

JAN 24 2013

A BILL FOR AN ACT

RELATING TO COASTAL ZONE MANAGEMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

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

4 "§205A- State consistency review and certification. (a)

5 Notwithstanding any other law to the contrary, a development by
6 a state agency on state land within the special management area
7 need not obtain a permit or shoreline setback variance as
8 otherwise required by this chapter, provided that the
9 development meets the following requirements:

10 (1) The state agency shall conduct a state consistency
11 review;

12 (2) Prior to completion of the state consistency review,
13 the state agency shall file a notice of the state
14 consistency review, with a thirty-day comment period;

15 (3) Prior to publication of the notice of the state
16 consistency review, the state agency shall provide a
17 copy of its notice of the state consistency review to
18 the lead agency;

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- 1 (4) After state agency responses to relevant public
2 comments received during the thirty-day period have
3 been sent to the commenting persons or entities and
4 consultation with the lead agency has concluded, the
5 state agency shall file a notice of state consistency
6 certification, which notice shall include instructions
7 on how to retrieve electronic and printed copies of
8 the state agency responses and all public comments
9 received by the state agency; and
- 10 (5) Except as otherwise provided by law, printed copies of
11 responses and public comments shall be provided upon
12 request, provided that the state agency may require
13 the payment of the reasonable cost of providing paper
14 copies.
- 15 (b) After publication of the state consistency
16 certification, a development by a state agency on state land
17 shall be allowed within a special management area without
18 obtaining a permit or shoreline setback variance as otherwise
19 required by this chapter.
- 20 (c) The process of state consistency review and
21 consistency certification may occur concurrently with an
22 environmental review under chapter 343.

1 (d) Subsection (a) shall not apply to a development by a
2 state agency that is subject to federal consistency review
3 pursuant to title 15 Code of Federal Regulations part 930. Upon
4 issuance of a federal consistency concurrence pursuant to title
5 15 Code of Federal Regulations part 930, a development by a
6 state agency on state land shall be allowed without obtaining a
7 permit or shoreline setback variance as otherwise required by
8 this chapter.

9 (e) The lead agency may adopt, amend, or repeal rules to
10 implement the purposes of this section."

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

13 "**§205A-1 Definitions.** As used in this chapter, unless the
14 context otherwise requires:

15 "Agency" means any agency, board, commission, department,
16 or officer of a county government or the state government,
17 including the authority as defined in part II[+].

18 "Artificial light" or "artificial lighting" means the light
19 emanating from any fixed human-made device.

20 "Coastal zone management area" means all lands of the State
21 and the area extending seaward from the shoreline to the limit
22 of the State's police power and management authority, including
23 the United States territorial sea[+].

1 "Coastal zone management program" means the comprehensive
2 statement in words, maps, or other permanent media of
3 communication, prepared, approved for submission, and amended by
4 the State and approved by the United States government pursuant
5 to Public Law No. 92-583, as amended, and the federal
6 regulations adopted pursuant thereto, which describes
7 objectives, policies, laws, standards, and procedures to guide
8 and regulate public and private uses in the coastal zone
9 management area, provided [~~however~~] that the "coastal zone
10 management program" is consistent with the intent, purpose, and
11 provisions of this chapter[+].

12 "Directly illuminate" means to illuminate through the use
13 of a glowing element, lamp, globe, or reflector of an artificial
14 light source.

15 "Land" means the earth, water, and air above, below, or on
16 the surface[+].

17 "Lead agency" means the office of planning[+].

18 "Notice unless otherwise indicated means publication in
19 the periodic bulletin published by the office of environmental
20 quality control, pursuant to section 343-3.

21 "Ocean waters" means all waters seaward of the shoreline
22 within the jurisdiction of the State.

1 "Person" means an individual, corporation, or partnership,
2 and an organization or association, whether or not
3 incorporated[+].

4 "Public advisory body" means the advisory body established
5 in section 205A-3.5[+].

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

11 "State consistency certification" means a statement by a
12 state agency that it has completed the state consistency review
13 and the development by a state agency on state land is
14 consistent with section 205A-26(1), (2)(A), (2)(B), and (3) and
15 with the objectives and policies of section 205A-2.

16 "State consistency review" means the review of a
17 development by a state agency on state land for consistency with
18 section 205A-26(1), (2)(A), (2)(B), and (3) and with the
19 objectives and policies of section 205A-2."

20 SECTION 3. Section 205A-28, Hawaii Revised Statutes, is
21 amended to read as follows:

22 "**§205A-28 Permit required for development.** [~~No~~] Except as
23 provided by section 205A- , no development shall be allowed in

1 any county within the special management area without obtaining
2 a permit in accordance with this part."

