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Bill Requiring Owners of Shoreline Properties to Provide the Public With Suitable Access to Beaches Moves Forward. The Bill Affects Future Developments.

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Beach shoreline By. iStock/Getty Images/ VI CONSORTIUM

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A measure that requires owners of shoreline properties to provide the public with convenient access to the territory's beaches was heard in the Committee on Gov't Operations, Consumer Affairs, Energy, Environment, and Planning on Friday, and favorably forwarded to the Committee on Rules and Judiciary for further vetting.

The [amendment \(No. 33-439\) in the nature of a substitute of Bill No 33-0108](#), sponsored by Senators Janelle Sarauw, Myron Jackson and Kurt Vialet, requires owners of shoreline properties to provide the public with suitable access to the territory's shorelines, imposes fines to those who fail to comply with these requirements, and grants the Department of Planning and Natural Resources enforcement and investigative authority regarding shoreline access.

Importantly, the bill affects future developments; Ms. Sarauw on Sunday afternoon told the Consortium that lawmakers were working on addressing current properties.

The Department of Planning and Natural Resources had some concerns. Jean-Pierre Oriol, D.P.N.R. commissioner, told the committee that while the department supports free access to shorelines for all residents, the proposed legislation fails to address the concerns D.P.N.R. presented to the committee during a 2019 hearing. "Although the bill provides for the creation of easements when new developments are made in the coastal areas, it does not state that the owners will be compensated for dedicating the property for those easements," said Mr. Oriol.

Mr. Oriol questioned whether the measure as written would withstand property owners' challenging the would-be law under the Fifth Amendment's "Takings Clause." According to the Fifth Amendment of the United States Constitution, private property shall not be taken for public use without just compensation. Due to this law, Mr. Oriol told the committee that the proposed bill and amendment does not address shoreline owners' compensation.

Furthermore, Mr. Oriol explained, "If the main purpose is to provide access to the beaches, then maybe the bill should be amended to include a definition of a beach, and the bill should specifically apply to shoreline areas where there are "beaches." He elaborated, "The legislation as-is applies broadly to all shorelines, which covers a broader land area as defined in 12 VIC § 402(b)."

Moreover, Mr. Oriol articulated that along with the practicable issues of the "Taken Clause," legislators need to consider possible liability and legality problems. "With respect to liability, if a third party is injured while using the public access, then who will be liable for the injury—the government or the property owner?" According to Mr. Oriol, this is also a question that is asked even under the current format of the Open Shorelines Act.

While D.P.N.R. understands the measure's intent, the department believes that it creates several challenges for implementation and does not hold out against the "Taken Clause" under the Fifth Amendment.

Nonetheless, the bill was favorably voted on and forwarded to the Committee on Rules and Judiciary, following an amendment offered by Senator Myron Jackson.

Along with Bill No 33-0108, the Committee received an update from D.P.N.R. on the development of a Comprehensive Land and Water Use Plan for the territory and heard testimonies on behalf of Bill No. 33-0340 which is an Act requiring the V.I Port Authority to provide limited free parking at the Enighed Pond parking lot on St. John.

Sponsored by Senators Steven Payne and Oakland Benta, Bill No. 33-0340 received strong opposition from V.I. Port Authority Executive Director Carlton Dowe, who stated that V.I.P.A. strongly opposes the bill as it would negatively impact the authority's essential marine revenue. "It will be detrimental to the authority's ability to meet its financial obligations," said Mr. Dowe.

Providing further explanation to the committee, Mr. Dowe said that in accordance with local law, V.I.P.A. must charge user fees to fund their port operations, maintain their facilities, and expand and modernize the territory's travel infrastructure. "Apart from federal grants received primarily for the aviation division, V.I.P.A.'s main source of revenue is the fees we charge the users of our facilities," Mr. Dowe said.

Director of the Office of Management and Budget, Jenifer O'Neal, communicated similar concerns to the committee. She said with V.I.P.A. being a semi-autonomous agency, it does not receive any funds from the central government, and that in order for V.I.P.A. to support its operations, the authority must utilize the profits produced from parking lots and other projects to fulfill its payroll and vendor obligations.

After hearing the concerns from both V.I.P.A. and O.M.B., senators moved to hold the bill in committee.

Lastly, to end the session, Keith Richards, assistant commissioner of D.P.N.R., communicated to legislators that DPNR is presently involved in multiple efforts that have led to proposed legislation, plans, and initiatives that will offer guidance to the development, use, and effective management of the territory's land and water resource.

Director of the Virgin Islands Office of Disaster Recovery, Adrienne Williams-Octalien, stated in her testimony that the O.D.R. is in full support of developing a comprehensive land and water use plan for the territory. Ms. Williams-Octalien further explained that O.D.R. has met with DPNR to provide guidance on available funding to further this specific initiative.

"Funds are available in the planning section of the Community Development Block Grant Mitigation funds that can support this endeavor. O.D.R. has advised D.P.N.R. it will provide any support necessary for the required agency capacity assessment as well as support to develop an application that will then be vetted by the Virgin Islands Housing Finance Authority," said Ms. Williams-Octalien.

Correction: Oct. 18, 2020

A previous version of this article included the wrong bill number for the beach access measure. We've updated the story.