
A BILL FOR AN ACT

RELATING TO COASTAL ZONE MANAGEMENT.

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

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

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

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

12 "§205A- Special management area permits for state
13 projects. (a) For state projects, the lead agency shall grant
14 or deny special management area permits in accordance with rules
15 adopted pursuant chapter 91. The rules shall be consistent with
16 this chapter.

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



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

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

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

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

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

18 (c) If the lead agency does not take action within the
19 deadline set in subsection (b) (1), (2), or (3), then on the
20 first day following the expiration of the deadline, the lead
21 agency shall be deemed to have:



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

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

5 (3) Granted the special management area use or minor
6 permit without conditions.

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

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

18 The lead agency shall provide notice of special management
19 area use or minor permit applications for state projects and
20 public hearings on the applications to persons who have
21 requested in writing to be notified of the applications and
22 public hearings.



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

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

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

13 "**§205A-3 Lead agency.** The lead agency shall:

- 14 (1) Receive, disburse, use, expend, and account for all
15 funds that are made available by the United States and
16 the State for the coastal zone management program;
- 17 (2) Provide support and assistance in the administration
18 of the coastal zone management program;
- 19 (3) Review federal programs, federal permits, federal
20 licenses, and federal development proposals for
21 consistency with the coastal zone management program;



- 1 (4) Consult with the counties and the public in preparing
2 guidelines to further specify and clarify the
3 objectives and policies of this chapter to be
4 submitted twenty days prior to the convening of any
5 regular session of the legislature for review,
6 modification, or enactment by the legislature;
- 7 (5) Conduct a continuing review of the administration of
8 the coastal zone management program and of the
9 compliance of state and county agencies with the
10 objectives and policies of this chapter;
- 11 (6) Facilitate public participation in the coastal zone
12 management program, including the maintenance of a
13 public advisory body to identify coastal management
14 problems and to provide policy advice and assistance
15 to the lead agency;
- 16 (7) Prepare and periodically update a plan for use of
17 coastal zone management funds to resolve coastal
18 problems and issues that are not adequately addressed
19 by existing laws and rules;
- 20 (8) Advocate agency compliance with chapter 205A;
- 21 (9) Monitor the coastal zone management-related
22 enforcement activities of the state and county



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

13 SECTION 4. Section 205A-6, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§205A-6 Cause of action.** (a) [~~Subject~~] Except as
16 otherwise provided under subsection (b), subject to chapters 661
17 and 662, any person or agency may commence a civil action
18 alleging that any agency:

- 19 (1) Is not in compliance with one or more of the
20 objectives, policies, and guidelines provided or
21 authorized by this chapter within the special



1 management area and the waters from the shoreline to
2 the seaward limit of the State's jurisdiction; or

3 (2) Has failed to perform any act or duty required to be
4 performed under this chapter; or

5 (3) In exercising any duty required to be performed under
6 this chapter, has not complied with the provisions of
7 this chapter.

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

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

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

18 [~~e~~] Nothing in this [~~section~~] subsection shall restrict
19 any right that any person may have to assert any other claim or
20 bring any other action.

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



- 1 (1) The granting or denial of a special management area
- 2 permit for a state project;
- 3 (2) The exemption of a state project from the need for a
- 4 special management area permit;
- 5 (3) The determination that a use, activity, or operation
- 6 of a state agency is not a state project requiring a
- 7 special management area permit; or
- 8 (4) The granting or denial of a shoreline setback variance
- 9 for a state structure or activity."

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

12 1. By adding two new definitions to be appropriately
 13 inserted and to read:

14 "Special management area permit" means a special
 15 management area use permit, special management area minor
 16 permit, or special management area emergency permit.

17 "State project" means a development:

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



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

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

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

19 "Development" does not include the following:

- 20 (1) Construction or reconstruction of a single-family
21 residence that is less than seven thousand five



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



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

20 "Non-state structure or activity" means a structure or
21 activity that is not a state structure or activity.



1 "State structure or activity" means a structure or
2 activity:

3 (1) The contracting agency for which is a state agency;
4 and

5 (2) The funding for which includes state or federal
6 funds."

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

9 **"§205A-43 Establishment of shoreline setbacks and duties**
10 **and powers of the department.** (a) Setbacks along shorelines

11 are established of not less than twenty feet and not more than
12 forty feet inland from the shoreline. The department shall
13 adopt rules pursuant to chapter 91[7] and, except as otherwise
14 provided in this part, and shall enforce the shoreline setbacks
15 and rules pertaining thereto.

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

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

21 (2) The department shall review the plans of all
22 applicants who propose any non-state structure[7] or



1 activity~~[, or facility]~~ that would be prohibited
2 without a variance pursuant to this part. The
3 department may require that the plans be supplemented
4 by accurately mapped data and photographs showing
5 natural conditions and topography relating to all
6 existing and proposed structures and activities."

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

9 "[+]§205A-43.5[+] **Powers and duties of the authority[-]**
10 **and lead agency.** (a) Prior to action on a variance
11 application~~[,]~~ for a non-state structure or activity, the
12 authority shall hold a public hearing under chapter 91. By
13 adoption of rules under chapter 91, the authority may delegate
14 responsibility to the department. Public and private notice,
15 including reasonable notice to abutting property owners and
16 persons who have requested this notice, shall be provided, but a
17 public hearing may be waived prior to action on a variance
18 application for:

19 (1) Stabilization of shoreline erosion by the moving of
20 sand entirely on public lands;



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

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

16 (b) For a variance application for a state structure or
17 activity, the lead agency may hold a public hearing, with notice
18 provided in accordance with section 1-28.5 at least ten calendar
19 days before the hearing."

