A BILL FOR AN ACT

RELATING TO ECONOMIC DEVELOPMENT.

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

PART I

SECTION 1. The purpose of this Act is to promote economic development by temporarily removing regulatory restrictions to the expeditious construction of certain state and county projects.

The legislature finds that the economic recovery has not been robust. One strategy to promote economic revitalization is by way of capital expenditures on public infrastructure projects. This strategy will generate jobs and infuse dollars into the local economy. Additionally, the public infrastructure constructed will benefit the general public.

Part II of this Act temporarily makes the office of planning responsible for the issuance of special management area permits and shoreline setback variances for state projects. This part is repealed on June 30, 2015.

Part III temporarily exempts airport structures and improvements from the special management area permit and shoreline setback variance requirements when the structures and

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improvements are necessary to comply with Federal Aviation Administration regulations.

Part IV temporarily authorizes the heads of the department of land and natural resources and department of transportation, with the approval of the governor, to exempt department projects from the special management area permit and shoreline setback variance requirements. This part is repealed on June 30, 2015.

Part V exempts all work involving submerged lands used for state commercial harbor purposes from any permit and site plan review requirements for lands in the conservation district. This part does not sunset.

Part VI temporarily authorizes a more streamlined process for exempting state and county projects from the environmental review process of chapter 343, Hawaii Revised Statutes. Part V also temporarily reduces the deadline for challenging the lack of an environmental assessment for a state project. This part is repealed on June 30, 2015.

PART II

SECTION 2. The purpose of this part is to temporarily make the office of planning responsible for the issuance of special management area permits and shoreline setback variances for state projects.
SECTION 3. Chapter 205A, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

"§205A- Special management area permits for state projects. (a) For state projects, the lead agency shall grant or deny special management area permits in accordance with rules adopted pursuant chapter 91. The rules shall be consistent with this chapter.

(b) With respect to a special management area use or minor permit, the following deadlines shall apply:

(1) The lead agency, within ten calendar days from receipt of a request from a state agency, shall determine whether:

(A) A use, activity, or operation proposed by the state agency is not a development requiring a special management area use or minor permit; or

(B) A development proposed by the state agency is exempt from the need for a special management area use or minor permit;

(2) The lead agency shall grant or deny a special management area use permit for a state project within
forty-five calendar days from receipt of a completed application for the permit; and

(3) The lead agency shall grant or deny a special management area minor permit for a state project within thirty calendar days from receipt of a completed application for the permit.

(c) If the lead agency does not take action within the deadline set by subsection (b)(1), (2), or (3), then on the first day following the expiration of the deadline, the lead agency shall be deemed to have:

(1) Determined that the use, activity, or operation is not a development;

(2) Exempted the development from the need for a special management area use or minor permit; or

(3) Granted the special management area use or minor permit without conditions.

(d) The lead agency may hold a public hearing on the application for a special management area use or minor permit for a state project in the county in which the state project is located. The lead agency shall provide notice of the public hearing in accordance with section 1-28.5 at least ten calendar days before any hearing held pursuant to this subsection.
(e) The lead agency shall provide notice of a special management area use or minor permit application for a state project to individuals whose property rights, as determined by the lead agency in its sole discretion, may be affected by the state project.

The lead agency shall provide notice of special management area use or minor permit applications for state projects and public hearings on the applications to persons who have requested in writing to be notified of the applications and public hearings.

(f) The lead agency may require a state agency to pay an application fee for a special management area permit.

(g) Chapter 91 shall not apply to the lead agency when granting or denying a special management permit, exempting a state project from obtaining a special management area permit, or determining that a use, activity, or operation is not a development requiring a special management area permit. Such an action by the lead agency shall be final; provided that the lead agency may establish a process for reconsideration of its action."

