
A BILL FOR AN ACT

RELATING TO COASTAL ZONE MANAGEMENT.

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

1 PART I

2 SECTION 1. The legislature finds that the acceleration of
3 state capital improvement and other projects is necessary to
4 maintain the State's economic recovery.

5 The purpose of this Act is to expedite special management
6 area permit applications for state projects and shoreline
7 setback variance applications for state structures and
8 activities by temporarily making the office of planning
9 responsible for the issuance of such permits and variances.

10 SECTION 2. Chapter 205A, Hawaii Revised Statutes, is
11 amended by adding a new section to part II to be appropriately
12 designated and to read as follows:

13 "§205A- Special management area permits for state
14 projects. (a) For state projects, the lead agency shall grant
15 or deny special management area permits in accordance with rules
16 adopted pursuant chapter 91. The rules shall be consistent with
17 this chapter.



1 (b) With respect to a special management area use or minor
2 permit, the following deadlines shall apply:

3 (1) The lead agency, within ten calendar days from receipt
4 of a request from a state agency, shall determine
5 whether:

6 (A) A use, activity, or operation proposed by the
7 state agency is not a development requiring a
8 special management area use or minor permit; or

9 (B) A development proposed by the state agency is
10 exempt from the need for a special management
11 area use or minor permit;

12 (2) The lead agency shall grant or deny a special
13 management area use permit for a state project within
14 forty-five calendar days from receipt of a completed
15 application for the permit; and

16 (3) The lead agency shall grant or deny a special
17 management area minor permit for a state project
18 within thirty calendar days from receipt of a
19 completed application for the permit.

20 (c) If the lead agency does not take action within the
21 deadline set by subsection (b) (1), (2), or (3), then on the



1 first day following the expiration of the deadline, the lead
2 agency shall be deemed to have:

3 (1) Determined that the use, activity, or operation is not
4 a development;

5 (2) Exempted the development from the need for a special
6 management area use or minor permit; or

7 (3) Granted the special management area use or minor
8 permit without conditions.

9 (d) The lead agency may hold a public hearing on the
10 application for a special management area use or minor permit
11 for a state project in the county in which the state project is
12 located. The lead agency shall provide notice of the public
13 hearing in accordance with section 1-28.5 at least ten calendar
14 days before any hearing held pursuant to this subsection.

15 (e) The lead agency shall provide notice of a special
16 management area use or minor permit application for a state
17 project to individuals whose property rights, as determined by
18 the lead agency in its sole discretion, may be affected by the
19 state project.

20 The lead agency shall provide notice of special management
21 area use or minor permit applications for state projects and
22 public hearings on the applications to persons who have



1 requested in writing to be notified of the applications and
2 public hearings.

3 (f) The lead agency may require a state agency to pay an
4 application fee for a special management area permit.

5 (g) Chapter 91 shall not apply to the lead agency when
6 granting or denying a special management permit, exempting a
7 state project from obtaining a special management area permit,
8 or determining that a use, activity, or operation is not a
9 development requiring a special management area permit. Such an
10 action by the lead agency shall be final; provided that the lead
11 agency may establish a process for reconsideration of its
12 action."

13 SECTION 3. Section 205A-3, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§205A-3 Lead agency.** The lead agency shall:

16 (1) Receive, disburse, use, expend, and account for all
17 funds that are made available by the United States and
18 the State for the coastal zone management program;

19 (2) Provide support and assistance in the administration
20 of the coastal zone management program;



- 1 (3) Review federal programs, federal permits, federal
2 licenses, and federal development proposals for
3 consistency with the coastal zone management program;
- 4 (4) Consult with the counties and the public in preparing
5 guidelines to further specify and clarify the
6 objectives and policies of this chapter to be
7 submitted twenty days prior to the convening of any
8 regular session of the legislature for review,
9 modification, or enactment by the legislature;
- 10 (5) Conduct a continuing review of the administration of
11 the coastal zone management program and of the
12 compliance of state and county agencies with the
13 objectives and policies of this chapter;
- 14 (6) Facilitate public participation in the coastal zone
15 management program, including the maintenance of a
16 public advisory body to identify coastal management
17 problems and to provide policy advice and assistance
18 to the lead agency;
- 19 (7) Prepare and periodically update a plan for use of
20 coastal zone management funds to resolve coastal
21 problems and issues that are not adequately addressed
22 by existing laws and rules;



- 1 (8) Advocate agency compliance with this chapter [~~205A~~];
- 2 (9) Monitor the coastal zone management-related
- 3 enforcement activities of the state and county
- 4 agencies responsible for the administration of the
- 5 objectives and policies of this chapter;
- 6 (10) Prepare an annual report to the governor and the
- 7 legislature which shall include recommendations for
- 8 enactment of any legislation necessary to require any
- 9 agency to comply with the objectives and policies of
- 10 this chapter and any guidelines enacted by the
- 11 legislature; [~~and~~]
- 12 (11) Coordinate the implementation of the ocean resources
- 13 management plan[~~-~~]; and
- 14 (12) Perform other duties required under this chapter and
- 15 section 206E-8.5."

