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# A BILL FOR AN ACT

RELATING TO COASTAL AREAS.

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

1           SECTION 1. The legislature finds that there are many  
2 shoreline areas throughout the state where the overgrowth of  
3 vegetation inhibits access to and transit along the beach,  
4 thereby denying the public of use and enjoyment of the public  
5 domain. The area seaward of the shoreline is part of the  
6 conservation district and the department of land and natural  
7 resources is responsible for regulating the uses of the  
8 conservation district. Although natural vegetative overgrowth  
9 exists along beach areas, there is also evidence in many areas  
10 of vegetative overgrowth into the beach area induced by private  
11 property owners. The department does not have the funding to  
12 remove this vegetative overgrowth, nor should it be financially  
13 responsible for the removal.

14           The legislature finds that public beach corridors are  
15 similar to public sidewalks in the sense that they are for  
16 public use. To maintain public transit along the shoreline,  
17 provisions similar to those pertaining to the maintenance of  
18 sidewalks are needed. For example, chapter 14, article 20,



1 Revised Ordinances of Honolulu, requires property owners to  
2 maintain adjacent sidewalks. If the sidewalk is not maintained,  
3 a property owner may be cited and given a certain amount of time  
4 to clean up the sidewalk. If the sidewalk is not cleaned, the  
5 city and county of Honolulu may clean the sidewalk and seek  
6 reimbursement from the property owner.

7 The legislature finds that a similar provision to protect  
8 transit areas and public transit corridors along shorelines in  
9 the conservation district would encourage property owners to keep  
10 adjacent beachfront free of encroaching vegetation and provide a  
11 means to reimburse government agencies for removing vegetation if  
12 necessary.

13 SECTION 2. Chapter 115, Hawaii Revised Statutes, is  
14 amended by adding a new section to be appropriately designated  
15 and to read as follows:

16 "§115- Maintenance of beach transit corridors. (a)  
17 Under chapter 183C and this chapter, the department of land and  
18 natural resources shall maintain transit areas and public  
19 transit corridors by requiring private property owners to ensure  
20 that transit areas and public transit corridors abutting or  
21 adjoining their lands are kept passable and free from human-



1 induced, enhanced, or unmaintained vegetation that interferes  
2 with transit.

3 (b) The department is authorized to issue notice to  
4 landowners who fail to maintain transit areas and public transit  
5 corridors abutting or adjoining their property. If any  
6 landowner fails to remove the obstruction within twenty-one days  
7 of notice being issued, the department must elect to either  
8 impose fines pursuant to the schedule in section 115-9(d) or  
9 impose fines pursuant to the schedule in section 115-9(d) and  
10 remove the obstruction as may be necessary to allow public  
11 access. The cost incurred for removal by the department shall  
12 be charged to and against the landowner, as landowner is defined  
13 in section 115-9, and collected from the landowner, if not  
14 immediately paid, by action in the district court."

15 SECTION 3. Section 115-5, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 "~~[+] §115-5 [1]~~ Transit area and public transit corridor  
18 defined. (a) The right of transit along the shoreline exists  
19 ~~[below the private property line which is defined as being along~~  
20 ~~the upper reaches of the wash of waves, usually evidenced by the~~  
21 ~~edge of vegetation or by the debris left by the wash of waves.]~~



1 seaward of the shoreline as defined in section 205A-1. This  
2 area shall be known as a transit area.

3       However, in areas of cliffs or areas where the nature of  
4 the topography is such that there is no reasonably safe transit  
5 for the public along the shoreline below the private property  
6 lines, the counties by condemnation [~~shall~~] may establish along  
7 the makai boundaries of the property lines public transit  
8 corridors which shall be not less than six feet wide.

9       (b) Along transit areas and public transit corridors where  
10 the vegetation is human-induced, enhanced, or unmaintained such  
11 that there is interference with public transit, the department  
12 of land and natural resources may require maintenance of transit  
13 areas and public transit corridors by the adjacent landowner, by  
14 means of the removal of the interfering vegetation."

15       SECTION 4. Section 115-9, Hawaii Revised Statutes, is  
16 amended to read as follows:

17       "~~+~~§115-9~~+~~ **Obstructing access to public property;**  
18 **penalty.** (a) A person commits the offense of obstructing  
19 access to public property if the person, by action or by having  
20 installed a physical impediment, intentionally prevents a member  
21 of the public from traversing:

22       (1) A public right-of-way;



1 (2) A transit area; or

2 (3) A public transit corridor;

3 and thereby obstructs access to and along the sea, the  
4 shoreline, or any inland public recreational area.

5 (b) Physical impediments that may prevent traversing  
6 include but are not limited to the following:

7 (1) Gates;

8 (2) Fences;

9 (3) Walls;

10 (4) Constructed barriers;

11 (5) Rubbish;

12 (6) Security guards; [~~and~~]

13 (7) Guard dogs or animals[-]; and

14 (8) Human-induced, enhanced, or unmaintained vegetation.

15 (c) Obstructing access to public property is a

16 misdemeanor. Notice shall be sent to the affected landowner by  
17 mailing it to the landowner's last known address in the state.

