

JAN 28 2009

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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 regulating uses of the conservation  
7 district is the responsibility of the department of land and  
8 natural resources. Although there exists natural vegetative  
9 overgrowth along beach areas, there is also evidence in many  
10 areas of induced vegetative overgrowth into the beach area by  
11 private property owners. The department does not have the  
12 funding to remove this vegetative overgrowth, nor should it have  
13 the financial responsibility to do so.

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



1 article 20, Revised Ordinances of Honolulu, requires property  
2 owners to maintain adjacent sidewalks. If the sidewalk is not  
3 maintained, a property owner may be cited and given a certain  
4 amount of time to clean up the sidewalk. If the sidewalk is not  
5 cleaned, the city and county of Honolulu may clean the sidewalk  
6 and seek reimbursement from the property owner.

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

13 SECTION 2. Chapter 183C, Hawaii Revised Statutes, is  
14 amended by adding a new section to be appropriately designated  
15 and to read as follows:

16 "§183C- Notice to property owners. The department  
17 shall provide written notice of amendments to this chapter and  
18 to administrative rules adopted pursuant to this chapter to  
19 property owners that may be directly affected by those  
20 amendments by mailing notice to the property owner's last known  
21 address in the State or to the property owner's agent at the  
22 property owner's last known address."



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

3 "[~~f~~]\$115-5[~~t~~] **Transit area and public transit corridor**  
4 **defined.** (a) The right of transit along the shoreline exists  
5 [~~below the private property line which is defined as being along~~  
6 ~~the upper reaches of the wash of waves, usually evidenced by the~~  
7 ~~edge of vegetation or by the debris left by the wash of waves.]~~  
8 seaward of the highest wash of the highest wave during the  
9 season of high surf.

10 [~~However, in areas of cliffs or areas where the nature of~~  
11 ~~the topography is such that there is no reasonably safe transit~~  
12 ~~for the public along the shoreline below the private property~~  
13 ~~lines, the counties by condemnation shall establish along the~~  
14 ~~makai boundaries of the property lines public transit corridors~~  
15 ~~which shall be not less than six feet wide.]~~

16 (b) In areas where the shoreline vegetation is human-  
17 induced, enhanced, or unmaintained such that there is no  
18 reasonably safe transit for the public along the shoreline, the  
19 counties and the State may require maintenance of public transit  
20 corridors by the adjacent landowner, by means of the removal of  
21 the impeding vegetation."



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

3 "[~~F~~]~~\$~~115-9[~~+~~] **Obstructing access to public property;**

4 **penalty.** (a) A person commits the offense of obstructing  
5 access to public property if the person, by action or by having  
6 installed a physical impediment, intentionally prevents a member  
7 of the public from traversing:

8 (1) A public right-of-way;

9 (2) A transit area; [~~or~~]

10 (3) A public transit corridor; or

11 (4) Along the shoreline;

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

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

16 (1) Gates;

17 (2) Fences;

18 (3) Walls;

19 (4) Constructed barriers;

20 (5) Rubbish;

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

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



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

2       (c) Obstructing access to public property is a  
3 misdemeanor. If any landowner, after receiving notice from the  
4 applicable county or the State, fails to remove an obstruction,  
5 the county or State may remove the obstruction as may be  
6 necessary to allow public access. The cost for removal by the  
7 county or State shall be charged to and against the landowner,  
8 and if not paid immediately, shall be collected from the  
9 landowner or the landowner's agent by action in the district  
10 court.

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

- 14       (1) \$1,000 for a second conviction; and  
15       (2) \$2,000 for any conviction after a second conviction.

