

## ACT 258

H.B. NO. 1721

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-2, Hawaii Revised Statutes, is amended to read as follows:

**“§205A-2 Coastal zone management program; objectives and policies.**

(a) The objectives and policies in this section shall apply to [both] all parts [I and II] of this chapter.

(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, [and] subsidence, and pollution.<sup>1</sup>
- (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.
- (c) Policies.
  - (1) Recreational resources;
    - (A) Improve coordination and funding of coastal [recreation] 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 [sandy] 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) [Encouraging expanded] Ensuring public recreational use of county, [State,] 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, county planning commissions; 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) [Insure] 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 are not coastal dependent to locate in inland areas.
- (4) Coastal ecosystems;
  - (A) Improve the technical basis for natural resource management;
  - (B) Preserve valuable coastal ecosystems, including reefs, of significant biological or economic importance;
  - (C) 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) Promote water quantity and quality planning and management practices which reflect the tolerance of fresh water and marine ecosystems and prohibit land and water uses which violate state water quality standards.
- (5) Economic uses;
  - (A) Concentrate [in appropriate areas the location of] coastal dependent development [necessary to the State's economy;] in appropriate areas;
  - (B) [Insure] 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) [Utilization] Use of presently designated locations is not feasible;
    - (ii) Adverse environmental effects are minimized; and
    - (iii) [Important] The development is important to the State's economy.
- (6) Coastal hazards;
  - (A) Develop and communicate adequate information [on] about storm wave, tsunami, flood, erosion, [and] subsidence, and point and nonpoint source pollution [hazard;] hazards;
  - (B) Control development in areas subject to storm wave, tsunami, flood, erosion, [and] subsidence, and point and nonpoint source pollution [hazard;] 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) [Effectively utilize and] 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 [application] 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-cycle and in terms understandable to the [general] 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;
  - (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 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 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.”

SECTION 2. 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, permits, licenses, and development proposals for consistency with the coastal zone management program;
- (4) [In consultation] Consult with the counties and the [general] public [prepare] in preparing 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 with the objectives and policies of this chapter;
  - (6) Facilitate public participation in the coastal zone management program; [and]
  - (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; and
  - [(7)] (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.”

SECTION 3. Section 205A-5, Hawaii Revised Statutes, is amended to read as follows:

“**§205A-5 Compliance.** (a) All agencies shall ensure that their rules comply with the objectives and policies of this chapter and any guidelines enacted by the legislature.

(b) All agencies shall enforce the objectives and policies of this chapter and any rules adopted pursuant to this chapter.”

SECTION 4. Section 205A-22, Hawaii Revised Statutes, is amended by adding a definition of “department” to be appropriately inserted and to read:

““Department” means the planning department in the counties of Kauai, Maui, and Hawaii, and the department of land utilization in the city and county of Honolulu, or other appropriate agency as designated by the county councils.”

SECTION 5. Section 205A-41, Hawaii Revised Statutes, is amended to read as follows:

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

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

“Board approval” means approval by the board of land and natural resources pursuant to section 183-41.

[“Department” means the planning department of each county.]

“Shoreline area” shall include all of the land area between the shoreline and the shoreline setback line and may include the area between mean sea level and the shoreline[.]; provided that if the highest annual wash of the waves is fixed or significantly affected by a structure that has not received all permits and approvals required by law or if any part of any structure in violation of this part extends seaward of the shoreline, then the term “shoreline area” shall include the entire structure.

“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.

“Structure” includes, but is not limited to, any portion of any building, pavement, road, pipe, flume, utility line, fence, groin, wall, or revetment.”

SECTION 6. Section 205A-46, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A variance may be granted for a structure or activity otherwise prohibited in<sup>2</sup> this part if the authority finds in writing, based on the record presented, that the proposed structure or activity is necessary for or ancillary to:

- (1) Cultivation of crops;
- (2) Aquaculture;
- (3) Landscaping; provided that the authority finds that the proposed structure or activity will not adversely affect beach processes and will not artificially fix the shoreline;
- (4) Drainage;
- (5) Boating, maritime, or watersports recreational facilities;
- (6) Facilities or improvements by public agencies or public utilities regulated under chapter 269;
- (7) Private facilities or improvements that are clearly in the public interest;
- (8) Private facilities or improvements which will neither adversely affect beach processes nor artificially fix the shoreline; provided that the authority also finds that hardship will result to the applicant if the facilities or improvements are not allowed within the shoreline area;
- (9) Private facilities or improvements that may artificially fix the shoreline; provided that the authority also finds that shoreline erosion is likely to cause hardship to the applicant if the facilities or improvements are not allowed within the shoreline area; provided further that], and the authority imposes conditions to prohibit any structure seaward of the existing shoreline unless it is clearly in the public interest; or
- (10) Moving of sand from one location seaward of the shoreline to another location seaward of the shoreline; provided that the authority also finds that moving of sand will not adversely affect beach processes, will not diminish the size of a public beach, and will be necessary to stabilize an eroding shoreline.”

SECTION 7. Each agency charged with carrying out this Act shall adopt rules necessary to implement or comply with the provisions of this Act by July 1, 1994.

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 9. This Act shall take effect on July 1, 1993.

(Approved June 18, 1993.)

Notes

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