
A BILL FOR AN ACT

RELATING TO ECONOMIC DEVELOPMENT.

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

1 PART I

2 SECTION 1. The purpose of this Act is to promote economic
3 development by temporarily removing regulatory restrictions to
4 the expeditious construction of certain state and county
5 projects.

6 The legislature finds that the economic recovery has not
7 been robust. One strategy to promote economic revitalization is
8 by way of capital expenditures on public infrastructure
9 projects. This strategy will generate jobs and infuse dollars
10 into the local economy. Additionally, the public infrastructure
11 constructed will benefit the general public.

12 Part II of this Act temporarily makes the office of
13 planning responsible for the issuance of special management area
14 permits and shoreline setback variances for state projects.

15 This part is repealed on June 30, 2015.

16 Part III temporarily exempts airport structures and
17 improvements from the special management area permit and
18 shoreline setback variance requirements when the structures and



1 improvements are necessary to comply with Federal Aviation
2 Administration regulations.

3 Part IV temporarily authorizes the heads of the department
4 of land and natural resources and department of transportation,
5 with the approval of the governor, to exempt department projects
6 from the special management area permit and shoreline setback
7 variance requirements. This part is repealed on June 30, 2015.

8 Part V exempts all work involving submerged lands used for
9 state commercial harbor purposes from any permit and site plan
10 review requirements for lands in the conservation district.
11 This part does not sunset.

12 Part VI temporarily authorizes a more streamlined process
13 for exempting state and county projects from the environmental
14 review process of chapter 343, Hawaii Revised Statutes. Part V
15 also temporarily reduces the deadline for challenging the lack
16 of an environmental assessment for a state project. This part
17 is repealed on June 30, 2015.

18 PART II

19 SECTION 2. The purpose of this part is to temporarily make
20 the office of planning responsible for the issuance of special
21 management area permits and shoreline setback variances for
22 state projects.



1 SECTION 3. Chapter 205A, Hawaii Revised Statutes, is
2 amended by adding a new section to part II to be appropriately
3 designated and to read as follows:

4 "§205A- Special management area permits for state
5 projects. (a) For state projects, the lead agency shall grant
6 or deny special management area permits in accordance with rules
7 adopted pursuant chapter 91. The rules shall be consistent with
8 this chapter.

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

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

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

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

20 (2) The lead agency shall grant or deny a special
21 management area use permit for a state project within



1 forty-five calendar days from receipt of a completed
2 application for the permit; and

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

7 (c) If the lead agency does not take action within the
8 deadline set by subsection (b) (1), (2), or (3), then on the
9 first day following the expiration of the deadline, the lead
10 agency shall be deemed to have:

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

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

15 (3) Granted the special management area use or minor
16 permit without conditions.

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



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

6 The lead agency shall provide notice of special management
7 area use or minor permit applications for state projects and
8 public hearings on the applications to persons who have
9 requested in writing to be notified of the applications and
10 public hearings.

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

13 (g) Chapter 91 shall not apply to the lead agency when
14 granting or denying a special management permit, exempting a
15 state project from obtaining a special management area permit,
16 or determining that a use, activity, or operation is not a
17 development requiring a special management area permit. Such an
18 action by the lead agency shall be final; provided that the lead
19 agency may establish a process for reconsideration of its
20 action."

21 SECTION 4. Section 205A-3, Hawaii Revised Statutes, is
22 amended to read as follows:



- 1 **"§205A-3 Lead agency.** The lead agency shall:
- 2 (1) Receive, disburse, use, expend, and account for all
- 3 funds that are made available by the United States and
- 4 the State for the coastal zone management program;
- 5 (2) Provide support and assistance in the administration
- 6 of the coastal zone management program;
- 7 (3) Review federal programs, federal permits, federal
- 8 licenses, and federal development proposals for
- 9 consistency with the coastal zone management program;
- 10 (4) Consult with the counties and the public in preparing
- 11 guidelines to further specify and clarify the
- 12 objectives and policies of this chapter to be
- 13 submitted twenty days prior to the convening of any
- 14 regular session of the legislature for review,
- 15 modification, or enactment by the legislature;
- 16 (5) Conduct a continuing review of the administration of
- 17 the coastal zone management program and of the
- 18 compliance of state and county agencies with the
- 19 objectives and policies of this chapter;
- 20 (6) Facilitate public participation in the coastal zone
- 21 management program, including the maintenance of a
- 22 public advisory body to identify coastal management