16       (e) As used in this section:

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

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

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



1 SECTION 5. Section 183C-3, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "[~~F~~]\$183C-3[~~}]~~ Powers and duties of the board and  
4 department. The board and department shall:

- 5 (1) Maintain an accurate inventory of lands classified  
6 within the state conservation district by the state  
7 land use commission, pursuant to chapter 205;
- 8 (2) Identify and appropriately zone those lands classified  
9 within the conservation district;

10 (3) Maintain shoreline public transit in the conservation  
11 district along beach corridors by providing ongoing  
12 maintenance and requiring private property owners to  
13 ensure that beaches abutting or adjoining their  
14 lands are kept passable and free from human-induced,  
15 enhanced, or unmaintained vegetation that blocks  
16 transit;

17 [~~+3~~] (4) Adopt rules, in compliance with chapter 91 which  
18 shall have the force and effect of law;

19 [~~+4~~] (5) Set, charge, and collect reasonable fees in an  
20 amount sufficient to defray the cost of processing  
21 applications for zoning, use, and subdivision of  
22 conservation lands[~~+~~] and for maintenance to clear



1            human-induced, enhanced, or unmaintained vegetation,  
2            as necessary;

3        [~~5~~] (6)    Establish categories of uses or activities on  
4            conservation lands, including allowable uses or  
5            activities for which no permit shall be required;

6        [~~6~~] (7)    Establish restrictions, requirements, and  
7            conditions consistent with the standards set forth in  
8            this chapter on the use of conservation lands; and

9        [~~7~~] (8)    Establish and enforce land use regulations on  
10           conservation district lands, including the collection  
11           of fines for violations of land use [~~and~~], terms and  
12           conditions of permits issued by the department[~~-~~], and  
13           collection of reimbursements from private property  
14           owners for clearing human-induced, enhanced, or  
15           unmaintained vegetation necessary to provide free and  
16           clear public transit along beach corridors."

17        SECTION 6.    Section 205A-2, Hawaii Revised Statutes, is  
18        amended by amending subsections (b) and (c) to read as follows:

19            "(b)    Objectives.

20            (1)    Recreational resources;

21            (A)    Provide coastal recreational opportunities  
22                            accessible to the public[~~-~~]; and



1            (B) Provide and maintain coastal recreational access  
2                    to and along the shoreline for public use.

3            (2) Historic resources;

4                    (A) Protect, preserve, and, where desirable, restore  
5                            those natural and manmade historic and  
6                            prehistoric resources in the coastal zone  
7                            management area that are significant in Hawaiian  
8                            and American history and culture.

9            (3) Scenic and open space resources;

10                   (A) Protect, preserve, and, where desirable, restore  
11                            or improve the quality of coastal scenic and open  
12                            space resources.

13           (4) Coastal ecosystems;

14                   (A) Protect valuable coastal ecosystems, including  
15                            reefs, from disruption and minimize adverse  
16                            impacts on all coastal ecosystems.

17           (5) Economic uses;

18                   (A) Provide public or private facilities and  
19                            improvements important to the State's economy in  
20                            suitable locations.

21           (6) Coastal hazards;





- 1 (A) Reduce hazard to life and property from tsunami,  
2 storm waves, stream flooding, erosion,  
3 subsidence, and pollution.
- 4 (7) Managing development;
- 5 (A) Improve the development review process,  
6 communication, and public participation in the  
7 management of coastal resources and hazards.
- 8 (8) Public participation;
- 9 (A) Stimulate public awareness, education, and  
10 participation in coastal management.
- 11 (9) Beach protection;
- 12 (A) Protect beaches for public use and recreation[-];  
13 and
- 14 (B) Protect and maintain access to and along the  
15 shoreline for public use and recreation.
- 16 (10) Marine resources;
- 17 (A) Promote the protection, use, and development of  
18 marine and coastal resources to assure their  
19 sustainability.
- 20 (c) Policies.
- 21 (1) Recreational resources;



- 1 (A) Improve coordination and funding of coastal  
2 recreational planning and management; and
- 3 (B) Provide adequate, accessible, and diverse  
4 recreational opportunities in the coastal zone  
5 management area by:
- 6 (i) Protecting coastal resources uniquely suited  
7 for recreational activities that cannot be  
8 provided in other areas;
- 9 (ii) Requiring replacement of coastal resources  
10 having significant recreational value  
11 including, but not limited to, surfing  
12 sites, fishponds, and sand beaches, when  
13 such resources will be unavoidably damaged  
14 by development; or requiring reasonable  
15 monetary compensation to the State for  
16 recreation when replacement is not feasible  
17 or desirable;
- 18 (iii) Providing and managing adequate public  
19 access, consistent with conservation of  
20 natural resources, to and along shorelines  
21 with recreational value;