16 SECTION 4. Section 205A-6, Hawaii Revised Statutes, is

17 amended to read as follows:

18 "§205A-6 Cause of action. (a) [~~Subject~~] Except as

19 otherwise provided under subsection (b), subject to chapters 661

20 and 662, any person or agency may commence a civil action

21 alleging that any agency:



- 1 (1) Is not in compliance with one or more of the
2 objectives, policies, and guidelines provided or
3 authorized by this chapter within the special
4 management area and the waters from the shoreline to
5 the seaward limit of the State's jurisdiction; or
6 (2) Has failed to perform any act or duty required to be
7 performed under this chapter; or
8 (3) In exercising any duty required to be performed under
9 this chapter, has not complied with the provisions of
10 this chapter.

11 [~~b~~] In any action brought under this [~~section~~,
12 subsection, the lead agency, if not a party, may intervene as a
13 matter of right.

14 [~~e~~] A court, in any action brought under this [~~section~~,
15 subsection, shall have jurisdiction to provide any relief as may
16 be appropriate, including a temporary restraining order or
17 preliminary injunction.

18 [~~d~~] Any action brought under this [~~section~~] subsection
19 shall be commenced within sixty days of the act which is the
20 basis of the action.



1 ~~[(e)]~~ Nothing in this section shall restrict any right that
2 any person may have to assert any other claim or bring any other
3 action.

4 (b) No person or agency shall commence an action against
5 the lead agency for:

6 (1) The granting or denial of a special management area
7 permit for a state project;

8 (2) The exemption of a state project from the need for a
9 special management area permit;

10 (3) The determination that a use, activity, or operation
11 of a state agency is not a development requiring a
12 special management area permit; or

13 (4) The granting or denial of a shoreline setback variance
14 for a state structure or activity."

15 SECTION 5. Section 205A-22, Hawaii Revised Statutes, is
16 amended as follows:

17 1. By adding two new definitions to be appropriately
18 inserted and to read:

19 "Special management area permit" means a special
20 management area use permit, special management area minor
21 permit, or special management area emergency permit.

22 "State project" means a development for which:



1 (1) The contracting agency is a state agency; and

2 (2) The funding includes state or federal funds."

3 2. By amending the definitions of "development", "special
4 management area emergency permit", "special management area
5 minor permit", "special management area use permit", and
6 "valuation" to read:

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

- 10 (1) Placement or erection of any solid material or any
11 gaseous, liquid, solid, or thermal waste;
- 12 (2) Grading, removing, dredging, mining, or extraction of
13 any materials;
- 14 (3) Change in the density or intensity of use of land,
15 including but not limited to the division or
16 subdivision of land;
- 17 (4) Change in the intensity of use of water, ecology
18 related thereto, or of access thereto; and
- 19 (5) Construction, reconstruction, demolition, or
20 alteration of the size of any structure.

21 "Development" does not include the following:



- 1 (1) Construction or reconstruction of a single-family
2 residence that is less than seven thousand five
3 hundred square feet of floor area and is not part of a
4 larger development;
- 5 (2) Repair or maintenance of roads and highways within
6 existing rights-of-way;
- 7 (3) Routine maintenance dredging of existing streams,
8 channels, and drainage ways;
- 9 (4) Repair and maintenance of underground utility lines,
10 including but not limited to water, sewer, power, and
11 telephone and minor appurtenant structures such as pad
12 mounted transformers and sewer pump stations;
- 13 (5) Zoning variances, except for height, density, parking,
14 and shoreline setback;
- 15 (6) Repair, maintenance, or interior alterations to
16 existing structures;
- 17 (7) Demolition or removal of structures, except those
18 structures located on any historic site as designated
19 in national or state registers;
- 20 (8) Use of any land for the purpose of cultivating,
21 planting, growing, and harvesting plants, crops,
22 trees, and other agricultural, horticultural, or



- 1 forestry products or animal husbandry, or aquaculture
2 or mariculture of plants or animals, or other
3 agricultural purposes;
- 4 (9) Transfer of title to land;
- 5 (10) Creation or termination of easements, covenants, or
6 other rights in structures or land;
- 7 (11) Final subdivision approval;
- 8 (12) Subdivision of land into lots greater than twenty
9 acres in size;
- 10 (13) Subdivision of a parcel of land into four or fewer
11 parcels when no associated construction activities are
12 proposed; provided that any land which is so
13 subdivided shall not thereafter qualify for this
14 exception with respect to any subsequent subdivision
15 of any of the resulting parcels;
- 16 (14) Installation of underground utility lines and
17 appurtenant aboveground fixtures less than four feet
18 in height along existing corridors;
- 19 (15) Structural and nonstructural improvements to existing
20 single-family residences, where otherwise permissible;
- 21 (16) Nonstructural improvements to existing commercial
22 structures; and



1 (17) Construction, installation, maintenance, repair, and
2 replacement of civil defense warning or signal devices
3 and sirens;
4 provided that whenever the authority finds that any excluded
5 non-state use, activity, or operation may have a cumulative
6 impact, or a significant environmental or ecological effect on a
7 special management area, that non-state use, activity, or
8 operation shall be defined as "development" for the purpose of
9 this part. For the purposes of this definition, "non-state use,
10 activity, or operation" means a use, activity, or operation for
11 which the contracting agency is not a state agency and for which
12 the funding does not include state or federal funds.

13 "Special management area emergency permit" means an action
14 by the authority or lead agency, as applicable, authorizing
15 development in cases of emergency requiring immediate action to
16 prevent substantial physical harm to persons or property or to
17 allow the reconstruction of structures damaged by natural
18 hazards to their original form; provided that such structures
19 were previously found to be in compliance with requirements of
20 the Federal Flood Insurance Program.

