



GOV. MSG. NO. 618

**EXECUTIVE CHAMBERS
HONOLULU**

LINDA LINGLE
GOVERNOR

June 2, 2010

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on June 2, 2010, the following bill was signed into law:

HB1808 HD3 SD1 CD1

A BILL FOR AN ACT
RELATING TO COASTAL AREAS.
ACT 160 (10)

Sincerely,



LINDA LINGLE

Approved by the Governor

on JUN 2 2010

HOUSE OF REPRESENTATIVES
TWENTY-FIFTH LEGISLATURE, 2009
STATE OF HAWAII

ACT 160

H.B. NO. 1808
H.D. 3
S.D. 1
C.D. 1

A BILL FOR AN ACT

RELATING TO COASTAL AREAS.

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

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

14 The legislature further finds that beach transit corridors
15 are similar to public sidewalks in the sense that they are for
16 public use. To maintain beach transit along the shoreline,
17 provisions similar to those pertaining to the maintenance of



1 sidewalks are needed when induced or cultivated vegetation
2 interferes or encroaches into the beach transit corridor.

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

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

12 "§115- Duty to maintain access within beach transit
13 corridors. (a) The department of land and natural resources
14 shall maintain access within beach transit corridors under this
15 chapter and chapter 183C, by requiring private property owners
16 to ensure that beach transit corridors abutting their lands
17 shall be kept passable and free from the landowner's human-
18 induced, enhanced, or unmaintained vegetation that interferes or
19 encroaches in the beach transit corridors.

20 (b) In addition to the criminal penalties in section 115-
21 9, the department is authorized to issue notice to landowners
22 who fail to maintain access within beach transit corridors, as



1 set out in subsection (a), abutting their property. If any
 2 landowner fails to remove the landowner's human-induced,
 3 enhanced, or unmaintained vegetation within twenty-one days of
 4 notice being issued, the department shall take any action
 5 authorized under section 183C-7 as necessary to maintain access
 6 within beach transit corridors; provided that if the landowner
 7 contests the basis upon which the notice was issued prior to the
 8 expiration of the notice period, the department's enforcement
 9 actions under section 183C-7 shall be tolled until the final
 10 resolution of the contested matter.

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

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

16 "~~[§]115-5[§] Transit area and public~~ **Beach transit**
 17 **corridor defined.** (a) The right of transit ~~[along the~~
 18 ~~shoreline exists below the private property line which is~~
 19 ~~defined as being along the upper reaches of the wash of waves,~~
 20 ~~usually evidenced by the edge of vegetation or by the debris~~
 21 ~~left by the wash of waves.] shall exist seaward of the shoreline~~
 22 and this area shall be defined as a beach transit corridor. For



1 purposes of this section, "shoreline" shall have the same
2 meaning as in section 205A-1.

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

9 (b) Along beach transit corridors where the abutting
10 landowner's human-induced, enhanced, or unmaintained vegetation
11 interferes or encroaches with beach transit corridors, the
12 department of land and natural resources may require the
13 abutting landowner to remove the landowner's interfering or
14 encroaching vegetation."

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

17 "~~+~~§115-9~~+~~ **Obstructing access to public property;**
18 **penalty.** (a) A person commits the offense of obstructing
19 access to public property if the person, by action or by having
20 installed a physical impediment, intentionally prevents a member
21 of the public from traversing:

22 (1) A public right-of-way;



1 (2) A transit area; [~~or~~]

2 (3) A public transit corridor; or

3 (4) A beach transit corridor;

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

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

8 (1) Gates;

9 (2) Fences;

10 (3) Walls;

11 (4) Constructed barriers;

12 (5) Rubbish;

13 (6) Security guards; [~~and~~]

14 (7) Guard dogs or animals[-]; and

15 (8) A landowner's human-induced, enhanced, or unmaintained
16 vegetation that interferes or encroaches within beach
17 transit corridors.

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

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

22 (1) \$1,000 for a second conviction; and

1 (2) \$2,000 for any conviction after a second conviction.

2 (e) As used in this section:

3 "Landowner" means the record owner of the property or the
4 record owner's agent, including a lessee, tenant, property
5 manager, or trustee.