- 1                   (iv) Providing an adequate supply of shoreline  
2                   parks and other recreational facilities  
3                   suitable for public recreation;
- 4                   (v) Ensuring public recreational uses of county,  
5                   state, and federally owned or controlled  
6                   shoreline lands and waters having  
7                   recreational value consistent with public  
8                   safety standards and conservation of natural  
9                   resources;
- 10                  (vi) Adopting water quality standards and  
11                  regulating point and nonpoint sources of  
12                  pollution to protect, and where feasible,  
13                  restore the recreational value of coastal  
14                  waters;
- 15                  (vii) Developing new shoreline recreational  
16                  opportunities, where appropriate, such as  
17                  artificial lagoons, artificial beaches, and  
18                  artificial reefs for surfing and fishing;  
19                  and
- 20                  (viii) Encouraging reasonable dedication of  
21                  shoreline areas with recreational value for  
22                  public use as part of discretionary



1                   approvals or permits by the land use  
2                   commission, board of land and natural  
3                   resources, and county authorities; and  
4                   crediting such dedication against the  
5                   requirements of section 46-6.

6           (2) Historic resources;

7                   (A) Identify and analyze significant archaeological  
8                   resources;

9                   (B) Maximize information retention through  
10                   preservation of remains and artifacts or salvage  
11                   operations; and

12                   (C) Support state goals for protection, restoration,  
13                   interpretation, and display of historic  
14                   resources.

15           (3) Scenic and open space resources;

16                   (A) Identify valued scenic resources in the coastal  
17                   zone management area;

18                   (B) Ensure that new developments are compatible with  
19                   their visual environment by designing and  
20                   locating such developments to minimize the  
21                   alteration of natural landforms and existing  
22                   public views to and along the shoreline;



- 1 (C) Preserve, maintain, and, where desirable, improve
- 2 and restore shoreline open space and scenic
- 3 resources; and
- 4 (D) Encourage those developments that are not coastal
- 5 dependent to locate in inland areas.
- 6 (4) Coastal ecosystems;
- 7 (A) Exercise an overall conservation ethic, and
- 8 practice stewardship in the protection, use, and
- 9 development of marine and coastal resources;
- 10 (B) Improve the technical basis for natural resource
- 11 management;
- 12 (C) Preserve valuable coastal ecosystems, including
- 13 reefs, of significant biological or economic
- 14 importance;
- 15 (D) Minimize disruption or degradation of coastal
- 16 water ecosystems by effective regulation of
- 17 stream diversions, channelization, and similar
- 18 land and water uses, recognizing competing water
- 19 needs; and
- 20 (E) Promote water quantity and quality planning and
- 21 management practices that reflect the tolerance
- 22 of fresh water and marine ecosystems and maintain



1 and enhance water quality through the development  
2 and implementation of point and nonpoint source  
3 water pollution control measures.

4 (5) Economic uses;

5 (A) Concentrate coastal dependent development in  
6 appropriate areas;

7 (B) Ensure that coastal dependent development such as  
8 harbors and ports, and coastal related  
9 development such as visitor industry facilities  
10 and energy generating facilities, are located,  
11 designed, and constructed to minimize adverse  
12 social, visual, and environmental impacts in the  
13 coastal zone management area; and

14 (C) Direct the location and expansion of coastal  
15 dependent developments to areas presently  
16 designated and used for such developments and  
17 permit reasonable long-term growth at such areas,  
18 and permit coastal dependent development outside  
19 of presently designated areas when:

20 (i) Use of presently designated locations is not  
21 feasible;



- 1                   (ii) Adverse environmental effects are minimized;
- 2   and
- 3                   (iii) The development is important to the State's
- 4   economy.

