
A BILL FOR AN ACT

RELATING TO SPECIAL MANAGEMENT AREAS.

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

1 **PART I**

2 SECTION 1. The legislature finds that the costs of
3 purchasing and importing construction materials, along with the
4 costs of labor, have risen at a rate that has increased overall
5 costs of projects that in the past may have been viewed as
6 unsubstantial or minor. Further, the increase in the number of
7 these minor projects, and the shortage of personnel that the
8 various county planning departments are experiencing, have
9 significantly slowed down the review and processing of minor
10 projects within the special management areas of the counties.

11 The purpose of this part is to expedite and facilitate work
12 on projects that have been or may be stalled due to delays
13 relating to special management area permitting requirements.

14 SECTION 2. Section 171-6, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "§171-6 Powers. Except as otherwise provided by law, the
17 board of land and natural resources shall have the powers and



1 functions granted to the heads of departments and the board of
2 land and natural resources under chapter 26.

3 In addition to the foregoing, the board may:

4 (1) Adopt a seal;

5 (2) Administer oaths;

6 (3) Prescribe forms of instruments and documents;

7 (4) Adopt rules which, upon compliance with chapter 91,
8 shall have the force and effect of law;

9 (5) Set, charge, demand, and collect reasonable fees for
10 the preparation of documents to be issued, for the
11 surveying of public lands, and for the issuing of
12 certified copies of its government records, which
13 fees, when collected, shall be deposited into the
14 state general fund, unless otherwise specified in this
15 chapter;

16 (6) Establish additional restrictions, requirements, or
17 conditions, not inconsistent with those prescribed in
18 this chapter, relating to the use of particular land
19 being disposed of, the terms of sale, lease, license,
20 or permit, and the qualifications of any person to
21 draw, bid, or negotiate for public land;



- 1 (7) Reduce or waive the lease rental at the beginning of
2 the lease on any lease of public land to be used for
3 any agricultural or pastoral use, or for resort,
4 commercial, industrial, or other business use where
5 the land being leased requires substantial
6 improvements to be placed thereon; provided that such
7 reduction or waiver shall not exceed two years for
8 land to be used for any agricultural or pastoral use,
9 or exceed one year for land to be used for resort,
10 commercial, industrial, or other business use;
- 11 (8) Delegate to the chairperson or employees of the
12 department of land and natural resources, subject to
13 the board's control and responsibility, such powers
14 and duties as may be lawful or proper for the
15 performance of the functions vested in the board;
- 16 (9) Utilize arbitration under chapter 658A to settle any
17 controversy arising out of any existing or future
18 lease;
- 19 (10) Set, charge, and collect reasonable fees in an amount
20 sufficient to defray the cost of performing or
21 otherwise providing for the inspection of activities



1 permitted upon the issuance of a land license
2 involving a commercial purpose;

3 (11) Appoint masters or hearing officers to conduct public
4 hearings as provided by law and under such conditions
5 as the board by rules shall establish;

6 (12) Bring such actions as may be necessary to remove or
7 remedy encroachments upon public lands. Any person
8 causing an encroachment upon public land shall:

9 (A) Be fined not more than \$1,000 a day for the first
10 offense;

11 (B) Be fined not less than \$1,000 nor more than
12 \$4,000 per day upon the second offense and
13 thereafter;

14 (C) If required by the board, restore the land to its
15 original condition if altered and assume the
16 costs thereof;

17 (D) Assume such costs as may result from adverse
18 effects from such restoration; and

19 (E) Be liable for administrative costs incurred by
20 the department and for payment of damages;

21 (13) Set, charge, and collect interest and a service charge
22 on delinquent payments due on leases, sales, or other



1 accounts. The rate of interest shall not exceed one
2 per cent a month and the service charge shall not
3 exceed \$50 a month for each delinquent payment;
4 provided that the contract shall state the interest
5 rate and the service charge and be signed by the party
6 to be charged;

