

ACT 188

H.B. NO. 122

A Bill for an Act Relating to Coastal Zone Management.

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

SECTION 1. Findings and Purpose. The legislature finds that Congress has enacted the Coastal Zone Management Act of 1972, Public Law 92-583, as amended, which recognizes the national interest in the effective planning, management, beneficial use, protection, and development of the coastal zones of the several states.

It is a purpose of this Act, to authorize a Hawaii state coastal zone management program that complies with the requirements of the National Coastal Zone Management Act. However, the controlling purpose of this Act is to provide for the effective management, beneficial use, protection, and development of the coastal zone. Where Hawaii's unique geographical and political circumstances result in the necessity of choosing between the intent of the federal legislation and specific requirements the purpose of this Act shall control.

The legislature further finds that Hawaii's environment is both undermanaged and overregulated; that new regulatory mechanisms must not be added onto, but rather combined with, the existing systems; and that the counties have shown their ability and willingness to play a constructive role in coastal zone management by their actions under chapter 205A, part II, Hawaii Revised Statutes.

SECTION 2. Repeal. Part I of chapter 205A, Hawaii Revised Statutes, is repealed.

SECTION 3. Chapter 205A, Hawaii Revised Statutes, is amended by adding a new part to read as follows:

"PART I. COASTAL ZONE MANAGEMENT

Sec. 205A-1 Definitions. As used in this part, unless the context otherwise requires:

(1) "Agency" means any agency, board, commission, department, or

officer of a county government or the State government;

- (2) "Authority" means the authority administering chapter 205A, Hawaii Revised Statutes, at the time of the effective date of this Act.
- (3) "Coastal zone management area" means the special management area after compliance pursuant to section 205A-23 of this chapter and as defined in part II of this chapter.
- (4) "Coastal zone management program" means the coastal zone management program as provided by this part;
- (5) "Department" means the department of planning and economic development.
- (6) "Development" means the development as defined in part II of this chapter.
- (7) "Land" means the earth, water, and air above, below, or on the surface;
- (8) "Lead agency" means the department of planning and economic development;
- (9) "Person" means an individual, corporation, or partnership, and an organization or association, whether or not incorporated.
- (10) "Shoreline" means the shoreline as defined in part II of this chapter.

Sec. 205A-2 Coastal Zone Management Program; Objectives and policies.

(a) The objectives and policies in this section shall apply to both parts I and II of this chapter.

(b) Objectives.

(1) Recreational resources;

(A) Provide coastal recreational opportunities accessible to the public.

(2) Historic resources;

(A) Protect, preserve, and, where desirable, restore those natural and man-made historic and pre-historic resources in the coastal zone management area that are significant in Hawaiian and American history and culture.

(3) Scenic and open space resources;

(A) Protect, preserve, and, where desirable, restore or improve the quality of coastal scenic and open space resources.

(4) Coastal ecosystems;

(A) Protect valuable coastal ecosystems from disruption and minimize adverse impacts on all coastal ecosystems.

(5) Economic uses;

(A) Provide public or private facilities and improvements important to the State's economy in suitable locations.

(6) Coastal hazards;

(A) Reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, and subsidence.

(7) Managing development;

(A) Improve the development review process, communication, and public participation in the management of coastal resources and hazards.

(c) Policies.

(1) Recreational resources;

