

STAND. COM. REP. NO. 1271

Honolulu, Hawaii

March 27, 2009

RE: S.B. No. 468  
S.D. 1  
H.D. 1

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Fifth State Legislature  
Regular Session of 2009  
State of Hawaii

Sir:

Your Committee on Water, Land, & Ocean Resources, to which was referred S.B. No. 468, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO COASTAL ZONE MANAGEMENT,"

begs leave to report as follows:

The purpose of this bill is to revise coastal zone management statutes by:

- (1) Requiring affected agencies to account for sea level rise and minimize risks from coastal hazards such as erosion, storm inundation, hurricanes, and tsunamis;
- (2) Preserving public access and public shoreline access and ensuring reasonable street parking near access areas;
- (3) Extending shoreline setbacks to not less than 40 feet from the shoreline; and
- (4) Requiring the counties to account for annual erosion rates.

The Sierra Club, Hawaii Chapter, Maui Tomorrow Foundation, Inc., and several concerned individuals supported this bill. The Office of Planning, Honolulu Department of Planning and Permitting, Land Use Research Foundation of Hawaii, and Hawaii Developers' Council opposed this bill. The Department of Land and

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Natural Resources, Hawaii Association of Realtors, Hawaiian Electric Company, Hawaii Electric Light Company, and Maui Electric Company offered comments.

Your Committee has amended this bill by replacing its substance with the contents of H.B. No. 570, H.D. 1. As amended this bill, among other things:

- (1) Preserves public access to shorelines and ensures reasonable street parking near access areas;
- (2) Includes in the objectives and policies of the Coastal Zone Management Program with respect to coastal ecosystems, beaches and dunes, and with respect to beach protection, minimizes negative impacts to coastal environments and protects against coastal hazards;
- (3) Clarifies that all development in the special management area is subject to reasonable terms and conditions "relative to the objectives, policies, and guidelines" of coastal zone management laws;
- (4) Provides that the counties may not approve developments in the special management areas that impede "reasonable and adequate" public access to or along the shoreline;
- (5) Requires the counties to minimize development that "directly" reduces the size of the beach or recreation area;
- (6) Retains the current statutory setback minimum of 20 feet;
- (7) Deletes the provision waiving a public hearing prior to a shoreline setback variance for:
  - (a) The protection of a legal structure costing more than \$20,000, for structures at risk of immediate damage from shoreline erosion, instead of raising the threshold structure value to \$50,000; and
  - (b) Other structures or activities for which no person or agency has requested a public hearing within 25 calendar days of public notice of the variance application;



- (8) Waives the public hearing requirement for a shoreline setback variance for temporary emergency protection of legal inhabited dwelling or major infrastructure at risk of immediate damage from shoreline erosion or other coastal hazard;
- (9) Requires the counties in establishing shoreline setbacks greater than those established by part II of the coastal zone management statutes to use average shoreline erosion rates, where appropriate, and to use the setback as a tool to minimize the damage from coastal hazards and protect the public safety and access;
- (10) Requires for structural variances that are necessary for or ancillary to landscaping, that the proposed structure or activity not adversely affect adequate public access;
- (11) Requires that a private facility or improvement not adversely affect beach processes or artificially fix the shoreline for allowing a structural variance where denial will result in significant hardship to the applicant;
- (12) Requires for applications of structural variances that may harden the shoreline, consideration of whether the activity will alter beach-quality sediment availability;
- (13) Requires for applications of variances for the moving of sand from one location seaward of the shoreline to another location seaward of the shoreline, that the movement be within the same littoral system, and allowing movement not only to stabilize an eroding shoreline, but also for stream mouth maintenance;
- (14) Authorizes the planning departments of the counties, instead of DLNR, to determine and enforce the shoreline setbacks, and to adopt rules pertaining to the setback and its enforcement;
- (15) Exempts existing structures on Waikiki beach and properties subject to the Waikiki Beach Reclamation Agreement between the Territory of Hawaii and the beachfront property owners from the shoreline setback established in part II of the coastal zone management statutes and any more restrictive setbacks established by the counties; and



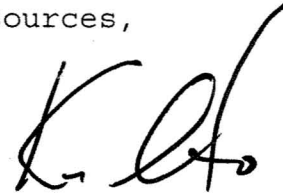
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- (16) Makes technical, nonsubstantive changes for style, clarity, and consistency.

Your Committee respectfully requests that the Committee on Judiciary consider the application of the setback provisions in this bill to properties on neighbor islands and whether additional exemptions from their application are required.

As affirmed by the record of votes of the members of your Committee on Water, Land, & Ocean Resources that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 468, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 468, S.D. 1, H.D. 1, and be referred to the Committee on Judiciary.

Respectfully submitted on  
behalf of the members of the  
Committee on Water, Land, &  
Ocean Resources,



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KEN ITO, Chair