SECTION 4. Section 205A-3, Hawaii Revised Statutes, is amended to read as follows:

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§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, federal permits, federal licenses, and federal development proposals for consistency with the coastal zone management program;

(4) Consult with the counties and the public in preparing guidelines to further specify and clarify the objectives and policies of this 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, including the maintenance of a public advisory body to identify coastal management
problems and to provide policy advice and assistance to the lead agency;

(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 this 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;

(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; [and]

(11) Coordinate the implementation of the ocean resources management plan[†]; and

(12) Perform other duties required under this chapter and section 206E-8.5."
SECTION 5. Section 205A-6, Hawaii Revised Statutes, is amended to read as follows:

"§205A-6 Cause of action. (a) Except as otherwise provided under subsection (b), subject to chapters 661 and 662, any person or agency may commence a civil action alleging that any agency:

(1) Is not in compliance with one or more of the objectives, policies, and guidelines provided or authorized by this chapter within the special management area and the waters from the shoreline to the seaward limit of the State's jurisdiction; or

(2) Has failed to perform any act or duty required to be performed under this chapter; or

(3) In exercising any duty required to be performed under this chapter, has not complied with the provisions of this chapter.

(b) In any action brought under this subsection, the lead agency, if not a party, may intervene as a matter of right.

c) A court, in any action brought under this subsection, shall have jurisdiction to provide any relief as may
be appropriate, including a temporary restraining order or preliminary injunction.

[4.] Any action brought under this subsection shall be commenced within sixty days of the act which is the basis of the action.

[5.] Nothing in this section shall restrict any right that any person may have to assert any other claim or bring any other action.

(b) No person or agency shall commence an action against the lead agency for:

(1) The granting or denial of a special management area permit for a state project;

(2) The exemption of a state project from the need for a special management area permit;

(3) The determination that a use, activity, or operation of a state agency is not a development requiring a special management area permit; or

(4) The granting or denial of a shoreline setback variance for a state structure or activity."

SECTION 6. Section 205A-22, Hawaii Revised Statutes, is amended as follows:
1. By adding two new definitions to be appropriately inserted and to read:

"Special management area permit" means a special management area use permit, special management area minor permit, or special management area emergency permit.

"State project" means a development for which:

(1) The contracting agency is a state agency; and
(2) The funding includes state or federal funds."

2. By amending the definitions of "development", "special management area emergency permit", "special management area minor permit", "special management area use permit", and "valuation" to read:

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

(1) Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;
(2) Grading, removing, dredging, mining, or extraction of any materials;
(3) Change in the density or intensity of use of land, including but not limited to the division or subdivision of land;
(4) Change in the intensity of use of water, ecology related thereto, or of access thereto; and

(5) Construction, reconstruction, demolition, or alteration of the size of any structure.

"Development" does not include the following:

(1) Construction or reconstruction of a single-family residence that is less than seven thousand five hundred square feet of floor area and is not part of a larger development;

(2) Repair or maintenance of roads and highways within existing rights-of-way;

(3) Routine maintenance dredging of existing streams, channels, and drainage ways;

(4) Repair and maintenance of underground utility lines, including but not limited to water, sewer, power, and telephone and minor appurtenant structures such as pad mounted transformers and sewer pump stations;

(5) Zoning variances, except for height, density, parking, and shoreline setback;

(6) Repair, maintenance, or interior alterations to existing structures;
(7) Demolition or removal of structures, except those structures located on any historic site as designated in national or state registers;

(8) Use of any land for the purpose of cultivating, planting, growing, and harvesting plants, crops, trees, and other agricultural, horticultural, or forestry products or animal husbandry, or aquaculture or mariculture of plants or animals, or other agricultural purposes;

(9) Transfer of title to land;

(10) Creation or termination of easements, covenants, or other rights in structures or land;

(11) Final subdivision approval;

(12) Subdivision of land into lots greater than twenty acres in size;

(13) Subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed; provided that any land which is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels;
(14) Installation of underground utility lines and appurtenant aboveground fixtures less than four feet in height along existing corridors;

(15) Structural and nonstructural improvements to existing single-family residences, where otherwise permissible;

(16) Nonstructural improvements to existing commercial structures; and

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

provided that whenever the authority finds that any excluded non-state use, activity, or operation may have a cumulative impact, or a significant environmental or ecological effect on a special management area, that non-state use, activity, or operation shall be defined as "development" for the purpose of this part. For the purposes of this definition, "non-state use, activity, or operation" means a use, activity, or operation for which the contracting agency is not a state agency and for which the funding does not include state or federal funds.

