

JAN 25 2012

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# 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 land-sea  
2 interface is a complex social-ecological system characterized by  
3 natural ecological processes and human-induced changes.  
4 Holistic management of the shoreline is a critical element of an  
5 ecosystem-based approach to the land-sea interface in coastal  
6 zone management programs. Anthropogenic alteration of shoreline  
7 environments has resulted in significant loss of sandy beach  
8 ecosystems and eroded the resilience of these systems to  
9 disturbance. Cumulative impacts from human activities have made  
10 coastal ecosystems among the most transformed and degraded  
11 environments worldwide.

12           In Hawaii, beach loss on Maui has been estimated at  
13 nineteen per cent since the 1950s, with over eight kilometers of  
14 dry sand beach lost, and similar losses have been reported for  
15 Oahu. Much of the beach loss on Hawaiian shores is attributed  
16 to the construction of hard stabilization structures for erosion  
17 control, commonly referred to as "armoring." Pre-coastal zone  
18 management estimates for Hawaii from the early 1970s indicate



1 that more than seven per cent of the total shoreline of the  
2 major islands was armored, with Oahu exhibiting 25.6 per cent of  
3 its shoreline being armored. Many pre-coastal zone management  
4 structures are unrecorded and non-conforming with existing law,  
5 and amnesty programs have been developed for some shorelines to  
6 bring existing structures into legal compliance. Current  
7 conservative estimates indicate that up to forty per cent of  
8 Oahu's shoreline is now armored.

9 The purpose of Act is to enhance the efficacy of coastal  
10 zone management programs in successfully managing shorelines  
11 under erosion risk and to maintain or enhance the resilience of  
12 coastal ecosystems and communities.

13 SECTION 2. Section 205A-26, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "**§205A-26 Special management area guidelines.** (a) In  
16 implementing this part, the authority shall adopt the following  
17 guidelines for the review of developments proposed in the  
18 special management area:

19 (1) All development in the special management area shall  
20 be subject to reasonable terms and conditions set by  
21 the authority in order to ensure:



- 1           (A) Adequate access, by dedication or other means, to  
2           publicly owned or used beaches, recreation areas,  
3           and natural reserves is provided to the extent  
4           consistent with sound conservation principles;
- 5           (B) Adequate and properly located public recreation  
6           areas and wildlife preserves are reserved;
- 7           (C) Provisions are made for solid and liquid waste  
8           treatment, disposition, and management which will  
9           minimize adverse effects upon special management  
10          area resources; and
- 11          (D) Alterations to existing land forms and  
12          vegetation, except crops, and construction of  
13          structures shall cause minimum adverse effect to  
14          water resources and scenic and recreational  
15          amenities and minimum danger of floods, wind  
16          damage, storm surge, landslides, erosion,  
17          siltation, or failure in the event of earthquake.
- 18          (2) No development shall be approved unless the authority  
19          has first found:
- 20               (A) That the development will not have any  
21               substantial adverse environmental or ecological  
22               effect, except as such adverse effect is



1 minimized to the extent practicable and clearly  
2 outweighed by public health, safety, or  
3 compelling public interests. Such adverse  
4 effects shall include[-] but not be limited to[-]  
5 the potential cumulative impact of individual  
6 developments, each one of which taken in itself  
7 might not have a substantial adverse effect, and  
8 the elimination of planning options;

9 (B) That the development is consistent with the  
10 objectives, policies, and special management area  
11 guidelines of this chapter and any guidelines  
12 enacted by the legislature; [~~and~~]

13 (C) That the development is consistent with the  
14 county general plan and zoning. Such a finding  
15 of consistency does not preclude concurrent  
16 processing where a general plan or zoning  
17 amendment may also be required[-]; and

18 (D) That the development will not interfere with the  
19 natural course of the beach, including further  
20 accretion or erosion in the case of development  
21 that includes the construction of any structure,



1                   retaining wall, or other object to prevent or  
2                   mitigate coastal erosion of private property; and

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

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

8           (B) Any development which would reduce the size of  
9           any beach or other area usable for public  
10          recreation;

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

16          (D) Any development which would substantially  
17          interfere with or detract from the line of sight  
18          toward the sea from the state highway nearest the  
19          coast; and

20          (E) Any development which would adversely affect  
21          water quality, existing areas of open water free  
22          of visible structures, existing and potential



1                    fisheries and fishing grounds, wildlife habitats,  
2                    or potential or existing agricultural uses of  
3                    land.

4            (b) The authority shall identify, categorize, and  
5 prioritize zones within the special management area that may  
6 consist of specific habitats, ecosystems, or other resource  
7 types that are targeted for preservation or hazard mitigation.  
8 The guidelines for reviewing developments within special  
9 management areas adopted pursuant to subsection (a) shall  
10 include guidelines specific to the preservation of or mitigation  
11 of hazards to the habitat or resource within each specific zone.