- 1 problems and to provide policy advice and assistance
2 to the lead agency;
- 3 (7) Prepare and periodically update a plan for use of
4 coastal zone management funds to resolve coastal
5 problems and issues that are not adequately addressed
6 by existing laws and rules;
- 7 (8) Advocate agency compliance with this chapter [~~205A~~];
- 8 (9) Monitor the coastal zone management-related
9 enforcement activities of the state and county
10 agencies responsible for the administration of the
11 objectives and policies of this chapter;
- 12 (10) Prepare an annual report to the governor and the
13 legislature which shall include recommendations for
14 enactment of any legislation necessary to require any
15 agency to comply with the objectives and policies of
16 this chapter and any guidelines enacted by the
17 legislature; [~~and~~]
- 18 (11) Coordinate the implementation of the ocean resources
19 management plan[~~-~~]; and
- 20 (12) Perform other duties required under this chapter and
21 section 206E-8.5."



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

3 "**§205A-6 Cause of action.** (a) [~~Subject~~] Except as
4 otherwise provided under subsection (b), subject to chapters 661
5 and 662, any person or agency may commence a civil action
6 alleging that any agency:

7 (1) Is not in compliance with one or more of the
8 objectives, policies, and guidelines provided or
9 authorized by this chapter within the special
10 management area and the waters from the shoreline to
11 the seaward limit of the State's jurisdiction; or

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

14 (3) In exercising any duty required to be performed under
15 this chapter, has not complied with the provisions of
16 this chapter.

17 [~~(b)~~] In any action brought under this [~~section,~~]
18 subsection, the lead agency, if not a party, may intervene as a
19 matter of right.

20 [~~(e)~~] A court, in any action brought under this [~~section,~~]
21 subsection, shall have jurisdiction to provide any relief as may



1 be appropriate, including a temporary restraining order or
2 preliminary injunction.

3 ~~[(d)]~~ Any action brought under this ~~[section]~~ subsection
4 shall be commenced within sixty days of the act which is the
5 basis of the action.

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

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

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

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

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

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

20 SECTION 6. Section 205A-22, Hawaii Revised Statutes, is
21 amended as follows:



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

3 "Special management area permit" means a special
4 management area use permit, special management area minor
5 permit, or special management area emergency permit.

6 "State project" means a development for which:

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

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

9 2. By amending the definitions of "development", "special
10 management area emergency permit", "special management area
11 minor permit", "special management area use permit", and
12 "valuation" to read:

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

16 (1) Placement or erection of any solid material or any
17 gaseous, liquid, solid, or thermal waste;

18 (2) Grading, removing, dredging, mining, or extraction of
19 any materials;

20 (3) Change in the density or intensity of use of land,
21 including but not limited to the division or
22 subdivision of land;



1 (4) Change in the intensity of use of water, ecology
2 related thereto, or of access thereto; and

3 (5) Construction, reconstruction, demolition, or
4 alteration of the size of any structure.

5 "Development" does not include the following:

6 (1) Construction or reconstruction of a single-family
7 residence that is less than seven thousand five
8 hundred square feet of floor area and is not part of a
9 larger development;

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

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

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

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

20 (6) Repair, maintenance, or interior alterations to
21 existing structures;



- 1 (7) Demolition or removal of structures, except those
- 2 structures located on any historic site as designated
- 3 in national or state registers;
- 4 (8) Use of any land for the purpose of cultivating,
- 5 planting, growing, and harvesting plants, crops,
- 6 trees, and other agricultural, horticultural, or
- 7 forestry products or animal husbandry, or aquaculture
- 8 or mariculture of plants or animals, or other
- 9 agricultural purposes;
- 10 (9) Transfer of title to land;
- 11 (10) Creation or termination of easements, covenants, or
- 12 other rights in structures or land;
- 13 (11) Final subdivision approval;
- 14 (12) Subdivision of land into lots greater than twenty
- 15 acres in size;
- 16 (13) Subdivision of a parcel of land into four or fewer
- 17 parcels when no associated construction activities are
- 18 proposed; provided that any land which is so
- 19 subdivided shall not thereafter qualify for this
- 20 exception with respect to any subsequent subdivision
- 21 of any of the resulting parcels;