"Special management area emergency permit" means an action by the authority or lead agency, as applicable, authorizing development in cases of emergency requiring immediate action to
prevent substantial physical harm to persons or property or to allow the reconstruction of structures damaged by natural hazards to their original form; provided that such structures were previously found to be in compliance with requirements of the Federal Flood Insurance Program.

"Special management area minor permit" means an action by the authority or lead agency, as applicable, authorizing development, the valuation of which is not in excess of $500,000 and which has no substantial adverse environmental or ecological effect, taking into account potential cumulative effects.

"Special management area use permit" means an action by the authority or lead agency, as applicable, authorizing development, the valuation of which exceeds $500,000 or which may have a substantial adverse environmental or ecological effect, taking into account potential cumulative effects.

"Valuation" shall be determined by the authority or lead agency, as applicable, and means the estimated cost to replace the structure in kind based on current replacement costs, or in the cases of other development as defined above, the fair market value of the development.

SECTION 7. Section 205A-26, Hawaii Revised Statutes, is amended to read as follows:

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"§205A-26 Special management area guidelines. In implementing this part, the authority or lead agency, as applicable, shall adopt the following guidelines for the review of developments proposed in the special management area:

(1) All developments, including state projects, in the special management area shall be subject to reasonable terms and conditions set by the authority or lead agency, as applicable, in order to ensure:

(A) Adequate access, by dedication or other means, to publicly owned or used beaches, recreation areas, and natural reserves is provided to the extent consistent with sound conservation principles;

(B) Adequate and properly located public recreation areas and wildlife preserves are reserved;

(C) Provisions are made for solid and liquid waste treatment, disposition, and management which will minimize adverse effects upon special management area resources; and

(D) Alterations to existing land forms and vegetation, except crops, and construction of structures shall cause minimum adverse effect to
water resources and scenic and recreational amenities and minimum danger of floods, wind damage, storm surge, landslides, erosion, siltation, or failure in the event of earthquake.

(2) No development or state project shall be approved unless the authority or lead agency, as applicable, has first found:

(A) That the development or state project will not have any substantial adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interests. Such adverse effects shall include, but not be limited to, the potential cumulative impact of individual developments[\tau] or state projects, each one of which taken in itself might not have a substantial adverse effect, and the elimination of planning options;

(B) That the development or state project is consistent with the objectives, policies, and special management area guidelines of this
chapter and any guidelines enacted by the legislature; and

(C) That the development, if not a state project, is consistent with the county general plan and zoning. Such a finding of consistency does not preclude concurrent processing where a general plan or zoning amendment may also be required. Consistency of a state project with a county general plan and zoning shall not be required, but shall be encouraged.

(3) The authority or lead agency, as applicable, shall seek to minimize, where reasonable:

(A) Dredging, filling, or otherwise altering any bay, estuary, salt marsh, river mouth, slough or lagoon;

(B) Any development or state project that would reduce the size of any beach or other area usable for public recreation;

(C) Any development or state project that would reduce or impose restrictions upon public access to tidal and submerged lands, beaches, portions of rivers and streams within the special...
management areas and the mean high tide line where there is no beach;

(D) Any development [which] or state project that would substantially interfere with or detract from the line of sight toward the sea from the state highway nearest the coast; and

(E) Any development [which] or state project that would adversely affect water quality, existing areas of open water free of visible structures, existing and potential fisheries and fishing grounds, wildlife habitats, or potential or existing agricultural uses of land."

SECTION 8. Section 205A-27, Hawaii Revised Statutes, is amended to read as follows:

"§205A-27 Designation of special management area authority. The authority is designated the special management area authority and, except as otherwise provided for state projects, is authorized to carry out the objectives, policies, and procedures of this part."

SECTION 9. Section 205A-28, Hawaii Revised Statutes, is amended to read as follows:
"§205A-28 Permit required for development[–], including state projects. No development, including a state project, shall be allowed in any county within the special management area without obtaining a permit in accordance with this part."

SECTION 10. Section 205A-29, Hawaii Revised Statutes, is amended to read as follows:

"§205A-29 Special management area use permit procedure.