- (A) Improve coordination and funding of coastal recreation planning and management; and
- (B) Provide adequate, accessible, and diverse recreational opportunities in the coastal zone management area by:
 - (i) Protecting coastal resources uniquely suited for recreational activities that cannot be provided in other areas;
 - (ii) Requiring replacement of coastal resources having significant recreational value, including but not limited to surfing sites and sandy beaches, when such resources will be unavoidably damaged by development; or requiring reasonable monetary compensation to the State for recreation when replacement is not feasible or desirable;
 - (iii) Providing and managing adequate public access, consistent with conservation of natural resources, to and along shorelines with recreational value;
 - (iv) Providing an adequate supply of shoreline parks and other recreational facilities suitable for public recreation;
 - (v) Encouraging expanded public recreational use of county, State, and federally owned or controlled shoreline lands and waters having recreational value;
 - (vi) Adopting water quality standards and regulating point and non-point sources of pollution to protect and where feasible, restore the recreational value of coastal waters;
 - (vii) Developing new shoreline recreational opportunities, where appropriate, such as artificial lagoons, artificial beaches, artificial reefs for surfing and fishing; and
 - (viii) Encouraging reasonable dedication of shoreline areas with recreational value for public use as part of discretionary approvals or permits by the land use commission, board of land and natural resources, county planning commissions; and crediting such dedication against the requirements of section 46-6.
- (2) Historic resources;
 - (A) Identify and analyze significant archaeological resources;
 - (B) Maximize information retention through preservation of remains and artifacts or salvage operations; and
 - (C) Support State goals for protection, restoration, interpretation, and display of historic resources.
- (3) Scenic and open space resources;
 - (A) Identify valued scenic resources in the coastal zone management area;
 - (B) Insure that new developments are compatible with their visual environment by designing and locating such developments to minimize the alteration of natural landforms and existing public views to and along the shoreline;
 - (C) Preserve, maintain, and, where desirable, improve and restore shoreline open space and scenic resources; and

- (D) Encourage those developments which are not coastal dependent to locate in inland areas.
- (4) Coastal Ecosystems;
 - (A) Improve the technical basis for natural resource management;
 - (B) Preserve valuable coastal ecosystems of significant biological or economic importance;
 - (C) Minimize disruption or degradation of coastal water ecosystems by effective regulation of stream diversions, channelization, and similar land and water uses, recognizing competing water needs; and
 - (D) Promote water quantity and quality planning and management practices which reflect the tolerance of fresh water and marine ecosystems and prohibit land and water uses which violate State water quality standards.
- (5) Economic uses;
 - (A) Concentrate in appropriate areas the location of coastal dependent development necessary to the State's economy;
 - (B) Insure that coastal dependent development such as harbors and ports, visitor industry facilities, and energy generating facilities are located, designed, and constructed to minimize adverse social, visual, and environmental impacts in the coastal zone management area; and
 - (C) Direct the location and expansion of coastal dependent developments to areas presently designated and used for such developments and permit reasonable long-term growth at such areas, and permit coastal dependent development outside of presently designated areas when:
 - (i) Utilization of presently designated locations is not feasible;
 - (ii) Adverse environmental effects are minimized; and
 - (iii) Important to the State's economy.
- (6) Coastal hazards;
 - (A) Develop and communicate adequate information on storm wave, tsunami, flood, erosion, and subsidence hazard;
 - (B) Control development in areas subject to storm wave, tsunami, flood, erosion, and subsidence hazard;
 - (C) Ensure that developments comply with requirements of the Federal Flood Insurance Program; and
 - (D) Prevent coastal flooding from inland projects.
- (7) Managing development;
 - (A) Effectively utilize and implement existing law to the maximum extent possible in managing present and future coastal zone development;
 - (B) Facilitate timely processing of application for development permits and resolve overlapping or conflicting permit requirements; and
 - (C) Communicate the potential short and long-term impacts of proposed significant coastal developments early in their life-cycle

and in terms understandable to the general public to facilitate public participation in the planning and review process.

Sec. 205A-3 Lead Agency. The lead agency shall:

- (1) Receive, disburse, use, expend, and account for all funds that are made available by the United States and the State for the coastal zone management program;
- (2) Provide support and assistance in the administration of the state coastal zone management program;
- (3) Review federal programs, permits, licenses and development proposals for consistency with the coastal zone management program;
- (4) In consultation with the counties and the general public prepare guidelines in furtherance of the objectives and policies of the Act to be submitted 20 days prior to the convening of the 1978 Regular Session of the Legislature for review, modification and enactment by the Legislature.
- (5) Conduct a continuing review of the administration of the coastal zone management program and of the compliance of State and county agencies;
- (6) Facilitate public participation in the coastal zone management program;
- (7) Review State programs within the coastal zone management area from the shoreline to the seaward limit of the State's jurisdiction for consistency with the coastal zone management program; and
- (8) Prepare an annual report to the governor and the legislature which shall include recommendations for enactment of any legislation necessary to require any agency to comply with the objectives and policies of this chapter and the guidelines enacted by the legislature.