7 (14) Set, charge, and collect additional rentals for the
8 unauthorized use of public lands by a lessee,
9 licensee, grantee, or permittee who is in violation of
10 any term or condition of a lease, license, easement,
11 or revocable permit, retroactive to the date of the
12 occurrence of the violation. Such amounts shall be
13 considered delinquent payments and shall be subject to
14 interest and service charges as provided in paragraph
15 (13);

16 (15) Set, charge, and collect reasonable fines for
17 violation of this chapter or any rule adopted
18 thereunder. Any person engaging in any prohibited use
19 of public lands or conducting any prohibited activity
20 on public lands, or violating any of the other
21 provisions of this chapter or any rule adopted



1 thereunder, for which violation a penalty is not
2 otherwise provided, shall be:

3 (A) Fined not more than \$5,000 per violation for a
4 first violation or a violation beyond five years
5 of the last violation, provided that, after
6 written or verbal notification from the
7 department, an additional \$1,000 per day per
8 violation may be assessed for each day in which
9 the violation persists;

10 (B) Fined not more than \$10,000 per violation for a
11 second violation within five years of the last
12 violation, provided that, after written or verbal
13 notification from the department, an additional
14 \$2,000 per day per violation may be assessed for
15 each day in which the violation persists;

16 (C) Fined not more than \$20,000 per violation for a
17 third or subsequent violation within five years
18 of the last violation, provided that, after
19 written or verbal notification from the
20 department, an additional \$4,000 per day per
21 violation may be assessed for each day in which
22 the violation persists; and



1 (D) Liable for administrative costs and expenses
2 incurred by the department and for payment for
3 damages, including but not limited to natural
4 resource damages.

5 In addition to the fines, administrative costs, and
6 damages provided for hereinabove, for damage to or
7 theft of natural resources, the board may also set,
8 charge, and collect a fine that, in its discretion, is
9 appropriate considering the value of the natural
10 resource that is damaged or the subject of the theft.

11 In arriving at an appropriate fine, the board may
12 consider the market value of the natural resource
13 damaged or taken and any other factor it deems
14 appropriate, such as the loss of the natural resource
15 to its natural habitat and environment and the cost of
16 restoration or replacement. The remedies provided for
17 in this paragraph are cumulative and in addition to
18 any other remedies allowed by law.

19 No person shall be sanctioned pursuant to this section
20 for the exercise of native Hawaiian gathering rights
21 and traditional cultural practices as authorized by
22 law or as permitted by the department pursuant to



- 1 article XII, section 7, of the Hawaii state
2 constitution;
- 3 (16) Issue revenue bonds, subject to the approval of the
4 legislature. All revenue bonds shall be issued
5 pursuant to part III of chapter 39, except as provided
6 in this chapter. All revenue bonds shall be issued in
7 the name of the department and not in the name of the
8 State. The final maturity date of the revenue bonds
9 may be any date not exceeding thirty years from the
10 date of issuance;
- 11 (17) Pledge or assign all or any part of the receipts and
12 revenues of the department. The revenue bonds shall
13 be payable from and secured solely by the revenue
14 derived by the department from the industrial park or
15 parks for which the bonds are issued;
- 16 (18) Reimburse the state general fund for debt service on
17 general obligation bonds or reimbursable general
18 obligation bonds issued by the State for purposes of
19 this chapter; ~~and~~
- 20 (19) Do any and all things necessary to carry out its
21 purposes and exercise the powers granted in this
22 chapter~~[-]~~; and



1 (20) Notwithstanding part II of chapter 205A to the
2 contrary, plan, design, construct, operate, and
3 maintain any lands or facilities under its
4 jurisdiction without the need to obtain a special
5 management area minor permit or special management
6 area use permit."