(a) [The authority in each county, upon consultation with the central coordinating agency, shall adopt rules under chapter 91 setting the special management area use permit application procedures, conditions under which hearings must be held, and the time periods within which the hearing and action for special management area use permits shall occur. The authority shall provide for adequate notice to individuals whose property rights may be adversely affected and to persons who have requested in writing to be notified of special management area use permit hearings or applications. The authority shall also provide public notice statewide at least twenty days in advance of the hearing. The authority may require a reasonable filing fee which shall be used for the purposes set forth herein."

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Any rule adopted by the authority shall be consistent with the objectives, policies, and special management area guidelines provided in this chapter. Action on the special management permit shall be final unless otherwise mandated by court order.

(b) For state projects, the lead agency shall be responsible for granting or denying special management area use permits in accordance with section 205A-._.

[(b)] (c) No agency authorized to issue permits pertaining to any development, including a state project, within the special management area shall authorize any development unless approval is first received in accordance with the procedures adopted pursuant to this part. For the purposes of this subsection, county general plan, state land use district boundary amendments, and zoning changes are not permits."

SECTION 11. Section 205A-30, Hawaii Revised Statutes, is amended to read as follows:

"§205A-30 Emergency and minor permits. (a) Each [county] authority shall provide specific procedures consistent with this part for the issuance of special management area emergency permits or special management area minor permits[τ] for developments other than state projects, pursuant to the procedural requirements within this part, and judicial review
from the grant and denial thereof. The lead agency shall file notice of special management area minor permits in the next available issue of the periodic bulletin of the office of environmental quality control.

(b) For state projects, the lead agency shall be responsible for granting or denying special management area minor or emergency permits in accordance with section 205A-__.

SECTION 12. Section 205A-30.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The authority or lead agency, as applicable, shall adopt rules under chapter 91 setting forth procedures for implementing this section."

SECTION 13. Section 205A-32, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Any civil fine or other penalty provided under this section relating to a development other than a state project may be imposed by the circuit court or may be imposed by the department after an opportunity for a hearing under chapter 91. Any civil fine or other penalty provided under this section relating to a state project may be imposed by the circuit court."
Imposition of a civil fine shall not be a prerequisite to any civil fine or other injunctive relief ordered by the circuit court."

SECTION 14. Section 205A-41, Hawaii Revised Statutes, is amended by adding three new definitions to be appropriately inserted and to read as follows:

""Authority" means the county planning commission, except in counties where the county planning commission is advisory only, in which case "authority" means the county council or such body as the council may by ordinance designate. The authority may, as appropriate, delegate the responsibility for administering this part.

"Non-state structure or activity" means a structure or activity that is not a state structure or activity.

"State structure or activity" means a structure or activity for which:

(1) The contracting agency is a state agency; and
(2) The funding includes state or federal funds."

SECTION 15. Section 205A-43, Hawaii Revised Statutes, is amended to read as follows:

"§205A-43 Establishment of shoreline setbacks and duties and powers of the department. (a) 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 pursuant to chapter 91 and, except as otherwise provided in this part, shall enforce the shoreline setbacks and rules pertaining thereto.

(b) The powers and duties of the department shall include, but not be limited to:

(1) The department shall adopt rules under chapter 91 prescribing procedures for determining the shoreline setback line; and

(2) The department shall review the plans of all applicants who propose any non-state structure or activity that would be prohibited without a variance pursuant to this part. The department may require that the plans be supplemented by accurately mapped data and photographs showing natural conditions and topography relating to all existing and proposed structures and activities."

SECTION 16. Section 205A-43.5, Hawaii Revised Statutes, is amended to read as follows:

"§205A-43.5 Powers and duties of the authority and lead agency. (a) Prior to action on a variance..."
application[τ] for a non-state structure or activity, the
authority shall hold a public hearing under chapter 91. By
adoption of rules under chapter 91, the authority may delegate
responsibility to the department. Public and private notice,
including reasonable notice to abutting property owners and
persons who have requested this notice, shall be provided, but a
public hearing may be waived prior to action on a variance
application for:

(1) Stabilization of shoreline erosion by the moving of
sand entirely on public lands;

(2) Protection of a legal structure costing more than
$20,000; provided the structure is at risk of
immediate damage from shoreline erosion;

(3) Other structures or activities; provided that no
person or agency has requested a public hearing within
twenty-five calendar days after public notice of the
application; or

(4) Maintenance, repair, reconstruction, and minor
additions or alterations of legal boating, maritime,
or watersports recreational facilities, which result
in little or no interference with natural shoreline
processes.
[b] The authority shall either act on variance applications or, by adoption of rules under chapter 91, delegate the responsibility to the department.