- 1 (14) Installation of underground utility lines and
- 2 appurtenant aboveground fixtures less than four feet
- 3 in height along existing corridors;
- 4 (15) Structural and nonstructural improvements to existing
- 5 single-family residences, where otherwise permissible;
- 6 (16) Nonstructural improvements to existing commercial
- 7 structures; and
- 8 (17) Construction, installation, maintenance, repair, and
- 9 replacement of civil defense warning or signal devices
- 10 and sirens;

11 provided that whenever the authority finds that any excluded
12 non-state use, activity, or operation may have a cumulative
13 impact, or a significant environmental or ecological effect on a
14 special management area, that non-state use, activity, or
15 operation shall be defined as "development" for the purpose of
16 this part. For the purposes of this definition, "non-state use,
17 activity, or operation" means a use, activity, or operation for
18 which the contracting agency is not a state agency and for which
19 the funding does not include state or federal funds.

20 "Special management area emergency permit" means an action
21 by the authority or lead agency, as applicable, authorizing
22 development in cases of emergency requiring immediate action to



1 prevent substantial physical harm to persons or property or to
2 allow the reconstruction of structures damaged by natural
3 hazards to their original form; provided that such structures
4 were previously found to be in compliance with requirements of
5 the Federal Flood Insurance Program.

6 "Special management area minor permit" means an action by
7 the authority or lead agency, as applicable, authorizing
8 development, the valuation of which is not in excess of \$500,000
9 and which has no substantial adverse environmental or ecological
10 effect, taking into account potential cumulative effects.

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

16 "Valuation" shall be determined by the authority or lead
17 agency, as applicable, and means the estimated cost to replace
18 the structure in kind based on current replacement costs, or in
19 the cases of other development as defined above, the fair market
20 value of the development."

21 SECTION 7. Section 205A-26, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "**§205A-26 Special management area guidelines.** In
2 implementing this part, the authority or lead agency, as
3 applicable, shall adopt the following guidelines for the review
4 of developments proposed in the special management area:

5 (1) All [~~development~~] developments, including state
6 projects, in the special management area shall be
7 subject to reasonable terms and conditions set by the
8 authority or lead agency, as applicable, in order to
9 ensure:

10 (A) Adequate access, by dedication or other means, to
11 publicly owned or used beaches, recreation areas,
12 and natural reserves is provided to the extent
13 consistent with sound conservation principles;

14 (B) Adequate and properly located public recreation
15 areas and wildlife preserves are reserved;

16 (C) Provisions are made for solid and liquid waste
17 treatment, disposition, and management which will
18 minimize adverse effects upon special management
19 area resources; and

20 (D) Alterations to existing land forms and
21 vegetation, except crops, and construction of
22 structures shall cause minimum adverse effect to



1 water resources and scenic and recreational
2 amenities and minimum danger of floods, wind
3 damage, storm surge, landslides, erosion,
4 siltation, or failure in the event of earthquake.

5 (2) No development or state project shall be approved
6 unless the authority or lead agency, as applicable,
7 has first found:

8 (A) That the development or state project will not
9 have any substantial adverse environmental or
10 ecological effect, except as such adverse effect
11 is minimized to the extent practicable and
12 clearly outweighed by public health, safety, or
13 compelling public interests. Such adverse
14 effects shall include, but not be limited to, the
15 potential cumulative impact of individual
16 developments[7] or state projects, each one of
17 which taken in itself might not have a
18 substantial adverse effect, and the elimination
19 of planning options;

20 (B) That the development or state project is
21 consistent with the objectives, policies, and
22 special management area guidelines of this



1 chapter and any guidelines enacted by the
2 legislature; and

3 (C) That the development, if not a state project, is
4 consistent with the county general plan and
5 zoning. Such a finding of consistency does not
6 preclude concurrent processing where a general
7 plan or zoning amendment may also be required.
8 Consistency of a state project with a county
9 general plan and zoning shall not be required,
10 but shall be encouraged.

