
A BILL FOR AN ACT

RELATING TO COASTAL ZONE MANAGEMENT.

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

1 SECTION 1. Section 205A-43.5, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) Prior to action on a variance application, the
4 authority shall hold a public hearing under chapter 91. By
5 adoption of rules under chapter 91, the authority may delegate
6 responsibility to the department. Public and private notice,
7 including reasonable notice to abutting property owners and
8 persons who have requested this notice, shall be provided, but a
9 public hearing may be waived prior to action on a variance
10 application for:

- 11 (1) Stabilization of shoreline erosion by the moving of
12 sand entirely on public lands;
- 13 (2) Protection of a legal structure costing more than
14 \$20,000; provided the structure is at risk of
15 immediate damage from shoreline erosion;
- 16 (3) Other structures or activities; provided that no
17 person or agency has requested a public hearing within



1 twenty-five calendar days after public notice of the
2 application; or

3 (4) Maintenance, repair, reconstruction, and minor
4 additions or alterations of legal boating, maritime,
5 or watersports recreational facilities, which result
6 in little or no interference with natural shoreline
7 processes [-];

8 provided that a public hearing shall not be waived for action on
9 a variance application for a shoreline hardening structure that
10 will artificially fix the shoreline, including a seawall,
11 revetment, or groin, subject to section 205A-46(d)."

12 SECTION 2. Section 205A-44, Hawaii Revised Statutes, is
13 amended by amending subsection (b) to read as follows:

14 "(b) Except as provided in this section, structures are
15 prohibited in the shoreline area without a variance pursuant to
16 this part. [~~Structures~~] Except as provided in section 205A-
17 46(d), structures in the shoreline area shall not need a
18 variance if:

19 (1) They were completed prior to June 22, 1970;



- 1 (2) They received either a building permit, board
2 approval, or shoreline setback variance prior to June
3 16, 1989;
- 4 (3) They are outside the shoreline area when they receive
5 either a building permit or board approval;
- 6 (4) They are necessary for or ancillary to continuation of
7 existing agriculture or aquaculture in the shoreline
8 area on June 16, 1989;
- 9 (5) They are minor structures permitted under rules
10 adopted by the department which do not affect beach
11 processes or artificially fix the shoreline and do not
12 interfere with public access or public views to and
13 along the shoreline; or
- 14 (6) Work being done consists of maintenance, repair,
15 reconstruction, and minor additions or alterations of
16 legal boating, maritime, or watersports recreational
17 facilities, which are publicly owned, and which result
18 in little or no interference with natural shoreline
19 processes;
- 20 provided that permitted structures may be repaired, but shall
21 not be enlarged within the shoreline area without a variance."



1 SECTION 3. Section 205A-46, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§205A-46 Variances. (a) [A] Except as provided in
4 subsection (d), a variance may be granted for a structure or
5 activity otherwise prohibited in this part if the authority
6 finds in writing, based on the record presented, that the
7 proposed structure or activity is necessary for or ancillary to:

- 8 (1) Cultivation of crops;
- 9 (2) Aquaculture;
- 10 (3) Landscaping; provided that the authority finds that
11 the proposed structure or activity will not adversely
12 affect beach processes and will not artificially fix
13 the shoreline;
- 14 (4) Drainage;
- 15 (5) Boating, maritime, or watersports recreational
16 facilities;
- 17 (6) Facilities or improvements by public agencies or
18 public utilities regulated under chapter 269;
- 19 (7) Private facilities or improvements that are clearly in
20 the public interest;



- 1 (8) Private facilities or improvements which will neither
2 adversely affect beach processes nor artificially fix
3 the shoreline; provided that the authority also finds
4 that hardship will result to the applicant if the
5 facilities or improvements are not allowed within the
6 shoreline area;
- 7 (9) Private facilities or improvements that may
8 artificially fix the shoreline; provided that the
9 authority also finds that shoreline erosion is likely
10 to cause hardship to the applicant if the facilities
11 or improvements are not allowed within the shoreline
12 area, and the authority imposes conditions to prohibit
13 any structure seaward of the existing shoreline unless
14 it is clearly in the public interest; or
- 15 (10) Moving of sand from one location seaward of the
16 shoreline to another location seaward of the
17 shoreline; provided that the authority also finds that
18 moving of sand will not adversely affect beach
19 processes, will not diminish the size of a public
20 beach, and will be necessary to stabilize an eroding
21 shoreline.



1 (b) Hardship shall be defined in rules adopted by the
2 authority under chapter 91. Hardship shall not be determined as
3 a result of county zoning changes, planned development permits,
4 cluster permits, or subdivision approvals after June 16, 1989,
5 or as a result of any other permit or approval listed in rules
6 adopted by the authority.

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

9 (1) To maintain safe lateral access to and along the
10 shoreline or adequately compensate for its loss;

11 (2) To minimize risk of adverse impacts on beach
12 processes;

13 (3) To minimize risk of structures failing and becoming
14 loose rocks or rubble on public property; and

15 (4) To minimize adverse impacts on public views to, from,
16 and along the shoreline.

17 (d) No variance shall be granted to allow for the
18 construction of a shoreline hardening structure that will
19 artificially fix the shoreline, including a seawall, revetment,
20 or groin, unless the applicant demonstrates that the shoreline
21 hardening structure is necessary to protect an existing legal



1 object, structure, or activity from damage due to seawater
2 inundation or shoreline erosion and the object, structure, or
3 activity cannot reasonably be protected by relocating it outside
4 of the shoreline area. In determining whether a variance for a
5 shoreline hardening structure may be approved, the authority
6 shall consider the following:

- 7 (1) The feasibility and cost of relocating the relevant
8 structure, object, or activity outside of the
9 shoreline area;
- 10 (2) The likelihood and severity of damage that will occur
11 if the shoreline hardening structure is not
12 constructed;
- 13 (3) The availability of alternative means to protect the
14 relevant object, structure, or activity;
- 15 (4) Whether the shoreline hardening structure is the only
16 reasonable alternative to protect a relevant
17 structure, object, or activity from damage due to
18 shoreline erosion;
- 19 (5) The nature and scope of valued cultural and historical
20 resources in the seaward areas that may be impacted by
21 shoreline erosion resulting from the installation of a



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1 shoreline hardening structure, impact to any
 2 associated native Hawaiian traditional and customary
 3 practices, and the feasibility of action that may be
 4 taken to protect the resources and practices; and
 5 (6) The potential diminution of safe lateral public access
 6 and enjoyment of shoreline area resulting from the
 7 shoreline hardening structure, and conditions,
 8 including but not limited to public access easements,
 9 that may be required to mitigate any such diminution."

10 SECTION 4. This Act does not affect rights and duties that
 11 matured, penalties that were incurred, and proceedings that were
 12 begun before its effective date.

13 SECTION 5. Statutory material to be repealed is bracketed
 14 and stricken. New statutory material is underscored.

15 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY: *[Signature]*
Mildred E. Lowen



[Signature]

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[Signature]

[Signature]

JAN 16 2018



H.B. NO. 1750

Report Title:

Shoreline Area; Coastal Zone Management; Seawall; Shoreline Hardening Structure

Description:

Prohibits variances for installation of shoreline hardening structures in shoreline areas without a public hearing and a showing that the shoreline hardening structure is necessary to protect an existing legal object, structure, or activity from damage due to seawater inundation or shoreline erosion.

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