(b) For a variance application for a state structure or activity, the lead agency may hold a public hearing, with notice provided in accordance with section 1-28.5 at least ten calendar days before the hearing."

SECTION 17. Section 205A-43.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) For a non-state structure or activity, the department or an agency designated by department rules shall enforce this part and rules adopted by the department or agency pursuant to this part.

For a state structure or activity, the lead agency shall enforce this part and the rules adopted by the lead agency pursuant to this part.

Any structure or activity prohibited by section 205A-44, that has not received a variance pursuant to this part or complied with conditions on a variance, shall be removed or corrected.

No other state or county permit or approval shall be construed as a variance pursuant to this part."
SECTION 18. Section 205A-44, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Except as provided in this section, structures are prohibited in the shoreline area without a variance pursuant to this part. Structures in the shoreline area shall not need a variance if:

(1) They were completed prior to June 22, 1970;
(2) They received either a building permit, board approval, or shoreline setback variance prior to June 16, 1989;
(3) They are outside the shoreline area when they receive either a building permit or board approval;
(4) They are necessary for or ancillary to continuation of existing agriculture or aquaculture in the shoreline area on June 16, 1989;
(5) They are minor structures permitted under rules that do not affect beach processes or artificially fix the shoreline and do not interfere with public access or public views to and along the shoreline; provided that rules permitting minor non-state structures in the shoreline area shall be adopted by the department and rules
permitting minor state structures in the shoreline area shall be adopted by the lead agency; or

(6) Work being done consists of maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime, or watersports recreational facilities, which are publicly owned, and which result in little or no interference with natural shoreline processes;

provided that permitted structures may be repaired, but shall not be enlarged within the shoreline area without a variance."

SECTION 19. Section 205A-46, Hawaii Revised Statutes, is amended to read as follows:

"§205A-46 Variances. (a) The authority shall be responsible for granting or denying a variance for a non-state structure or activity in the shoreline area.

(b) The lead agency shall be responsible for granting or denying a variance for a state structure or activity in the shoreline area. The lead agency shall grant or deny a variance for a state structure or activity within twenty calendar days of receipt of the completed application for the variance. If the lead agency does not grant or deny the variance within the twenty-day period, the variance shall be deemed granted by the
lead agency without conditions on the twenty-first day. The grant or denial of a variance for a state structure or activity by the lead agency shall be final; provided that the lead agency may establish a process for reconsideration of its action.

Chapter 91 shall not apply to the lead agency when granting or denying a variance application for a state structure or activity.

[(a)] (c) A variance may be granted for a structure or activity otherwise prohibited in this part if the authority or lead agency, as applicable, 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 or lead agency, as applicable, 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, 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 or lead agency, as applicable, 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.

(d) Hardship shall be defined in rules adopted by the authority under chapter 91. Hardship shall not be determined as a result of county zoning changes, planned development permits, cluster permits, or subdivision approvals after June 16, 1989, or as a result of any other permit or approval listed in rules adopted by the authority.

(e) No variance shall be granted unless appropriate conditions are imposed:

1. To maintain safe lateral access to and along the shoreline or adequately compensate for its loss;
2. To minimize risk of adverse impacts on beach processes;
3. To minimize risk of structures failing and becoming loose rocks or rubble on public property; and
4. To minimize adverse impacts on public views to, from, and along the shoreline.

SECTION 20. Section 205A-48, Hawaii Revised Statutes, is amended to read as follows:
"§205A-48 Conflict of other laws. (a) 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.

(b) Nothing contained in this part shall be construed to diminish the jurisdiction of the state department of transportation over wharves, airports, docks, piers, or other commercial harbors, and any other maritime facilities constructed 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 codes.

