

JAN 22 2010

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. 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 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 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. The
17 department of land and natural resources shall maintain public
18 transit along beach corridors. For lands seaward of the
19 shoreline and in the state conservation district, the department
20 is authorized to issue a violation citation to landowners who
21 fail to maintain beaches abutting or adjoining their property to
22 keep them passable and free from human-induced, enhanced, or



1 unmaintained vegetation that blocks transit. If any landowner,
2 after receiving notice from the department, fails to remove the
3 obstruction, the department may remove the obstruction as may be
4 necessary to allow public access. The cost incurred for removal
5 by the department shall be charged to and against the landowner,
6 and collected from the landowner, if not immediately paid by
7 action in the district court."

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

10 "[+]§115-5[+] Transit area and public transit corridor
11 defined. (a) The right of transit along the shoreline exists
12 [~~below the private property line which is defined as being along~~
13 ~~the upper reaches of the wash of waves, usually evidenced by the~~
14 ~~edge of vegetation or by the debris left by the wash of waves.]~~
15 seaward of the shoreline as defined in section 205A-1.

16 However, in areas of cliffs or areas where the nature of
17 the topography is such that there is no reasonably safe transit
18 for the public [~~along the~~] seaward of the shoreline [~~below the~~
19 ~~private property lines~~], the counties by condemnation [~~shall~~] of
20 private property mauka of the shoreline may establish along the
21 makai boundaries of the property lines public transit corridors
22 which shall be not less than six feet wide.



1 (b) In areas where the shoreline vegetation is human-
2 induced, enhanced, or unmaintained such that there is no
3 reasonably safe transit for the public along the shoreline, the
4 department of land and natural resources may require maintenance
5 of public transit corridors by the adjacent landowner, by means
6 of the removal of the impeding vegetation."

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

9 "[+] §115-9 [+] **Obstructing access to public property;**
10 **penalty.** (a) A person commits the offense of obstructing
11 access to public property if the person, by action or by having
12 installed a physical impediment, intentionally prevents a member
13 of the public from traversing:

- 14 (1) A public right-of-way;
15 (2) A transit area; [~~or~~]
16 (3) A public transit corridor; or
17 (4) Along the shoreline,

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

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

- 22 (1) Gates;



- 1 (2) Fences;
- 2 (3) Walls;
- 3 (4) Constructed barriers;
- 4 (5) Rubbish;
- 5 (6) Security guards; [~~and~~]
- 6 (7) Guard dogs or animals [~~-~~]; and
- 7 (8) Human-induced, enhanced, or unmaintained vegetation.

8 (c) Obstructing access to public property is a
9 misdemeanor. Notice shall be sent by the department of land and
10 natural resources to the affected landowner by mailing it to the
11 landowner's last known address in the state. If any landowner,
12 after receiving notice from the department, fails to remove an
13 obstruction, the department may remove the obstruction as may be
14 necessary to allow public access. The cost for removal by the
15 department shall be charged to and against the landowner, and if
16 not paid immediately, shall be collected from the landowner by
17 action in the district court.

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

- 21 (1) \$1,000 for a second conviction; and
- 22 (2) \$2,000 for any conviction after a second conviction.



1 (e) As used in this section:

2 "Landowner" means the record owner of the property or the
3 record owner's agent, including a lessee, tenant, property
4 manager, or trustee.

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

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

8 SECTION 5. Section 205A-2, Hawaii Revised Statutes, is
9 amended by amending subsection (c) to read as follows:

10 "(c) Policies.

11 (1) Recreational resources;

12 (A) Improve coordination and funding of coastal
13 recreational planning and management; and

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

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

20 (ii) Requiring replacement of coastal resources
21 having significant recreational value
22 including, but not limited to, surfing



1 sites, fishponds, and sand beaches, when
2 such resources will be unavoidably damaged
3 by development; or requiring reasonable
4 monetary compensation to the State for
5 recreation when replacement is not feasible
6 or desirable;

7 (iii) Providing and managing adequate public
8 access, consistent with conservation of
9 natural resources, to and along shorelines
10 with recreational value;

