

JAN 26 2009

A BILL FOR AN ACT

RELATING TO COASTAL ZONE MANAGEMENT.

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

1 SECTION 1. Section 205A-1, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§205A-1 Definitions. As used in this chapter, unless the
4 context otherwise requires:

5 "Agency" means any agency, board, commission, department,
6 or officer of a county government or the state government,
7 including the authority as defined in part II[†].

8 "Artificial light" or "artificial lighting" means the light
9 emanating from any fixed human-made device.

10 "Coastal hazards" include tsunami, hurricane, wind, storm
11 wave, sea level rise, flood, erosion, volcanic activity,
12 earthquake, landslide, subsidence, and point and nonpoint source
13 pollution.

14 "Coastal zone management area" means all lands of the State
15 and the area extending seaward from the shoreline to the limit
16 of the State's police power and management authority, including
17 the United States territorial sea[†].

1 "Coastal zone management program" means the comprehensive
2 statement in words, maps, or other permanent media of
3 communication, prepared, approved for submission, and amended by
4 the State and approved by the United States government pursuant
5 to Public Law No. 92-583, as amended, and the federal
6 regulations adopted pursuant thereto, which describes
7 objectives, policies, laws, standards, and procedures to guide
8 and regulate public and private uses in the coastal zone
9 management area, provided however the "coastal zone management
10 program" is consistent with the intent, purpose, and provisions
11 of this chapter[+].

12 "Directly illuminate" means to illuminate through the use
13 of a glowing element, lamp, globe, or reflector of an artificial
14 light source.

15 "Land" means the earth, water, and air above, below, or on
16 the surface[+].

17 "Lead agency" means the office of planning[+].

18 "Ocean waters" means all waters seaward of the shoreline
19 within the jurisdiction of the State.

20 "Person" means an individual, corporation, or partnership,
21 and an organization or association, whether or not
22 incorporated[+].

1 "Public advisory body" means the advisory body established
2 in section 205A-3.5[~~7~~].

3 "Shoreline" means the upper reaches of the wash of the
4 waves, other than storm and seismic waves, at high tide during
5 the season of the year in which the highest wash of the waves
6 occurs, usually evidenced by the edge of vegetation growth, or
7 the upper limit of debris left by the wash of the waves."

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

10 "(b) Objectives.

11 (1) Recreational resources;

12 (A) Provide coastal recreational opportunities
13 accessible to the public.

14 (2) Historic resources;

15 (A) Protect, preserve, and, where desirable, restore
16 those natural and manmade historic and
17 prehistoric resources in the coastal zone
18 management area that are significant in Hawaiian
19 and American history and culture.

20 (3) Scenic and open space resources;

S.B. NO. 867

1 (A) Protect, preserve, and, where desirable, restore
2 or improve the quality of coastal scenic and
3 open space resources.

4 (4) Coastal ecosystems;

5 (A) Protect valuable coastal ecosystems, including
6 reefs, from disruption and minimize adverse
7 impacts on all coastal ecosystems.

8 (5) Economic uses;

9 (A) Provide public or private facilities and
10 improvements important to the State's economy in
11 suitable locations.

12 (6) Coastal hazards;

13 (A) Reduce [~~hazard~~] threat to life and property from
14 [~~tsunami, storm waves, stream flooding, erosion,~~
15 ~~subsidence, and pollution.~~] coastal hazards.

16 (7) Managing development;

17 (A) Improve the development review process,
18 communication, and public participation in the
19 management of coastal resources and hazards.

20 (8) Public participation;

21 (A) Stimulate public awareness, education, and
22 participation in coastal management.

- 1 (9) Beach protection;
- 2 (A) Protect beaches for public use and recreation.
- 3 (10) Marine resources;
- 4 (A) Promote the protection, use, and development of
- 5 marine and coastal resources to assure their
- 6 sustainability.
- 7 (c) Policies.
- 8 (1) Recreational resources;
- 9 (A) Improve coordination and funding of coastal
- 10 recreational planning and management; and
- 11 (B) Provide adequate, accessible, and diverse
- 12 recreational opportunities in the coastal zone
- 13 management area by:
- 14 (i) Protecting coastal resources uniquely suited
- 15 for recreational activities that cannot be
- 16 provided in other areas;
- 17 (ii) Requiring restoration or replacement of
- 18 coastal resources having significant
- 19 recreational value including, but not
- 20 limited to, surfing sites, fishponds, and
- 21 sand beaches, when such resources will be
- 22 unavoidably damaged by development; or

