

A Bill for an Act Relating to Coastal Areas.

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

SECTION 1. The legislature finds that there are many shoreline areas throughout the state where the overgrowth of vegetation inhibits lateral access and transit along the beach, thereby denying the public of use and enjoyment of the public domain. The area seaward of the shoreline is part of the State's conservation district and is regulated by the department of land and natural resources. Although natural vegetative overgrowth exists along beach areas, there is also evidence in many areas of vegetative overgrowth into the beach area induced or cultivated by private property owners. The department does not have the funding nor should it be financially responsible for the removal of induced or cultivated vegetation by private landowners which interfere or encroach seaward of the shoreline.

The legislature further finds that beach transit corridors are similar to public sidewalks in the sense that they are for public use. To maintain beach transit along the shoreline, provisions similar to those pertaining to the maintenance of sidewalks are needed when induced or cultivated vegetation interferes or encroaches into the beach transit corridor.

The purpose of this Act is to reaffirm a longstanding public policy of extending to public use and ownership as much of Hawaii's shoreline as is reasonably possible by ensuring the public's lateral access along the shoreline, by requiring the removal of the landowners' induced or cultivated vegetation that interferes or encroaches seaward of the shoreline.

SECTION 2. Chapter 115, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§115- Duty to maintain access within beach transit corridors.** (a) The department of land and natural resources shall maintain access within beach transit corridors under this chapter and chapter 183C, by requiring private property owners to ensure that beach transit corridors abutting their lands shall be kept passable and free from the landowner's human-induced, enhanced, or unmaintained vegetation that interferes or encroaches in the beach transit corridors.

(b) In addition to the criminal penalties in section 115-9, the department is authorized to issue notice to landowners who fail to maintain access within beach transit corridors, as set out in subsection (a), abutting their property. If any landowner fails to remove the landowner's human-induced, enhanced, or unmaintained vegetation within twenty-one days of notice being issued, the department shall take any action authorized under section 183C-7 as necessary to maintain access within beach transit corridors; provided that if the landowner contests the basis upon which the notice was issued prior to the expiration of the notice period, the department's enforcement actions under section 183C-7 shall be tolled until the final resolution of the contested matter.

(c) As used in this section, "landowner" means the record owner of the property or the record owner's agent, including a lessee, tenant, property manager, or trustee."

SECTION 3. Section 115-5, Hawaii Revised Statutes, is amended to read as follows:

~~“[§115-5] Transit area and public Beach transit corridor defined. (a) The right of transit [along the shoreline exists below the private property line which is defined as being along the upper reaches of the wash of waves, usually evidenced by the edge of vegetation or by the debris left by the wash of waves;] shall exist seaward of the shoreline and this area shall be defined as a beach transit corridor. For purposes of this section, “shoreline” shall have the same meaning as in section 205A-1.~~

However, in areas of cliffs or areas where the nature of the topography is such that there is no reasonably safe transit for the public along the shoreline below the private property lines, the counties by condemnation ~~shall~~ may establish along the makai boundaries of the property lines public transit corridors which shall be not less than six feet wide.

(b) Along beach transit corridors where the abutting landowner’s human-induced, enhanced, or unmaintained vegetation interferes or encroaches with beach transit corridors, the department of land and natural resources may require the abutting landowner to remove the landowner’s interfering or encroaching vegetation.”

SECTION 4. Section 115-9, Hawaii Revised Statutes, is amended to read as follows:

~~“[§115-9] Obstructing access to public property; penalty. (a) A person commits the offense of obstructing access to public property if the person, by action or by having installed a physical impediment, intentionally prevents a member of the public from traversing:~~

- ~~(1) A public right-of-way;~~
- ~~(2) A transit area; [or]~~
- ~~(3) A public transit corridor; or~~
- ~~(4) A beach transit corridor;~~

~~and thereby obstructs access to and along the sea, the shoreline, or any inland public recreational area.~~

~~(b) Physical impediments that may prevent traversing include but are not limited to the following:~~