21 "Special management area minor permit" means an action by
22 the authority or lead agency, as applicable, authorizing



1 development, the valuation of which is not in excess of \$500,000
2 and which has no substantial adverse environmental or ecological
3 effect, taking into account potential cumulative effects.

4 "Special management area use permit" means an action by the
5 authority or lead agency, as applicable, authorizing
6 development, the valuation of which exceeds \$500,000 or which
7 may have a substantial adverse environmental or ecological
8 effect, taking into account potential cumulative effects.

9 "Valuation" shall be determined by the authority or lead
10 agency, as applicable, and means the estimated cost to replace
11 the structure in kind based on current replacement costs, or in
12 the cases of other development as defined above, the fair market
13 value of the development."

14 SECTION 6. Section 205A-26, Hawaii Revised Statutes, is
15 amended to read as follows:

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

20 (1) All [~~development~~] developments, including state
21 projects, in the special management area shall be
22 subject to reasonable terms and conditions set by the



1 authority or lead agency, as applicable, in order to
2 ensure:

3 (A) Adequate access, by dedication or other means, to
4 publicly owned or used beaches, recreation areas,
5 and natural reserves is provided to the extent
6 consistent with sound conservation principles;

7 (B) Adequate and properly located public recreation
8 areas and wildlife preserves are reserved;

9 (C) Provisions are made for solid and liquid waste
10 treatment, disposition, and management which will
11 minimize adverse effects upon special management
12 area resources; and

13 (D) Alterations to existing land forms and
14 vegetation, except crops, and construction of
15 structures shall cause minimum adverse effect to
16 water resources and scenic and recreational
17 amenities and minimum danger of floods, wind
18 damage, storm surge, landslides, erosion,
19 siltation, or failure in the event of earthquake.

20 (2) No development or state project shall be approved
21 unless the authority or lead agency, as applicable,
22 has first found:



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



1 Consistency of a state project with a county
2 general plan and zoning shall not be required,
3 but shall be encouraged.

4 (3) The authority or lead agency, as applicable, shall
5 seek to minimize, where reasonable:

6 (A) Dredging, filling, or otherwise altering any bay,
7 estuary, salt marsh, river mouth, slough or
8 lagoon;

9 (B) Any development [~~which~~] or state project that
10 would reduce the size of any beach or other area
11 usable for public recreation;

12 (C) Any development [~~which~~] or state project that
13 would reduce or impose restrictions upon public
14 access to tidal and submerged lands, beaches,
15 portions of rivers and streams within the special
16 management areas and the mean high tide line
17 where there is no beach;

18 (D) Any development [~~which~~] or state project that
19 would substantially interfere with or detract
20 from the line of sight toward the sea from the
21 state highway nearest the coast; and



1 (E) Any development [~~which~~] or state project that
2 would adversely affect water quality, existing
3 areas of open water free of visible structures,
4 existing and potential fisheries and fishing
5 grounds, wildlife habitats, or potential or
6 existing agricultural uses of land."

7 SECTION 7. Section 205A-27, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§205A-27 Designation of special management area**
10 **authority.** The authority is designated the special management
11 area authority and, except as otherwise provided for state
12 projects, is authorized to carry out the objectives, policies,
13 and procedures of this part."

14 SECTION 8. Section 205A-28, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§205A-28 Permit required for development[~~-~~], including**
17 **state projects.** No development, including a state project,
18 shall be allowed in any county within the special management
19 area without obtaining a permit in accordance with this part."

20 SECTION 9. Section 205A-29, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§205A-29 Special management area use permit procedure.

2 (a) ~~[The]~~ For developments other than state projects, the
3 authority in each county, upon consultation with the central
4 coordinating agency, shall adopt rules under chapter 91 setting
5 the special management area use permit application procedures,
6 conditions under which hearings must be held, and the time
7 periods within which the hearing and action for special
8 management area use permits shall occur. The authority shall
9 provide for adequate notice to individuals whose property rights
10 may be adversely affected and to persons who have requested in
11 writing to be notified of special management area use permit
12 hearings or applications. The authority shall also provide
13 public notice statewide at least twenty days in advance of the
14 hearing. The authority may require a reasonable filing fee
15 which shall be used for the purposes set forth herein.

16 Any rule adopted by the authority shall be consistent with
17 the objectives, policies, and special management area guidelines
18 provided in this chapter. Action on the special management
19 permit shall be final unless otherwise mandated by court order.

20 (b) For state projects, the lead agency shall be
21 responsible for granting or denying special management area use
22 permits in accordance with section 205A- .



1 ~~[(b)]~~ (c) No agency authorized to issue permits pertaining
2 to any development, including a state project, within the
3 special management area shall authorize any development unless
4 approval is first received in accordance with the procedures
5 adopted pursuant to this part. For the purposes of this
6 subsection, county general plan, state land use district
7 boundary amendments, and zoning changes are not permits."

8 SECTION 10. Section 205A-30, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "§205A-30 Emergency and minor permits. (a) Each [county]
11 authority shall provide specific procedures consistent with this
12 part for the issuance of special management area emergency
13 permits or special management area minor permits~~[7]~~ for
14 developments other than state projects, pursuant to the
15 procedural requirements within this part, and judicial review
16 from the grant and denial thereof. The lead agency shall file
17 notice of special management area minor permits in the next
18 available issue of the periodic bulletin of the office of
19 environmental quality control.

