
A BILL FOR AN ACT

RELATING TO SPECIAL MANAGEMENT AREA USE PERMITS.

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

1 **PART I**

2 SECTION 1. Federal Aviation Administration permits and
3 licenses are identified on the National Oceanic and Atmospheric
4 Administration approved list of federal licenses and permits
5 subject to federal consistency certification, in accordance with
6 15 Code of Federal Regulations section 930.53. The Federal
7 Aviation Administration permits and licenses for construction
8 and operation of airports are subject to Hawaii coastal zone
9 management program federal consistency review.

10 The legislature recognizes that the requirements of the
11 National Environmental Policy Act and Hawaii's environmental
12 impact statement law apply to structures and improvements
13 relating to airports. The legislature further notes that the
14 office of planning, as the lead agency of the Hawaii coastal
15 zone management program, will continue to review and comment on
16 the National Environmental Policy Act and environmental impact
17 statement documents in that regard despite amendments to state
18 law regulating airports as contained in this Act.



1 The purpose of this part is to provide the department of
2 transportation with sufficient authority to plan, design, and
3 construct airports, subject to the Hawaii coastal zone
4 management program federal consistency review, without
5 sacrificing special controls on developments within an area
6 along the shoreline to avoid permanent loss of valuable coastal
7 and ocean resources.

8 SECTION 2. Section 261-4, Hawaii Revised Statutes, is
9 amended by amending subsection (c) to read as follows:

10 "(c) Structures and improvements. [~~All~~] Notwithstanding
11 any law or provision to the contrary, all structures and
12 improvements to land, to be used for airport purposes [~~, may~~]:

13 (1) May be planned, designed, and constructed by the
14 department [-]; and

15 (2) Shall be exempt from requirements to obtain a special
16 management area minor permit or special management
17 area use permit; provided that the structures and
18 improvements relating to airports are necessary to
19 comply with Federal Aviation Administration
20 regulations."



1 **PART II**

2 SECTION 3. The purpose of this part is to authorize the
3 board of land and natural resources to exempt certain state
4 projects from special management area and shoreline setback
5 requirements under the coastal zone management laws to expedite
6 and facilitate work on special projects.

7 SECTION 4. Section 171-6, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "§171-6 Powers. Except as otherwise provided by law, the
10 board of land and natural resources shall have the powers and
11 functions granted to the heads of departments and the board of
12 land and natural resources under chapter 26.

13 In addition to the foregoing, the board may:

- 14 (1) Adopt a seal;
- 15 (2) Administer oaths;
- 16 (3) Prescribe forms of instruments and documents;
- 17 (4) Adopt rules which, upon compliance with chapter 91,
18 shall have the force and effect of law;
- 19 (5) Set, charge, demand, and collect reasonable fees for
20 the preparation of documents to be issued, for the
21 surveying of public lands, and for the issuing of
22 certified copies of its government records, which



1 fees, when collected, shall be deposited into the
2 state general fund, unless otherwise specified in this
3 chapter;

4 (6) Establish additional restrictions, requirements, or
5 conditions, not inconsistent with those prescribed in
6 this chapter, relating to the use of particular land
7 being disposed of, the terms of sale, lease, license,
8 or permit, and the qualifications of any person to
9 draw, bid, or negotiate for public land;

10 (7) Reduce or waive the lease rental at the beginning of
11 the lease on any lease of public land to be used for
12 any agricultural or pastoral use, or for resort,
13 commercial, industrial, or other business use where
14 the land being leased requires substantial
15 improvements to be placed thereon; provided that such
16 reduction or waiver shall not exceed two years for
17 land to be used for any agricultural or pastoral use,
18 or exceed one year for land to be used for resort,
19 commercial, industrial, or other business use;

20 (8) Delegate to the chairperson or employees of the
21 department of land and natural resources, subject to
22 the board's control and responsibility, such powers



- 1 and duties as may be lawful or proper for the
2 performance of the functions vested in the board;
- 3 (9) Use arbitration under chapter 658A to settle any
4 controversy arising out of any existing or future
5 lease;
- 6 (10) Set, charge, and collect reasonable fees in an amount
7 sufficient to defray the cost of performing or
8 otherwise providing for the inspection of activities
9 permitted upon the issuance of a land license
10 involving a commercial purpose;
- 11 (11) Appoint masters or hearing officers to conduct public
12 hearings as provided by law and under such conditions
13 as the board by rules shall establish;
- 14 (12) Bring such actions as may be necessary to remove or
15 remedy encroachments upon public lands. Any person
16 causing an encroachment upon public land shall:
- 17 (A) Be fined not more than \$1,000 a day for the first
18 offense;
- 19 (B) Be fined not less than \$1,000 nor more than
20 \$4,000 per day upon the second offense and
21 thereafter;