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

11 "'Development" means any of the uses, activities, or
12 operations on land or in or under water within a special
13 management area that are included below:

- 14 (1) Placement or erection of any solid material or any
15 gaseous, liquid, solid, or thermal waste;
- 16 (2) Grading, removing, dredging, mining, or extraction of
17 any materials;
- 18 (3) Change in the density or intensity of use of land,
19 including but not limited to the division or
20 subdivision of land;
- 21 (4) Change in the intensity of use of water, ecology
22 related thereto, or of access thereto; and



1 (5) Construction, reconstruction, demolition, or
2 alteration of the size of any structure.

3 "Development" does not include the following:

4 (1) Construction of a single-family residence that is not
5 part of a larger development; provided that a single-
6 family residence that is situated on a tax map key
7 parcel that is subject to a shoreline setback shall be
8 included in the definition of a "development";

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

11 (3) Routine maintenance dredging of existing streams,
12 channels, and drainage ways;

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

17 (5) Zoning variances, except for height, density, parking,
18 and shoreline setback;

19 (6) Repair, maintenance, or interior alterations to
20 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) Preliminary or tentative subdivision approval;
- 14 ~~(11)~~ (12) Subdivision of land into lots greater than
- 15 twenty acres in size;
- 16 ~~(12)~~ (13) Subdivision of a parcel of land into four or
- 17 fewer parcels when no associated construction
- 18 activities are proposed; provided that any land which
- 19 is so subdivided shall not thereafter qualify for this
- 20 exception with respect to any subsequent subdivision
- 21 of any of the resulting parcels;



1 ~~[(13)]~~ (14) Installation of underground utility lines and
2 appurtenant aboveground fixtures less than four feet
3 in height along existing corridors;

4 ~~[(14)]~~ (15) Structural and nonstructural improvements to
5 existing single-family residences, where otherwise
6 permissible;

7 ~~[(15)]~~ (16) Nonstructural improvements to existing
8 commercial structures; and

9 ~~[(16)]~~ (17) Construction, installation, maintenance, repair,
10 and replacement of civil defense warning or signal
11 devices and sirens;

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

17 "Special management area minor permit" means an action by
18 the authority authorizing development the valuation of which is
19 not in excess of [~~\$125,000~~] \$500,000 and [~~which~~] that has no
20 substantial adverse environmental or ecological effect, taking
21 into account potential cumulative effects.



1 "Special management area major use permit" means an action
2 by the authority authorizing development the valuation of which
3 exceeds [~~\$125,000~~] \$500,000 or [~~which~~] that may have a
4 substantial adverse environmental or ecological effect, taking
5 into account potential cumulative effects."

6 SECTION 4. Section 205A-29, Hawaii Revised Statutes, is
7 amended by amending subsection (b) to read as follows:

8 "(b) [~~No~~] An agency authorized to issue permits pertaining
9 to any development within the special management area [~~shall~~]
10 may authorize any development [~~unless approval is first~~
11 ~~received~~] in accordance with the procedures adopted pursuant to
12 this part. For the purposes of this subsection, county general
13 plan, state land use district boundary amendments, and zoning
14 changes are not permits."

15 **PART II**

16 SECTION 5. Section 205A-26, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**\$205A-26 Special management area guidelines.** In
19 implementing this part, the authority shall adopt the following
20 guidelines for the review of developments proposed in the
21 special management area:



- 1 (1) All development in the special management area shall
2 be subject to reasonable terms and conditions set by
3 the authority in order to ensure:
- 4 (A) Adequate access, by dedication or other means, to
5 publicly owned or used beaches, recreation areas,
6 and natural reserves is provided to the extent
7 consistent with sound conservation principles;
- 8 (B) Adequate and properly located public recreation
9 areas and wildlife preserves are reserved;
- 10 (C) Provisions are made for solid and liquid waste
11 treatment, disposition, and management which will
12 minimize adverse effects upon special management
13 area resources; and
- 14 (D) Alterations to existing land forms and
15 vegetation, except crops, and construction of
16 structures shall cause minimum adverse effect to
17 water resources and scenic and recreational
18 amenities and minimum danger of floods, wind
19 damage, storm surge, landslides, erosion,
20 siltation, or failure in the event of earthquake.
- 21 (2) No development shall be approved unless the authority
22 has first [~~found~~] found that:



- 1 (A) [~~That the~~] The development will not have any
2 substantial adverse environmental or ecological
3 effect, except as [~~such~~] the adverse effect is
4 minimized to the extent practicable and clearly
5 outweighed by public health, safety, or
6 compelling public interests. [~~Such~~] The adverse
7 effects shall include[-] but not be limited to[-]
8 the potential cumulative impact of individual
9 developments, each one of which taken in itself
10 might not have a substantial adverse effect, and
11 the elimination of planning options;
- 12 (B) [~~That the~~] The development is consistent with the
13 objectives, policies, and special management area
14 guidelines of this chapter and any guidelines
15 enacted by the legislature; [~~and~~]
- 16 (C) [~~That the~~] The development is consistent with the
17 county general plan and zoning. [~~Such a~~] A
18 finding of consistency does not preclude
19 concurrent processing where a general plan or
20 zoning amendment may also be required[-]; and
- 21 (D) Adequate notice of the development has been
22 provided to the public. For purposes of this



1 paragraph, "adequate notice" means that a sign
2 shall be posted on the property to be developed.

3 The sign shall:

- 4 (i) Notify the public of the proposed use, size,
5 and tax map key numbers of the property;
6 (ii) Notify the public of the address and
7 telephone number of the authority;
8 (iii) Remain posted until the application for
9 approval of the development has been
10 granted, denied, or withdrawn;
11 (iv) Be removed promptly after the application
12 has been granted, denied, or withdrawn;
13 (v) Be not less than nine square feet and not
14 more than twelve square feet in area with
15 letters not less than one inch high;
16 (vi) Not contain any pictures, drawings, or
17 promotional materials; and
18 (vii) Be posted at or near the property boundary
19 adjacent to a public road bordering the
20 property.

21 Not more than five days after the sign is posted,

22 the applicant shall file an affidavit with the



1 authority. The affidavit shall state that a sign
2 has been posted in compliance with this section
3 and that the applicant and the agents of the
4 applicant shall not remove the sign until the
5 application has been granted, denied, or
6 withdrawn. A photograph of the sign in place on
7 the property shall accompany the affidavit.

8 (3) The authority shall seek to minimize, where
9 reasonable:

10 (A) Dredging, filling or otherwise altering any bay,
11 estuary, salt marsh, river mouth, slough or
12 lagoon;

13 (B) Any development which would reduce the size of
14 any beach or other area usable for public
15 recreation;

16 (C) Any development which would reduce or impose
17 restrictions upon public access to tidal and
18 submerged lands, beaches, portions of rivers and
19 streams within the special management areas and
20 the mean high tide line where there is no beach;

21 (D) Any development which would substantially
22 interfere with or detract from the line of sight



1 toward the sea from the state highway nearest the
2 coast; and

3 (E) Any development which would adversely affect
4 water quality, existing areas of open water free
5 of visible structures, existing and potential
6 fisheries and fishing grounds, wildlife habitats,
7 or potential or existing agricultural uses of
8 land."

9 **PART III**

10 SECTION 6. This Act does not affect rights and duties that
11 matured, penalties that were incurred, and proceedings that were
12 begun, before its effective date.

13 SECTION 7. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 8. This Act shall take effect on July 1, 3000.



Report Title:

Special Management Areas; Permits; Public Notice; Development

Description:

Expedites and facilitates work on projects that have been or may be stalled due to delays relating to special management area permitting requirements. Requires applicants for approval of a development to post signs on the property to be developed to provide to the public adequate notice of the development. Excludes tentative subdivision approval from definition of "development". Effective July 1, 3000. (SD2)

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