1 requiring reasonable monetary compensation
2 to the State for recreation when restoration
3 or replacement is not feasible or desirable;

4 (iii) Providing and managing adequate public
5 access, consistent with conservation of
6 natural resources, to and along shorelines
7 with recreational value;

8 (iv) Providing an adequate supply of shoreline
9 parks and other recreational facilities
10 suitable for public recreation;

11 (v) Ensuring public recreational uses of county,
12 state, and federally owned or controlled
13 shoreline lands and waters having
14 recreational value consistent with public
15 safety standards and conservation of natural
16 resources;

17 (vi) Adopting water quality standards and
18 regulating point and nonpoint sources of
19 pollution to protect, and where feasible,
20 restore the recreational value of coastal
21 waters;

- 1 (vii) Developing new shoreline recreational
2 opportunities, where appropriate, such as
3 artificial lagoons, artificial beaches, and
4 artificial reefs for surfing and fishing;
5 and
6 (viii) Encouraging reasonable dedication of
7 shoreline areas with recreational value for
8 public use as part of discretionary
9 approvals or permits by the land use
10 commission, board of land and natural
11 resources, and county authorities; and
12 crediting such dedication against the
13 requirements of section 46-6.
- 14 (2) Historic resources;
- 15 (A) Identify and analyze significant archaeological
16 resources;
- 17 (B) Maximize information retention through
18 preservation of remains and artifacts or salvage
19 operations; and
- 20 (C) Support state goals for protection, restoration,
21 interpretation, and display of historic
22 resources.

- 1 (3) Scenic and open space resources;
- 2 (A) Identify valued scenic resources in the coastal
- 3 zone management area;
- 4 (B) Ensure that new developments are compatible with
- 5 their visual environment by designing and
- 6 locating such developments to minimize the
- 7 alteration of natural landforms and existing
- 8 public views to and along the shoreline;
- 9 (C) Preserve, maintain, and, where desirable,
- 10 improve and restore shoreline open space and
- 11 scenic resources; and
- 12 (D) Encourage those developments that are not
- 13 coastal dependent to locate in inland areas.
- 14 (4) Coastal ecosystems;
- 15 (A) Exercise an overall conservation ethic, and
- 16 practice stewardship in the protection, use, and
- 17 development of marine and coastal resources;
- 18 (B) Improve the technical basis for natural resource
- 19 management;
- 20 (C) Preserve valuable coastal ecosystems, including
- 21 reefs, of significant biological or economic
- 22 importance;

- 1 (D) Minimize disruption or degradation of coastal
2 water ecosystems by effective regulation of
3 stream diversions, channelization, and similar
4 land and water uses, recognizing competing water
5 needs; and
- 6 (E) Promote water quantity and quality planning and
7 management practices that reflect the tolerance
8 of fresh water and marine ecosystems and
9 maintain and enhance water quality through the
10 development and implementation of point and
11 nonpoint source water pollution control
12 measures.
- 13 (5) Economic uses;
- 14 (A) Concentrate coastal dependent development in
15 appropriate areas;
- 16 (B) Ensure that coastal dependent development such
17 as harbors and ports, and coastal related
18 development such as visitor industry facilities
19 and energy generating facilities, are located,
20 designed, and constructed to minimize adverse
21 social, visual, and environmental impacts in the
22 coastal zone management area; and

1 (C) Direct the location and expansion of coastal
2 dependent developments to areas presently
3 designated and used for such developments and
4 permit reasonable long-term growth at such
5 areas, and permit coastal dependent development
6 outside of presently designated areas when:

7 (i) Use of presently designated locations is not
8 feasible;

9 (ii) Adverse environmental effects are minimized;
10 and

11 (iii) The development is important to the State's
12 economy.

13 (6) Coastal hazards;

14 (A) Develop and communicate adequate information
15 about [~~storm wave, tsunami, flood, erosion,~~
16 ~~subsidence, and point and nonpoint source~~
17 ~~pollution~~] coastal hazards;

18 (B) Control development in areas subject to [~~storm~~
19 ~~wave, tsunami, flood, erosion, hurricane, wind,~~
20 ~~subsidence, and point and nonpoint source~~
21 ~~pollution~~] the threat of coastal hazards;