18 If any landowner, after receiving notice from the department of  
19 land and natural resources, fails to remove an obstruction

20 within twenty-one days, the department may fine the landowner as

21 provided in subsection (d), or fine the landowner as provided in

22 subsection (d) and remove the obstruction as may be necessary to



1 allow public access. The cost for removal by the department  
2 shall be charged to and against the landowner, and if not paid  
3 immediately, shall be collected from the landowner by action in  
4 the district court.

5 (d) [~~Minimum~~] In addition to the cost of removal of an  
6 obstruction pursuant to subsection (c), the minimum fines for  
7 violation under this section shall be as follows:

- 8 (1) \$1,000 for a second [~~conviction~~] violation or failure  
9 to rectify a first violation within twenty-one days of  
10 being notified of the offense by the department; and  
11 (2) \$2,000 for any [~~conviction~~] violation after a second  
12 [~~conviction~~] violation or for each twenty-one day  
13 period, after the first twenty-one day period, in  
14 which an ongoing violation has not been rectified.

15 (e) As used in this section:

16 "Landowner" means the record owner of the property or the  
17 record owner's agent, including a lessee, tenant, property  
18 manager, or trustee.

19 "Person" means a natural person or a legal entity.

20 "Public recreational area" means public lands or bodies of  
21 water opened to the public for recreational use."



1 SECTION 5. Section 205A-1, Hawaii Revised Statutes, is  
2 amended by amending the definition of "shoreline" to read as  
3 follows:

4 "Shoreline" means the upper reaches of the wash of the  
5 waves, other than storm and seismic waves, at high tide during  
6 the season of the year in which the highest wash of the waves  
7 occurs, usually evidenced by the edge of natural vegetation  
8 growth, [~~or~~] but never lower than the upper limit of debris left  
9 by the wash of the waves."

10 SECTION 6. Section 205A-2, Hawaii Revised Statutes, is  
11 amended by amending subsection (c) to read as follows:

12 "(c) Policies.

13 (1) Recreational resources;

14 (A) Improve coordination and funding of coastal  
15 recreational planning and management; and

16 (B) Provide adequate, accessible, and diverse  
17 recreational opportunities in the coastal zone  
18 management area by:

19 (i) Protecting coastal resources uniquely suited  
20 for recreational activities that cannot be  
21 provided in other areas;



- 1                   (ii) Requiring replacement of coastal resources  
2                   having significant recreational value  
3                   including, but not limited to[7] surfing  
4                   sites, fishponds, and sand beaches, when  
5                   such resources will be unavoidably damaged  
6                   by development; or requiring reasonable  
7                   monetary compensation to the State for  
8                   recreation when replacement is not feasible  
9                   or desirable;
- 10                  (iii) Providing and managing adequate public  
11                  access, consistent with conservation of  
12                  natural resources, to and along shorelines  
13                  with recreational value;
- 14                  (iv) Providing an adequate supply of shoreline  
15                  parks and other recreational facilities  
16                  suitable for public recreation;
- 17                  (v) Ensuring public recreational uses of county,  
18                  state, and federally owned or controlled  
19                  shoreline lands and waters having  
20                  recreational value consistent with public  
21                  safety standards and conservation of natural  
22                  resources;





- 1                   (vi) Adopting water quality standards and  
2                   regulating point and nonpoint sources of  
3                   pollution to protect, and where feasible,  
4                   restore the recreational value of coastal  
5                   waters;
- 6                   (vii) Developing new shoreline recreational  
7                   opportunities, where appropriate, such as  
8                   artificial lagoons, artificial beaches, and  
9                   artificial reefs for surfing and fishing;  
10                   and
- 11                   (viii) Encouraging reasonable dedication of  
12                   shoreline areas with recreational value for  
13                   public use as part of discretionary  
14                   approvals or permits by the land use  
15                   commission, board of land and natural  
16                   resources, and county authorities; and  
17                   crediting such dedication against the  
18                   requirements of section 46-6[-];
- 19           (2) Historic resources;
- 20                   (A) Identify and analyze significant archaeological  
21                   resources;



- 1 (B) Maximize information retention through  
2 preservation of remains and artifacts or salvage  
3 operations; and
- 4 (C) Support state goals for protection, restoration,  
5 interpretation, and display of historic  
6 resources[-];
- 7 (3) Scenic and open space resources;
- 8 (A) Identify valued scenic resources in the coastal  
9 zone management area;
- 10 (B) Ensure that new developments are compatible with  
11 their visual environment by designing and  
12 locating such developments to minimize the  
13 alteration of natural landforms and existing  
14 public views to and along the shoreline;
- 15 (C) Preserve, maintain, and, where desirable, improve  
16 and restore shoreline open space and scenic  
17 resources; and
- 18 (D) Encourage those developments that are not coastal  
19 dependent to locate in inland areas[-];
- 20 (4) Coastal ecosystems;