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

13 (A) Dredging, filling, or otherwise altering any bay,
14 estuary, salt marsh, river mouth, slough or
15 lagoon;

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

19 (C) Any development [~~which~~] or state project that
20 would reduce or impose restrictions upon public
21 access to tidal and submerged lands, beaches,
22 portions of rivers and streams within the special



1 management areas and the mean high tide line
2 where there is no beach;

3 (D) Any development [~~which~~] or state project that
4 would substantially interfere with or detract
5 from the line of sight toward the sea from the
6 state highway nearest the coast; and

7 (E) Any development [~~which~~] or state project that
8 would adversely affect water quality, existing
9 areas of open water free of visible structures,
10 existing and potential fisheries and fishing
11 grounds, wildlife habitats, or potential or
12 existing agricultural uses of land."

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

15 "**§205A-27 Designation of special management area**
16 **authority.** The authority is designated the special management
17 area authority and, except as otherwise provided for state
18 projects, is authorized to carry out the objectives, policies,
19 and procedures of this part."

20 SECTION 9. Section 205A-28, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "**§205A-28 Permit required for development[-], including**
2 **state projects.** No development, including a state project,
3 shall be allowed in any county within the special management
4 area without obtaining a permit in accordance with this part."

5 SECTION 10. Section 205A-29, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§205A-29 Special management area use permit procedure.**

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



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

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

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

15 SECTION 11. Section 205A-30, Hawaii Revised Statutes, is
 16 amended to read as follows:

17 "**§205A-30 Emergency and minor permits.** (a) Each [county]
 18 authority shall provide specific procedures consistent with this
 19 part for the issuance of special management area emergency
 20 permits or special management area minor permits[~~7~~] for
 21 developments other than state projects, pursuant to the
 22 procedural requirements within this part, and judicial review



1 from the grant and denial thereof. The lead agency shall file
2 notice of special management area minor permits in the next
3 available issue of the periodic bulletin of the office of
4 environmental quality control.

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

8 SECTION 12. Section 205A-30.5, Hawaii Revised Statutes, is
9 amended by amending subsection (c) to read as follows:

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

13 SECTION 13. Section 205A-32, Hawaii Revised Statutes, is
14 amended by amending subsection (c) to read as follows:

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

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



1 Imposition of a civil fine shall not be a prerequisite to
2 any civil fine or other injunctive relief ordered by the circuit
3 court."

4 SECTION 14. Section 205A-41, Hawaii Revised Statutes, is
5 amended by adding three new definitions to be appropriately
6 inserted and to read as follows:

7 "Authority" means the county planning commission, except
8 in counties where the county planning commission is advisory
9 only, in which case "authority" means the county council or such
10 body as the council may by ordinance designate. The authority
11 may, as appropriate, delegate the responsibility for
12 administering this part.

13 "Non-state structure or activity" means a structure or
14 activity that is not a state structure or activity.

15 "State structure or activity" means a structure or activity
16 for which:"

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

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

19 SECTION 15. Section 205A-43, Hawaii Revised Statutes, is
20 amended to read as follows:

21 **"§205A-43 Establishment of shoreline setbacks and duties**
22 **and powers of the department.** (a) Setbacks along shorelines



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

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

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

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

19 SECTION 16. Section 205A-43.5, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "[+]§205A-43.5[+] **Powers and duties of the authority[-]**
22 **and lead agency.** (a) Prior to action on a variance



1 application[7] for a non-state structure or activity, the
2 authority shall hold a public hearing under chapter 91. By
3 adoption of rules under chapter 91, the authority may delegate
4 responsibility to the department. Public and private notice,
5 including reasonable notice to abutting property owners and
6 persons who have requested this notice, shall be provided, but a
7 public hearing may be waived prior to action on a variance
8 application for:

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



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

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

8 SECTION 17. Section 205A-43.6, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

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

14 For a state structure or activity, the lead agency shall
15 enforce this part and the rules adopted by the lead agency
16 pursuant to this part.

17 Any structure or activity prohibited by section 205A-44,
18 that has not received a variance pursuant to this part or
19 complied with conditions on a variance, shall be removed or
20 corrected.