- 1 (C) Ensure that developments comply with
- 2 requirements of the [~~Federal~~] National Flood
- 3 Insurance Program; and
- 4 (D) Prevent coastal flooding from inland projects.
- 5 (7) Managing development;
- 6 (A) Use, implement, and enforce existing law
- 7 effectively to the maximum extent possible in
- 8 managing present and future coastal zone
- 9 development;
- 10 (B) Facilitate timely processing of applications for
- 11 development permits and resolve overlapping or
- 12 conflicting permit requirements; and
- 13 (C) Communicate the potential short and long-term
- 14 impacts of proposed significant coastal
- 15 developments early in their life cycle and in
- 16 terms understandable to the public to facilitate
- 17 public participation in the planning and review
- 18 process.
- 19 (8) Public participation;
- 20 (A) Promote public involvement in coastal zone
- 21 management processes;

S.B. NO. 867

- 1 (B) Disseminate information on coastal management
2 issues by means of educational materials,
3 published reports, staff contact, and public
4 workshops for persons and organizations
5 concerned with coastal issues, developments, and
6 government activities; and
- 7 (C) Organize workshops, policy dialogues, and site-
8 specific mediations to respond to coastal issues
9 and conflicts.
- 10 (9) Beach protection;
- 11 (A) Locate new structures inland from the shoreline
12 setback to conserve open space, minimize
13 interference with natural shoreline processes,
14 and minimize loss of improvements due to
15 erosion;
- 16 (B) Prohibit construction of private erosion-
17 protection structures seaward of the shoreline,
18 except when they result in improved aesthetic
19 and engineering solutions to erosion at the
20 sites and do not interfere with existing
21 recreational and waterline activities; and

- 1 (C) Minimize the construction of public erosion-
2 protection structures seaward of the shoreline.
- 3 (10) Marine resources;
- 4 (A) Ensure that the use and development of marine
5 and coastal resources are ecologically and
6 environmentally sound and economically
7 beneficial;
- 8 (B) Coordinate the management of marine and coastal
9 resources and activities to improve
10 effectiveness and efficiency;
- 11 (C) Assert and articulate the interests of the State
12 as a partner with federal agencies in the sound
13 management of ocean resources within the United
14 States exclusive economic zone;
- 15 (D) Promote research, study, and understanding of
16 ocean processes, marine life, and other ocean
17 resources in order to acquire and inventory
18 information necessary to understand how ocean
19 development activities relate to and impact upon
20 ocean and coastal resources; and

1 (E) Encourage research and development of new,
2 innovative technologies for exploring, using, or
3 protecting marine and coastal resources. "

4 SECTION 3. Section 205A-22, Hawaii Revised Statutes, is
5 amended by amending the definitions of "department",
6 "development", "special management area emergency permit",
7 "special management area minor permit", and "special management
8 area use permit" to read as follows:

9 ""Department" means the planning department [~~in~~] of the
10 counties of Kauai, Maui, [~~and~~] Hawaii, and [~~the department of~~
11 ~~land utilization in the city and county of~~] Honolulu, or other
12 appropriate agency as designated by the county [~~councils.~~]
13 council.

14 "Development" means any of the uses, activities, or
15 operations on land or in or under water within a special
16 management area that are included below:

- 17 (1) Placement or erection of any solid material or any
18 gaseous, liquid, solid, or thermal waste;
- 19 (2) Grading, removing, dredging, mining, or extraction of
20 any materials;

1 (3) Change in the density or intensity of use of land,
2 including but not limited to the division or
3 subdivision of land;

4 (4) Change in the intensity of use of water, ecology
5 related thereto, or of access thereto; and

6 (5) Construction, reconstruction, [~~demolition,~~] or
7 alteration of the size of any structure.

8 "Development" does not include the following:

9 (1) Construction of a single-family residence that is not
10 part of a larger development;

11 (2) Repair or maintenance of roads and highways within
12 existing rights-of-way;

13 (3) Routine maintenance dredging of existing streams,
14 channels, and drainage ways;

15 (4) Repair and maintenance of underground utility lines,
16 including but not limited to water, sewer, power, and
17 telephone and minor appurtenant structures such as pad
18 mounted transformers and sewer pump stations;

19 (5) Zoning variances, except for height, density, parking,
20 and shoreline setback;

21 (6) Repair, maintenance, or interior alterations to
22 existing structures;

- 1 (7) Demolition or removal of structures, except those
2 structures located on any historic site as designated
3 in national or state registers;
- 4 (8) Use of any land for the purpose of cultivating,
5 planting, growing, and harvesting plants, crops,
6 trees, and other agricultural, horticultural, or
7 forestry products or animal husbandry, or aquaculture
8 or mariculture of plants or animals, or other
9 agricultural purposes;
- 10 (9) Transfer of title to land;
- 11 (10) Creation or termination of easements, covenants, or
12 other rights in structures or land;
- 13 (11) Subdivision of land into lots greater than twenty acres
14 in size;
- 15 (12) Subdivision of a parcel of land into four or fewer
16 parcels when no associated construction activities are
17 proposed; provided that any land which is so
18 subdivided shall not thereafter qualify for this
19 exception with respect to any subsequent subdivision
20 of any of the resulting parcels;

