

A Bill for an Act Relating to Coastal Zone Management.

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

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

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

- (1) “Agency” means any agency, board, commission, department, or officer of a county government or the state government, including the authority as defined in part II;
- (2) “Coastal zone management area” means the special management area after compliance pursuant to section 205A-23 of this chapter, and the waters from the shoreline to the seaward limit of the State’s jurisdiction and any other area which the head agency may designate for the purpose of administering the coastal zone management program;
- (3) “Coastal zone management program” means the comprehensive statement in words, maps, or other permanent media of communication, prepared, approved for submission, and amended by the State and approved by the United States government pursuant to Public Law No. 92-583, as amended, and the federal regulations adopted pursuant thereto, which describes objectives, policies, laws, standards, and procedures to guide and regulate public and private uses in the coastal zone management area, provided however the “coastal zone management program” is consistent with the intent, purpose, and provisions of this chapter;
- (4) “Land” means the earth, water, and air above, below, or on the surface;
- (5) “Lead agency” means the department of planning and economic development;
- (6) “Person” means an individual, corporation, or partnership, and an organization or association, whether or not incorporated;
- (7) “Shoreline” means the upper reaches of the wash of the waves, other than storm and tidal waves, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves.”

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

“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 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;
 - (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 any guidelines enacted by the legislature."

SECTION 3. Section 205A-4, Hawaii Revised Statutes, is amended to read as follows:

"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 any guidelines enacted by the legislature shall be binding upon actions within the coastal zone management area by all agencies."

SECTION 4. Section 205A-5, Hawaii Revised Statutes, is amended to read as follows:

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

SECTION 5. Section 205A-6, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 205A-6 Cause of action. (a) Subject to chapters 661 and 662, 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 chapter within the special management area and the waters from the shoreline to the seaward limit of the State's jurisdiction; or
- (2) Has failed to perform any act or duty required to be performed under this chapter; or

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

(b) In any action brought under this section, the lead agency, if not a party, may 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 6. Part II of chapter 205A, Hawaii Revised Statutes, is amended by amending its title to read as follows:

"PART II. SPECIAL MANAGEMENT AREAS"

SECTION 7. Section 205A-22, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 205A-22 Definitions. As used in this part, unless the context otherwise requires:

- (1) "Applicant" means any individual, organization, partnership, or corporation, including any utility, and any agency of government.
- (2) "Authority" means the county planning commission, except in counties where the county planning commission is advisory only, in which case "authority" means the county council or such body as the council may by ordinance designate. The authority may, as appropriate, delegate the responsibility for administering this part.
- (3) "Development" means any of the uses, activities, or operations on land; in or under water, within the special management area that are included below, but not those uses, activities, or operations excluded in paragraph (B):
 - (A) "Development" includes the following:
 - (i) The placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;
 - (ii) Grading, removing, dredging, mining, or extraction of any materials;
 - (iii) Change in the density or intensity of use of land, including but not limited to the division or subdivision of land;
 - (iv) Change in the intensity of use of water, ecology related thereto, or of access thereto; and
 - (v) Construction, reconstruction, demolition, or alteration of the size of any structure.
 - (B) "Development" does not include the following:
 - (i) Construction of a single-family residence that is not part of a larger development;
 - (ii) Repair or maintenance of roads and highways within existing rights-of-way;

- (iii) Routine maintenance dredging of existing streams, channels, and drainage ways;
 - (iv) The 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;
 - (v) Zoning variances, except for height, density, parking, and shoreline setback;
 - (vi) Repair, maintenance, or interior alterations to existing structures;
 - (vii) Demolition or removal of structures, except those structures located on any historic site as designated in national or state registers;
 - (viii) The use of any land for the purpose of cultivating, planting, growing, and harvesting of 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 subject to review by the authority in accordance with paragraph (c);
 - (ix) The transfer of title to land;
 - (x) The creation or termination of easements, covenants, or other rights in structures or land; and
 - (xi) The subdivision of land into lots greater than twenty acres in size.
- (C) Whenever the authority finds that any use, activity, or operation excluded in paragraph (B) is or may become part of a larger project, the cumulative impact of which may have a significant environmental or ecological effect on the special management area, that use, activity, or operation shall be defined as "development" for the purpose of this part.
- (4) "Special management area" means the land extending inland from the shoreline as delineated on the maps filed with the authority as of June 8, 1977 or as amended pursuant to section 205A-23.
 - (5) "Special management area emergency permit" means an action by the authority authorizing development in cases of emergency requiring immediate action to prevent substantial physical harm to persons or property.
 - (6) "Special management area minor permit" means an action by the authority authorizing development, the total cost or fair market value of which is not in excess of \$25,000 and which has no substantial adverse environmental or ecological effect, taking into account potential cumulative effects.
 - (7) "Special management area use permit" means an action by the authority authorizing development, the total cost or fair market value of which exceeds \$25,000 or which may have a substantial adverse environmental or ecological effect, taking into account potential cumulative effects.
 - (8) "Structure" includes, but is not limited to any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line."

SECTION 8. Section 205A-23, Hawaii Revised Statutes, is amended to read:

“Sec. 205A-23 County special management area boundaries. (a) The special management area in each county shall be as shown on such maps filed with the authority as of June 8, 1977.

(b) On or before December 31, 1979, the authority shall review and pursuant to chapter 91, amend as necessary its special management area boundaries, to further the objectives and policies of this chapter, provided that any contraction of the special management area boundaries as provided for in paragraph (a), shall be subject to lead agency review and determination as to compliance with the objectives and policies of this chapter and any guidelines enacted by the legislature. Copies of the existing and amended maps shall be filed with the authority and the lead agency.

(c) Nothing in this chapter shall preclude the authority from amending its special management area boundary at any point in time; provided that the procedures and requirements outlined in paragraph (b) shall be complied with and provided further that any future special management area boundary adjustments shall be restricted to the coastal zone management area.”

SECTION 9. Section 205A-26, Hawaii Revised Statutes, is amended to read:

“Sec. 205A-26 Special management area guidelines. 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 minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest. 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 objectives, policies, and special management area guidelines of this chapter and any guidelines

enacted by the legislature.

- (C) That the development is consistent with the county general plan, zoning and subdivision codes and other applicable ordinances.
- (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.”

SECTION 10. Section 205A-27, Hawaii Revised Statutes, is amended to read:

“**Sec. 205A-27 Designation of special management area authority.** The authority is designated the special management area authority and is authorized to carry out the objectives, policies and procedures of this part.”

SECTION 11. Section 205A-28, Hawaii Revised Statutes, is amended to read:

“**Sec. 205A-28 Permit required for development.** No development shall be allowed in any county within the special management area without obtaining a permit in accordance with this part.”

SECTION 12. Section 205A-29, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 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 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 13. Section 205A-30, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 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.”

SECTION 14. Section 205A-31, Hawaii Revised Statutes, is repealed.

SECTION 15. Chapter 205A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**Sec. 205A- Injunctions.** Any person violating any provision of this chapter may be enjoined by the circuit court of the State by mandatory or restraining order necessary or proper to effectuate the purposes of this chapter in a suit brought by the authority or the lead agency.”

SECTION 16. Statutory material to be repealed is bracketed. New material is underscored.*

SECTION 17. This Act shall take effect upon its approval.

(Approved June 8, 1979.)

*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.