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



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

3 "(b) Except as provided in this section, structures are
4 prohibited in the shoreline area without a variance pursuant to
5 this part. Structures in the shoreline area shall not need a
6 variance if:

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

8 (2) They received either a building permit, board
9 approval, or shoreline setback variance prior to
10 June 16, 1989;

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

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

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



1 permitting minor state structures in the shoreline
2 area shall be adopted by the lead agency; or
3 (6) Work being done consists of maintenance, repair,
4 reconstruction, and minor additions or alterations of
5 legal boating, maritime, or watersports recreational
6 facilities, which are publicly owned, and which result
7 in little or no interference with natural shoreline
8 processes;

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

11 SECTION 19. Section 205A-46, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§205A-46 Variances.** (a) The authority shall be
14 responsible for granting or denying a variance for a non-state
15 structure or activity in the shoreline area.

16 (b) The lead agency shall be responsible for granting or
17 denying a variance for a state structure or activity in the
18 shoreline area. The lead agency shall grant or deny a variance
19 for a state structure or activity within twenty calendar days of
20 receipt of the completed application for the variance. If the
21 lead agency does not grant or deny the variance within the
22 twenty-day period, the variance shall be deemed granted by the



1 lead agency without conditions on the twenty-first day. The
2 grant or denial of a variance for a state structure or activity
3 by the lead agency shall be final; provided that the lead agency
4 may establish a process for reconsideration of its action.

5 Chapter 91 shall not apply to the lead agency when granting
6 or denying a variance application for a state structure or
7 activity.

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

13 (1) Cultivation of crops;

14 (2) Aquaculture;

15 (3) Landscaping; provided that the authority or lead
16 agency, as applicable, finds that the proposed
17 structure or activity will not adversely affect beach
18 processes and will not artificially fix the shoreline;

19 (4) Drainage;

20 (5) Boating, maritime, or watersports recreational
21 facilities;



- 1 (6) Facilities or improvements by public agencies or
2 public utilities regulated under chapter 269;
- 3 (7) Private facilities or improvements that are clearly in
4 the public interest;
- 5 (8) Private facilities or improvements which will neither
6 adversely affect beach processes nor artificially fix
7 the shoreline; provided that the authority also finds
8 that hardship will result to the applicant if the
9 facilities or improvements are not allowed within the
10 shoreline area;
- 11 (9) Private facilities or improvements that may
12 artificially fix the shoreline; provided that the
13 authority also finds that shoreline erosion is likely
14 to cause hardship to the applicant if the facilities
15 or improvements are not allowed within the shoreline
16 area, and the authority imposes conditions to prohibit
17 any structure seaward of the existing shoreline unless
18 it is clearly in the public interest; or
- 19 (10) Moving of sand from one location seaward of the
20 shoreline to another location seaward of the
21 shoreline; provided that the authority or lead agency,
22 as applicable, also finds that moving of sand will not



1 adversely affect beach processes, will not diminish
2 the size of a public beach, and will be necessary to
3 stabilize an eroding shoreline.

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

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

12 (1) To maintain safe lateral access to and along the
13 shoreline or adequately compensate for its loss;

14 (2) To minimize risk of adverse impacts on beach
15 processes;

16 (3) To minimize risk of structures failing and becoming
17 loose rocks or rubble on public property; and

18 (4) To minimize adverse impacts on public views to, from,
19 and along the shoreline."

20 SECTION 20. Section 205A-48, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "**§205A-48 Conflict of other laws.** (a) In case of a
2 conflict between the requirements of any other state law or
3 county ordinance regarding shoreline setback lines, the more
4 restrictive requirements shall apply in furthering the purposes
5 of this part.

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

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

18 SECTION 21. Section 205A-49, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§205A-49 Adoption of rules.** Each agency charged with
21 carrying out this part shall adopt rules necessary to implement



1 or comply with this part by July 1, 1990. ~~[All]~~ The rules shall
2 be adopted under chapter 91."

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

5 "**§206E-8.5 Developments within special management areas**
6 **and shoreline setback.** (a) Notwithstanding chapter 205A, all
7 requests for special management area permits for developments
8 ~~[within a special management area]~~ that are not state projects
9 and shoreline setback variances for ~~[developments]~~ non-state
10 structures or activities on any lands within a community
11 development district, for which a community development plan has
12 been developed and approved in accordance with section 206E-5,
13 shall be submitted to and reviewed by the lead agency as defined
14 in chapter 205A. In community development districts for which a
15 community development plan has not been developed and approved
16 in accordance with section 206E-5, parts II and III of chapter
17 205A shall continue to be administered by the applicable county
18 authority until a community development plan for the district
19 takes effect.

