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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. Section 205A-43.5, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:
- 3           "(a) Prior to action on a variance application, the  
4 authority shall hold a public hearing under chapter 91. By  
5 adoption of rules under chapter 91, the authority may delegate  
6 responsibility to the department. Public and private notice,  
7 including reasonable notice to abutting property owners and  
8 persons who have requested this notice, shall be provided, but a  
9 public hearing may be waived prior to action on a variance  
10 application for:
- 11           (1) Stabilization of shoreline erosion by the moving of  
12 sand entirely on public lands;
- 13           (2) Protection of a legal structure costing more than  
14 \$20,000; provided the structure is at risk of  
15 immediate damage from shoreline erosion;
- 16           (3) Other structures or activities; provided that no  
17 person or agency has requested a public hearing within



1           twenty-five calendar days after public notice of the  
2           application; or

3           (4) Maintenance, repair, reconstruction, and minor  
4           additions or alterations of legal boating, maritime,  
5           or watersports recreational facilities, which result  
6           in little or no interference with natural shoreline  
7           processes[-];

8           provided that a public hearing shall not be waived for action on  
9           a variance application for a shoreline hardening structure that  
10           will artificially fix the shoreline, including a seawall,  
11           revetment, or groin, subject to section 205A-46(d)."

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

14           "(b) Except as provided in this section, structures are  
15           prohibited in the shoreline area without a variance pursuant to  
16           this part. [~~Structures~~] Except as provided in section 205A-  
17           46(d), structures in the shoreline area shall not need a  
18           variance if:

19           (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 do not affect beach  
11          processes or artificially fix the shoreline and do not  
12          interfere with public access or public views to and  
13          along the shoreline; or
- 14          (6) Work being done consists of maintenance, repair,  
15          reconstruction, and minor additions or alterations of  
16          legal boating, maritime, or watersports recreational  
17          facilities, which are publicly owned, and which result  
18          in little or no interference with natural shoreline  
19          processes;
- 20          provided that permitted structures may be repaired, but shall  
21          not be enlarged within the shoreline area without a variance."



1 SECTION 3. Section 205A-46, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§205A-46 Variances. (a) [A] Except as provided in  
4 subsection (d), a variance may be granted for a structure or  
5 activity otherwise prohibited in this part if the authority  
6 finds in writing, based on the record presented, that the  
7 proposed structure or activity is necessary for or ancillary to:

- 8 (1) Cultivation of crops;
- 9 (2) Aquaculture;
- 10 (3) Landscaping; provided that the authority finds that  
11 the proposed structure or activity will not adversely  
12 affect beach processes and will not artificially fix  
13 the shoreline;
- 14 (4) Drainage;
- 15 (5) Boating, maritime, or watersports recreational  
16 facilities;
- 17 (6) Facilities or improvements by public agencies or  
18 public utilities regulated under chapter 269;
- 19 (7) Private facilities or improvements that are clearly in  
20 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 also finds that  
18 moving of sand will not adversely affect beach  
19 processes, will not diminish the size of a public  
20 beach, and will be necessary to stabilize an eroding  
21 shoreline.



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

7 (c) 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 (d) No variance shall be granted to allow for the  
18 construction of a shoreline hardening structure that will  
19 artificially fix the shoreline, including a seawall, revetment,  
20 or groin, unless the applicant demonstrates that the shoreline  
21 hardening structure is necessary to protect an existing legal



1 object, structure, or activity from damage due to seawater  
2 inundation or shoreline erosion and the object, structure, or  
3 activity cannot reasonably be protected by relocating it outside  
4 of the shoreline area. In determining whether a variance for a  
5 shoreline hardening structure may be approved, the authority  
6 shall consider the following:

7 (1) The feasibility and cost of relocating the relevant  
8 structures, objects, or activities outside of the  
9 shoreline area;

10 (2) The likelihood and severity of damage that will occur  
11 if the shoreline hardening structure is not  
12 constructed;

13 (3) The availability of alternative means to protect the  
14 relevant objects, structures, or activities;

15 (4) The shoreline hardening structure as the only  
16 reasonable alternative to protect relevant structures,  
17 objects, or activities from damage due to shoreline  
18 erosion;

19 (5) The nature and scope of valued cultural and historical  
20 resources in the seaward areas that may be impacted by  
21 shoreline erosion resulting from the installation of a



1           shoreline hardening structure, impact to any  
2           associated native Hawaiian traditional and customary  
3           practices, and the feasibility of action that may be  
4           taken to protect the resources and practices; and  
5           (6) The diminution of safe lateral public access and  
6           enjoyment of shoreline area resulting from the  
7           shoreline hardening structure, and conditions,  
8           including but not limited to public access easements,  
9           that may be required to mitigate any such diminution."

10           SECTION 4. This Act does not affect rights and duties that  
11 matured, penalties that were incurred, and proceedings that were  
12 begun before its effective date.

13           SECTION 5. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15           SECTION 6. This Act shall take effect upon its approval.



**Report Title:**

Shoreline Area; Coastal Zone Management; Seawall; Shoreline  
Hardening Structure

**Description:**

Prohibits variances for installation of shoreline hardening structures in shoreline areas, unless a public hearing is held, the applicant demonstrates that the shoreline hardening structure is necessary to protect an existing legal object, structure, or activity from damage due to seawater inundation or shoreline erosion, and no reasonable alternative locations exist. (HB437 HD1)

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