20 (b) For state projects, the lead agency shall be
21 responsible for granting or denying special management area
22 minor or emergency permits in accordance with section 205A- ."



1 SECTION 11. Section 205A-30.5, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:

3 "(c) The authority or lead agency, as applicable, shall
4 adopt rules under chapter 91 setting forth procedures for
5 implementing this section."

6 SECTION 12. Section 205A-32, Hawaii Revised Statutes, is
7 amended by amending subsection (c) to read as follows:

8 "(c) Any civil fine or other penalty provided under this
9 section relating to a development other than a state project may
10 be imposed by the circuit court or may be imposed by the
11 department after an opportunity for a hearing under chapter 91.

12 Any civil fine or other penalty provided under this section
13 relating to a state project may be imposed by the circuit court.

14 Imposition of a civil fine shall not be a prerequisite to
15 any civil fine or other injunctive relief ordered by the circuit
16 court."

17 SECTION 13. Section 205A-41, Hawaii Revised Statutes, is
18 amended by adding three new definitions to be appropriately
19 inserted and to read as follows:

20 ""Authority" means the county planning commission, except
21 in counties where the county planning commission is advisory
22 only, in which case "authority" means the county council or such



1 body as the council may by ordinance designate. The authority
2 may, as appropriate, delegate the responsibility for
3 administering this part.

4 "Non-state structure or activity" means a structure or
5 activity that is not a state structure or activity.

6 "State structure or activity" means a structure or activity
7 for which:

8 (1) The contracting agency is a state agency; and

9 (2) The funding includes state or federal funds."

10 SECTION 14. Section 205A-43, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "§205A-43 Establishment of shoreline setbacks and duties
13 and powers of the department. (a) Setbacks along shorelines
14 are established of not less than twenty feet and not more than
15 forty feet inland from the shoreline. The department shall
16 adopt rules pursuant to chapter 91[7] and, except as otherwise
17 provided in this part, shall enforce the shoreline setbacks and
18 rules pertaining thereto.

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



1 (1) The department shall adopt rules under chapter 91
2 prescribing procedures for determining the shoreline
3 setback line; and

4 (2) The department shall review the plans of all
5 applicants who propose any non-state structure [7] or
6 activity [~~7~~, ~~or facility~~] that would be prohibited
7 without a variance pursuant to this part. The
8 department may require that the plans be supplemented
9 by accurately mapped data and photographs showing
10 natural conditions and topography relating to all
11 existing and proposed structures and activities."

12 SECTION 15. Section 205A-43.5, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "[+]§205A-43.5[+] Powers and duties of the authority[7]
15 and lead agency. (a) Prior to action on a variance
16 application[7] for a non-state structure or activity, the
17 authority shall hold a public hearing under chapter 91. By
18 adoption of rules under chapter 91, the authority may delegate
19 responsibility to the department. Public and private notice,
20 including reasonable notice to abutting property owners and
21 persons who have requested this notice, shall be provided, but a



1 public hearing may be waived prior to action on a variance
2 application for:

- 3 (1) Stabilization of shoreline erosion by the moving of
4 sand entirely on public lands;
- 5 (2) Protection of a legal structure costing more than
6 \$20,000; provided the structure is at risk of
7 immediate damage from shoreline erosion;
- 8 (3) Other structures or activities; provided that no
9 person or agency has requested a public hearing within
10 twenty-five calendar days after public notice of the
11 application; or
- 12 (4) Maintenance, repair, reconstruction, and minor
13 additions or alterations of legal boating, maritime,
14 or watersports recreational facilities, which result
15 in little or no interference with natural shoreline
16 processes.

17 [~~(b)~~] The authority shall either act on variance
18 applications or, by adoption of rules under chapter 91, delegate
19 the responsibility to the department.

20 (b) For a variance application for a state structure or
21 activity, the lead agency may hold a public hearing, with notice



1 provided in accordance with section 1-28.5 at least ten calendar
2 days before the hearing."

3 SECTION 16. Section 205A-43.6, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) [~~The~~] For a non-state structure or activity, the
6 department or an agency designated by department rules shall
7 enforce this part and rules adopted by the department or agency
8 pursuant to this part.

9 For a state structure or activity, the lead agency shall
10 enforce this part and the rules adopted by the lead agency
11 pursuant to this part.

12 Any structure or activity prohibited by section 205A-44,
13 that has not received a variance pursuant to this part or
14 complied with conditions on a variance, shall be removed or
15 corrected.