20 ~~[(b)]~~ In the review of ~~[such]~~ requests~~[r]~~ submitted under
21 this subsection, the lead agency shall conform to the following,
22 as deemed appropriate:



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

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

8 [~~e~~] With the approval of the lead agency, the
9 developments may be allowed without a special management area
10 permit or shoreline setback variance as required by chapter
11 205A.

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

16 SECTION 23. By October 1, 2012, the office of planning
17 shall adopt rules necessary to implement this part. The office
18 of planning shall not be required to adopt the initial rules in
19 compliance with chapters 91 or 201M, Hawaii Revised Statutes,
20 but shall hold at least one public hearing in each county on the
21 proposed rules before adoption. The office of planning shall
22 provide public notice of a public hearing in accordance with



1 section 1-28.5, Hawaii Revised Statutes, at least ten days
2 before the hearing.

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

6 SECTION 24. There is appropriated out of the general
7 revenues of the State of Hawaii the sum of \$ or so
8 much thereof as may be necessary for fiscal year 2012-2013 for
9 the employment of one planner V position and one planner IV
10 position to perform the duties of the office of planning under
11 this part. The planners shall be exempt from chapters 76 and
12 89, Hawaii Revised Statutes.

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

15 SECTION 25. The director of finance may reimburse the
16 general fund for the amount expended under section __ from the
17 project adjustment fund or the capital improvement project
18 allotment for a state project that:

- 19 (1) Requires a special management area permit or shoreline
20 setback variance from the office of planning; and
- 21 (2) Is funded by bond funds.



1 PART III

2 SECTION 26. The purpose of this part is to temporarily
3 exempt airport structures and improvements from the special
4 management area permit and shoreline setback variance
5 requirements when the structures and improvements are necessary
6 to comply with Federal Aviation Administration regulations.

7 SECTION 27. Section 261-4, Hawaii Revised Statutes, is
8 amended by amending subsection (c) to read as follows:

9 "(c) Structures and improvements. [~~All~~] Notwithstanding
10 any law or provision to the contrary, all structures and
11 improvements to land, to be used for airport purposes[~~, may~~]:

12 (1) May be planned, designed, and constructed by the
13 department[~~;~~]; and

14 (2) Shall be exempt from requirements to obtain a special
15 management area minor permit, special management area
16 use permit, or shoreline setback variance; provided
17 that the structures and improvements relating to
18 airports are necessary to comply with Federal Aviation
19 Administration regulations."

20 PART IV

21 SECTION 28. The purpose of this part is to temporarily
22 authorize the heads of the department of land and natural



1 resources and department of transportation, with the governor's
2 approval, to exempt their department projects from the special
3 management area permit and shoreline setback variance
4 requirements. The legislature intends that the exemptions
5 authorized under this part be additional to the current
6 exemptions under chapter 205A or pertinent rule.

7 SECTION 29. Chapter 171, Hawaii Revised Statutes, is
8 amended by adding a new section to part I to be appropriately
9 designated and to read as follows:

10 "§171- Exemption from special management area permit
11 and shoreline setback variance requirements; authorized. (a)

12 For the purpose of this section, "state project" means a
13 development as defined in section 205A-22 for which:

14 (1) The contracting agency is the department of land and
15 natural resources; and

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

17 (b) The board, with the approval of the governor, may
18 exempt any state project from the requirements of part II and
19 part III of chapter 205A; provided that any project exempted
20 under this section shall be subject to:



1 (1) The requirements of chapter 343, unless exempt from
2 the need for an environmental assessment under that
3 chapter; and

4 (2) Consultation with the office of conservation and
5 coastal lands and office of planning.

6 (c) The board may delegate the authority of this section
7 to the chairperson."

8 SECTION 30. Chapter 264, Hawaii Revised Statutes, is
9 amended by adding a new section to part I to be appropriately
10 designated and to read as follows:

11 "§264- Exemption from special management area permit
12 and shoreline setback variance requirements; authorized. (a)

13 For the purpose of this section, "state project" means a
14 development as defined in section 205A-22 for which:

15 (1) The contracting agency is the department of
16 transportation; and

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

18 (b) The director of transportation, with the approval of
19 the governor, may exempt any state project from the requirements
20 of part II and part III of chapter 205A; provided that any
21 project exempted under this section shall be subject to:



1 (1) The requirements of chapter 343, unless exempt from
2 the need for an environmental assessment under that
3 chapter; and

4 (2) Consultation with the office of conservation and
5 coastal lands and office of planning."

