

ACT 176

S.B. NO. 42

A Bill for an Act Relating to Environmental Shoreline Protection.

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

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

“PART II. INTERIM CONTROLS

Sec. 205A- Findings and purposes. The legislature finds that, until a general coastal management program can be developed and implemented, special interim controls on developments within an area along the shoreline are necessary to avoid permanent losses of valuable resources and the foreclosure of management options, and to ensure that adequate access, by dedication or other means, to public owned or used beaches, recreation areas, and natural reserves is provided. The legislature finds and declares that it is the state policy to preserve, protect, and where possible, to restore the natural resources of the coastal zone of Hawaii.

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

- (1) “Authority” means the county planning commission except in counties where the county planning commission is advisory only in which case “authority” means the county council or such body as the council shall by ordinance designate.
- (2) “Development” means, on land, in or under water, any of the following, the total cost or fair market value of which exceeds \$25,000 or which significantly affects the coastal zone, taking into account potential cumulative effects: The placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including but not limited to, the division or subdivision of land; change in the intensity of use of water, ecology related thereto, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private or public utility, and the extensive removal of vegetation, except crops. Whenever any of the above described ac-

tivities is or may become a part of a larger project, the total cost or fair market value of the activity for the purposes of this chapter shall be the total cost or fair market value of this larger project. Development does not include construction, repairs or maintenance of a single family residence which is not a part of a larger development.

- (3) "Applicant" includes any individual, organization, partnership, or corporation, including any utility, and any agency of federal, state, and county government.
- (4) "Shoreline" means the line at the seashore along the upper reaches of the wash of the waves, usually evidenced by the vegetation line or, if there is no vegetation line, then by debris left by the wash of the waves.
- (5) "Special management area" means the land extending not less than one hundred yards inland from the "shoreline" as defined within this part. The special management area shall also include the surrounding area extending one hundred yards from the border of any body of surface water subject to salinity intrusion or tidal influences and the waters themselves. However, such areas which abut any inland waterway or body of water wholly or partially improved with walls and upon portions of which there are numerous residential, commercial, or other structures of a substantial nature in existence as of the effective date of this bill, are excluded from the management area.
- (6) "Structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

Sec. 205A- County area boundaries. Each county shall, after holding public hearings, provide for the delineation of the boundary of the special management area of that county on maps of appropriate scale. Copies of such maps shall be filed with the authority prior to December 1, 1975.

Sec. 205A- Special management area objectives. The objectives of the special management area shall be the maintenance, restoration, and enhancement of the overall quality of the coastal zone environment, including, but not limited to, its amenities and aesthetic values, and to provide adequate public access to publicly owned or used beaches, recreation areas and natural reserves.

Sec. 205A- Special management area policy. It shall be the policy of the authority through its programs, activities and resources to:

- (1) Maintain the undeveloped portion of the special management area of the State where needed for recreation, scenic, educational and scientific uses in a manner that protects resources and is of maximum benefit to the general public.
- (2) Encourage public and private agencies to manage the natural resources within the State in a manner that avoids or minimizes adverse effects on the environment and depletion of energy and natural resources to the fullest extent.
- (3) Protect the shorelines of the State where needed from encroachment of man-made improvements and structures.

- (4) Encourage the definition and development of operational criteria and standards for the special management area which lead toward progressive enhancement of the relationship between mankind and the natural environment.
- (5) Carry out a program of intergovernmental and private-public interaction and coordination on the special management area planning and management.
- (6) Encourage citizen participation in the planning process for the special management area so that it continually embraces more citizens and more issues.

Sec. 205A- Guidelines. In implementing this part, the authority shall adopt the following guidelines for the review of developments proposed in the special management area:

- (1) All development in the special management area shall be subject to reasonable terms and conditions set by the authority in order to ensure:
 - (A) Adequate access, by dedication or other means to publicly owned or used beaches, recreation areas, and natural reserves is provided to the extent consistent with sound conservation principles.
 - (B) Adequate and properly located public recreation areas and wildlife preserves are reserved.
 - (C) Provisions are made for solid and liquid waste treatment, disposition, and management which will minimize adverse effects upon special management area resources.
 - (D) Alterations to existing land forms and vegetation except crops, and construction of structures shall cause minimum adverse effect to water resources and scenic and recreational amenities and minimum danger of floods, landslides, erosion, siltation, or failure in the event of earthquake.
- (2) No development shall be approved unless the authority has first found:
 - (A) That the development will not have any substantial adverse environmental or ecological effect except as such adverse effect is clearly outweighed by public health and safety. Such adverse effects shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect and the elimination of planning options; and
 - (B) That the development is consistent with the findings and policies set forth in this part.
- (3) The authority shall seek to minimize, where reasonable:
 - (A) Dredging, filling or otherwise altering any bay, estuary, salt marsh, river mouth, slough, or lagoon.
 - (B) Any development which would reduce the size of any beach or other area usable for public recreation.
 - (C) Any development which would reduce or impose restrictions upon public access to tidal and submerged lands, beaches, por-

