

ETC & I

A BILL FOR AN ACT

To amend the Kosrae State code by adding a new Chapter 9, under Title 19 of the Kosrae State Code to prescribe power and authority to Kosrae Island Resources Management Authority 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 the Kosrae State code by
2 adding a new section 9 of Title 19. The beaches of Kosrae are distinct, valuable island
3 resources for the people, and are disappearing. The protections of the beaches and the
4 coastal areas are vital to the livelihood of the people of Kosrae in promoting sustainable
5 living and in protecting land on Kosrae from coastal change and inundation caused by sea
6 level rise and storm surges. The regulation of coastal sand mining, and removal of silt,
7 gravel, dead corals, cobble and boulders from the backshore, beach, reef areas is imminent
8 for the protection and safeguarding of the beach and costal area resources, and is to further
9 aid in combating the negative impacts of climate change. The unauthorized removal of
10 sand, silt, gravel, dead corals, cobble and boulders from the backshore, beach, or reef
11 areas contributes to coastal erosion and destruction of the near shore marine coastal
12 ecosystem. Exploitation of sand from the beach and removal of silt, gravel, dead corals,
13 cobble, and boulders cause irreparable harm to the environment. The removal of sand
14 from beaches further causes reduction of sand reserve for natural beach storm responses.
15 In recognition of the damage that coastal sand mining does and of the need to preserve the
16 backshore, beach or reef areas for sustainable living and for future generations, costal sand

1 mining in the State of Kosrae must be regulated. To protect the natural environment and
2 the general interest of the public, it is necessary to enact legislation to prevent the
3 deterioration and destruction caused by mining and removal of sand, silt, gravel, dead
4 corals, cobble and boulders from the backshore, beach and reef areas.

5 Section 2. Amendment. Title 13, Chapter 9, of the Kosrae State Code is hereby
6 inserted to read as follows:

7 **“ Chapter 9. Coastal Area Preservation**

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

10 19.902. Definition. As used in this Chapter, unless otherwise indicated:

11 1. “Adminstrator” means the Adminstrator of KIRMA.

12 2. “Person” means an individual, firm, association, corporation, organization,
13 partnership of the Government of the State of Kosrae, or any agency or department
14 thereof.

15 3. “Sand Mining” means the excavation or removal of sand.

16 4. “Silt” means the earthy matter, fine sand, or the like carried and deposited by
17 moving or running water.

18 5. “Cobbles” means coal in lumps larger than a pebble and small than a boulder.

19 6. “Boulder” means a detached and rounded or work rock, especially a large one.

1 7. "Marine Debris" means marine litter, human crated wast that has been
2 deliberately or accidentally been released in a lake, sea, ocean, or waterway.

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

8 19.903. Prohibition. The mining of coastal sand, dead coral or coral rubble, rocks,
9 soil or other beach or marine deposits from the coastal area is prohibited in all areas,
10 unless a permit is obtained from KIRMA as provided in Section 19.907 of this Act.

11 19.904. Exceptions.

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

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

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

18 4. The cleaning of shoreline area for state or municipality maintenance purposes.

1 19.905. Authorized Coastal Sand Mining. Coastal sand mining may be permitted
2 in an authorized area only upon obtaining and satisfying the permit requirements as
3 provided under Section 19.907.

4 19.906. Prohibited Areas. Sand mining permits are prohibited in the following
5 areas: Utwe Biosphere Reserve, Tafunsak Marine Protected Area, any an all areas and
6 sites identified and registered under the Protected Areas Act, and other protected areas
7 identified and authorized through KIRMA Regulations.

8 19.907. Permits and Fees.

9 a. KIRMA shall, by regulation, establish a process for issuing permits to possess,
10 use, for removal of sand, silt, gravel, dead corals, cobble and boulders from the
11 backshore, beach and reef area.

12 b. Any permit issued shall specify its duration and the conditions for compliance
13 with any rules and standards adopted by regulation pursuant to this chapter.