6 "Person" means a natural person or a legal entity.

7 "Public recreational area" means public lands or bodies of
8 water opened to the public for recreational use."

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

11 "(c) Policies.

12 (1) Recreational resources;

13 (A) Improve coordination and funding of coastal
14 recreational planning and management; and

15 (B) Provide adequate, accessible, and diverse
16 recreational opportunities in the coastal zone
17 management area by:

18 (i) Protecting coastal resources uniquely suited
19 for recreational activities that cannot be
20 provided in other areas;

21 (ii) Requiring replacement of coastal resources
22 having significant recreational value



1 including, but not limited to[7] surfing
2 sites, fishponds, and sand beaches, when
3 such resources will be unavoidably damaged
4 by development; or requiring reasonable
5 monetary compensation to the State for
6 recreation when replacement is not feasible
7 or desirable;

8 (iii) Providing and managing adequate public
9 access, consistent with conservation of
10 natural resources, to and along shorelines
11 with recreational value;

12 (iv) Providing an adequate supply of shoreline
13 parks and other recreational facilities
14 suitable for public recreation;

15 (v) Ensuring public recreational uses of county,
16 state, and federally owned or controlled
17 shoreline lands and waters having
18 recreational value consistent with public
19 safety standards and conservation of natural
20 resources;

21 (vi) Adopting water quality standards and
22 regulating point and nonpoint sources of



- 1 pollution to protect, and where feasible,
2 restore the recreational value of coastal
3 waters;
- 4 (vii) Developing new shoreline recreational
5 opportunities, where appropriate, such as
6 artificial lagoons, artificial beaches, and
7 artificial reefs for surfing and fishing;
8 and
- 9 (viii) Encouraging reasonable dedication of
10 shoreline areas with recreational value for
11 public use as part of discretionary
12 approvals or permits by the land use
13 commission, board of land and natural
14 resources, and county authorities; and
15 crediting such dedication against the
16 requirements of section 46-6[-];
- 17 (2) Historic resources;
- 18 (A) Identify and analyze significant archaeological
19 resources;
- 20 (B) Maximize information retention through
21 preservation of remains and artifacts or salvage
22 operations; and



- 1 (C) Support state goals for protection, restoration,
2 interpretation, and display of historic
3 resources[-];
4 (3) Scenic and open space resources;
5 (A) Identify valued scenic resources in the coastal
6 zone management area;
7 (B) Ensure that new developments are compatible with
8 their visual environment by designing and
9 locating such developments to minimize the
10 alteration of natural landforms and existing
11 public views to and along the shoreline;
12 (C) Preserve, maintain, and, where desirable, improve
13 and restore shoreline open space and scenic
14 resources; and
15 (D) Encourage those developments that are not coastal
16 dependent to locate in inland areas[-];
17 (4) Coastal ecosystems;
18 (A) Exercise an overall conservation ethic, and
19 practice stewardship in the protection, use, and
20 development of marine and coastal resources;
21 (B) Improve the technical basis for natural resource
22 management;



- 1 (C) Preserve valuable coastal ecosystems, including
2 reefs, of significant biological or economic
3 importance;
- 4 (D) Minimize disruption or degradation of coastal
5 water ecosystems by effective regulation of
6 stream diversions, channelization, and similar
7 land and water uses, recognizing competing water
8 needs; and
- 9 (E) Promote water quantity and quality planning and
10 management practices that reflect the tolerance
11 of fresh water and marine ecosystems and maintain
12 and enhance water quality through the development
13 and implementation of point and nonpoint source
14 water pollution control measures[-];
- 15 (5) Economic uses;
- 16 (A) Concentrate coastal dependent development in
17 appropriate areas;
- 18 (B) Ensure that coastal dependent development such as
19 harbors and ports, and coastal related
20 development such as visitor industry facilities
21 and energy generating facilities, are located,
22 designed, and constructed to minimize adverse