- 1 (A) Exercise an overall conservation ethic, and  
2 practice stewardship in the protection, use, and  
3 development of marine and coastal resources;
- 4 (B) Improve the technical basis for natural resource  
5 management;
- 6 (C) Preserve valuable coastal ecosystems, including  
7 reefs, of significant biological or economic  
8 importance;
- 9 (D) Minimize disruption or degradation of coastal  
10 water ecosystems by effective regulation of  
11 stream diversions, channelization, and similar  
12 land and water uses, recognizing competing water  
13 needs; and
- 14 (E) Promote water quantity and quality planning and  
15 management practices that reflect the tolerance  
16 of fresh water and marine ecosystems and maintain  
17 and enhance water quality through the development  
18 and implementation of point and nonpoint source  
19 water pollution control measures [-] i
- 20 (5) Economic uses;
- 21 (A) Concentrate coastal dependent development in  
22 appropriate areas;



1 (B) Ensure that coastal dependent development such as  
2 harbors and ports, and coastal related  
3 development such as visitor industry facilities  
4 and energy generating facilities, are located,  
5 designed, and constructed to minimize adverse  
6 social, visual, and environmental impacts in the  
7 coastal zone management area; and

8 (C) Direct the location and expansion of coastal  
9 dependent developments to areas presently  
10 designated and used for such developments and  
11 permit reasonable long-term growth at such areas,  
12 and permit coastal dependent development outside  
13 of presently designated areas when:

14 (i) Use of presently designated locations is not  
15 feasible;

16 (ii) Adverse environmental effects are minimized;  
17 and

18 (iii) The development is important to the State's  
19 economy[-];

20 (6) Coastal hazards;

21 (A) Develop and communicate adequate information  
22 about storm wave, tsunami, flood, erosion,



- 1 subsidence, and point and nonpoint source  
2 pollution hazards;
- 3 (B) Control development in areas subject to storm  
4 wave, tsunami, flood, erosion, hurricane, wind,  
5 subsidence, and point and nonpoint source  
6 pollution hazards;
- 7 (C) Ensure that developments comply with requirements  
8 of the Federal Flood Insurance Program; and
- 9 (D) Prevent coastal flooding from inland projects[-];
- 10 (7) Managing development;
- 11 (A) Use, implement, and enforce existing law  
12 effectively to the maximum extent possible in  
13 managing present and future coastal zone  
14 development;
- 15 (B) Facilitate timely processing of applications for  
16 development permits and resolve overlapping or  
17 conflicting permit requirements; and
- 18 (C) Communicate the potential, short and long-term  
19 impacts of proposed significant coastal  
20 developments early in their life cycle and in  
21 terms understandable to the public to facilitate



- 1 public participation in the planning and review  
2 process[-];
- 3 (8) Public participation;
- 4 (A) Promote public involvement in coastal zone  
5 management processes;
- 6 (B) Disseminate information on coastal management  
7 issues by means of educational materials,  
8 published reports, staff contact, and public  
9 workshops for persons and organizations concerned  
10 with coastal issues, developments, and government  
11 activities; and
- 12 (C) Organize workshops, policy dialogues, and site-  
13 specific mediations to respond to coastal issues  
14 and conflicts[-];
- 15 (9) Beach protection;
- 16 (A) Locate new structures inland from the shoreline  
17 setback to conserve open space, minimize  
18 interference with natural shoreline processes,  
19 and minimize loss of improvements due to erosion;
- 20 (B) Prohibit construction of private erosion-  
21 protection structures seaward of the shoreline,  
22 except when they result in improved aesthetic and



- 1            engineering solutions to erosion at the sites and  
2            do not interfere with existing recreational and  
3            waterline activities; [~~and~~]
- 4            (C) Minimize the construction of public erosion-  
5            protection structures seaward of the  
6            shoreline [-];
- 7            (D) Prohibit private property owners from creating a  
8            public nuisance by inducing vegetation in a  
9            public transit area or public transit corridor;  
10           and
- 11           (E) Prohibit private property owners from creating a  
12           public nuisance by allowing unmaintained  
13           vegetation to encroach upon a public transit area  
14           or public transit corridor;
- 15           (10) Marine resources;
- 16           (A) Ensure that the use and development of marine and  
17           coastal resources are ecologically and  
18           environmentally sound and economically  
19           beneficial;
- 20           (B) Coordinate the management of marine and coastal  
21           resources and activities to improve effectiveness  
22           and efficiency;



1 (C) Assert and articulate the interests of the State  
2 as a partner with federal agencies in the sound  
3 management of ocean resources within the United  
4 States exclusive economic zone;

5 (D) Promote research, study, and understanding of  
6 ocean processes, marine life, and other ocean  
7 resources [~~in order~~] to acquire and inventory  
8 information necessary to understand how ocean  
9 development activities relate to and impact upon  
10 ocean and coastal resources; [~~and~~]

11 and

12 (E) Encourage research and development of new,  
13 innovative technologies for exploring, using, or  
14 protecting marine and coastal resources."

15 SECTION 7. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17 SECTION 8. This Act shall take effect on November 1, 2010.





**Report Title:**

Coastal Areas; Public Access

**Description:**

Requires maintenance of public beach accesses by adjacent landowners and imposes penalties for noncompliance. Establishes shoreline access as a policy of the Coastal Zone Management Program. Effective November 1, 2010. (HB1808 HD2)

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