

TWELFTH KOSRAE STATE LEGISLATURE

FIRST REGULAR SESSION, FEBRUARY 2019

L.B. No. 12-18

ETC & I

A BILL FOR AN ACT

To amend Title 19 of the Kosrae State Code, by adding a new Chapter 9 to prescribe power and authority to Kosrae Island Resources Management Authority (KIRMA) to regulate the removal of sand, silt, gravel, dead corals, cobble and boulders from the backshore, beach or reef areas, and for other purposes.

BE IT ENACTED BY THE KOSRAE STATE LEGISLATURE

1 Section 1. Purpose. The purpose of this act is to amend Title 19 of the Kosrae
2 State Code by adding a new Chapter 9 to prescribe power and authority to KIRMA to
3 regulate the removal of sand, silt, gravel, dead corals, cobble and boulders from the
4 backshore, beach or reef areas.

5 Section 2. Amendment. A new Chapter 9 is hereby added to Title 19 of the
6 Kosrae State Code to read as follows:

7 "Chapter 9. Coastal Area Preservation

8 Section 19.901. Short Title. This chapter shall be known as the "Coastal Area
9 Preservation Act of 2019".

10 Section 19.902. Findings and Purpose.

11 (a) The beaches of Kosrae are distinct, valuable island resources for the
12 people, and are disappearing.

13 (b) The protections of the beaches and the coastal areas are vital to the
14 livelihood of the people of Kosrae in promoting sustainable living

TWELFTH KOSRAE STATE LEGISLATURE

FIRST REGULAR SESSION, FEBRUARY 2019

L.B. No. 12-18

and in protecting land on Kosrae from coastal change and
inundation caused by sea level rise and storm surges.

(c) The regulation of coastal sand mining, and removal of silt, gravel, dead corals, cobble and boulders from the backshore, beach, reef areas is imminent for the protection and safeguarding of the beach and coastal area resources, and is to further aid in combatting the negative impacts of climate change.

(d) The unauthorized removal of sand, silt, gravel, dead corals, cobble and boulders from the backshore, beach, or reef areas contributes to coastal erosion and destruction of the near shore marine coastal ecosystem.

(e) Exploitation of sand from the beach and removal of silt, gravel, dead corals, cobble and boulders cause irreparable harm to the environment. The removal of sand from beaches further causes reduction of the sand reserve for natural beach storm responses.

(f) In recognition of the damage that coastal sand mining does and of the need to preserve the backshore, beach or reef areas for sustainable living and for future generations, coastal sand mining in the State of Kosrae must be regulated.

(g) To protect the natural environment and the general interest of the public, it is necessary to enact legislation to prevent the deterioration and destruction caused by mining and removal of sand, silt, gravel, dead corals, cobble and boulders from the backshore, beach and reef areas.

Section 19.903. Definitions. As used in this Chapter, unless otherwise indicated:

1. "Administrator" means the Administrator of KIRMA.
2. "Person" means an individual, firm, association, corporation, organization, partnership or the Government of the State of Kosrae, or any agency or department thereof.
3. "Sand Mining" means the excavation or removal of sand.
4. "Silt" means the earthly matter, fine sand, or the like carried and deposited by moving or running water.
5. "Cobbles" means coal in lumps larger than a pebble and small than a boulder.
6. "Boulder" means a detached and rounded or work rock, especially a large one.

TWELFTH KOSRAE STATE LEGISLATURE

FIRST REGULAR SESSION, FEBRUARY 2019

L.B. No. 12-18

1 7. “Marine Debris” means marine litter, human created waste that has
2 been deliberately or accidentally been released in a lake, sea, ocean,
3 or waterway.

4 8. “Coastal Area” means the reef, reef flats, lagoon, beach and
5 backshore areas including the natural vegetated areas behind the
6 beach. The coastal area zone comprises of the low lying areas,
7 below the 10 meter elevation that are prone to coastal hazards such
8 as shoreline change and coastal inundation during times of high
9 king tides, and large tidal swells.

10 Section 19.904. Prohibition. The mining of coastal sand, dead coral or coral
11 rubble, rocks, soil or other beach or marine deposits from the coastal area is prohibited in
12 all areas, unless a permit is obtained from KIRMA as provided in §19.908.

13 Section 19.905. Exceptions.

14 1. The inadvertent taking from the shoreline area of the materials, such
15 as those inadvertently carried away on the body, and on clothes,
16 canoes, bags, fishing and recreational equipment.

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

18 3. The clearing of materials from existing and proposed drainage pipes
19 and canals and from the mouths of streams.

FIRST REGULAR SESSION, FEBRUARY 2019

L.B. No.

12-18

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

TWELFTH KOSRAE STATE LEGISLATURE

FIRST REGULAR SESSION, FEBRUARY 2019

L.B. No. 12-18

1 or denying the requested permit, and of an inspection program to
2 determine compliance with the permit. The fee shall accompany
3 the application for a permit.

