

ACT 356

H.B. NO. 1902

A Bill for an Act Relating to Coastal Zone Management.

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

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

“§205A- Powers and duties of the authority. (a) Prior to action on a variance application, the authority shall hold a public hearing under chapter 91. By

adoption of rules under chapter 91, the authority may delegate responsibility to the department. Public and private notice, including reasonable notice to abutting property owners and persons who have requested this notice, shall be provided, but a public hearing may be waived prior to action on a variance application for:

- (1) Stabilization of shoreline erosion by the moving of sand entirely on public lands;
- (2) Protection of a legal structure costing more than \$20,000; provided the structure is at risk of immediate damage from shoreline erosion;
- (3) Other structures or activities; provided that no person or agency has requested a public hearing within twenty-five calendar days after public notice of the application; or
- (4) Maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime, or watersports recreational facilities, which result in little or no interference with natural shoreline processes.

(b) The authority shall either act on variance applications or, by adoption of rules under chapter 91, delegate the responsibility to the department.

§205A- Enforcement of shoreline setbacks. (a) The department or an agency designated by department rules shall enforce this part and rules adopted pursuant to this part. Any structure or activity prohibited by section 205A-44, that has not received a variance pursuant to this part or complied with conditions on a variance, shall be removed or corrected. No other State or county permit or approval shall be construed as a variance pursuant to this part.

(b) Where the shoreline is affected by a man-made structure that has not been authorized with government agency permits required by law, if any part of the structure is on private property, then for purposes of enforcement of this part, the structure shall be construed to be entirely within the shoreline area.

(c) The authority of the board of land and natural resources to determine the shoreline and enforce rules established under section 183-41 shall not be diminished by a man-made structure in violation of this part."

SECTION 2. Section 205A-41, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

" "Board approval" means approval by the board of land and natural resources pursuant to section 183-41.

"Structure" includes, but is not limited to, any portion of any building, pavement, road, pipe, flume, utility line, fence, groin, wall, or revetment."

SECTION 3. Section 171-58.5, Hawaii Revised Statutes, is amended to read as follows:

"[§171-58.5] Prohibitions. The mining or taking of sand, dead coral or coral rubble, rocks, soil, or other marine deposits seaward from the shoreline is prohibited with the following exceptions:

- (1) The taking from seaward of the shoreline of such materials, not in excess of one gallon per person per day for reasonable, personal, noncommercial use;
- (2) For the replenishment or protection of public shoreline areas and adjacent public lands seaward of the shoreline [area], or construction or maintenance of State approved lagoons, harbors, launching ramps or navigational channels with a permit authorized under section 183-41[, provided that such permit shall not be issued for Hakipu'u sandbar, which is offshore of Molii fishpond, Oahu];

- (3) The clearing of such materials from existing drainage pipes and canals and from the mouths of streams[;] including clearing for the purposes under section 46-11.5; provided that the sand removed shall be placed on adjacent areas unless this placement would result in significant turbidity; or
- (4) The cleaning of areas seaward of the shoreline for state or county maintenance purposes including the purposes under [section 46-11.5 and] section 46-12; provided that the [materials] sand removed shall be placed on adjacent areas unless such placement would result in significant turbidity."

SECTION 4. Section 205A-1, Hawaii Revised Statutes, is amended by amending the definitions of "coastal zone management area" and "shoreline" to read as follows:

" "Coastal zone management area" means [the special management area after compliance pursuant to section 205A-23, and] the waters from the shoreline to the seaward limit of the State's jurisdiction and [any other area which the lead agency may designate for the purpose of administering the coastal zone management program;] all land areas excluding those lands designated as state forest reserves;

"Shoreline" means the upper reaches of the wash of the waves, other than storm and [tidal] seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves."

SECTION 5. Section 205A-3, Hawaii Revised Statutes, is amended to read as follows:

"§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 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 as necessary to further specify and clarify the objectives and policies of the chapter to be submitted twenty days prior to the convening of any regular session of the legislature for review, modification, or 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[;] with the objectives and policies of this chapter;
- (6) Facilitate public participation in the coastal zone management program; and
- [(7)] (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)] (7) 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 any guidelines enacted by the legislature."

SECTION 6. Section 205A-4, Hawaii Revised Statutes, is amended to read as follows:

"§205A-4 Implementation of objectives, policies, and guidelines. (a) In implementing the objectives of the coastal zone management program, the agencies shall give full consideration [shall be given] to ecological, cultural, historic, [and] esthetic, recreational, scenic, and open space values, and coastal hazards, as well as to needs for economic development.

(b) The objectives and policies of this chapter and any guidelines enacted by the legislature shall be binding upon actions within the coastal zone management area by all agencies[.], within the scope of their authority."

