credits, or the site protection instrument.  
4 Major amendments shall be reviewed and recommended for  
5 approval by the endangered species recovery committee  
6 and approved by the board pursuant to the procedure  
7 set forth in subsection (d).

8 (i) The department may collect from bank sponsors fees or  
9 payment for costs incurred, including but not limited to costs  
10 included by the department during:

- 11 (1) Its rulemaking process;
- 12 (2) Application processing; and
- 13 (3) The establishment, monitoring, and oversight of the  
14 bank sponsor's conservation bank.

15 (j) This part shall not apply to aquatic life or their  
16 habitats.

17 **§195D-C Conservation banks; rules.** The department may  
18 adopt rules pursuant to chapter 91 necessary to implement this  
19 part."

20 SECTION 3. Section 195D-25, Hawaii Revised Statutes, is  
21 amended to read as follows:

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1           "§195D-25 **Endangered species recovery committee.** (a)

2   There is established within the department for administrative  
3   purposes only, the endangered species recovery committee, which  
4   shall serve as a consultant to the board and the department on  
5   matters relating to endangered, threatened, proposed, and  
6   candidate species. The committee shall consist of two field  
7   biologists with expertise in conservation biology, the  
8   chairperson of the board or the chairperson's designee, the  
9   ecoregion director of the United States Fish and Wildlife  
10  Service or the director's designee, [~~the director of the United~~  
11 ~~States Geological Survey, Biological Resources Division or the~~  
12 ~~director's designee]~~ the associate director of the United States  
13 Geological Survey, Ecosystem Mission Area or associate  
14 director's designee, the dean of the [~~University]~~ university of  
15 Hawaii at Manoa college of natural sciences or the dean's  
16 designee, and a person possessing a background in native  
17 Hawaiian traditional and customary practices, as evidenced by:

- 18           (1) A college degree in a relevant field, such as Hawaiian  
19                 studies, native Hawaiian law, native Hawaiian  
20                 traditional and customary practices, or related  
21                 subject area;

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- 1           (2) Work history that demonstrates an appropriate level of  
2           knowledge in native Hawaiian traditional and customary  
3           practices; or  
4           (3) Substantial experience in native Hawaiian traditional  
5           and customary practices.

6           Nongovernmental members shall be appointed by the governor  
7           pursuant to section 26-34. Nongovernmental members shall not  
8           serve for more than two consecutive terms. Nongovernmental  
9           members shall serve for four-year staggered terms, except that  
10          one of the members first appointed shall serve for two years.

11          Governmental members from the federal agencies are  
12          requested but not required to serve on the committee. The  
13          ability of the committee to carry out its functions and purposes  
14          shall not be affected by the vacancy of any position allotted to  
15          a federal governmental member.

16          (b) The endangered species recovery committee shall:

- 17          (1) Review all applications and proposals for habitat  
18          conservation plans, safe harbor agreements, [~~and~~]  
19          incidental take licenses, and conservation banks and  
20          make recommendations, based on a full review of the  
21          best available scientific and other reliable data and  
22          at least one site visit to each property that is the

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1 subject of the proposed action, and in consideration  
2 of the cumulative impacts of the proposed action on  
3 the recovery potential of the endangered, threatened,  
4 proposed, or candidate species, to the department and  
5 the board as to whether or not they should be  
6 approved, amended, or rejected;

7 (2) Review all habitat conservation plans, safe harbor  
8 agreements, [~~and~~] incidental take licenses, and  
9 conservation banks on an annual basis to ensure  
10 compliance with agreed to activities and, on the basis  
11 of any available monitoring reports, and scientific  
12 and other reliable data, make recommendations for any  
13 necessary changes;

14 (3) Consider and recommend appropriate incentives to  
15 encourage landowners to voluntarily engage in efforts  
16 that restore and conserve endangered, threatened,  
17 proposed, and candidate species;

18 (4) Perform such other duties as provided in this chapter;

19 (5) Consult with persons possessing expertise in such  
20 areas as the committee may deem appropriate and  
21 necessary in the course of exercising its duties; and

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1 (6) Not conduct more than one site visit per year to each  
2 property that is the subject of a habitat conservation  
3 plan [~~or~~], safe harbor agreement[~~-~~], or conservation  
4 bank instrument."

5 SECTION 4. In codifying the new sections added by section  
6 2 and referenced in section 2 of this Act, the revisor of  
7 statutes shall substitute appropriate section numbers for the  
8 letters used in designating new sections in this Act.

9 SECTION 5. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11 SECTION 6. This Act shall take effect upon its approval. .

12

13

INTRODUCED BY: 

14

BY REQUEST

S.B. NO. 3147

**Report Title:**

Department of Land and Natural Resources; Conservation Banks

**Description:**

Authorizes the Board of Land and Natural Resources to approve the operation of conservation banks and amends the Endangered Species Recovery Committee's membership and scope of authority. Effective upon approval.

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

# SB. NO. 3147

## JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO CONSERVATION BANKS.

PURPOSE: To authorize the Board of Land and Natural Resources (Board) to approve the operation of public and private conservation banks.

MEANS: Add a new part to chapter 195D and amend section 195D-25, Hawaii Revised Statutes (HRS).

JUSTIFICATION: This bill authorizes entities to operate conservation banks: landscape-scale conservation projects designed to help recover at-risk species or improve their habitat. Conservation banks would bring additional funds for the department's conservation actions on state lands and encourage private landowners to conduct conservation actions on their property to help recover Hawaii's threatened and endangered species.

The Board issues incidental take licenses as part of approved habitat conservation plans for the take of threatened and endangered species incidental to the operation of many different types of projects. Habitat conservation plans require licensees mitigate all negative impacts to threatened, endangered, candidate, or proposed species in the project area. Currently, mitigation actions consist of on-the-ground conservation actions, funding for conservation actions and research, and the purchase of property.

The Department finds that incidental take licensees fall behind on their mitigation obligations for various reasons and that by adding conservation banks to the available compensatory mitigation options, licensees

will have additional tools to ensure adverse impacts to imperiled species will be offset.

This bill seeks to provide more tools for incidental take licensees to satisfy mitigation requirements in chapter 195D, HRS. Conservation banks would make project costs more predictable for incidental take licensees, expedite review of mitigation projects in habitat conservation plans, increase certainty that this mitigation obligation is complete, offer landscape scale benefits to multiple species, and reduce or eliminate the time delay between issuing the incidental take license and the mitigation obligation being met.

This bill requires that applications for conservation banks be reviewed and recommended for approval by the existing Endangered Species Recovery Committee and approved by the Board before operation. This bill also provides legal safeguards should an approved conservation bank instrument—an agreement between the Board and a bank sponsor that establishes the conservation bank—be breached.

Impact on the public: This bill will provide incidental take licensees with another option for mitigation through conservation banks and ensure the fidelity of such mitigation for the public benefit.

Impact on the department and other agencies: This bill will also provide flexibility to prescribe administrative rules that govern the operation of conservation banks.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	LNR 402.

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OTHER AFFECTED  
AGENCIES:

None.

EFFECTIVE DATE:

Upon its approval.