1 (C) If required by the board, restore the land to its
2 original condition if altered and assume the
3 costs thereof;

4 (D) Assume such costs as may result from adverse
5 effects from such restoration; and

6 (E) Be liable for administrative costs incurred by
7 the department and for payment of damages;

8 (13) Set, charge, and collect interest and a service charge
9 on delinquent payments due on leases, sales, or other
10 accounts. The rate of interest shall not exceed one
11 per cent a month and the service charge shall not
12 exceed \$50 a month for each delinquent payment;
13 provided that the contract shall state the interest
14 rate and the service charge and be signed by the party
15 to be charged;

16 (14) Set, charge, and collect additional rentals for the
17 unauthorized use of public lands by a lessee,
18 licensee, grantee, or permittee who is in violation of
19 any term or condition of a lease, license, easement,
20 or revocable permit, retroactive to the date of the
21 occurrence of the violation. Such amounts shall be
22 considered delinquent payments and shall be subject to



1 interest and service charges as provided in paragraph
2 (13);
3 (15) Set, charge, and collect reasonable fines for
4 violation of this chapter or any rule adopted
5 thereunder. Any person engaging in any prohibited use
6 of public lands or conducting any prohibited activity
7 on public lands, or violating any of the other
8 provisions of this chapter or any rule adopted
9 thereunder, for which violation a penalty is not
10 otherwise provided, shall be:
11 (A) Fined not more than \$5,000 per violation for a
12 first violation or a violation beyond five years
13 of the last violation; provided that, after
14 written or verbal notification from the
15 department, an additional \$1,000 per day per
16 violation may be assessed for each day in which
17 the violation persists;
18 (B) Fined not more than \$10,000 per violation for a
19 second violation within five years of the last
20 violation; provided that, after written or verbal
21 notification from the department, an additional



1 \$2,000 per day per violation may be assessed for
2 each day in which the violation persists;

3 (C) Fined not more than \$20,000 per violation for a
4 third or subsequent violation within five years
5 of the last violation; provided that, after
6 written or verbal notification from the
7 department, an additional \$4,000 per day per
8 violation may be assessed for each day in which
9 the violation persists; and

10 (D) Liable for administrative costs and expenses
11 incurred by the department and for payment for
12 damages, including but not limited to natural
13 resource damages.

14 In addition to the fines, administrative costs, and
15 damages provided for hereinabove, for damage to or
16 theft of natural resources, the board may also set,
17 charge, and collect a fine that, in its discretion, is
18 appropriate considering the value of the natural
19 resource that is damaged or the subject of the theft.

20 In arriving at an appropriate fine, the board may
21 consider the market value of the natural resource
22 damaged or taken and any other factor it deems



1 appropriate, such as the loss of the natural resource
2 to its natural habitat and environment and the cost of
3 restoration or replacement. The remedies provided for
4 in this paragraph are cumulative and in addition to
5 any other remedies allowed by law.

6 No person shall be sanctioned pursuant to this section
7 for the exercise of native Hawaiian gathering rights
8 and traditional cultural practices as authorized by
9 law or as permitted by the department pursuant to
10 article XII, section 7, of the Hawaii state
11 constitution;

12 (16) Issue revenue bonds, subject to the approval of the
13 legislature. All revenue bonds shall be issued
14 pursuant to part III of chapter 39, except as provided
15 in this chapter. All revenue bonds shall be issued in
16 the name of the department and not in the name of the
17 State. The final maturity date of the revenue bonds
18 may be any date not exceeding thirty years from the
19 date of issuance;

20 (17) Pledge or assign all or any part of the receipts and
21 revenues of the department. The revenue bonds shall
22 be payable from and secured solely by the revenue



1 derived by the department from the industrial park or
2 parks for which the bonds are issued;

3 (18) Reimburse the state general fund for debt service on
4 general obligation bonds or reimbursable general
5 obligation bonds issued by the State for purposes of
6 this chapter;

7 (19) Notwithstanding part II of chapter 205A to the
8 contrary, plan, design, construct, operate, and
9 maintain any lands or facilities under the
10 jurisdiction of the division of boating and ocean
11 recreation of the department without the need to
12 obtain a special management area minor permit or
13 special management area use permit; [~~and~~]

14 (20) Notwithstanding part II and part III of chapter 205A
15 to the contrary, plan, design, construct, operate, and
16 maintain any state project in the jurisdiction of the
17 department without the need to obtain a special
18 management area minor permit, special management area
19 use permit, or shoreline setback variance approval.