(c) Nothing contained in this part shall be construed to diminish the jurisdiction and power of the Hawaii community development authority conferred under section 206E-8.5."

SECTION 21. Section 205A-49, Hawaii Revised Statutes, is amended to read as follows:

"§205A-49 Adoption of rules. Each agency charged with carrying out this part shall adopt rules necessary to implement
or comply with this part by July 1, 1990. [All] The rules shall be adopted under chapter 91."

SECTION 22. Section 206E-8.5, Hawaii Revised Statutes, is amended to read as follows:

"§206E-8.5 Developments within special management areas and shoreline setback. (a) Notwithstanding chapter 205A, all requests for special management area permits for developments [within a special management area] that are not state projects and shoreline setback variances for [developments] non-state structures or activities on any lands within a community development district, for which a community development plan has been developed and approved in accordance with section 206E-5, shall be submitted to and reviewed by the lead agency as defined in chapter 205A. In community development districts for which a community development plan has not been developed and approved in accordance with section 206E-5, parts II and III of chapter 205A shall continue to be administered by the applicable county authority until a community development plan for the district takes effect.

(b) In the review of [such] requests[7] submitted under this subsection, the lead agency shall conform to the following, as deemed appropriate:
(1) Applicable county rules adopted in accordance with section 205A-26 for the review of developments within a special management area, except that paragraph (2)(C) of section 205A-26 shall not apply; and

(2) Part III of chapter 205A and applicable county rules for the review of developments within the shoreline setback.

[\(\text{c}\)] With the approval of the lead agency, the developments may be allowed without a special management area permit or shoreline setback variance as required by chapter 205A.

(b) Requests for special management area permits for state projects and shoreline setback variances for state structures and activities within a community development district shall be submitted to the lead agency and subject to chapter 205A."

SECTION 23. By October 1, 2012, the office of planning shall adopt rules necessary to implement this part. The office of planning shall not be required to adopt the initial rules in compliance with chapters 91 or 201M, Hawaii Revised Statutes, but shall hold at least one public hearing in each county on the proposed rules before adoption. The office of planning shall provide public notice of a public hearing in accordance with
section 1-28.5, Hawaii Revised Statutes, at least ten days
before the hearing.

After adoption of the initial rules, any subsequent
amendment of the rules shall be subject to chapters 91 and 201M,
Hawaii Revised Statutes.

SECTION 24. There is appropriated out of the general
revenues of the State of Hawaii the sum of $ or so
much thereof as may be necessary for fiscal year 2012-2013 for
the employment of one planner V position and one planner IV
position to perform the duties of the office of planning under
this part. The planners shall be exempt from chapters 76 and
89, Hawaii Revised Statutes.

The sum appropriated shall be expended by the office of
planning for the purposes of this part.

SECTION 25. The director of finance may reimburse the
general fund for the amount expended under section ___ from the
project adjustment fund or the capital improvement project
allotment for a state project that:

(1) Requires a special management area permit or shoreline
setback variance from the office of planning; and

(2) Is funded by bond funds.
PART III

SECTION 26. The purpose of this part is to temporarily exempt airport structures and improvements from the special management area permit and shoreline setback variance requirements when the structures and improvements are necessary to comply with Federal Aviation Administration regulations.

SECTION 27. Section 261-4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

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

(1) May be planned, designed, and constructed by the department; and

(2) Shall be exempt from requirements to obtain a special management area minor permit, special management area use permit, or shoreline setback variance; provided that the structures and improvements relating to airports are necessary to comply with Federal Aviation Administration regulations."

PART IV

SECTION 28. The purpose of this part is to temporarily authorize the heads of the department of land and natural
resources and department of transportation, with the governor's approval, to exempt their department projects from the special management area permit and shoreline setback variance requirements. The legislature intends that the exemptions authorized under this part be additional to the current exemptions under chapter 205A or pertinent rule.

SECTION 29. Chapter 171, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

"§171-__ Exemption from special management area permit and shoreline setback variance requirements; authorized. (a) For the purpose of this section, "state project" means a development as defined in section 205A-22 for which:

(1) The contracting agency is the department of land and natural resources; and

(2) The funding includes state or federal funds.