6 SECTION 31. Chapter 266, Hawaii Revised Statutes, is
7 amended by adding a new section to part I to be appropriately
8 designated and to read as follows:

9 "~~§266-~~ Exemption from special management area permit
10 and shoreline setback variance requirements; authorized. (a)

11 For the purpose of this section, "state project" means a
12 development as defined in section 205A-22 for which:

13 (1) The contracting agency is the department of
14 transportation; and

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

16 (b) The director of transportation, with the approval of
17 the governor, may exempt any state project from the requirements
18 of part II and part III of chapter 205A; provided that any
19 project exempted under this section shall be subject to:

20 (1) The requirements of chapter 343, unless exempt from
21 the need for an environmental assessment under that
22 chapter; and



1 projects that are exempt under the existing provisions of
2 chapter 343 or pertinent implementing rules.

3 This part also reduces the deadline for challenging the
4 lack of an assessment for a state project.

5 SECTION 35. Chapter 343, Hawaii Revised Statutes, is
6 amended by adding a new section to be appropriately designated
7 and to read as follows:

8 **"§343- Exemption list for state and county projects;**
9 **authorization for establishment by governor.** (a) Until June
10 30, 2015, the governor may establish a list of specific types of
11 state projects that are actions exempt from the need for
12 preparation of an environmental assessment because they will
13 probably have minimal or no significant effects on the
14 environment. The governor may include in the list types of
15 state projects already exempt by state agencies and other types
16 of state projects deemed by the governor to qualify for
17 exemption under this section. The governor may amend the list
18 from time to time.

19 The governor may establish and amend the list without
20 necessity of:

21 (1) Approval by the environmental council;



1 (2) Compliance with procedures established by the
2 environmental council pursuant to section 343-6(a)(2)
3 or rules of the office of environmental quality
4 control; or

5 (3) Promulgation of rules under chapter 91.

6 The office, upon request of the governor, shall provide
7 public notice of the list of exemptions and any amendments
8 through the periodic bulletin prescribed in section 343-3.

9 A list established by the governor and any amendment to it
10 shall take effect on the date specified by the governor, but not
11 earlier than the issuance date of the bulletin by which the
12 office informs the public of the list and amendment.

13 (b) A county mayor shall have the same authority to
14 establish and amend an exemption list of county projects as
15 conferred upon the governor for state projects under subsection
16 (a).

17 (c) Unless the governor or a mayor expressly states
18 otherwise, a state or county agency's list of exempt actions
19 established pursuant to the procedures of section 343-6(a)(2)
20 shall remain valid, even if the governor or mayor establishes a
21 separate list under this section.



1 (d) After the repeal of this section, the governor's or
2 mayor's list shall remain valid until terminated by the governor
3 or mayor."

4 SECTION 36. Section 343-2, Hawaii Revised Statutes, is
5 amended by adding three new definitions of "construction",
6 "county project", and "state project" to be appropriately
7 inserted and to read as follows:

8 "Construction" includes grading, grubbing, stockpiling,
9 excavation, foundation laying, pile driving, demolition,
10 building, reconstruction, rehabilitation, renovation, repairing,
11 maintaining, paving, landscaping, and any other improvement of
12 real property.

13 "County project" means a construction project for which:

- 14 (1) The contracting agency is a county agency; and
15 (2) The funding includes county, state, or federal funds.

16 "State project" means a construction project for which:

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

19 SECTION 37. Section 343-7, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:

21 "(a) Any judicial proceeding[7] concerning an applicant's
22 action, the subject of which is the lack of assessment required



1 under section 343-5, shall be initiated within one hundred
2 twenty days of the agency's decision to [~~carry out or~~] approve
3 the action, or, if a proposed action is undertaken without a
4 formal determination by the agency that a statement is or is not
5 required, a judicial proceeding shall be instituted within one
6 hundred twenty days after the proposed action is started. The
7 council or office, any agency responsible for approval of the
8 action, or the applicant shall be adjudged an aggrieved party
9 for the purposes of bringing judicial action under this
10 subsection. Others, by court action, may be adjudged aggrieved.