SECTION 7. Section 205A-5, Hawaii Revised Statutes, is amended to read as follows:

"§205A-5 Compliance. All agencies shall [amend] ensure that their [regulations, as may be necessary, to] rules comply with the objectives and policies of this chapter and any guidelines enacted by the legislature."

SECTION 8. Section 205A-29, Hawaii Revised Statutes, is amended to read as follows:

"§205A-29 Special management area use permit procedure. (a) The authority in each county, upon consultation with the central coordinating agency, shall [establish and may amend pursuant to chapter 91, by rule or regulation] adopt rules under chapter 91 setting the special management area use permit application procedures, conditions under which hearings must be held, and the time periods within which the hearing and action for special management area use permits shall occur. The authority shall provide for adequate notice to individuals whose property rights may be adversely affected and to persons who have requested in writing to be notified of special management area use permit hearings or applications. The authority shall also provide written public notice once in a newspaper of general circulation in the State at least twenty days in advance of the hearing. The authority may require a reasonable filing fee which shall be used for the purposes set forth herein.

Any rule [or regulation] adopted by the authority shall be consistent with the objectives, policies, and special management area guidelines provided in this chapter. Action on the special management permit shall be final unless otherwise mandated by court order.

(b) No agency authorized to issue permits pertaining to any development within the special management area shall authorize any development unless approval is first received in accordance with the procedures adopted pursuant to this part. For the purposes of this subsection, county general plan, state land use district boundary amendments, and zoning changes are not permits."

SECTION 9. Section 205A-32, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~205A-32~~] Penalties.~~ (a) Any person who violates any provision of [this] part II or part III shall be [subject to] liable for 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] is violating any provision of part II or part III shall be [subject to] liable for a civil fine not to exceed [\$500] \$1,000 a day for each day in which such violation persists.

(c) Any civil fine provided under this section may be imposed by the circuit court or may be imposed by the department after an opportunity for a hearing under

chapter 91. Imposition of a civil fine shall not be a prerequisite to any civil fine or other injunctive relief ordered by the circuit court."

SECTION 10. Section 205A-41, Hawaii Revised Statutes, is amended by amending the definition of "shoreline area" to read:

" "Shoreline area" [means] shall include all of the land area between the shoreline and the shoreline setback line[.] and may include the area between mean sea level and the shoreline."

SECTION 11. Section 205A-43, Hawaii Revised Statutes, is amended to read as follows:

"§205A-43 Establishment of shoreline setbacks and duties and powers of the department. (a) Setbacks along shorelines are established of not less than twenty feet and not more than forty feet inland from the shoreline. The department shall adopt rules [within a period of one year after June 22, 1970,] pursuant to chapter 91, and shall enforce the shoreline setbacks and rules pertaining thereto.

(b) The powers and duties of the department shall include, but not be limited to:

- (1) The department shall adopt rules under chapter 91 prescribing procedures for determining the shoreline setback line; and
- (2) The department shall review the plans of all applicants who propose any structure, activity, or facility that would be prohibited without a variance pursuant to this part. The department may require that the plans be supplemented by accurately mapped data and photographs showing natural conditions and topography relating to all existing and proposed structures and activities."

SECTION 12. Section 205A-44, Hawaii Revised Statutes, is amended to read as follows:

"§205A-44 Prohibitions. (a) The mining or taking of sand, dead coral or coral rubble, rocks, soil, or other beach or marine deposits from the shoreline area is prohibited with the following exceptions:

- (1) The taking from the shoreline area of [such] the materials, not in excess of one gallon per person per day, for reasonable, personal, noncommercial use, provided that stricter provisions may be established by the counties;
- (2) Where the mining or taking [of sand by the State or county is for the replenishment of sand in the shoreline area, provided that for the purpose of this paragraph an environmental assessment for the proposed project shall be prepared pursuant to chapter 343, a finding shall be made by the proposing state or county agency that the proposed project is in the public interest and will not have any adverse significant social, economic¹ or environmental impact, and both a public informational meeting and public hearing shall be held by the proposing state or county agency in the affected community. The public hearing shall be preceded by public notice of the proposed project not less than thirty days before the hearing and published on three separate days in a newspaper of general circulation in the State or county affected by the proposed project. The proposing state or county agency shall also notify in writing the owners or lessees of adjoining, overlapping, or affected property of the proposed project;] is authorized by a variance pursuant to this part;

- (3) The clearing of [sand] the materials from existing drainage pipes and canals and from the mouths of streams[;] including clearing for the purposes under section 46-11.5; provided that the sand removed shall be placed on adjacent areas unless such placement would result in significant turbidity; or
- (4) The cleaning of the shoreline area for State or county maintenance purposes, including the clearing for purposes under [section 46-11.5 and] section 46-12; provided that the sand removed shall be placed on adjacent areas unless [such] the placement would result in significant turbidity.