16 No other state or county permit or approval shall be
17 construed as a variance pursuant to this part."

18 SECTION 17. Section 205A-44, Hawaii Revised Statutes, is
19 amended by amending subsection (b) to read as follows:

20 "(b) Except as provided in this section, structures are
21 prohibited in the shoreline area without a variance pursuant to



1 this part. Structures in the shoreline area shall not need a
2 variance if:

3 (1) They were completed prior to June 22, 1970;

4 (2) They received either a building permit, board
5 approval, or shoreline setback variance prior to
6 June 16, 1989;

7 (3) They are outside the shoreline area when they receive
8 either a building permit or board approval;

9 (4) They are necessary for or ancillary to continuation of
10 existing agriculture or aquaculture in the shoreline
11 area on June 16, 1989;

12 (5) They are minor structures permitted under rules
13 [~~adopted by the department which~~] that do not affect
14 beach processes or artificially fix the shoreline and
15 do not interfere with public access or public views to
16 and along the shoreline; provided that rules
17 permitting minor non-state structures in the shoreline
18 area shall be adopted by the department and rules
19 permitting minor state structures in the shoreline
20 area shall be adopted by the lead agency; or

21 (6) Work being done consists of maintenance, repair,
22 reconstruction, and minor additions or alterations of



1 legal boating, maritime, or watersports recreational
2 facilities, which are publicly owned, and which result
3 in little or no interference with natural shoreline
4 processes;

5 provided that permitted structures may be repaired, but shall
6 not be enlarged within the shoreline area without a variance."

7 SECTION 18. Section 205A-46, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "§205A-46 Variances. (a) The authority shall be
10 responsible for granting or denying a variance for a non-state
11 structure or activity in the shoreline area.

12 (b) The lead agency shall be responsible for granting or
13 denying a variance for a state structure or activity in the
14 shoreline area. The lead agency shall grant or deny a variance
15 for a state structure or activity within twenty calendar days of
16 receipt of the completed application for the variance. If the
17 lead agency does not grant or deny the variance within the
18 twenty-day period, the variance shall be deemed granted by the
19 lead agency without conditions on the twenty-first day. The
20 grant or denial of a variance for a state structure or activity
21 by the lead agency shall be final; provided that the lead agency
22 may establish a process for reconsideration of its action.



1 Chapter 91 shall not apply to the lead agency when granting
2 or denying a variance application for a state structure or
3 activity.

4 [~~a~~] (c) A variance may be granted for a structure or
5 activity otherwise prohibited in this part if the authority or
6 lead agency, as applicable, finds in writing, based on the
7 record presented, that the proposed structure or activity is
8 necessary for or ancillary to:

- 9 (1) Cultivation of crops;
- 10 (2) Aquaculture;
- 11 (3) Landscaping; provided that the authority or lead
12 agency, as applicable, finds that the proposed
13 structure or activity will not adversely affect beach
14 processes and will not artificially fix the shoreline;
- 15 (4) Drainage;
- 16 (5) Boating, maritime, or watersports recreational
17 facilities;
- 18 (6) Facilities or improvements by public agencies or
19 public utilities regulated under chapter 269;
- 20 (7) Private facilities or improvements that are clearly in
21 the public interest;



- 1 (8) Private facilities or improvements which will neither
2 adversely affect beach processes nor artificially fix
3 the shoreline; provided that the authority also finds
4 that hardship will result to the applicant if the
5 facilities or improvements are not allowed within the
6 shoreline area;
- 7 (9) Private facilities or improvements that may
8 artificially fix the shoreline; provided that the
9 authority also finds that shoreline erosion is likely
10 to cause hardship to the applicant if the facilities
11 or improvements are not allowed within the shoreline
12 area, and the authority imposes conditions to prohibit
13 any structure seaward of the existing shoreline unless
14 it is clearly in the public interest; or
- 15 (10) Moving of sand from one location seaward of the
16 shoreline to another location seaward of the
17 shoreline; provided that the authority or lead agency,
18 as applicable, also finds that moving of sand will not
19 adversely affect beach processes, will not diminish
20 the size of a public beach, and will be necessary to
21 stabilize an eroding shoreline.



1 [~~(b)~~] (d) Hardship shall be defined in rules adopted by the
2 authority under chapter 91. Hardship shall not be determined as
3 a result of county zoning changes, planned development permits,
4 cluster permits, or subdivision approvals after June 16, 1989,
5 or as a result of any other permit or approval listed in rules
6 adopted by the authority.

7 [~~(e)~~] (e) No variance shall be granted unless appropriate
8 conditions are imposed:

- 9 (1) To maintain safe lateral access to and along the
10 shoreline or adequately compensate for its loss;
- 11 (2) To minimize risk of adverse impacts on beach
12 processes;
- 13 (3) To minimize risk of structures failing and becoming
14 loose rocks or rubble on public property; and
- 15 (4) To minimize adverse impacts on public views to, from,
16 and along the shoreline."

17 SECTION 19. Section 205A-48, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "§205A-48 Conflict of other laws. (a) In case of a
20 conflict between the requirements of any other state law or
21 county ordinance regarding shoreline setback lines, the more



1 restrictive requirements shall apply in furthering the purposes
2 of this part.

3 (b) Nothing contained in this part shall be construed to
4 diminish the jurisdiction of the state department of
5 transportation over wharves, airports, docks, piers, or other
6 commercial harbors, and any other maritime facilities
7 constructed by the State; provided that such plans are submitted
8 for the ~~[review and]~~ information of the officer of the
9 respective agency charged with the administration of the county
10 zoning laws ~~[, and found not to conflict with any county~~
11 ~~ordinances, zoning laws, and building codes]~~.

12 (c) Nothing contained in this part shall be construed to
13 diminish the jurisdiction and power of the Hawaii community
14 development authority conferred under section 206E-8.5."

15 SECTION 20. Section 205A-49, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "§205A-49 Adoption of rules. Each agency charged with
18 carrying out this part shall adopt rules necessary to implement
19 or comply with this part by July 1, 1990. ~~[All]~~ The rules shall
20 be adopted under chapter 91."