11 (iv) Providing an adequate supply of shoreline
12 parks and other recreational facilities
13 suitable for public recreation;

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

20 (vi) Adopting water quality standards and
21 regulating point and nonpoint sources of
22 pollution to protect, and where feasible,



1 restore the recreational value of coastal
2 waters;

3 (vii) Developing new shoreline recreational
4 opportunities, where appropriate, such as
5 artificial lagoons, artificial beaches, and
6 artificial reefs for surfing and fishing;
7 and

8 (viii) Encouraging reasonable dedication of
9 shoreline areas with recreational value for
10 public use as part of discretionary
11 approvals or permits by the land use
12 commission, board of land and natural
13 resources, and county authorities; and
14 crediting such dedication against the
15 requirements of section 46-6.

16 (2) Historic resources;

17 (A) Identify and analyze significant archaeological
18 resources;

19 (B) Maximize information retention through
20 preservation of remains and artifacts or salvage
21 operations; and



1 (C) Support state goals for protection, restoration,
2 interpretation, and display of historic
3 resources.

4 (3) Scenic and open space resources;

5 (A) Identify valued scenic resources in the coastal
6 zone management area;

7 (B) Ensure that new developments are compatible with
8 their visual environment by designing and
9 locating such developments to minimize the
10 alteration of natural landforms and existing
11 public views to and along the shoreline;

12 (C) Preserve, maintain, and, where desirable, improve
13 and restore shoreline open space and scenic
14 resources; and

15 (D) Encourage those developments that are not coastal
16 dependent to locate in inland areas.

17 (4) Coastal ecosystems;

18 (A) Exercise an overall conservation ethic, and
19 practice stewardship in the protection, use, and
20 development of marine and coastal resources;

21 (B) Improve the technical basis for natural resource
22 management;



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



- 1 social, visual, and environmental impacts in the
2 coastal zone management area; and
- 3 (C) Direct the location and expansion of coastal
4 dependent developments to areas presently
5 designated and used for such developments and
6 permit reasonable long-term growth at such areas,
7 and permit coastal dependent development outside
8 of presently designated areas when:
- 9 (i) Use of presently designated locations is not
10 feasible;
- 11 (ii) Adverse environmental effects are minimized;
12 and
- 13 (iii) The development is important to the State's
14 economy.
- 15 (6) Coastal hazards;
- 16 (A) Develop and communicate adequate information
17 about storm wave, tsunami, flood, erosion,
18 subsidence, and point and nonpoint source
19 pollution hazards;
- 20 (B) Control development in areas subject to storm
21 wave, tsunami, flood, erosion, hurricane, wind,



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



- 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 concerned
5 with coastal issues, developments, and government
6 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 erosion;
- 15 (B) Prohibit construction of private erosion-
16 protection structures seaward of the shoreline,
17 except when they result in improved aesthetic and
18 engineering solutions to erosion at the sites and
19 do not interfere with existing recreational and
20 waterline activities; [~~and~~]



- 1 (C) Minimize the construction of public erosion-
2 protection structures seaward of the
3 shoreline[-]; and
- 4 (D) Prohibit private property owners from inducing
5 vegetation seaward of the shoreline where it
6 interferes with public lateral access or natural
7 shoreline processes.

8 (10) Marine resources;

- 9 (A) Ensure that the use and development of marine and
10 coastal resources are ecologically and
11 environmentally sound and economically
12 beneficial;
- 13 (B) Coordinate the management of marine and coastal
14 resources and activities to improve effectiveness
15 and efficiency;
- 16 (C) Assert and articulate the interests of the State
17 as a partner with federal agencies in the sound
18 management of ocean resources within the United
19 States exclusive economic zone;
- 20 (D) Promote research, study, and understanding of
21 ocean processes, marine life, and other ocean
22 resources in order to acquire and inventory



1 information necessary to understand how ocean
2 development activities relate to and impact upon
3 ocean and coastal resources; and

4 (E) Encourage research and development of new,
5 innovative technologies for exploring, using, or
6 protecting marine and coastal resources."

7 SECTION 6. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 7. This Act shall take effect upon its approval.

10

INTRODUCED BY:

Nike Hubbard



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.

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