

ACT 169

H.B. NO. 538

A Bill for an Act Relating to Coastal Zone Management.

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

SECTION 1. The legislature finds that there is a need to clarify the language of chapter 205A, Hawaii Revised Statutes, pertaining to a public advisory group because of litigation and to revise the objectives and policies of the chapter to make them consistent with the practical intent and purpose of coastal zone management.

The purpose of this Act is to make clear that it is the lead agency’s responsibility to maintain a public advisory body and that the body is advisory to the lead agency and the state coastal zone management program. The Act amends certain objectives and policies to make the former all goal statements and the latter all implementation statements.

The Act increases the range of total and daily penalties which can be assessed for violations of part II or part III of chapter 205A, Hawaii Revised Statutes.

SECTION 2. Section 205A-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

““Public advisory body” means the advisory body established in section 205A-3.5;”

2. By repealing the definition of “advisory group”.

[~~““Advisory group” means the marine and coastal zone management advisory group established in section 205A-3.5;”~~]

SECTION 3. Section 205A-2, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

- “(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 manmade historic and prehistoric 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, including reefs, 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, subsidence, and pollution.
 - (7) Managing development;
 - (A) Improve the development review process, communication, and public participation in the management of coastal resources and hazards.
 - (8) Public participation;
 - (A) Stimulate public awareness, education, and participation in coastal management.
 - (9) Beach protection;
 - (A) Protect beaches for public use and recreation.
 - (10) Marine resources;
 - (A) ~~[Implement the State’s ocean resources management plan.]~~ Promote the protection, use, and development of marine and coastal resources to assure their sustainability.
- (c) Policies.
- (1) Recreational resources;
 - (A) Improve coordination and funding of coastal recreational 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, fishponds, and sand 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) Ensuring public recreational ~~[use]~~ uses of county, state, and federally owned or controlled shoreline lands and waters having recreational value consistent with public safety standards and conservation of natural resources;
 - (vi) Adopting water quality standards and regulating point and nonpoint 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, and 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, and county ~~[planning commissions;]~~ authorities; 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) Ensure 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]~~ that are not coastal dependent to locate in inland areas.
 - (4) Coastal ecosystems;
 - (A) Exercise an overall conservation ethic, and practice stewardship in the protection, use, and development of marine and coastal resources;
 - ~~[(A)]~~ (B) Improve the technical basis for natural resource management;
 - ~~[(B)]~~ (C) Preserve valuable coastal ecosystems, including reefs, of significant biological or economic importance;
 - ~~[(C)]~~ (D) 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)]~~ (E) Promote water quantity and quality planning and management practices ~~[which]~~ that reflect the tolerance of fresh water and marine ecosystems and ~~[prohibit land and water uses which violate state water quality standards.]~~ maintain and enhance water quality through the development and implementation of point and nonpoint source water pollution control measures.
 - (5) Economic uses;
 - (A) Concentrate coastal dependent development in appropriate areas;

- (B) Ensure that coastal dependent development such as harbors and ports, and coastal related development such as 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) Use of presently designated locations is not feasible;
 - (ii) Adverse environmental effects are minimized; and
 - (iii) The development is important to the State's economy.
- (6) Coastal hazards;
- (A) Develop and communicate adequate information about storm wave, tsunami, flood, erosion, subsidence, and point and nonpoint source pollution hazards;
 - (B) Control development in areas subject to storm wave, tsunami, flood, erosion, hurricane, wind, subsidence, and point and nonpoint source pollution hazards;
 - (C) Ensure that developments comply with requirements of the Federal Flood Insurance Program; and
 - (D) Prevent coastal flooding from inland projects[; and
 - (E) ~~Develop a coastal point and nonpoint source pollution control program].~~
- (7) Managing development;
- (A) Use, implement, and enforce existing law effectively to the maximum extent possible in managing present and future coastal zone development;
 - (B) Facilitate timely processing of applications 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-eyele~~] life cycle and in terms understandable to the public to facilitate public participation in the planning and review process.
- (8) Public participation;
- (A) [~~Maintain a public advisory body to identify coastal management problems and to provide policy advice and assistance to the coastal zone management program;~~] Promote public involvement in coastal zone management processes;
 - (B) Disseminate information on coastal management issues by means of educational materials, published reports, staff contact, and public workshops for persons and organizations concerned with [~~coastal-related~~] coastal issues, developments, and government activities; and
 - (C) Organize workshops, policy dialogues, and site-specific mediations to respond to coastal issues and conflicts.
- (9) Beach protection;
- (A) Locate new structures inland from the shoreline setback to conserve open space, minimize interference with natural shoreline processes, and [~~to~~] minimize loss of improvements due to erosion;