21 SECTION 21. Section 206E-8.5, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "§206E-8.5 Developments within special management areas
2 and shoreline setback. (a) Notwithstanding chapter 205A, all
3 requests for special management area permits for developments
4 ~~[within a special management area]~~ that are not state projects
5 and shoreline setback variances for ~~[developments]~~ non-state
6 structures or activities on any lands within a community
7 development district, for which a community development plan has
8 been developed and approved in accordance with section 206E-5,
9 shall be submitted to and reviewed by the lead agency as defined
10 in chapter 205A. In community development districts for which a
11 community development plan has not been developed and approved
12 in accordance with section 206E-5, parts II and III of chapter
13 205A shall continue to be administered by the applicable county
14 authority until a community development plan for the district
15 takes effect.

16 ~~[(b)]~~ In the review of ~~[such]~~ requests~~[,]~~ submitted under
17 this subsection, the lead agency shall conform to the following,
18 as deemed appropriate:

- 19 (1) Applicable county rules adopted in accordance with
20 section 205A-26 for the review of developments within
21 a special management area, except that paragraph
22 (2) (C) of section 205A-26 shall not apply; and



1 (2) Part III of chapter 205A and applicable county rules
2 for the review of developments within the shoreline
3 setback.

4 [~~(e)~~] With the approval of the lead agency, the developments
5 may be allowed without a special management area permit or
6 shoreline setback variance as required by chapter 205A.

7 (b) Requests for special management area permits for state
8 projects and shoreline setback variances for state structures
9 and activities within a community development district shall be
10 submitted to the lead agency and subject to chapter 205A."

11 SECTION 22. By October 1, 2012, the office of planning
12 shall adopt rules necessary to implement this part. The office
13 of planning shall not be required to adopt the initial rules in
14 compliance with chapters 91 or 201M, Hawaii Revised Statutes,
15 but shall hold at least one public hearing in each county on the
16 proposed rules before adoption. The office of planning shall
17 provide public notice of a public hearing in accordance with
18 section 1-28.5, Hawaii Revised Statutes, at least ten days
19 before the hearing.

20 After adoption of the initial rules, any subsequent
21 amendment of the rules shall be subject to chapters 91 and 201M,
22 Hawaii Revised Statutes.



1 SECTION 23. There is appropriated out of the general
2 revenues of the State of Hawaii the sum of \$ or so much
3 thereof as may be necessary for fiscal year 2012-2013 for the
4 employment of one planner V position and one planner IV position
5 to perform the duties of the office of planning under this
6 part. The planners shall be exempt from chapters 76 and 89,
7 Hawaii Revised Statutes.

8 The sum appropriated shall be expended by the office of
9 planning for the purposes of this part.

10 SECTION 24. The director of finance may reimburse the
11 general fund for the amount expended under section 23 from the
12 project adjustment fund or the capital improvement project
13 allotment for a state project that requires a special management
14 area permit or shoreline setback variance from the office of
15 planning.

16 PART II

17 SECTION 25. Section 171-6, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "§171-6 Powers. Except as otherwise provided by law, the
20 board of land and natural resources shall have the powers and
21 functions granted to the heads of departments and the board of
22 land and natural resources under chapter 26.



- 1 In addition to the foregoing, the board may:
- 2 (1) Adopt a seal;
- 3 (2) Administer oaths;
- 4 (3) Prescribe forms of instruments and documents;
- 5 (4) Adopt rules which, upon compliance with chapter 91,
6 shall have the force and effect of law;
- 7 (5) Set, charge, demand, and collect reasonable fees for
8 the preparation of documents to be issued, for the
9 surveying of public lands, and for the issuing of
10 certified copies of its government records, which
11 fees, when collected, shall be deposited into the
12 state general fund, unless otherwise specified in this
13 chapter;
- 14 (6) Establish additional restrictions, requirements, or
15 conditions, not inconsistent with those prescribed in
16 this chapter, relating to the use of particular land
17 being disposed of, the terms of sale, lease, license,
18 or permit, and the qualifications of any person to
19 draw, bid, or negotiate for public land;
- 20 (7) Reduce or waive the lease rental at the beginning of
21 the lease on any lease of public land to be used for
22 any agricultural or pastoral use, or for resort,



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



- 1 (11) Appoint masters or hearing officers to conduct public
2 hearings as provided by law and under such conditions
3 as the board by rules shall establish;
- 4 (12) Bring such actions as may be necessary to remove or
5 remedy encroachments upon public lands. Any person
6 causing an encroachment upon public land shall:
- 7 (A) Be fined not more than \$1,000 a day for the first
8 offense;
- 9 (B) Be fined not less than \$1,000 nor more than
10 \$4,000 per day upon the second offense and
11 thereafter;
- 12 (C) If required by the board, restore the land to its
13 original condition if altered and assume the
14 costs thereof;
- 15 (D) Assume such costs as may result from adverse
16 effects from such restoration; and
- 17 (E) Be liable for administrative costs incurred by
18 the department and for payment of damages;
- 19 (13) Set, charge, and collect interest and a service charge
20 on delinquent payments due on leases, sales, or other
21 accounts. The rate of interest shall not exceed one
22 per cent a month and the service charge shall not



1 exceed \$50 a month for each delinquent payment;
2 provided that the contract shall state the interest
3 rate and the service charge and be signed by the party
4 to be charged;