- ~~(1) Gates;~~
- ~~(2) Fences;~~
- ~~(3) Walls;~~
- ~~(4) Constructed barriers;~~
- ~~(5) Rubbish;~~
- ~~(6) Security guards; [and]~~
- ~~(7) Guard dogs or animals[-]; and~~
- ~~(8) A landowner’s human-induced, enhanced, or unmaintained vegetation that interferes or encroaches within beach transit corridors.~~

~~(c) Obstructing access to public property is a misdemeanor.~~

~~(d) Minimum fines for violation under this section shall be as follows:~~

- ~~(1) \$1,000 for a second conviction; and~~
- ~~(2) \$2,000 for any conviction after a second conviction.~~

~~(e) As used in this section:~~

~~“Landowner” means the record owner of the property or the record owner’s agent, including a lessee, tenant, property manager, or trustee.~~

~~“Person” means a natural person or a legal entity.~~

~~“Public recreational area” means public lands or bodies of water opened to the public for recreational use.”~~

SECTION 5. Section 205A-2, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

- “(c) Policies.
- (1) Recreational resources;
    - (A) Improve coordination and funding of coastal 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 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) Ensuring public recreational uses of county, 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, and county authorities; 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) 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 that are not coastal dependent to locate in inland areas[-];
- (4) Coastal ecosystems;
  - (A) Exercise an overall conservation ethic, and practice stewardship in the protection, use, and development of marine and coastal resources;
  - (B) Improve the technical basis for natural resource management;
  - (C) Preserve valuable coastal ecosystems, including reefs, of significant biological or economic importance;
  - (D) 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
  - (E) Promote water quantity and quality planning and management practices that reflect the tolerance of fresh water and marine ecosystems and maintain and enhance water quality through the development and implementation of point and nonpoint source water pollution control measures[-];
- (5) Economic uses;
  - (A) Concentrate coastal dependent development in appropriate areas;
  - (B) 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) Use of presently designated locations is not feasible;
    - (ii) Adverse environmental effects are minimized; and
    - (iii) The development is important to the State's economy[-];
- (6) Coastal hazards;
  - (A) Develop and communicate adequate information about storm wave, tsunami, flood, erosion, subsidence, and point and nonpoint source pollution hazards;
  - (B) Control development in areas subject to storm wave, tsunami, flood, erosion, hurricane, wind, subsidence, and point and nonpoint source pollution hazards;
  - (C) Ensure that developments comply with requirements of the Federal Flood Insurance Program; and
  - (D) Prevent coastal flooding from inland projects[-];
- (7) Managing development;
  - (A) 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 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 public to facilitate public participation in the planning and review process[-];
- (8) Public participation;
    - (A) Promote public involvement in coastal zone management processes;
    - (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 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, minimize interference with natural shoreline processes, and 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[-];
    - (D) Prohibit private property owners from creating a public nuisance by inducing or cultivating the private property owner's vegetation in a beach transit corridor; and
    - (E) Prohibit private property owners from creating a public nuisance by allowing the private property owner's unmaintained vegetation to interfere or encroach upon a beach transit corridor;
  - (10) Marine resources;
    - (A) Ensure that the use and development of marine and coastal resources are ecologically and environmentally sound and economically beneficial;
    - (B) Coordinate the management of marine and coastal resources and activities to improve effectiveness and efficiency;
    - (C) Assert and articulate the interests of the State as a partner with federal agencies in the sound management of ocean resources within the United States exclusive economic zone;
    - (D) Promote research, study, and understanding of ocean processes, marine life, and other ocean resources ~~in order~~ to acquire and inventory information necessary to understand how ocean development activities relate to and impact upon ocean and coastal resources; and
    - (E) Encourage research and development of new, innovative technologies for exploring, using, or protecting marine and coastal resources.”

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect upon its approval; provided that on June 30, 2013, this Act shall be repealed and sections 115-5, 115-9, and

205A-2(c), Hawaii Revised Statutes, shall be reenacted in the form in which they read one day prior to the effective date of this Act.

(Approved June 2, 2010.)

**Note**

1. Edited pursuant to HRS §23G-16.5.