

A Bill for an Act Relating to the Land Use Law.

*Be It Enacted by the Legislature of the State of Hawaii:*

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

**“Sec. 205-6. Special permit.** The county planning commission may permit certain unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified. Any person who desires to use his land within an agricultural or rural district other than for an agricultural or rural use, as the case may be, may petition the planning commission of the county within which his land is located for permission to use his land in the manner desired.

The planning commission shall conduct a hearing within a period of not less than thirty nor more than one hundred twenty days from the receipt of the petition. The planning commission shall notify the land use commission and such persons and agencies that may have an interest in the subject matter of the time and place of the hearing.

The planning commission may under such protective restrictions as may be deemed necessary, permit the desired use, but only when the use would promote the effectiveness and objectives of this chapter. The planning commission shall act on the petition not earlier than fifteen days after the public hearing. A decision in favor of the applicant shall require a majority vote of the total membership of the planning commission which shall be subject to the approval of the land use commission, provided that the land use commission may impose additional restrictions as may be necessary or appropriate in granting such approval, including the adherence to representations made by the applicant. A copy of the decision together with the findings shall be transmitted to the commission within ten days after the decision is rendered. Within forty-five days after receipt of the county agency's decision, the commission shall act to approve, approve with modification, or deny the petition. A denial either by the county agency or by the commission, or a modification by the commission, as the case may be, of the desired use shall be appealable to the circuit court of

the circuit in which the land is situated and shall be made pursuant to the Hawaii Rules of Civil Procedure.”

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

**“PART . SHORELINE SETBACKS.**

**Sec. 205- . Definitions.** As used in this part, unless the context otherwise requires:

- (1) ‘Agency’ means the planning department of each county.
- (2) ‘Shoreline’ means the upper reaches of the wash of waves, other than storm and tidal waves, usually evidenced by the edge of vegetation growth, the upper line of debris left by the wash of waves.
- (3) ‘Shoreline setback’ means all of the land area between the shoreline and the shoreline setback line.
- (4) ‘Shoreline setback area’ means all the land area seaward of the shoreline setback line.
- (5) ‘Shoreline setback line’ means that line established by the State land use commission or the county running inland from and parallel to the shoreline at a horizontal plane.

**Sec. 205- . Duties and powers of the commission and agency.** The commission shall establish setbacks along shorelines of not less than twenty feet and not more than forty feet inland from the upper reaches of the wash of waves other than storm and tidal waves. The agency shall promulgate rules and regulations within a period of one year after the effective date of this Act, pursuant to chapter 91, and shall enforce the shoreline setbacks and rules and regulations pertaining thereto.

**Sec. 205- . Prohibitions.** (a) It shall be unlawful to remove sand, coral, rocks, soil, or other beach compositions for any purpose, except for reasonable domestic, non-commercial use, within the shoreline setback area, except that any sand mining operation which has been legally in operation for a period of at least two years immediately prior to the effective date of this Act, may be continued for a period not to extend beyond July 1, 1975. However, if during the period prior to July 1, 1975, the sand mining operation is substantially increased, it shall be unlawful to further continue such mining operation.

(b) Except as otherwise provided in this part, no structure or any portion thereof, including but not limited to seawalls, groins, and revetments, shall be permitted within the shoreline setback area; provided that any lawful nonconforming structure existing on the effective date of this Act shall be permitted; provided further that any structure which is necessary for safety reasons or to protect the property from erosion or wave damages shall be permitted. A structure not conforming to this section but for which a building permit application has been filed on or before the effective date of this Act, shall also be permitted

## ACT 136

as a nonconforming structure, subject to the ordinances and regulations of the particular county.

(c) Any nonconforming structure, including but not limited to residential dwellings, agricultural structures, seawalls, groins, and revetments may be replaced or reconstructed within the shoreline setback area; provided that no nonconforming structure shall be substantially enlarged or changed to another nonconforming use within the shoreline setback area. If the use of any nonconforming structure is discontinued or held in abeyance for a period of one year, the further continuation of such use shall be prohibited.

**Sec. 205- . Shoreline setback lines established by county.** The several counties through ordinances may require that shoreline setback lines be established at a distance greater than that established by the commission.

**Sec. 205- . Functions of agency.** (a) The agency shall administer the provisions of this part. It shall review the plans of all applicants who propose any structure, activity, or facility which otherwise would be prohibited by this part.

The agency may require that the plans be supplemented by accurately mapped data showing natural conditions and topography relating to all existing and proposed structures, buildings and facilities.

The agency may also require reasonable changes in the submitted plans in order to obtain optimum compliance practicable.

(b) After reviewing the plans, the agency shall transmit the plans with its recommendations to the governmental body of the county authorized to grant variances from zoning requirements. Such governmental body shall grant a variance for such structure, activity, or facility if, after a hearing pursuant to chapter 91, it finds in writing, based on the record presented either: (1) that such structure, activity, or facility is in the public interest; or (2) that hardship will be caused to the applicant if the proposed structure, activity, or facility is not allowed on that portion of the land within the shoreline setback. Any variance granted may be subject to such conditions as will cause the structure, activity, or facility to result in a minimum interference with natural shoreline processes. Such governmental body shall render written approval or disapproval within 45 days after the hearing on the applicant's plans, unless such period is extended by written agreement between the governmental body and the applicant.

**Sec. 205- . Exemptions.** Tunnels, canals, basins, and ditches, together with associated structures used by public utilities as the term is defined in section 269-1, wharves, docks, piers and other harbor and water front improvements and any other maritime facility and water sport recreational facilities may be permitted within the shoreline setback area; provided that the plans therefor are submitted for review and are approved by the agency after a public hearing has been held and that the appropriate State body has found that the proposed structures will result only in a minimum interference with natural shoreline processes; provided further that any such structure constructed by a governmental body shall be exempt from the provisions of this part except as to the requirement that two public hearings shall be held by the governmental

body charged with such construction, once when the project is first conceived and again when the project is substantially designed and planned, but prior to the letting of the contract.

**Sec. 205- . Conflict of other laws.** In case of a conflict between the requirements of any other State law or county ordinance regarding shoreline setbacks, the more restrictive requirements shall apply in furthering the purposes of this part. Nothing herein contained shall be construed to diminish the jurisdiction of the State department of transportation over wharves, airports, docks, piers, small boat, or other harbors, and any other maritime or water sports recreational facilities to be constructed on State land by the State; provided that such plans are submitted for the review and information of the officer of the respective agency charged with the administration of the county zoning laws, and found not to conflict with any county ordinances, zoning laws, and building code.”

SECTION 3. If any provision of this Act, or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are severable.

SECTION 4. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes may exclude the brackets, the bracketed material, or the underscoring.\*

SECTION 5. This Act shall take effect upon its approval.  
(Approved June 22, 1970.)

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\* Edited accordingly