

ACT 258

H.B. NO. 1870-86

A Bill for an Act Relating to Coastal Zone Management.

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

SECTION 1. Section¹ 205A, Hawaii Revised Statutes, is amended by adding a new part to read as follows:

“PART III. SHORELINE SETBACKS

§205A-41 Definitions. As used in this part, unless the context otherwise requires:

“Authority” means the authority as defined in part II.

“Department” means the planning department of each county.

“Shoreline area” means all of the land area between the shoreline and the shoreline setback line.

“Shoreline setback line” means that line established in this part or by the county running inland from and parallel to the shoreline at a horizontal plane.

§205A-42 Determination of the shoreline. The board of land and natural resources shall adopt rules pursuant to chapter 91 prescribing procedures for determining a shoreline and appeals of shoreline determinations; provided that no determination of a shoreline shall be valid for a period longer than twelve months, except where the shoreline is fixed by man-made structures which have been approved by appropriate government agencies and for which engineering drawings exist to locate the interface between the shoreline and the structure.

§205A-43 Establishment of shoreline setbacks and duties and powers of the department. 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.

§205A-44 Prohibitions. (a) The mining or taking of sand, coral, rocks, soil, or other beach or marine deposits from the shoreline area, or within 1,000 feet seaward from the shoreline, or in water of 30 feet or less in depth in the territorial sea, is prohibited with the following exceptions:

- (1) The taking from a public beach of such materials for reasonable, personal, noncommercial use;
- (2) Where the mining or taking of sand by the State or county is for the replenishment of sand on public beaches at Hilo Bay, Waiki, Ala Moana, and Kailua beaches; provided that for the purpose of this paragraph an environmental impact statement for the proposed project shall be accepted 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, economic, 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 30 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;
- (3) The clearing of sand from existing drainage pipes and canals and from the mouths of streams; provided that the sand shall be placed on adjacent beaches unless such 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.

(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.

§205A-45 Shoreline setback lines established by county. The several counties through ordinances may require that shoreline setback lines be established at a distance greater than that established in this part.

§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.

§205A-47 Exemptions. Tunnels, canals, basins, and ditches, together with associated structures used by public utilities as the term is defined in section 269-1, wharves, docks, piers, and other harbor and waterfront improvements and any other maritime facility and water sport recreational facilities may be permitted within the shoreline area; provided that the plans are submitted for review and are approved by the authority after a public hearing has been held and that the appropriate state body has found that the proposed structures will result only in a minimum interference with natural shoreline processes; provided further that any such structure constructed by a governmental body shall be exempt from the provisions of this part except as to the requirement that two public hearings shall be held by the governmental body charged with such construction, once when the project is first conceived and again when the project is substantially designed and planned, but prior to the letting of the contract. Repair, strengthening, reinforcement, and maintenance of fishponds, and improvements for aquaculture farms shall be exempt from this part, upon issuance of a permit or waiver of the requirements by the board of land and natural resources.

§205A-48 Conflict of other laws. In case of a conflict between the requirements of any other state law or county ordinance regarding shoreline setback lines, the more restrictive requirements shall apply in furthering the purposes of this part. Nothing contained in this part shall be construed to diminish the jurisdiction of the state department of transportation over wharves, airports, docks, piers, small boat, or other harbors, and any other maritime or water sports recreational facilities to be constructed on state land by the State; provided that such plans are submitted for the review and information of the officer of the respective agency charged with the administration of the county zoning laws, and found not to conflict with any county ordinances, zoning laws, and building code.

§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."

SECTION 2. Section 205A-1, Hawaii Revised Statutes, is amended by amending the definition of "shoreline" to read:

"(7) "Shoreline" means the upper reaches of the wash of the waves, other than storm or tidal 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 3. Part II, Chapter 205, Hawaii Revised Statutes, is repealed.

SECTION 4. New statutory material is underscored.

SECTION 5. This Act does not affect rights, duties, and penalties that were incurred and proceedings that were begun before its effective date. All variances and permits legally granted before the effective date of this Act shall continue in full force and effect after November 30, 1986.

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

(Approved May 29, 1986.)

Note

1. So in original.