- (B) Prohibit construction of private erosion-protection structures seaward of the shoreline, except when they result in improved aesthetic and engineering solutions to erosion at the sites and do not interfere with existing recreational and waterline activities; and
 - (C) Minimize the construction of public erosion-protection structures seaward of the shoreline.
- (10) Marine resources;
- (A) ~~Exercise an overall conservation ethic, and practice stewardship in the protection, use, and development of marine and coastal resources;~~
 - (B) ~~Assure~~ Ensure that the use and development of marine and coastal resources are ecologically and environmentally sound and economically beneficial;
 - ~~(C)~~ (B) Coordinate the management of marine and coastal resources and activities [~~management~~] to improve effectiveness and efficiency;
 - ~~(D)~~ (C) Assert and articulate the interests of the State as a partner with federal agencies in the sound management of ocean resources within the United States exclusive economic zone;
 - ~~(E)~~ (D) Promote research, study, and understanding of ocean processes, marine life, and other ocean resources in order to acquire and inventory information necessary to understand how ocean development activities relate to and impact upon ocean and coastal resources; and
 - ~~(F)~~ (E) Encourage research and development of new, innovative technologies for exploring, using, or protecting marine and coastal resources.”

SECTION 4. 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, federal permits, federal licenses, and federal development proposals for consistency with the coastal zone management program;
- (4) Consult with the counties and the public in preparing guidelines to further specify and clarify the objectives and policies of [~~the~~ this 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[;], including the maintenance of a public advisory body to identify coastal management problems and to provide policy advice and assistance to the lead agency;

- (7) Prepare and periodically update a plan for use of coastal zone management funds to resolve coastal problems and issues that are not adequately addressed by existing laws and rules;
- (8) Advocate agency compliance with chapter 205A;
- (9) Monitor the coastal zone management-related enforcement activities of the state and county agencies responsible for the administration of the objectives and policies of this chapter;
- (10) 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; and
- (11) Coordinate the implementation of the ocean resources management plan.’’

SECTION 5. Section 205A-3.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§205A-3.5]-Advisory group;]~~ **Public advisory body; establishment; composition.** (a) There is established within the lead agency [~~a marine and coastal zone management advisory group.~~] a public advisory body that shall provide support to the lead agency as set forth in subsection (f).

(b) ~~The [advisory group] public advisory body shall be composed of [twenty members. Advisory group membership shall include:~~

- (1) ~~The directors of the departments of planning in the counties of Hawaii, Kauai, and Maui and the director of the department of land utilization in the city and county of Honolulu;~~
- (2) ~~The attorney general, the chairperson of the board of agriculture, the director of business, economic development, and tourism, the adjutant general, the director of health, the chairperson of the board of land and natural resources, the director of public safety, the director of transportation, and the dean of the school of ocean and earth sciences and technology of the University of Hawaii;~~
- (3) ~~The executive director of the Kahoolawe island reserve commission; and~~
- (4) ~~Six non-government members, who shall be appointed by the governor for staggered terms of not more than two years.] not more than twelve members who shall be appointed by the director of the lead agency for staggered terms of not more than three years. These members shall be selected with consideration given to the following criteria:~~

~~[(A)] (1) Statewide geographic distribution; and~~

~~[(B)] (2) Balanced representation from among [commercial, environmental, native Hawaiian, recreational, and research interests.~~

~~Prior to the appointment of the non-governmental members, the lead agency shall undertake widespread solicitation of applications from persons who are interested in serving on the advisory group.~~

~~(C) The director of the] the following interests: business, environment, practitioners of native Hawaiian culture, terrestrial and marine commerce, recreation, research, and tourism.~~

The lead agency shall [serve as the chair of the advisory group and shall serve in a voting capacity.] undertake widespread solicitation of applications from persons who are interested in serving on the public advisory body.

(c) The public advisory body shall select its own chair from among its members.