- 1 (13) Installation of underground utility lines and
2 appurtenant aboveground fixtures less than four feet
3 in height along existing corridors;
- 4 (14) Structural and nonstructural improvements to existing
5 single-family residences, where otherwise permissible;
- 6 (15) Nonstructural improvements to existing commercial
7 structures; and
- 8 (16) Construction, installation, maintenance, repair, and
9 replacement of civil defense warning or signal devices
10 and sirens;

11 [~~provided~~] except that whenever the authority finds that any
12 excluded use, activity, or operation may have a cumulative
13 impact, or a significant environmental or ecological effect on a
14 special management area, that use, activity, or operation shall
15 be defined as "development" for the purpose of this part.

16 "Special management area emergency permit" means an action
17 by the authority authorizing development in cases of emergency
18 requiring immediate action to prevent substantial physical harm
19 to persons or property or to allow the reconstruction of
20 structures damaged by [~~natural~~] coastal hazards to their
21 original form; provided that such structures were previously

1 found to be in compliance with requirements of the [~~Federal~~]
2 National Flood Insurance Program.

3 "Special management area minor permit" means an action by
4 the authority authorizing development the valuation of which is
5 not in excess of \$125,000 and which has no substantial adverse
6 environmental or ecological effect, taking into account
7 potential cumulative [~~effects.~~] impact.

8 "Special management area use permit" means an action by the
9 authority authorizing development the valuation of which exceeds
10 \$125,000 or which may have a substantial adverse environmental
11 or ecological effect, taking into account potential cumulative
12 [~~effects.~~] impact."

13 SECTION 4. Section 205A-26, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§205A-26 Special management area guidelines.** In
16 implementing this part, the authority shall adopt the following
17 guidelines for the review of developments proposed in the
18 special management area:

19 (1) All development in the special management area shall
20 be subject to reasonable terms and conditions relative
21 to the objectives, policies, and guidelines of this
22 chapter set by the authority in order to ensure:

S.B. NO. 867

- 1 (A) Adequate access, by dedication or other means, to
2 and along the publicly owned or used beaches,
3 recreation areas, and natural reserves is
4 provided to the extent consistent with sound
5 conservation principles;
- 6 (B) Adequate and properly located public recreation
7 areas and wildlife preserves are reserved;
- 8 (C) Provisions are made for solid and liquid waste
9 treatment, disposition, and management which will
10 minimize adverse effects upon special management
11 area resources; [and]
- 12 (D) Alterations to existing land forms and
13 vegetation, except crops, and construction of
14 structures shall cause minimum adverse effect to
15 water resources and scenic and recreational
16 amenities and minimum danger of [~~floods, wind~~
17 ~~damage, storm surge, landslides, erosion,~~
18 ~~siltation, or failure in the event of~~
19 ~~earthquake.~~] coastal hazards; and
- 20 (E) Commencement and completion of development within
21 specified periods of time.

1 (2) No development shall be approved unless the authority
2 has first found:

3 (A) That the development will not have any
4 substantial adverse environmental or ecological
5 effect, except as such adverse effect is
6 minimized to the extent practicable and clearly
7 outweighed by public health, safety, or
8 compelling public interests. Such adverse
9 effects shall include, but not be limited to, the
10 potential cumulative impact of individual
11 developments, each one of which taken in itself
12 might not have a substantial adverse effect, and
13 the elimination of planning options;

14 (B) That the development is consistent with the
15 objectives, policies, and special management area
16 guidelines of this chapter and any other
17 guidelines enacted by the legislature; and

18 (C) That the development is consistent with the
19 county general plan, and zoning. Such a finding
20 of consistency does not preclude concurrent
21 processing where a general plan or zoning
22 amendment may also be required.

- 1 (3) The authority shall seek to minimize, where
2 reasonable:
- 3 (A) Dredging, filling, or otherwise altering any bay,
4 estuary, salt marsh, river mouth, slough, or
5 lagoon;
- 6 (B) Any development which would reduce the size of
7 any beach or other area usable for public
8 recreation;
- 9 (C) Any development which would reduce or impose
10 restrictions upon public access to tidal and
11 submerged lands, beaches, portions of rivers and
12 streams within the special management areas, and
13 the mean high tide line where there is no beach;
- 14 (D) Any development which would substantially
15 interfere with or detract from the line of sight
16 toward the sea from the state highway nearest the
17 coast; and
- 18 (E) Any development which would adversely affect
19 water quality, existing areas of open water free
20 of visible structures, existing and potential
21 fisheries and fishing grounds, wildlife habitats,

1 or potential or existing agricultural uses of
2 land."