(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 nonconforming 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.] Except as provided in this section, structures are prohibited in the shoreline area without a variance pursuant to this part. Structures in the shoreline area shall not need a variance if:

- (1) They were completed prior to June 22, 1970;
- (2) They received either a building permit, board approval, or shoreline setback variance prior to the effective date of this Act;
- (3) They are outside the shoreline area when they receive either a building permit or board approval;
- (4) They are necessary for or ancillary to continuation of existing agriculture or aquaculture in the shoreline area on the effective date of this section;
- (5) They are minor structures permitted under rules adopted by the department which do not affect beach processes or artificially fix the shoreline and do not interfere with public access or public views to and along the shoreline; or
- (6) Work being done consists of maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime, or watersports recreational facilities, which are publicly owned, and which result in little or no interference with natural shoreline processes;

provided that permitted structures may be repaired, but shall not be enlarged within the shoreline area without a variance.

[(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 nonconforming 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.]”

SECTION 13. Section 205A-45, Hawaii Revised Statutes, is amended to read as follows:

“§205A-45 Shoreline setback lines established by county. (a) The several counties through rules adopted pursuant to chapter 91 or ordinance[s] may require that shoreline setback lines be established at [a distance] distances¹ greater than that established in this part.

(b) The several counties through rules adopted pursuant to chapter 91 or ordinance may expand the shoreline area to include the area between mean sea level and the shoreline."

SECTION 14. Section 205A-46, Hawaii Revised Statutes, is amended to read as follows:

"§205A-46 [Functions of department. (a) The department 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 department 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 department may also require reasonable changes in the submitted plans in order to obtain optimum compliance practicable with this part.

(b) After reviewing the plans, the department shall transmit the plans with its recommendations to the authority. The authority 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 to the maximum extent practicable shall be subject to such conditions as will cause the structure, activity, or facility to result in a minimum interference with natural shoreline processes and as will provide for safe public shoreline access. The authority 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 authority and the applicant.] **Variances.** (a) A variance may be granted for a structure or activity otherwise prohibited by this part if the authority finds in writing, based on the record presented, that the proposed structure or activity is necessary for or ancillary to:

- (1) Cultivation of crops;
- (2) Aquaculture;
- (3) Landscaping; provided that the authority finds that the proposed structure or activity will not adversely affect beach processes and will not artificially fix the shoreline;
- (4) Drainage;
- (5) Boating, maritime, or water sports recreational facilities;
- (6) Facilities or improvements by public agencies or public utilities regulated under section 269;¹
- (7) Private facilities or improvements that are clearly in the public interest;
- (8) Private facilities or improvements which will neither adversely affect beach processes nor artificially fix the shoreline; provided that the authority also finds that hardship will result to the applicant if the facilities or improvements are not allowed within the shoreline area;
- (9) Private facilities or improvements that may artificially fix the shoreline; provided that the authority also finds that shoreline erosion is likely to cause hardship to the applicant if the facilities or improvements are not allowed within the shoreline area; provided further that the authority imposes conditions to prohibit any structure seaward of the existing shoreline unless it is clearly in the public interest; or
- (10) Moving of sand from one location seaward of the shoreline to another location seaward of the shoreline; provided that the authority also finds that moving of sand will not adversely affect beach processes, will not

diminish the size of a public beach, and will be necessary to stabilize an eroding shoreline.

(b) Hardship shall be defined in rules adopted by the authority under chapter 91. Hardship shall not be determined as a result of county zoning changes, planned development permits, cluster permits, or subdivision approvals after the effective date of this Act, or as a result of any other permit or approval listed in rules adopted by the authority.

(c) No variance shall be granted unless appropriate conditions are imposed:

- (1) To maintain safe lateral access to and along the shoreline or adequately compensate for its loss;
- (2) To minimize risk of adverse impacts on beach processes;
- (3) To minimize risk of structures failing and becoming loose rocks or rubble on public property; and
- (4) To minimize adverse impacts on public views to, from, and along the shoreline.”

SECTION 15. Section 205A-49, Hawaii Revised Statutes, is amended to read as follows:

“§205A-49 Adoption of rules. Each agency charged with carrying out this part shall adopt rules [under chapter 91, as necessary, to implement or comply with this part by June 30, 1987.] necessary to implement or comply with this part by July 1, 1990. All rules shall be adopted under chapter 91.”

SECTION 16. Section 205A-47, Hawaii Revised Statutes, is repealed.

SECTION 17. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 18. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 19. This Act shall take effect upon its approval.

(Approved June 16, 1989.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.