5           (6) Coastal hazards;

6                   (A) Develop and communicate adequate information  
7   about storm wave, tsunami, flood, erosion,  
8   subsidence, and point and nonpoint source  
9   pollution hazards;

10                   (B) Control development in areas subject to storm  
11   wave, tsunami, flood, erosion, hurricane, wind,  
12   subsidence, and point and nonpoint source  
13   pollution hazards;

14                   (C) Ensure that developments comply with requirements  
15   of the Federal Flood Insurance Program; and

16                   (D) Prevent coastal flooding from inland projects.

17           (7) Managing development;

18                   (A) Use, implement, and enforce existing law  
19   effectively to the maximum extent possible in  
20   managing present and future coastal zone  
21   development;



- 1 (B) Facilitate timely processing of applications for  
2 development permits and resolve overlapping or  
3 conflicting permit requirements; and
- 4 (C) Communicate the potential short and long-term  
5 impacts of proposed significant coastal  
6 developments early in their life cycle and in  
7 terms understandable to the public to facilitate  
8 public participation in the planning and review  
9 process.
- 10 (8) Public participation;
- 11 (A) Promote public involvement in coastal zone  
12 management processes;
- 13 (B) Disseminate information on coastal management  
14 issues by means of educational materials,  
15 published reports, staff contact, and public  
16 workshops for persons and organizations concerned  
17 with coastal issues, developments, and government  
18 activities; and
- 19 (C) Organize workshops, policy dialogues, and site-  
20 specific mediations to respond to coastal issues  
21 and conflicts.
- 22 (9) Beach protection;





- 1           (A) Locate new structures inland from the shoreline  
2                    setback to conserve open space, minimize  
3                    interference with natural shoreline processes,  
4                    and minimize loss of improvements due to erosion;
- 5           (B) Prohibit construction of private erosion-  
6                    protection structures seaward of the shoreline,  
7                    except when they result in improved aesthetic and  
8                    engineering solutions to erosion at the sites and  
9                    do not interfere with existing recreational and  
10                  waterline activities; [and]
- 11          (C) Minimize the construction of public erosion-  
12                  protection structures seaward of the  
13                  shoreline[-]; and
- 14          (D) Prohibit human-induced, enhanced, or unmaintained  
15                  vegetation seaward of the shoreline where it  
16                  impacts lateral access or beach processes.
- 17          (10) Marine resources;
- 18            (A) Ensure that the use and development of marine and  
19                  coastal resources are ecologically and  
20                  environmentally sound and economically  
21                  beneficial;



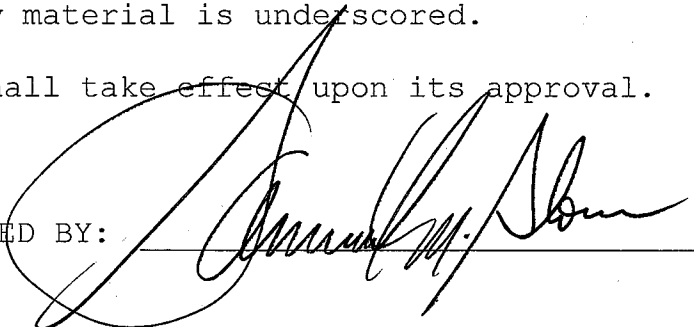
- 1 (B) Coordinate the management of marine and coastal  
2 resources and activities to improve effectiveness  
3 and efficiency;
- 4 (C) Assert and articulate the interests of the State  
5 as a partner with federal agencies in the sound  
6 management of ocean resources within the United  
7 States exclusive economic zone;
- 8 (D) Promote research, study, and understanding of  
9 ocean processes, marine life, and other ocean  
10 resources in order to acquire and inventory  
11 information necessary to understand how ocean  
12 development activities relate to and impact upon  
13 ocean and coastal resources; and
- 14 (E) Encourage research and development of new,  
15 innovative technologies for exploring, using, or  
16 protecting marine and coastal resources."

17 SECTION 7. Statutory material to be repealed is bracketed  
18 and stricken. New statutory material is underscored.

19 SECTION 8. This Act shall take effect upon its approval.

20

INTRODUCED BY: \_\_\_\_\_



**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 an objective of the coastal zone management program. Requires the department of land and natural resources to provide written notice to property owners affected by this Act.