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



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

5 For a state structure or activity, the lead agency shall
6 enforce this part and the rules adopted by the lead agency
7 pursuant to this part.

8 Any structure or activity prohibited by section 205A-44,
9 that has not received a variance pursuant to this part or
10 complied with conditions on a variance, shall be removed or
11 corrected.

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

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

16 "(b) Except as provided in this section, structures are
17 prohibited in the shoreline area without a variance pursuant to
18 this part. Structures in the shoreline area shall not need a
19 variance if:

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



- 1 (2) They received either a building permit, board
2 approval, or shoreline setback variance prior to
3 June 16, 1989;
- 4 (3) They are outside the shoreline area when they receive
5 either a building permit or board approval;
- 6 (4) They are necessary for or ancillary to continuation of
7 existing agriculture or aquaculture in the shoreline
8 area on June 16, 1989;
- 9 (5) They are minor structures permitted under rules
10 ~~[adopted by the department which]~~ that do not affect
11 beach processes or artificially fix the shoreline and
12 do not interfere with public access or public views to
13 and along the shoreline~~[+]~~. For this paragraph, the
14 rules permitting minor non-state structures in the
15 shoreline area shall be adopted by the department and
16 the rules permitting minor state structures in the
17 shoreline area shall be adopted by the lead agency; or
- 18 (6) Work being done consists of maintenance, repair,
19 reconstruction, and minor additions or alterations of
20 legal boating, maritime, or watersports recreational
21 facilities, which are publicly owned, and which result



1 in little or no interference with natural shoreline
2 processes;

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

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

7 "**§205A-46 Variances.** (a) The authority shall be
8 responsible for granting or denying a variance for a non-state
9 structure or activity in the shoreline area.

10 (b) The lead agency shall be responsible for granting or
11 denying a variance for a state structure or activity in the
12 shoreline area. The lead agency shall grant or deny a variance
13 for a state structure or activity within twenty calendar days of
14 receipt of the completed application for the variance. If the
15 lead agency does not grant or deny the variance within the
16 twenty-day period, the variance shall be deemed granted by the
17 lead agency without conditions on the twenty-first day. The
18 grant or denial of a variance for a state structure or activity
19 by the lead agency shall be final; provided that the lead agency
20 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
2 the authority under chapter 91. Hardship shall not be
3 determined as a result of county zoning changes, planned
4 development permits, cluster permits, or subdivision approvals
5 after June 16, 1989, or as a result of any other permit or
6 approval listed in rules 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 that are not state projects within
2 special management areas and shoreline setback. (a)

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

17 [~~(b)~~] In the review of [~~such~~] requests[~~7~~] submitted under
18 this subsection, the lead agency shall conform to the following,
19 as deemed appropriate:

20 (1) Applicable county rules adopted in accordance with
21 section 205A-26 for the review of developments within



1 a special management area, except that paragraph
2 (2) (C) of section 205A-26 shall not apply; and
3 (2) Part III of chapter 205A and applicable county rules
4 for the review of developments within the shoreline
5 setback.

6 [~~e~~] With the approval of the lead agency, the
7 developments may be allowed without a special management area
8 permit or shoreline setback variance as required by chapter
9 205A.

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

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



1 After adoption of the initial rules, any subsequent
2 amendment of the rules shall be subject to chapters 91 and 201M,
3 Hawaii Revised Statutes.

4 SECTION 23. There is appropriated out of the general
5 revenues of the State of Hawaii the sum of \$100,000 or so much
6 thereof as may be necessary for fiscal year 2012-2013 for the
7 employment of one planner V position and one planner IV position
8 to perform the duties of the office of planning under this Act.
9 The planners shall be exempt from chapters 76 and 89, Hawaii
10 Revised Statutes.

11 The sum appropriated shall be expended by the office of
12 planning for the purposes of this Act.

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

19 SECTION 25. (a) This Act shall not affect rights and
20 duties that matured, penalties that were incurred, and
21 proceedings that were begun before its effective date; except
22 that any state agency with a special management area permit or



1 shoreline setback variance application for a state project that
2 is pending before a county agency on the effective date may
3 withdraw the application and apply to the office of planning for
4 the permit or variance.

5 (b) The repeal of this Act shall not affect rights and
6 duties that matured, penalties that were incurred, and
7 proceedings that were begun before the repeal date, including
8 proceedings to review and act on special management area permit
9 and shoreline setback variances for state projects that were
10 submitted to the office of planning before the repeal date. The
11 office of planning shall continue to be responsible for the
12 granting or denial of the applications after the repeal date.

13 SECTION 26. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 27. This Act shall take effect on October 1, 2012,
16 and shall be repealed on June 30, 2015; provided that:

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

18 and

19 (2) Sections 205A-3, 205A-6, 205A-22, 205A-26, 205A-27,
20 205A-28, 205A-29, 205A-30, 205A-30.5, 205A-32, 205A-
21 41, 205A-43, 205A-43.5, 205A-43.6, 205A-44, 205A-46,
22 205A-48, 205A-49, and 206E-8.5, Hawaii Revised



1 Statutes, shall be reenacted on July 1, 2015, in the
2 form in which they existed on September 30, 2012.



Report Title:

Special Management Area; Shoreline Setback; Office of Planning

Description:

Makes the office of planning responsible for granting or denying special management area permits for state projects. Makes the office of planning responsible for granting or denying shoreline setback variances for state structures or activities. Repeals provision requiring department of transportation facilities to be found not in conflict with county ordinances, zoning laws, and building codes. Sunsets on 06/30/15. (HD1 PROPOSED)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