3 SECTION 4. Section 205A-44, Hawaii Revised Statutes, is
4 amended by amending subsection (b) to read as follows:

5 "(b) Except as provided in this section, structures are
6 prohibited in the shoreline area without a variance pursuant to
7 this part. Structures in the shoreline area shall not need a
8 variance if:

- 9 (1) They were completed prior to June 22, 1970;
- 10 (2) They received either a building permit, board
11 approval, or shoreline setback variance prior to June
12 16, 1989;
- 13 (3) They are outside the shoreline area when they receive
14 either a building permit or board approval;
- 15 (4) They are necessary for or ancillary to continuation of
16 existing agriculture or aquaculture in the shoreline
17 area on June 16, 1989;
- 18 (5) They are minor structures permitted under rules
19 adopted by the department which do not affect beach
20 processes or artificially fix the shoreline and do not
21 interfere with public access or public views to and
22 along the shoreline; [~~or~~]

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1 (6) Work being done consists of maintenance, repair,
2 reconstruction, and minor additions or alterations of
3 legal boating, maritime, or watersports recreational
4 facilities, which are publicly owned, and which result
5 in little or no interference with natural shoreline
6 processes; or

7 (7) As provided in section 205A-_____;
8 provided that permitted structures may be repaired, but shall
9 not be enlarged within the shoreline area without a variance."

10 SECTION 5. Section 206E-8.5, Hawaii Revised Statutes, is
11 amended by amending subsection (a) to read as follows:

12 "(a) Notwithstanding chapter 205A, except as provided for
13 in section 205A-_____, all requests for developments within a
14 special management area and shoreline setback variances for
15 developments on any lands within a community development
16 district, for which a community development plan has been
17 developed and approved in accordance with section 206E-5, shall
18 be submitted to and reviewed by the lead agency as defined in
19 chapter 205A. In community development districts for which a
20 community development plan has not been developed and approved
21 in accordance with section 206E-5, parts II and III of chapter
22 205A shall continue to be administered by the applicable county

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1 authority until a community development plan for the district
2 takes effect."

3 SECTION 6. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 7. This Act shall take effect upon its approval.

6
7 INTRODUCED BY: 

8 BY REQUEST

Report Title:

Coastal Zone Management

Description:

Adds a new section to part II of chapter 205A, Hawaii Revised Statutes, to provide a process for state consistency review and certification for development by a state agency on state land within the special management area. After a notice of state consistency certification is published in the periodic bulletin by the Office of Environmental Quality Control, or upon issuance of federal consistency, a development by a state agency on state land shall be allowed within a special management area without obtaining a special management area permit or shoreline setback variance as otherwise required by chapter 205A.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Business, Economic Development, and Tourism

TITLE: A BILL FOR AN ACT RELATING TO COASTAL ZONE MANAGEMENT.

PURPOSE: Provide a streamlined review process for development by a state agency on state land within the special management area, in place of a county approved special management area permit and shoreline setback variance.

MEANS: Add a new section to part II of chapter 205A, Hawaii Revised Statutes, and amend sections 205A-1, 205A-28, 205A-44(b), and 206E-8.5(a), Hawaii Revised Statutes.

JUSTIFICATION: The special management area permitting system, managed by the counties and overseen by the State Office of Planning, is part of the federally approved Hawaii coastal zone management program. The special management area permitting process involves public hearings by the County Planning Commissions or the Council of the City and County of Honolulu, and may involve contested case hearings. Currently, special management area permitting is applicable to state projects on state land.

Last session, the Legislature and the Governor requested streamlining for special management area permits for state projects.

This bill allows state agencies with developments on state land to either self-certify compliance with chapter 205A, obtain a federal consistency concurrence pursuant to title 15 Code of Federal Regulations part 930, or continue to go through the special management area permitting and shoreline setback variance processes if they prefer.

The state consistency review process recognizes the State's preemptive authority

over counties on developments on state lands, while ensuring consistency with chapter 205A, Hawaii Coastal Zone Management Act.

Impact on the public: The state consistency review and certification will help the state expeditiously deliver capital improvement projects and repair and maintenance projects, without sacrificing coastal resources.

Impact on the department and other agencies: The Legislature designed the coastal zone management law to build upon the existing functions of agencies that comprise Hawaii's coastal zone management network. All state and county agencies must ensure that their rules comply with the coastal zone management objectives and policies within the scope of their authorities. The counties may need to amend their ordinances and rules in response to the proposed amendments to chapter 205A.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: BED 144.

OTHER AFFECTED AGENCIES: Department of Accounting and General Services, Department of Education, Department of Health, Department of Land and Natural Resources, Department of Transportation, Hawaii Community Development Authority, Office of Hawaiian Affairs, and University of Hawaii.

EFFECTIVE DATE: Upon approval.