14 c. KIRMA may establish a schedule of fees for applying for a permit. The fees
15 shall be based upon the anticipated cost of filing and investigating the application,
16 reviewing of the application, issuing or denying the requested permit, and of an
17 inspection program to determine compliance with the permit. The fee shall
18 accompany the application for a permit.

19 d. KIRMA shall require periodic reports from the persons who hold permits. The
20 report shall be in a form prescribed by KIRMA and shall contain the information

1 on the amount and nature of the mining of sand, silt, gravel, dead corals, cobble
2 and boulders from the beaches and such other information as KIRMA may require
3 from time to time.

4 19.908. Revenues Collected.

5 Revenues collected from permits and other fees shall be deposited into the
6 General Fund of the Kosrae State Treasury.

7 19.909. Regulations. KIRMA shall promulgate and publish rules and regulations
8 consistent with Title 2 of the Kosrae State Code, Section 2.402, including
9 assessment and collection of fees in the regulation of coastal areas and mining as
10 necessary to carry out this title in which the rules and regulations shall have the
11 force and effect of law.

12 19.910. Powers and duties. KIRMA has the power and duty to adopt and enforce
13 regulation to effect the purposes of this chapter consistent with this title and
14 chapter, and other enabling statutes.

15 19.911. Unlawful act. No person shall violate this title, and regulations adopted
16 pursuant to this title. Any person found engaged in the removal of sand, silt,
17 gravel, dead corals, cobble and boulders from the backshore, beach and reef areas
18 within Kosrae State without a valid permit issued by KIRMA, shall be deemed to
19 have committed an offense against the Government of Kosrae State, which shall be

1 treated as an unlawful act within the meaning of this title and shall be subject to
2 the enforcement and jurisdiction provisions provided herein.

3 19.912. Penalty for violations.

4 (1) First violation.

5 (a) Any person who violates this chapter, or any regulation issued under this
6 chapter, shall receive a warning notice from KIRMA citing the specific violation
7 and the necessary corrective action for the first violation as authorized by
8 regulation.

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

12 (2). Second violation

13 (a) Any person who violates this chapter, or any regulation issued under this
14 chapter a second time, shall be assessed a civil penalty between ten dollars
15 (\$10.00) and fifty thousand dollars (\$50,000), depending on the severity of the
16 harm to the environment caused by the violation.

17 (3). Third and Successive violation

18 (a) Any person who violates this chapter, or any regulation issued under this
19 chapter a third or successive time, shall be assessed a civil penalty at least double

1 the amount of the pervious civil penalty, and depending on the severity of the harm
2 to environment caused by the violation.

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

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

8 (d) In addition, if the repeat violator knowingly and intentionally violated and the
9 violation caused serious harm or serious adverse effects on the environment, the
10 repeat violator shall be guilty of a felony and shall be fined not more than five
11 thousand dollars (\$5,000) or imprisoned for not more than three years, or both,
12 upon conviction.

13 19.913. Criteria for determining amount of penalty. In determining the amount of
14 any penalties to be assessed, KIRMA or the court shall take into account the
15 nature, circumstances, extent and gravity of the violation committed and the
16 policies for deterrence and future compliance with this chapter and in accordance
17 with the Kosrae Code and KIRMA Regulations. KIRMA or the court shall also
18 consider the respondent's degree of culpability, history of prior offenses, ability to
19 pay and such other matters as justice requires. In no case, however, shall KIRMA

1 or the court assess a civil penalty in excess of one hundred thousand dollars
2 (\$100,000).
3 19.914. Severability. If any provision of this title, or the application thereof to any
4 person or circumstance is held to be invalid, its invalidity shall not affect other
5 provisions or applications of the title, which shall be given effect without the
6 invalid provisions or application, and to this end the provisions of this title are
7 severable. ”

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

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16 Date: 2/8/21

Introduced by: J. Wesley
(By Request)