

The Virgin Islands Consortium

DPNR Skeptical of Bill Mandating Beachfront Property Owners Provide Suitable Access to Public Beaches, But Assures Public Access Will Be Enforced

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If you own oceanfront property, you may want to make sure the general public has access to the beach.

Testimony was taken Thursday by Virgin Islands lawmakers considering a bill that seeks to ensure owners of beachfront property provide the public with suitable access to the shorelines or face heavy fines.

The Senate Committee on Government Operations, Consumer Affairs, Energy, Environment and Planning heard testimony supportive of the intent, but skeptical of the language of Bill No. 33-0108.

Department of Planning and Natural Resources Commissioner Jean-Pierre L. Oriol told committee members that the bill was rife with potential problems. "This bill has a number of issues from qualifying criteria for access, to legal rights of property owners."

Under the bill, Title 12, Subsection 402 of the Virgin Islands Code would be amended to mandate property owners provide a physical pathway to the shoreline. "The owner or owners of the property that the public uses to access the shoreline must provide a path for vehicles and disabled individuals, and a path for civilians to walk," it reads.

Failure to comply would result in a fine of up to \$1,500. An additional fine of \$500 would be imposed every ninety (90) days that the violation continues to exist after the owner of the property is notified in writing of the violation. Any second or subsequent failure to comply would also result in the fines being multiplied by a factor equivalent to the number of failures to comply recorded against the property owner or owners, according to the bill.

"The Department understands the intent of the legislation, which is to ensure the right of access to the shoreline for the people of the Virgin Islands. However, we believe the bill as drafted creates a number of challenges for implementation, but more importantly, cannot withstand the "takings" test under the Fifth Amendment of the Constitution," Mr. Oriol testified.

In the Virgin Islands the public has the right to access any beach up to 50 feet from the mean high tide mark even if the land is deeded to the property owner who owns the beachfront property.

But it's not always so easy. Landowners have argued there is no obligation under the law to provide a pathway across private property. Attempts have been made, unsuccessfully, in the past to strengthen beach-access laws in the territory.

The bill would place enforcement of the proposed law under DPNR, and Senator Janelle Sarauw pressed Mr. Oriol to speak on actions taken when property owners violate VI law by forcing beachgoers to leave a particular beach.

"Every time the department receives a call of somebody trying to restrict the access, the department gets involved... whether it be contacting the owner directly," Mr. Oriol said. He recalled an incident where owners of a beachfront property had erected a "private beach" sign, and the department moved swiftly, he said, in assuring that the sign was removed.

"They cannot restrict the access of people. And to any Virgin Islander who goes on the beach and somebody is yelling at you and telling you get off my property, the first thing I would advise them to do is call the police. Come call them on me. Because I guarantee you any police that shows up there, they are very aware that in that setback area you have a right to be there as a Virgin Islander or a guest of this territory," Mr. Oriol said.

Ms. Sarauw stressed the importance of protecting all beaches and ensuring public access. "They see value in our resources and they try to commandeer those resources

and we have to protect them," she said. "Generations to come cannot be relegated to whatever beach they say we must have access to. We can't be relegated only to Magens Bay, only to Lindbergh Bay, to Coki Point. We cannot."

The bill was held in committee for further vetting, with all five senators present voting to hold the measure.

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