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

14 (15) Set, charge, and collect reasonable fines for
15 violation of this chapter or any rule adopted
16 thereunder. Any person engaging in any prohibited use
17 of public lands or conducting any prohibited activity
18 on public lands, or violating any of the other
19 provisions of this chapter or any rule adopted
20 thereunder, for which violation a penalty is not
21 otherwise provided, shall be:



- 1 (A) Fined not more than \$5,000 per violation for a
2 first violation or a violation beyond five years
3 of the last violation; provided that, after
4 written or verbal notification from the
5 department, an additional \$1,000 per day per
6 violation may be assessed for each day in which
7 the violation persists;
- 8 (B) Fined not more than \$10,000 per violation for a
9 second violation within five years of the last
10 violation; provided that, after written or verbal
11 notification from the department, an additional
12 \$2,000 per day per violation may be assessed for
13 each day in which the violation persists;
- 14 (C) Fined not more than \$20,000 per violation for a
15 third or subsequent violation within five years
16 of the last violation; provided that, after
17 written or verbal notification from the
18 department, an additional \$4,000 per day per
19 violation may be assessed for each day in which
20 the violation persists; and
- 21 (D) Liable for administrative costs and expenses
22 incurred by the department and for payment for



1 damages, including but not limited to natural
2 resource damages.

3 In addition to the fines, administrative costs, and
4 damages provided for hereinabove, for damage to or
5 theft of natural resources, the board may also set,
6 charge, and collect a fine that, in its discretion, is
7 appropriate considering the value of the natural
8 resource that is damaged or the subject of the theft.
9 In arriving at an appropriate fine, the board may
10 consider the market value of the natural resource
11 damaged or taken and any other factor it deems
12 appropriate, such as the loss of the natural resource
13 to its natural habitat and environment and the cost of
14 restoration or replacement. The remedies provided for
15 in this paragraph are cumulative and in addition to
16 any other remedies allowed by law.

17 No person shall be sanctioned pursuant to this section
18 for the exercise of native Hawaiian gathering rights
19 and traditional cultural practices as authorized by
20 law or as permitted by the department pursuant to
21 article XII, section 7, of the Hawaii state
22 constitution;



- 1 (16) Issue revenue bonds, subject to the approval of the
2 legislature. All revenue bonds shall be issued
3 pursuant to part III of chapter 39, except as provided
4 in this chapter. All revenue bonds shall be issued in
5 the name of the department and not in the name of the
6 State. The final maturity date of the revenue bonds
7 may be any date not exceeding thirty years from the
8 date of issuance;
- 9 (17) Pledge or assign all or any part of the receipts and
10 revenues of the department. The revenue bonds shall
11 be payable from and secured solely by the revenue
12 derived by the department from the industrial park or
13 parks for which the bonds are issued;
- 14 (18) Reimburse the state general fund for debt service on
15 general obligation bonds or reimbursable general
16 obligation bonds issued by the State for purposes of
17 this chapter;
- 18 (19) Notwithstanding part II of chapter 205A to the
19 contrary, plan, design, construct, operate, and
20 maintain any lands or facilities under the
21 jurisdiction of the division of boating and ocean
22 recreation of the department without the need to



1 obtain a special management area minor permit or
2 special management area use permit; [and]
3 (20) Exempt any state project from the requirements of part
4 II and part III of chapter 205A; provided that any
5 project exempted under this paragraph shall be subject
6 to the requirements of chapter 343 and consultation
7 with the office of conservation and coastal lands and
8 office of planning. As used in this paragraph, "state
9 project" means a development as defined in section
10 205A-22 for which:
11 (A) The contracting agency is a state agency; and
12 (B) The funding includes state or federal funds; and
13 ~~[(20)]~~ (21) Do any and all things necessary to carry out its
14 purposes and exercise the powers granted in this
15 chapter."

16 SECTION 26. Section 264-8, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "§264-8 Specifications, standards, procedures. (a)
19 Specifications, standards and procedures to be followed in the
20 installation and construction of connections for streets, roads
21 and driveways, concrete curbs and sidewalks, structures,
22 drainage systems, landscaping or grading within the highway



1 rights-of-way, excavation and backfilling of trenches or other
2 openings in state highways, and in the restoration, replacement,
3 or repair of the base course, pavement surfaces, highway
4 structures, and other highway improvements shall be prescribed
5 by the director of transportation. At the request of an
6 applicant for a permit, a copy of such specifications, standards
7 and procedures, shall be furnished. In prescribing the
8 specifications, standards and procedures, the director need not
9 comply with the provisions of law relating to the adoption of
10 rules and regulations.

11 (b) The director of transportation is authorized to exempt
12 any state project from the requirements of part II or part III
13 of chapter 205A; provided that any project exempted under this
14 subsection shall be subject to the requirements of chapter 343
15 and consultation with the office of conservation and coastal
16 lands and the office of planning.

17 As used in this subsection, "state project" means a
18 development as defined in section 205A-22 for which:

- 19 (1) The contracting agency is a state agency; and
20 (2) The funding includes state or federal funds."