4 d. KIRMA shall require periodic reports from persons who hold
5 permits. The report shall be in a form prescribed by KIRMA and
6 shall contain the information on the amount and nature of the
7 mining of sand, silt, gravel, dead corals, cobble and boulders from
8 the beaches and such other information as KIRMA may require
9 from time to time.

10 Section 19.909. Revenues Collected. Revenues collected from permits and other
11 fees shall be deposited into a special account of the general fund with a separate account
12 established for KIRMA.

13 Section 19.910. Regulations. KIRMA shall promulgate and publish rules and
14 regulations consistent with Title 2 of the Kosrae State Code, §2.402, including assessment
15 and collection of fees in the regulation of coastal area sand mining as necessary to carry
16 out this title in which the rules and regulations shall have the force and effect of law.

17 Section 19.911. Powers and Duties. KIRMA has the power and duty to adopt and
18 enforce regulation to effect the purposes of this chapter consistent with this title and
19 chapter, and other enabling statutes.

TWELFTH KOSRAE STATE LEGISLATURE

FIRST REGULAR SESSION, FEBRUARY 2019

L.B. No. 12-18

1 Section 19.912. Unlawful Acts. No person shall violate this title, and regulations
2 adopted pursuant to this title. Any person found engaged in the removal of sand, silt,
3 gravel, dead corals, cobble and boulders from the backshore, beach and reef areas within
4 Kosrae State without a valid permit issued by KIRMA, shall be deemed to have
5 committed an offense against the Government of Kosrae State, which shall be treated as
6 an unlawful act within the meaning of this title and shall be subject to the enforcement and
7 jurisdiction provisions provided herein.

8 Section 19.913. Penalty for violations.

9 (1) First Violation.

10 (a) Any person who violates this chapter, or any regulation
11 issued under this chapter, shall receive a warning notice
12 from KIRMA citing the specific violation and the necessary
13 corrective action for the first violation as authorized by
14 regulation.

15 (b) If the first violation is knowing and intentional, or if the first
16 violation causes substantial harm to the environment,
17 KIRMA may impose additional penalties as authorized by
18 regulation.

19 (2) Second Violation.

TWELFTH KOSRAE STATE LEGISLATURE

FIRST REGULAR SESSION, FEBRUARY 2019

L.B. No. 12-18

1 (a) Any person who violates this chapter, or any regulation
2 issued under this chapter a second time, shall be assessed a
3 civil penalty between ten dollars (\$10.00) and fifty thousand
4 dollars (\$50,000), depending on the severity of the harm to
5 the environment caused by the violation.

6 (3) Third and Successive Violation.

7 (a) Any person who violates this chapter, or any regulation
8 issued under this chapter a third or successive time, shall be
9 assessed a civil penalty at least double the amount of the
10 previous civil penalty, and depending on the severity of the
11 harm to environment caused by the violation.

12 (b) In addition, any permit issued to the repeat violator under
13 this chapter shall be revoked.

14 (c) In addition, the repeat violator shall be guilty of a
15 misdemeanor and shall be fined not more than \$500.00 or
16 imprisoned for not more than 6 months, or both upon
17 conviction.

18 (d) In addition, if the repeat violator knowingly and
19 intentionally violated and the violation caused serious harm

TWELFTH KOSRAE STATE LEGISLATURE

FIRST REGULAR SESSION, FEBRUARY 2019

L.B. No. 12-18

or serious adverse effects on the environment, the repeat violator shall be guilty of a felony and shall be fined not more than five thousand dollars (\$5,000) or imprisoned for not more than three years, or both, upon conviction.

Section 19.914. Criteria for determining amount of penalty. In determining the amount of any penalties to be assessed, KIRMA or the court shall take into account the nature, circumstances, extent and gravity of the violation committed and the policies for deterrence and future compliance with this chapter and in accordance with the Kosrae Code and KIRMA Regulations. KIRMA or the court shall also consider the respondent's degree of culpability, history of prior offenses, ability to pay and such other matters as justice requires. In no case, however, shall KIRMA or the court assess a civil penalty in excess of one hundred thousand dollars (\$100,000).

Section 19.915. Severability. If any provision of this title, or the application thereof to any person or circumstance is held to be invalid, its invalidity shall not affect other provisions or applications of the title, which shall be given effect without the invalid provision or application, and to this end the provisions of this title are severable.

TWELFTH KOSRAE STATE LEGISLATURE

FIRST REGULAR SESSION, FEBRUARY 2019

L.B. No.

12-18

1 Section 3. Effective Date. This act takes effect upon the approval of the Governor
2 or upon its becoming law without such approval.

3

4

5

6

Date: 3/7/19

Introduced by: *J. Wesley*
By Request