3 SECTION 5. Section 205A-43, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§205A-43 Establishment of shoreline setbacks and duties**
6 **and powers of the department.** (a) Setbacks along shorelines
7 are established of not less than twenty feet and not more than
8 forty feet inland from the shoreline [~~The department shall adopt~~
9 ~~rules pursuant to chapter 91, and shall enforce the shoreline~~
10 ~~setbacks and rules pertaining thereto.~~], unless the shoreline
11 setback line is established based on average annual shoreline
12 erosion or accretion rates.

13 (b) The powers and duties of the department shall include,
14 but not be limited to:

15 (1) The department shall adopt rules under chapter 91
16 prescribing procedures for determining the shoreline
17 setback line [~~+~~], and shall enforce the shoreline
18 setbacks and rules pertaining thereto; and

19 (2) The department shall review the plans of all
20 applicants who propose any structure, activity, or
21 facility that would be prohibited without a variance
22 pursuant to this part. The department may require

1 that the plans be supplemented by accurately mapped
2 data and photographs showing natural conditions and
3 topography relating to all existing and proposed
4 structures and activities."

5 SECTION 6. Section 205A-45, Hawaii Revised Statutes, is
6 amended to read as follows:

7 **"§205A-45 Shoreline setback lines established by county.**

8 (a) The [~~several~~] counties through rules adopted pursuant to
9 chapter 91 or ordinance may require that shoreline setback lines
10 be established at distances greater than that established in
11 this part.

12 (b) The [~~several~~] counties through rules adopted pursuant
13 to chapter 91 or ordinance may expand the shoreline area to
14 include the area between mean sea level and the shoreline."

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 upon its approval.

18
19 INTRODUCED BY: ~~_____~~
20 BY REQUEST

Report Title:

Coastal Zone Management

Description:

Amend chapter 205A, Hawaii Revised Statutes, to improve coastal zone management by (1) clarifying "development" and "not development" in the special management area (SMA); (2) improving the SMA permit system; and (3) considering shoreline erosion rates for the shoreline setback to reduce the threat from coastal hazards.

JUSTIFICATION SHEET

DEPARTMENT: Business, Economic Development, and
Tourism/Office of Planning

TITLE: A BILL FOR AN ACT RELATING TO COASTAL ZONE
MANAGEMENT.

PURPOSE: The purpose of this bill is to improve
coastal zone management by (1) clarifying
the definitions of "development" and "not
development" in the special management area
(SMA); (2) improving the SMA permit system;
and (3) considering shoreline erosion and
accretion rates for the shoreline setback to
reduce the threat from coastal hazards.

MEANS: Amend sections 205A-1, 205A-2(b) and (c),
205A-22, 205A-26, 205A-43, and 205A-45,
Hawaii Revised Statutes.

JUSTIFICATION: "Demolition" causes a conflict in inclusion
and exclusion of development relative to the
special management area (SMA) permit system.
Clarification of this discrepancy, and the
conditions on the SMA permit relative to the
objectives, polices, and guidelines would
minimize confusion and possibly increase
efficiency in assessing the requirements of
the SMA permit. The mitigation of coastal
hazards and the reduction of interference
with natural beach processes can be dealt
with by considering shoreline erosion and
accretion rates for shoreline setbacks.

Impact on the public: There should be a
positive impact on the public because the
proposed amendments reduce confusion and
possibly increase efficiency in assessing
the requirement of the SMA permit, improve
the SMA permit system with reasonable
conditions on SMA permits, and consider
shoreline erosion rates for the shoreline
setback to reduce the threat of coastal
hazards to life and property.

Impact on the department and other agencies:
Chapter 205A is an umbrella law for coastal zone management (CZM). The proposed amendments to this chapter would require CZM network agencies to ensure that their statutes, ordinances, rules, and actions comply with and carry out the CZM objectives and policies under their authorities. These agencies may need to amend their statutes, ordinances, or rules in response to the proposed amendments to chapter 205A.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: BED 144.

OTHER AFFECTED AGENCIES: Department of Land and Natural Resources; County Planning Departments; Department of Health; Office of Hawaiian Affairs; Department of Transportation.

EFFECTIVE DATE: Upon approval.