21 SECTION 27. Section 266-2, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "§266-2 Powers and duties of department. (a) The
2 department of transportation shall:

3 (1) Have and exercise all the powers and shall perform all
4 the duties which may lawfully be exercised by or under
5 the State relative to the control and management of
6 commercial harbors, commercial harbor and waterfront
7 improvements, ports, docks, wharves, piers, quays,
8 bulkheads, and landings belonging to or controlled by
9 the State, and the shipping using the same;

10 (2) Have the authority to use and permit and regulate the
11 use of the commercial docks, wharves, piers, quays,
12 bulkheads, and landings belonging to or controlled by
13 the State for receiving or discharging passengers and
14 for loading and landing merchandise, with a right to
15 collect wharfage and demurrage thereon or therefor;

16 (3) Subject to all applicable provisions of law, have the
17 power to fix and regulate from time to time rates and
18 charges for:

19 (A) Services rendered in mooring commercial vessels;

20 (B) The use of commercial moorings belonging to or
21 controlled by the State;

22 (C) Wharfage or demurrage;



- 1 (D) Warehouse space, office space, and storage space
2 for freight, goods, wares and merchandise; and
- 3 (E) The use of derricks or other equipment belonging
4 to the State or under the control of the
5 department;
- 6 (4) Make other charges including toll or tonnage charges
7 on freight passing over or across docks, wharves,
8 piers, quays, bulkheads, or landings;
- 9 (5) Appoint and remove clerks, harbor agents and their
10 assistants, and all such other employees as may be
11 necessary, and to fix their compensation;
- 12 (6) Adopt rules pursuant to chapter 91 and not
13 inconsistent with law; and
- 14 (7) Generally have all powers necessary to fully carry out
15 this chapter.
- 16 (b) Notwithstanding any law or provision to the contrary,
17 the department of transportation is authorized to plan,
18 construct, operate, and maintain any commercial harbor facility
19 in the State, including, but not limited to, the acquisition and
20 use of lands necessary to stockpile dredged spoils, without the
21 approval of county agencies.



1 All moneys appropriated for commercial harbor improvements,
2 including new construction, reconstruction, repairs, salaries,
3 and operating expenses, shall be expended under the supervision
4 and control of the department, subject to this chapter and
5 chapter 103D.

6 All contracts and agreements authorized by law to be
7 entered into by the department shall be executed on its behalf
8 by the director of transportation.

9 (c) The department of transportation is authorized to
10 exempt any state project from the requirements of part II and
11 part III of chapter 205A; provided that any project exempted
12 under this subsection shall be subject to the requirements of
13 chapter 343 and consultation with the office of conservation and
14 coastal lands and the office of planning.

15 As used in this subsection, "state project" means a
16 development as defined in section 205A-22 for which:

17 (1) The contracting agency is a state agency; and

18 (2) The funding includes state or federal funds.

19 ~~[-e-]~~ (d) The department shall prepare and submit annually
20 to the governor a report of its official acts during
21 the preceding fiscal year, together with its



1 recommendations as to commercial harbor improvements
2 throughout the State."

3 PART III

4 SECTION 28. (a) This Act shall not affect rights and
5 duties that matured, penalties that were incurred, and
6 proceedings that were begun before its effective date; provided
7 that any state agency with a special management area permit or
8 shoreline setback variance application for a state project that
9 is pending before a county agency on the effective date may
10 withdraw the application and apply to the office of planning for
11 the permit or variance.

12 (b) The repeal of this Act shall not affect rights and
13 duties that matured, penalties that were incurred, and
14 proceedings that were begun before the repeal date, including
15 proceedings to review and act on special management area permit
16 and shoreline setback variances for state projects that were
17 submitted to the office of planning before the repeal date. The
18 office of planning shall continue to be responsible after the
19 repeal date for the granting or denial of applications properly
20 submitted to the office of planning pursuant to this Act.

21 SECTION 29. It is the intent of this Act not to jeopardize
22 the receipt of any federal aid. If any provision of this Act is



1 found to be in conflict with federal requirements that are a
2 prescribed condition for the allocation of federal funds to the
3 State, those provisions shall be void.

4 SECTION 30. If any provision of this Act, or the
5 application thereof to any person or circumstance, is held
6 invalid, the invalidity does not affect other provisions or
7 applications of the Act that can be given effect without the
8 invalid provision or application, and to this end the provisions
9 of this Act are severable.

10 SECTION 31. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 32. This Act shall take effect on October 1, 2012,
13 and shall be repealed on June 30, 2015; provided that:

14 (1) Sections 22 and 23 shall take effect on July 1, 2012;

15 (2) Sections 205A-3, 205A-6, 205A-22, 205A-26, 205A-27,

16 205A-28, 205A-29, 205A-30, 205A-30.5, 205A-32, 205A-

17 41, 205A-43, 205A-43.5, 205A-43.6, 205A-44, 205A-46,

18 205A-48, 205A-49, and 206E-8.5, Hawaii Revised

19 Statutes, shall be reenacted on July 1, 2015, in the
20 form in which they existed on September 30, 2012; and

21 (3) Part II shall be repealed on June 30, 2013, and

22 sections 171-6, 264-8, and 266-2, Hawaii Revised



1 Statutes, shall be reenacted in the form in which they
2 read on September 30, 2012.



Report Title:

Coastal Zone Management; Permits

Description:

Makes the Office of Planning responsible for granting or denying special management area permits for state projects, and for granting or denying shoreline variances for state structures or activities in a shoreline area. Grants the Department of Land and Natural Resources and Department of Transportation the authority to exempt state projects and harbor and highway projects from certain specified requirements. (HB530 HD1)

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