Sec. 205A-4 Implementation of objectives, policies, and guidelines. (a) In implementing the objectives of the coastal zone management program full consideration shall be given to ecological, cultural, historic, and esthetic values as well as to needs for economic development.

(b) The objectives and policies of this chapter and the guidelines enacted by the legislature shall be binding upon actions within the coastal zone management area by all agencies.

Sec. 205A-5 Compliance. Within two years of the effective date of this chapter, all agencies shall amend their regulations, as may be necessary, to comply with the objectives, and policies of this chapter and the guidelines enacted by the Legislature.

Sec. 205A-6 Cause of action. (a) Subject to chapters 661 and 662, Hawaii Revised Statutes, any person or agency may commence a civil action alleging that any agency:

- (1) Is not in compliance with one or more of the objectives, policies, and guidelines provided or authorized by this Act; or
- (2) Has failed to perform any act or duty required to be performed under this Act; or

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

(b) In any action brought under this section, the department, if not a party, shall intervene as a matter of right.

(c) A court, in any action brought under this section, shall have jurisdiction to provide any relief as may be appropriate, including a temporary restraining order or preliminary injunction.

(d) Any action brought under this section shall be commenced within sixty days of the act which is the basis of the action.

(e) Nothing in this section shall restrict any right that any person may have to assert any other claim or bring any other action."

SECTION 4. Section 5, Act 176, Session Laws of Hawaii 1975, is amended to read as follows:

"SECTION 5. This part shall take effect upon its approval."

SECTION 5. Section 205A-21, Hawaii Revised Statutes, is amended to read as follows:

"**Sec. 205A-21 Findings and Purposes.** The legislature finds that, special 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."

SECTION 6. Section 205A-22, Hawaii Revised Statutes, is amended by amending one definition and adding three new definitions to be appropriately designated and to read:

"(1) "Authority" means the authority administering chapter 205A, Hawaii Revised Statutes, at the time of the effective date of this Act.

(7) "Lead agency" means the department of planning and economic development.

(8) "Coastal zone management area" means the special management area after compliance pursuant to section 205A-23 of this part.

(9) "Coastal zone management program" means the coastal zone management program as provided in this chapter."

SECTION 7. Section 205A-23, Hawaii Revised Statutes, is amended to read as follows:

"**Sec. 205A-23 County Area Boundaries.** (a) Each county shall, after holding public hearings, provide for the delineation of the boundary of the special management area of the county on maps of appropriate scale. Copies of such maps shall be filed with the authority prior to December 1, 1975. The special management area in each county shall be as shown on such maps filed with the authority as of the effective date of this Act.

(b) Within two years of the effective date of this Act, the authority shall review and amend as necessary its special management area boundaries, subject to lead agency review as to compliance with the objectives and policies of this

chapter and the guidelines enacted by the legislature. Copies of the amended maps shall be filed with the authority and the lead agency.

(c) After determination by the lead agency that there is compliance pursuant to section 205A-5, the special management areas shall be the coastal zone management areas."

SECTION 8. Section 205A-24, Hawaii Revised Statutes, is repealed.

SECTION 9. Section 205A-25, Hawaii Revised Statutes, is repealed.

SECTION 10. Section 205A-26, Hawaii Revised Statutes, is amended to read as follows:

"**Sec. 205A-26 Guidelines.** (a) 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, portions of rivers and streams within the special management areas 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.

(b) Guidelines adopted by the authority shall be consistent with the coastal zone management program objectives, and policies of this chapter and the guidelines enacted by the Legislature.”

SECTION 11. Section 205A-29, Hawaii Revised Statutes, is amended by amending subsection (a) to read:

“(a) The authority in each county shall adopt, prior to December 1, 1975 and may amend 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.”

SECTION 12. 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 13. This Act shall take effect upon its approval.

(Approved June 8, 1977.)

*Edited accordingly.