- 1 social, visual, and environmental impacts in the
- 2 coastal zone management area; and
- 3 (C) Direct the location and expansion of coastal
- 4 dependent developments to areas presently
- 5 designated and used for such developments and
- 6 permit reasonable long-term growth at such areas,
- 7 and permit coastal dependent development outside
- 8 of presently designated areas when:
 - 9 (i) Use of presently designated locations is not
 - 10 feasible;
 - 11 (ii) Adverse environmental effects are minimized;
 - 12 and
 - 13 (iii) The development is important to the State's
 - 14 economy[-];
- 15 (6) Coastal hazards;
 - 16 (A) Develop and communicate adequate information
 - 17 about storm wave, tsunami, flood, erosion,
 - 18 subsidence, and point and nonpoint source
 - 19 pollution hazards;
 - 20 (B) Control development in areas subject to storm
 - 21 wave, tsunami, flood, erosion, hurricane, wind,



- 1 subsidence, and point and nonpoint source
2 pollution hazards;
- 3 (C) Ensure that developments comply with requirements
4 of the Federal Flood Insurance Program; and
- 5 (D) Prevent coastal flooding from inland projects[-];
6 (7) Managing development;
- 7 (A) Use, implement, and enforce existing law
8 effectively to the maximum extent possible in
9 managing present and future coastal zone
10 development;
- 11 (B) Facilitate timely processing of applications for
12 development permits and resolve overlapping or
13 conflicting permit requirements; and
- 14 (C) Communicate the potential short and long-term
15 impacts of proposed significant coastal
16 developments early in their life cycle and in
17 terms understandable to the public to facilitate
18 public participation in the planning and review
19 process[-];
- 20 (8) Public participation;
- 21 (A) Promote public involvement in coastal zone
22 management processes;



1 (B) Disseminate information on coastal management
2 issues by means of educational materials,
3 published reports, staff contact, and public
4 workshops for persons and organizations concerned
5 with coastal issues, developments, and government
6 activities; and

7 (C) Organize workshops, policy dialogues, and site-
8 specific mediations to respond to coastal issues
9 and conflicts[-];

10 (9) Beach protection;

11 (A) Locate new structures inland from the shoreline
12 setback to conserve open space, minimize
13 interference with natural shoreline processes,
14 and minimize loss of improvements due to erosion;

15 (B) Prohibit construction of private erosion-
16 protection structures seaward of the shoreline,
17 except when they result in improved aesthetic and
18 engineering solutions to erosion at the sites and
19 do not interfere with existing recreational and
20 waterline activities; [~~and~~]



- 1 (C) Minimize the construction of public erosion-
2 protection structures seaward of the
3 shoreline[-];
- 4 (D) Prohibit private property owners from creating a
5 public nuisance by inducing or cultivating the
6 private property owner's vegetation in a beach
7 transit corridor; and
- 8 (E) Prohibit private property owners from creating a
9 public nuisance by allowing the private property
10 owner's unmaintained vegetation to interfere or
11 encroach upon a beach transit corridor;
- 12 (10) Marine resources;
- 13 (A) Ensure that the use and development of marine and
14 coastal resources are ecologically and
15 environmentally sound and economically
16 beneficial;
- 17 (B) Coordinate the management of marine and coastal
18 resources and activities to improve effectiveness
19 and efficiency;
- 20 (C) Assert and articulate the interests of the State
21 as a partner with federal agencies in the sound



1 management of ocean resources within the United
2 States exclusive economic zone;

3 (D) Promote research, study, and understanding of
4 ocean processes, marine life, and other ocean
5 resources [~~in order~~] to acquire and inventory
6 information necessary to understand how ocean
7 development activities relate to and impact upon
8 ocean and coastal resources; and

9 (E) Encourage research and development of new,
10 innovative technologies for exploring, using, or
11 protecting marine and coastal resources."

12 SECTION 6. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 7. This Act shall take effect upon its approval;
15 provided that on June 30, 2013, this Act shall be repealed and
16 sections 115-5, 115-9, and 205A-2(c), Hawaii Revised Statutes,
17 shall be reenacted in the form in which they read one day prior
18 to the effective date of this Act.



H.B. NO. 1808
H.D. 3
S.D. 1
C.D. 1

APPROVED this 2 day of JUN, 2010



GOVERNOR OF THE STATE OF HAWAII