

MAR 15 2006

SENATE RESOLUTION

REQUESTING THE AUDITOR TO CONDUCT A STUDY OF THE SHORELINE
SETBACK REFERENCE LINE.

1 WHEREAS, shorelines and beaches are one of Hawaii's most
2 precious natural resources and provide important recreational,
3 cultural, social, and economic opportunities for residents and
4 tourists; and

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6 WHEREAS, the shoreline setback system has been established
7 to serve the dual purpose of protecting Hawaii's beach resources
8 and reducing the loss of property from erosion, storms, or other
9 events by establishing a distance mauka of the ocean from which
10 structures may be built; and

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12 WHEREAS, in implementing shoreline setbacks and the
13 objectives of the coastal zone management program, the
14 Legislature mandated that agencies give full consideration to
15 ecological, cultural, historic, aesthetic, recreational, scenic,
16 and open space values, and coastal hazards, as well as to needs
17 for economic development; and

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19 WHEREAS, the shoreline setback system consists of two
20 components: the reference line and the distance from the
21 reference line that structures may be built; and

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23 WHEREAS, the reference line currently used is the
24 "shoreline" as defined by the Hawaii Supreme Court *In re*
25 *Application of Ashford*, 50 Haw. 314 (1968), and further
26 clarified in *County of Hawaii v. Sotomura*, 55 Haw. 176 (1973),
27 and the process of establishing this line is referred to as
28 "shoreline certification"; and

29
30 WHEREAS, the Hawaii Supreme Court established the shoreline
31 for the purposes of determining ownership as the "upper reaches
32 of the wash of the waves, usually evidenced by the edge of
33 vegetation or by the line of debris left by the wash of waves";
34 and



1 WHEREAS, this definition is inherently ambiguous and
2 subjective and, as Justice Marumoto in his dissenting opinion in
3 *Ashford* presciently wrote, "primitive in concept and haphazard
4 in application and result"; and
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6 WHEREAS, as argued by the State in *Ashford* and confirmed by
7 the Hawaii Supreme Court in *Sotomura*, the State has historically
8 emphasized the vegetation line as the more permanent and stable
9 monument to identify the shoreline; and
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11 WHEREAS, at the time of these court decisions in the late
12 1960s to early 1970s, vegetation could be better relied upon as
13 a natural indicator of the wash of the waves; and
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15 WHEREAS, in more recent years, the urbanization of Hawaii's
16 coastal lands and intensification of its use has resulted in
17 extended landscaping along the shoreline; and
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19 WHEREAS, this increased landscaping, including the use of
20 saltwater tolerant plants, has, in some cases, distorted the
21 shoreline for the purpose of establishing the shoreline setback
22 reference line; and
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24 WHEREAS, the *Ashford* definition of shoreline has become
25 problematic for shoreline setback purposes as the vegetation
26 line can no longer be relied upon as a natural indicator; and
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28 WHEREAS, other states and countries must deal with the same
29 question of how to establish shoreline setbacks and have varying
30 methods and reference lines for these purposes; and
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32 WHEREAS, there is rapidly improving technologies, such as
33 global positioning system, geographic information systems, and
34 light detection and ranging technology that might provide a more
35 objective, reliable reference to establish the reference line
36 for shoreline setbacks; and
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38 WHEREAS, Senate Concurrent Resolution No. 51, S.D. 1,
39 Regular Session 2005, requested the Department of Land and
40 Natural Resources and a working group to conduct a study of the
41 issues surrounding the shoreline certification process for the
42 purpose of shoreline setbacks; and
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1 WHEREAS, the report submitted by the Department did not
2 explore or analyze alternative methods and technologies that
3 could be used to establish the shoreline setback line and did
4 not offer clear recommendations in terms of the Department's
5 position; now, therefore,

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7 BE IT RESOLVED by the Senate of the Twenty-third
8 Legislature of the State of Hawaii, Regular Session of 2006,
9 that the Auditor is requested to study the alternative systems
10 and methods for defining and establishing the shoreline setback
11 reference line; and

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13 BE IT FURTHER RESOLVED, as part of the study, the Auditor
14 is requested to:

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- 16 (1) Provide the legal framework for the definition of
17 shoreline as used to establish the shoreline setback;
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 - 19 (2) Identify federal, state, and county agencies involved
20 in coastal zone management in Hawaii, existing coastal
21 data, and possible funding sources;
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 - 23 (3) Research and identify methods, systems, and
24 technologies used in other states and countries that
25 are used for the purpose of shoreline setbacks;
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 - 27 (4) Identify alternative shoreline setback lines that
28 could be used in Hawaii, the pros and cons of each as
29 applied to Hawaii's varying coastline types, and
30 associated costs;
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 - 32 (5) Compare the alternative methods with the current
33 method being used and make recommendations;
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 - 35 (6) Determine impacts of changing the setback reference
36 line on use of the shoreline certification process for
37 ownership purposes and for conservation district
38 purposes; and
39
 - 40 (7) Identify any other possible changes to Hawaii's
41 shoreline setback system; and
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43 BE IT FURTHER RESOLVED that the Auditor may hire
44 consultants to conduct portions or all of the study, provided



1 that any coastal consultant will preferably be one who has
2 national and international experience with coastal construction
3 setback systems; and
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5 BE IT FURTHER RESOLVED that the Auditor is requested to
6 convene and facilitate an advisory group to provide feedback on
7 the study that consists of one member each representing:
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- 9 (1) The Department of Land and Natural Resources;
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- 11 (2) The Department of Business, Economic Development, and
12 Tourism, Office of Planning;
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- 14 (3) The Department of Accounting and General Services,
15 Land Survey Division;
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- 17 (4) The University of Hawaii;
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- 19 (5) The planning office of each county;
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- 21 (6) The Office of Hawaiian Affairs;
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- 23 (7) The Hawaii Association of Land Surveyors;
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- 25 (8) Oceanfront landowners;
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- 27 (9) An environmental organization; and
- 28
- 29 (10) A native Hawaiian cultural organization;
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31 with the member in paragraphs (1) through (7), appointed by the
32 department, agency, or organization named, and with the member
33 in paragraphs (8) through (10), selected by the Auditor; and
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35 BE IT FURTHER RESOLVED that the Auditor is requested to
36 report findings and recommendations, including any proposed
37 legislation, not later than twenty days prior to the convening
38 of the Regular Session of 2007; and
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40 BE IT FURTHER RESOLVED that certified copies of this
41 Resolution be transmitted to the Auditor; the Chairperson of the
42 Board of Land and Natural Resources; the Attorney General; the
43 Director of the Department of Business, Economic Development,
44 and Tourism; the Comptroller; the President of the University of



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1 Hawaii; the head of each county's planning office; the Office of
2 Hawaiian Affairs; and the Hawaii Association of Land Surveyors.

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OFFERED BY: Buneeus Kohb

Paul

D. Kano

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[Signature]