20 As used in this paragraph, "state project" means a
21 development as defined in section 205A-22 for which:

22 (A) The contracting agency is the department; and



1 (B) The funding includes state or federal funds; and
2 ~~[-(20)]~~ (21) Do any and all things necessary to carry out its
3 purposes and exercise the powers granted in this
4 chapter."

5 SECTION 5. Section 205A-22, Hawaii Revised Statutes, is
6 amended by amending the definition of "development" to read as
7 follows:

8 "Development" means any of the uses, activities, or
9 operations on land or in or under water within a special
10 management area that are included below:

- 11 (1) Placement or erection of any solid material or any
12 gaseous, liquid, solid, or thermal waste;
- 13 (2) Grading, removing, dredging, mining, or extraction of
14 any materials;
- 15 (3) Change in the density or intensity of use of land,
16 including but not limited to the division or
17 subdivision of land;
- 18 (4) Change in the intensity of use of water, ecology
19 related thereto, or of access thereto; and
- 20 (5) Construction, reconstruction, demolition, or
21 alteration of the size of any structure.

22 "Development" does not include the following:



- 1 (1) Construction or reconstruction of a single-family
2 residence that is less than seven thousand five
3 hundred square feet of floor area and is not part of a
4 larger development;
- 5 (2) Repair or maintenance of roads and highways within
6 existing rights-of-way;
- 7 (3) Routine maintenance dredging of existing streams,
8 channels, and drainage ways;
- 9 (4) Repair and maintenance of underground utility lines,
10 including but not limited to water, sewer, power, and
11 telephone and minor appurtenant structures such as pad
12 mounted transformers and sewer pump stations;
- 13 (5) Zoning variances, except for height, density, parking,
14 and shoreline setback;
- 15 (6) Repair, maintenance, or interior alterations to
16 existing structures;
- 17 (7) Demolition or removal of structures, except those
18 structures located on any historic site as designated
19 in national or state registers;
- 20 (8) Use of any land for the purpose of cultivating,
21 planting, growing, and harvesting plants, crops,
22 trees, and other agricultural, horticultural, or



- 1 forestry products or animal husbandry, or aquaculture
2 or mariculture of plants or animals, or other
3 agricultural purposes;
- 4 (9) Transfer of title to land;
- 5 (10) Creation or termination of easements, covenants, or
6 other rights in structures or land;
- 7 (11) Final subdivision approval;
- 8 (12) Subdivision of land into lots greater than twenty
9 acres in size;
- 10 (13) Subdivision of a parcel of land into four or fewer
11 parcels when no associated construction activities are
12 proposed; provided that any land which is so
13 subdivided shall not thereafter qualify for this
14 exception with respect to any subsequent subdivision
15 of any of the resulting parcels;
- 16 (14) Installation of underground utility lines and
17 appurtenant aboveground fixtures less than four feet
18 in height along existing corridors;
- 19 (15) Structural and nonstructural improvements to existing
20 single-family residences, where otherwise permissible;
- 21 (16) Nonstructural improvements to existing commercial
22 structures; [~~and~~]



1 (17) Construction, installation, maintenance, repair, and
2 replacement of civil defense warning or signal devices
3 and sirens; and

4 (18) Repair, maintenance, or modification to existing
5 buildings, utilities, roadways, parking lots, or other
6 structures within state-owned parcels and funded by
7 state funds, federal funds, or both;

8 provided that whenever the authority finds that any excluded
9 use, activity, or operation may have a cumulative impact, or a
10 significant environmental or ecological effect on a special
11 management area, that use, activity, or operation shall be
12 defined as "development" for the purpose of this part."

13 **PART III**

14 SECTION 6. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 7. This Act shall take effect upon its approval,
17 and shall be repealed on June 30, 2015; provided that:

18 (1) Sections 261-4(c) and 171-6, Hawaii Revised Statutes,
19 and the definition of "development" in section 205A-
20 22, Hawaii Revised Statutes, shall be reenacted in the
21 form in which they read on the day before the
22 effective date of this Act; and



1 (2) Any state project for which funds are allotted by the
2 director of finance prior to June 30, 2015, shall
3 continue under the provisions of this Act until
4 completion.



Report Title:

Special Management Area; Federal Aviation Administration
Exception

Description:

Adds an exemption from the special management area use and minor permit requirements for airport development that is necessary to comply with Federal Aviation Administration regulations. Allows the board of land and natural resources to exempt certain state projects from coastal zone management and shoreline setback requirements. Excludes the repair, maintenance, or modification to existing buildings, utilities, roadways, parking lots, or other structures within state-owned parcels and funded by state funds, federal funds, or both, from the definition of "development" under chapter 205A, HRS. Repeals on 6/30/2015.
(SD2)

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