tions of rivers and streams within the special management area and the mean high tide line where there is no beach.

- (D) Any development which would substantially interfere with or detract from the line of sight toward the sea from the state highway nearest the coast.
- (E) Any development which would adversely affect water quality, existing areas of open water free of visible structures, existing and potential fisheries and fishing grounds, wildlife habitats, or potential or existing agricultural uses of land.

Sec. 205A- Designation of special management area authority. The authority is designated the special management area authority and is authorized to carry out the policies and procedures of this part, as it affects the coastal zones of that county.

Sec. 205A- Permit required for development or structure. No development or structure shall be constructed in any county within the coastal zone special management area as designated on maps prepared by the county planning department, without obtaining a permit in accordance with this part.

Sec. 205A- Procedure. (a) The authority in each county shall adopt prior to December 1, 1975, and pursuant to chapter 91 the rules, regulations and procedures necessary for application of permits and hearings. The authority may require a reasonable filing fee. The fee collected shall be used for the purposes set forth herein.

(b) A hearing shall be set no less than twenty-one nor more than ninety days after the date on which the application is filed, unless the ninety-day period is waived by the applicant. The authority shall give adequate notice to individuals whose property rights may be adversely affected, and written public notice once in a newspaper of general circulation in the county in which the area is situated and once in a newspaper of general circulation in the State at least twenty days in advance. The notice shall state the nature of the proposed development for which a permit application is made and of the time and place of the public hearing.

Any such hearing shall when possible be held jointly and concurrently with an environmental impact statement hearing, if such hearing is held under chapter 343. In counties with council districts, the hearing shall be held in the council district in which the development is proposed.

(c) The authority shall act upon an application within thirty days after the conclusion of the hearing, unless an extension has been agreed to by the applicant. Such action shall be final, unless otherwise mandated by court order when a judicial review is sought pursuant to chapter 91.

(d) No county or state department authorized to issue permits pertaining to any development within the special management area shall authorize any development unless approval is first received from the authority, in accordance with the procedures adopted pursuant to this part.

Sec. 205A- Emergency and minor permits. Each county authority shall provide specific procedures not inconsistent with this part for the issuance of a permit, pursuant to the procedural requirements within this part, and judicial review from the grant and denial thereof, in cases of emergency requiring

immediate action to prevent substantial physical harm to persons or property and in cases of minor permits for structural developments not in excess of \$25,000.

Sec. 205A- Appeals. Any person, including an applicant for a permit, aggrieved by the decision or action of a permit-granting authority, shall have a right to judicial review of any decision or action of the authority.

Sec. 205A- Penalties. (a) Any person who violates any provision of this part shall be subject to a civil fine not to exceed \$10,000.

(b) In addition to any other penalties, any person who performs any development in violation of this part shall be subject to a civil fine not to exceed \$500 a day for each day in which such violation persists."

SECTION 2. Sections 205A-1 through 205A-3 are designated as part I of Chapter 205A entitled "Coastal Zone Management."

SECTION 3. This part shall not apply to developments or structures for which a building permit, planned development permit, planned unit development permit or ordinance, or special permit for cluster development was issued prior to December 1, 1975, or to subdivisions of property into single family residential lots of one acre or less which have received final approval and on which subdivision improvements including but not limited to grading, utilities, roads, street lighting and all required on-site and off-site improvements have been completed prior to December 1, 1975. This part shall not apply to interior renovations.

SECTION 4. Severability. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 5. This part shall take effect upon its approval, and shall remain in effect until implementation of a coastal zone management program pursuant to coastal zone management Act of 1972, Public Law 92-583, and to Section 205A-1 and Section 205A-2, Hawaii Revised Statutes.

(Approved June 2, 1975.)