11 Any judicial proceeding concerning an agency's action, the
12 subject of which is the lack of assessment required under
13 section 343-5, shall be initiated within sixty days of the
14 agency's decision to carry out the action, or, if a proposed
15 action is undertaken without a formal determination by the
16 agency that an assessment is or is not required, a judicial
17 proceeding shall be instituted within sixty days after the
18 proposed action is started. The council, office, or any agency
19 responsible for approval of the action shall be adjudged an
20 aggrieved party for the purposes of bringing judicial action
21 under this subsection."



1 SECTION 38. A list of exempted state projected established
2 by the governor or a mayor pursuant to this part, including
3 amendments to the list, shall remain valid after the repeal of
4 this part. The list shall remain valid until repealed in
5 accordance with the procedures established under section 343-
6 6(a)(2), Hawaii Revised Statutes.

7 PART VII

8 SECTION 39. It is the intent of this Act not to jeopardize
9 the receipt of any federal aid. If any provision of this Act is
10 found to be in conflict with federal requirements that are a
11 prescribed condition for the allocation of federal funds to the
12 State, those provisions shall be void.

13 SECTION 40. If any provision of this Act, or the
14 application thereof to any person or circumstance, is held
15 invalid, the invalidity does not affect other provisions or
16 applications of the Act that can be given effect without the
17 invalid provision or application, and to this end the provisions
18 of this Act are severable.

19 SECTION 41. This Act does not affect rights and duties
20 that matured, penalties that were incurred, and proceedings that
21 were begun before its effective date.



1 SECTION 42. The repeal of part II, III, IV, or VI of this
2 Act shall not affect rights and duties that matured, penalties
3 that were incurred, and proceedings that were begun before the
4 repeal date, including:

5 (1) The validity of any special management area permit or
6 shoreline setback variance granted pursuant to part II
7 before the repeal date of that part; and

8 (2) Any proceedings to review and act on a special
9 management area permit or shoreline setback variance
10 for a state project that was submitted to the office
11 of planning before the repeal date of part II. The
12 office of planning shall continue to be responsible
13 after the repeal date for the granting or denial of
14 applications properly submitted to the office of
15 planning pursuant to part II;

16 (3) The validity of any airport structure or improvement
17 exempted under part III from the special management
18 area permit and shoreline setback variance
19 requirements before the repeal date of that part;

20 (4) The validity of any state project exempted under part
21 IV from the special management area permit and



1 shoreline setback variance requirements before the
2 repeal date of that part; and

3 (5) The validity of any state project exempted under part
4 VI from the environmental assessment requirement
5 before the repeal date of that part.

6 SECTION 43. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 44. This Act shall take effect on July 1, 2012;
9 provided that:

10 (1) Except for sections 23, 24, and 25, part II shall take
11 effect on October 1, 2012;

12 (2) Parts II, III, IV, and VI shall be repealed on June
13 30, 2015; and

14 (3) On July 1, 2015, the following sections of the Hawaii
15 Revised Statutes shall be reenacted in the form in
16 which they existed on the day before the effective
17 date of this Act: 205A-3, 205A-6, 205A-22, 205A-26,
18 205A-27, 205A-28, 205A-29, 205A-30, 205A-30.5, 205A-
19 41, 205A-43, 205A-43.5, 205A-43.6, 205A-44, 205A-46,
20 205A-48, 205A-49, 206E-8.5, 261-4, 343-2, and 343-7.



Report Title:

Economic Development; Special Management Area Permits, Shoreline Setback Variances, Environmental Assessment Exemptions

Description:

Part II temporarily makes the office of planning responsible for the issuance of special management area permits and shoreline setback variances for state projects. Part III temporarily exempts airport structures and improvements from the special management area permit and shoreline setback variance requirements when the structures and improvements are necessary to comply with FAA regulations. Part IV temporarily authorizes the department of land and natural resources and department of transportation, with the approval of the governor, to exempt department projects from the special management area permit and shoreline setback variance requirements. Part V exempts all work involving submerged lands used for state commercial harbor purposes from any permit and site plan review requirements for lands in the conservation district. Part VI temporarily authorizes a more streamlined process for exempting state and county projects from the environmental review process of chapter 343, HRS, and reduces the deadline for challenging the lack of an environmental assessment for a state or county project.

(PROPOSED HD2)

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