~~(d) [A coordinating committee may be established to assist the advisory group.] The public advisory body may establish working groups as needed. Working group members may include persons who are not members of the public advisory body.~~

~~(e) [Advisory group] Public advisory body and [coordinating committee] working group members shall serve without compensation.~~

~~(f) The [advisory group] public advisory body shall [advise] support the lead agency by providing advice regarding marine and coastal zone management planning, coordination, and facilitation of functions of the coastal zone management program. [The non-government members of the advisory group shall prepare and submit to the legislature, prior to each regular session, a summary of the recommendations appearing in the minutes of the meetings of the advisory group during the prior calendar year and actions resulting from those recommendations.] It shall:~~

- ~~(1) Evaluate the state coastal zone management program, including activity of the network agencies, and make recommendations for improvements;~~
- ~~(2) Advocate for the program to the public and the executive and legislative branches of government; and~~
- ~~(3) Advocate, provide for, and act upon citizen input.~~

~~(g) The [advisory group] public advisory body shall work toward the [establishment and] implementation of an integrated and comprehensive management system for marine and coastal zone resources, consistent with the objectives and policies established in this chapter.”~~

SECTION 6, Section 205A-22, Hawaii Revised Statutes, is amended by amending the definition of “development” to read:

““Development” means any of the uses, activities, or operations on land or in or under water within a special management area that are included below:

- (1) Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;
- (2) Grading, removing, dredging, mining, or extraction of any materials;
- (3) Change in the density or intensity of use of land, including but not limited to the division or subdivision of land;
- (4) Change in the intensity of use of water, ecology related thereto, or of access thereto; and
- (5) Construction, reconstruction, demolition, or alteration of the size of any structure.

“Development” does not include the following:

- (1) Construction of a single-family residence that is not part of a larger development;
- (2) Repair or maintenance of roads and highways within existing rights-of-way;
- (3) Routine maintenance dredging of existing streams, channels, and drainage ways;
- (4) Repair and maintenance of underground utility lines, including but not limited to water, sewer, power, and telephone and minor appurtenant structures such as pad mounted transformers and sewer pump stations;
- (5) Zoning variances, except for height, density, parking, and shoreline setback;
- (6) Repair, maintenance, or interior alterations to existing structures;
- (7) Demolition or removal of structures, except those structures located on any historic site as designated in national or state registers;
- (8) Use of any land for the purpose of cultivating, planting, growing, and harvesting plants, crops, trees, and other agricultural, horticultural, or

forestry products or animal husbandry, or aquaculture or mariculture of plants or animals, or other agricultural purposes;

- (9) Transfer of title to land;
 - (10) Creation or termination of easements, covenants, or other rights in structures or land;
 - (11) Subdivision of land into lots greater than twenty acres in size;
 - (12) Subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed; provided that any land which is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels;
 - (13) Installation of underground utility lines and appurtenant aboveground fixtures less than four feet in height along existing corridors;
 - (14) Structural and nonstructural improvements to existing single-family residences, [~~including additional dwelling units~~²] where otherwise permissible; and
 - (15) Nonstructural improvements to existing commercial structures;
- provided that whenever the authority finds that any excluded use, activity, or operation [is or may become part of a larger project the cumulative impact of which] may have a cumulative impact, or a significant environmental or ecological effect on a special management area, that use, activity, or operation shall be defined as “development” for the purpose of this part.”

SECTION 7. Section 205A-30, Hawaii Revised Statutes, is amended to read as follows:

“§205A-30 Emergency and minor permits. Each county authority shall provide specific procedures consistent with this part for the issuance of special management area emergency permits or special management area minor permits, pursuant to the procedural requirements within this part, and judicial review from the grant and denial thereof. The lead agency shall file notice of special management area minor permits in the next available issue of the periodic bulletin of the office of environmental quality control.”

SECTION 8. Section 205A-32, Hawaii Revised Statutes, is amended to read as follows:

“§205A-32 Penalties. (a) Any person who violates any provision of part II or part III shall be liable [fœr] as follows:

(1) For a civil fine not to exceed [~~\$10,000~~] \$100,000; or

(2) For the cost of returning the affected environment or ecology within the coastal management area to the condition existing before the violation.

(b) In addition to any other penalties, any person who is violating any provision of part II or part III shall be liable for a civil fine not to exceed [~~\$1,000~~] \$10,000 a day for each day in which such violation persists.

(c) Any civil fine or other penalty 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 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

ACT 169

SECTION 10. This Act shall take effect upon its approval.

(Approved May 29, 2001.)

Notes

1. So in original.
2. Prior to amendment “;” appeared here.