

A Bill for an Act Relating to Shoreline Setbacks.

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

SECTION 1. Chapter 205, Hawaii Revised Statutes, is amended in the following particulars:

1. By amending section 205-31 to read:

“Sec. 205-31 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, or the upper line of debris left by the wash of waves.
- (3) ‘Shoreline area’ means all of the land area between the shoreline and the shoreline setback line.
- (4) ‘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.”

2. By amending section 205-32 to read:

“Sec. 205-32 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 June 22, 1970, pursuant to chapter 91, and shall enforce the shoreline setbacks and rules and regulations pertaining thereto.”

3. By amending section 205-33 to read:

“Sec. 205-33 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 area or within 1,000 feet seaward of it or in ocean water of 30 or less feet in depth, except that any sand mining operation which has been legally in operation for a period of at least two years immediately prior to June 22, 1970, 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. This prohibition shall not

apply to the commercial mining of sand or other minerals, or taking of coral or rock in the territorial ocean when such mining or taking is located 1,000 or more feet from the shoreline or in ocean water of 30 or more feet in depth and has the written permission of all governmental agencies having jurisdiction thereof.

(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 area; provided that any lawful non-conforming structure existing on June 22, 1970, 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 June 22, 1970, shall also be permitted 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 area; provided that no non-conforming structure shall be substantially enlarged or changed to another nonconforming use within the shoreline 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.”

4. By amending section 205-35 to read:

“Sec. 205-35 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 area. 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 forty-five days after the hearing on the applicant’s plans, unless such period is extended by written agreement between the governmental body and the applicant.”

5. By amending section 205-36 to read:

“Sec. 205-36 Exemptions. Tunnels, canals, basins, and ditches, together

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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 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.”

6. By amending section 205-37 to read:

“Sec. 205-37 Conflict of other laws. In case of a conflict between the requirements of any other state law or county ordinance regarding shoreline setback lines, 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 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 17, 1973.)

*Edited accordingly.