12            (c) The authority shall presume that one foot of sea level  
13 rise will occur by 2050, and three feet of sea level rise will  
14 occur by 2100, and plan accordingly."

15            SECTION 3. Section 205A-27, Hawaii Revised Statutes, is  
16 amended to read as follows:

17            **"§205A-27 Designation of special management area**  
18 **authority.** The authority is designated the special management  
19 area authority and is authorized to carry out the objectives,  
20 policies, and procedures of this part [-]; provided that the  
21 authority may delegate special management area authority to any  
22 authority, as defined in section 205A-22, as necessary."



1 SECTION 4. Section 205A-46, Hawaii Revised Statutes, is  
2 amended by amending subsections (a) and (b) to read as follows:

3 "(a) A variance may be granted for a structure or activity  
4 otherwise prohibited in this part if the authority finds in  
5 writing, based on the record presented, that the proposed  
6 structure or activity is necessary for or ancillary to:

7 (1) Cultivation of crops;

8 (2) Aquaculture;

9 (3) Landscaping; provided that the authority finds that  
10 the proposed structure or activity will not adversely  
11 affect beach processes and will not artificially fix  
12 the shoreline;

13 (4) Drainage;

14 (5) Boating, maritime, or watersports recreational  
15 facilities;

16 (6) Facilities or improvements by public agencies or  
17 public utilities regulated under chapter 269;

18 (7) Private facilities or improvements that are clearly in  
19 the public interest;

20 (8) Private facilities or improvements which will neither  
21 adversely affect beach processes, including further  
22 accretion or erosion of a beach, nor artificially fix



1 the shoreline; provided that the authority [~~also~~  
2 ~~finds~~]:

3 (A) Finds that hardship will result to the applicant  
4 if the facilities or improvements are not allowed  
5 within the shoreline area; and

6 (B) Determines that alternatives that would have less  
7 adverse impacts on the shoreline are not  
8 feasible;

9 (9) Private facilities or improvements that may  
10 artificially fix the shoreline; provided that the  
11 authority [~~also finds~~]:

12 (A) Finds that shoreline erosion is likely to cause  
13 hardship to the applicant if the facilities or  
14 improvements are not allowed within the shoreline  
15 area[, ~~and the authority imposes conditions to~~  
16 ~~prohibit any structure seaward of the existing~~  
17 ~~shoreline unless it~~];

18 (B) Finds that alternatives that would have less  
19 adverse impacts on the shoreline, such as beach  
20 nourishment, are not feasible; and

21 (C) Finds that the structure is clearly in the public  
22 interest; or





1           (10) Moving of sand from one location seaward of the  
2           shoreline to another location seaward of the  
3           shoreline; provided that the authority also finds that  
4           moving of sand will not adversely affect beach  
5           processes, will not diminish the size of a public  
6           beach, and will be necessary to stabilize an eroding  
7           shoreline.

8           (b) ~~[Hardship shall be defined in rules adopted by the~~  
9 ~~authority under chapter 91. Hardship]~~ The authority shall adopt  
10 rules, pursuant to chapter 91, to establish a clear process and  
11 guidelines for determining the following:

12           (1) Specific types of facilities and improvements for  
13 which variances may be granted pursuant to this  
14 section and, if a variance is granted, specific  
15 guidelines for where in relation to the shoreline  
16 these facilities and improvements may be placed and  
17 under what conditions;

18           (2) How projects will be determined by the authority to  
19 benefit the public interest such that a variance may  
20 be granted for the project; and

21           (3) How hardship will be defined for purposes of granting  
22 a variance; provided that hardship shall not be



1           determined as a result of county zoning changes,  
2           planned development permits, cluster permits, or  
3           subdivision approvals after June 16, 1989, or as a  
4           result of any other permit or approval listed in rules  
5           adopted by the authority.

6   The rules adopted pursuant to this subsection shall include  
7   definitions of terms used, any potential exclusions from the  
8   process established under the rules, and measures that will be  
9   taken by the authority to enforce the rules."

10          SECTION 5. Statutory material to be repealed is bracketed  
11   and stricken. New statutory material is underscored.

12          SECTION 6. This Act shall take effect on July 1, 2012.

13

INTRODUCED BY: 



# S.B. NO. 2908

**Report Title:**

Coastal Zone Management; Special Management Area; Shoreline Setbacks

**Description:**

Requires counties to more strongly consider negative impacts on beaches when assessing developments within special management areas and shoreline setback variance applications and to establish guidelines for the granting of variances.

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