(b) The board, with the approval of the governor, may exempt any state project from the requirements of part II and part III of chapter 205A; provided that any project exempted under this section shall be subject to:
(1) The requirements of chapter 343, unless exempt from
the need for an environmental assessment under that
chapter; and

(2) Consultation with the office of conservation and
coastal lands and office of planning.

(c) The board may delegate the authority of this section
to the chairperson."

SECTION 30. Chapter 264, Hawaii Revised Statutes, is
amended by adding a new section to part I to be appropriately
designated and to read as follows:

"§264- Exemption from special management area permit
and shoreline setback variance requirements; authorized. (a)
For the purpose of this section, "state project" means a
development as defined in section 205A-22 for which:

(1) The contracting agency is the department of
transportation; and

(2) The funding includes state or federal funds.

(b) The director of transportation, with the approval of
the governor, may exempt any state project from the requirements
of part II and part III of chapter 205A; provided that any
project exempted under this section shall be subject to:
(1) The requirements of chapter 343, unless exempt from
the need for an environmental assessment under that
chapter; and

(2) Consultation with the office of conservation and
coastal lands and office of planning."

SECTION 31. Chapter 266, Hawaii Revised Statutes, is
amended by adding a new section to part I to be appropriately
designated and to read as follows:

"§266— Exemption from special management area permit
and shoreline setback variance requirements; authorized.  (a)
For the purpose of this section, "state project" means a
development as defined in section 205A-22 for which:

(1) The contracting agency is the department of
transportation; and

(2) The funding includes state or federal funds.

(b) The director of transportation, with the approval of
the governor, may exempt any state project from the requirements
of part II and part III of chapter 205A; provided that any
project exempted under this section shall be subject to:

(1) The requirements of chapter 343, unless exempt from
the need for an environmental assessment under that
chapter; and
(2) Consultation with the office of conservation and coastal lands and office of planning."

PART V

SECTION 32. The purpose of this part is to exempt all work involving submerged lands used for state commercial harbor purposes from any permit and site plan review requirements for lands in the conservation district.

SECTION 33. Chapter 266, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

"§266—Exemption from conservation district permitting and site plan approval requirements. Notwithstanding any law to the contrary, all work involving submerged lands used for state commercial harbor purposes shall be exempt from any permitting and site plan approval requirements established under chapter 183C for lands in a conservation district."

PART VI

SECTION 34. The purpose of this part is to temporarily authorize a more streamlined process for exempting state and county projects from the environmental review process of chapter 343, Hawaii Revised Statutes. The legislature emphasizes that this part does not statutorily expand the types of state
projects that are exempt under the existing provisions of chapter 343 or pertinent implementing rules.

This part also reduces the deadline for challenging the lack of an assessment for a state project.

SECTION 35. Chapter 343, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§343- Exemption list for state and county projects; authorization for establishment by governor. (a) Until June 30, 2015, the governor may establish a list of specific types of state projects that are actions exempt from the need for preparation of an environmental assessment because they will probably have minimal or no significant effects on the environment. The governor may include in the list types of state projects already exempt by state agencies and other types of state projects deemed by the governor to qualify for exemption under this section. The governor may amend the list from time to time.

The governor may establish and amend the list without necessity of:

(1) Approval by the environmental council;"
(2) Compliance with procedures established by the environmental council pursuant to section 343-6(a)(2) or rules of the office of environmental quality control; or

(3) Promulgation of rules under chapter 91.

The office, upon request of the governor, shall provide public notice of the list of exemptions and any amendments through the periodic bulletin prescribed in section 343-3. A list established by the governor and any amendment to it shall take effect on the date specified by the governor, but not earlier that the issuance date of the bulletin by which the office informs the public of the list and amendment.

(b) A county mayor shall have the same authority to establish and amend an exemption list of county projects as conferred upon the governor for state projects under subsection (a).

(c) Unless the governor or a mayor expressly states otherwise, a state or county agency's list of exempt actions established pursuant to the procedures of section 343-6(a)(2) shall remain valid, even if the governor or mayor establishes a separate list under this section.
(d) After the repeal of this section, the governor's or mayor's list shall remain valid until terminated by the governor or mayor."

SECTION 36. Section 343-2, Hawaii Revised Statutes, is amended by adding three new definitions of "construction", "county project", and "state project" to be appropriately inserted and to read as follows:

"Construction" includes grading, grubbing, stockpiling, excavation, foundation laying, pile driving, demolition, building, reconstruction, rehabilitation, renovation, repairing, maintaining, paving, landscaping, and any other improvement of real property.

"County project" means a construction project for which:

(1) The contracting agency is a county agency; and
(2) The funding includes county, state, or federal funds.

"State project" means a construction project for which:

(1) The contracting agency is a state agency; and
(2) The funding includes state or federal funds."

SECTION 37. Section 343-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any judicial proceeding concerning an applicant's action, the subject of which is the lack of assessment required..."
under section 343-5, shall be initiated within one hundred twenty days of the agency's decision to [carry out or] approve the action, or, if a proposed action is undertaken without a formal determination by the agency that a statement is or is not required, a judicial proceeding shall be instituted within one hundred twenty days after the proposed action is started. The council or office, any agency responsible for approval of the action, or the applicant shall be adjudged an aggrieved party for the purposes of bringing judicial action under this subsection. Others, by court action, may be adjudged aggrieved.

Any judicial proceeding concerning an agency's action, the subject of which is the lack of assessment required under section 343-5, shall be initiated within sixty days of the agency's decision to carry out the action, or, if a proposed action is undertaken without a formal determination by the agency that an assessment is or is not required, a judicial proceeding shall be instituted within sixty days after the proposed action is started. The council, office, or any agency responsible for approval of the action shall be adjudged an aggrieved party for the purposes of bringing judicial action under this subsection."
SECTION 38. A list of exempted state projected established by the governor or a mayor pursuant to this part, including amendments to the list, shall remain valid after the repeal of this part. The list shall remain valid until repealed in accordance with the procedures established under section 343-6(a)(2), Hawaii Revised Statutes.

PART VII

SECTION 39. It is the intent of this Act not to jeopardize the receipt of any federal aid. If any provision of this Act is found to be in conflict with federal requirements that are a prescribed condition for the allocation of federal funds to the State, those provisions shall be void.

SECTION 40. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 41. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.
SECTION 42. The repeal of part II, III, IV, or VI of this Act shall not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before the repeal date, including:

1. The validity of any special management area permit or shoreline setback variance granted pursuant to part II before the repeal date of that part; and

2. Any proceedings to review and act on a special management area permit or shoreline setback variance for a state project that was submitted to the office of planning before the repeal date of part II. The office of planning shall continue to be responsible after the repeal date for the granting or denial of applications properly submitted to the office of planning pursuant to part II;

3. The validity of any airport structure or improvement exempted under part III from the special management area permit and shoreline setback variance requirements before the repeal date of that part;

4. The validity of any state project exempted under part IV from the special management area permit and
shoreline setback variance requirements before the repeal date of that part; and

(5) The validity of any state project exempted under part VI from the environmental assessment requirement before the repeal date of that part.

SECTION 43. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 44. This Act shall take effect on July 1, 2012; provided that:

(1) Except for sections 23, 24, and 25, part II shall take effect on October 1, 2012;

(2) Parts II, III, IV, and VI shall be repealed on June 30, 2015; and

Report Title:
Economic Development; Special Management Area Permits, Shoreline Setback Variances, Environmental Assessment Exemptions

Description:
Part I temporarily makes the office of planning responsible for the issuance of special management area permits and shoreline setback variances for state projects. Part III temporarily exempts airport structures and improvements from the special management area permit and shoreline setback variance requirements when the structures and improvements are necessary to comply with FAA regulations. Part IV temporarily authorizes the department of land and natural resources and department of transportation, with the approval of the governor, to exempt department projects from the special management area permit and shoreline setback variance requirements. Part V exempts all work involving submerged lands used for state commercial harbor purposes from any permit and site plan review requirements for lands in the conservation district. Part VI temporarily authorizes a more streamlined process for exempting state and county projects from the environmental review process of chapter 343, HRS, and reduces the deadline for challenging the lack of an environmental assessment for a state or county project.

(PROPOSED HD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.