

JAN 22 2010

A BILL FOR AN ACT

RELATING TO SUBMERGED LANDS LEASING.

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

1 SECTION 1. Section 190D-11, Hawaii Revised Statutes, by
2 amending subsections (a) and (b) to read as follows:

3 "(a) Any person desiring to lease state marine waters
4 shall submit to the board an application for specific activities
5 in any specific area or areas. Applications made pursuant to
6 this chapter shall contain:

- 7 (1) An environmental [~~assessment or, if required, an~~
8 environmental] impact statement which shall be
9 prepared and accepted in compliance with the rules
10 adopted under chapter 343;
- 11 (2) A description of the location and boundaries of the
12 state marine waters to be used and a description of
13 the nature of the use desired;
- 14 (3) A statement of the reasons for selecting the proposed
15 location;
- 16 (4) A description of the activities to be conducted,
17 including a specification as to whether [~~such~~] the



1 activities are commercial or noncommercial, a
2 timetable for construction, deployment, and operation
3 of facilities, and planned levels of production;

4 (5) Where the application is for mariculture, a
5 description of the species to be cultivated and
6 produced;

7 (6) A statement on the extent to which the proposed
8 activities will interfere with the use of the state
9 marine waters for the purposes of navigation, fishing,
10 and public recreation;

11 (7) A description of any enclosure, fences, stakes, buoys,
12 or monuments proposed to mark off the desired area;

13 (8) An initial description of current users (military,
14 governmental, commercial, recreational, and cultural)
15 and their uses of the state marine waters requested
16 for lease, including any practitioners of traditional
17 and customary Hawaiian rights; and

18 (9) Other information which the board determines to be
19 necessary or appropriate, including financial and
20 technical information.

21 (b) The department shall process the application pursuant
22 to chapter 183C. Within sixty days after the submission of a



1 completed application with a request for a lease for marine
2 activities in state marine waters and the receipt of the related
3 [~~environmental assessment or~~] environmental impact statement,
4 the department shall issue a public notice that the application
5 has been received. The public notice shall describe:

- 6 (1) The state marine waters for which application has been
7 made;
- 8 (2) The nature of the exclusive use sought; and
- 9 (3) The purpose for which the application has been made.

10 The notice shall be given on three separate days statewide and
11 in the county nearest the state marine waters for which
12 application has been made. The public notice shall invite
13 public comment."

14 SECTION 2. Section 190D-23, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) Leases issued by the board shall be drawn up in
17 accordance with the following requirements, in addition to any
18 other requirements determined by the board:

- 19 (1) Each lease shall specify the term of the lease and the
20 nature of the exclusive use of the area being granted;



- 1 (2) Each lease shall specify the marine activities or
2 other resources which may be cultivated, produced,
3 harvested, removed, or used pursuant to the lease;
- 4 (3) Each lease shall specify an annual rent set by the
5 board for the leased area. The basic rental charged
6 in a commercial lease [~~may~~] shall be supplemented by
7 royalty payments[~~-~~] including per cent of gross
8 proceeds of sales. No royalty shall be charged in a
9 noncommercial lease;
- 10 (4) Leases may specify that failure of the lessee to
11 perform substantially the activities for which the
12 lease was granted shall constitute grounds for
13 revocation of the lease and forfeiture to the State of
14 all structures and, in the case of mariculture
15 activities, all plants or animals cultivated, in and
16 upon the leased area;
- 17 (5) Each lease shall require that the lessee execute a
18 bond conditioned upon the substantial performance of
19 the activities described in the lease. The amount of
20 the bond so executed shall be appropriate to the size,
21 scale, and risk of the activity for which the lease is
22 granted, and shall be sufficient to protect the public



1 interest in the removal of all structures and, in the
2 case of mariculture activities, all marine plants or
3 animals cultivated, as well as to restore or remediate
4 the water and state submerged lands to the
5 satisfaction of the department in and upon the leased
6 state marine waters, if the lease is forfeited for
7 nonperformance or the board requires the removal or
8 eradication of marine plants or animals pursuant to
9 paragraph (11);

10 (6) Each lease shall specify that if a lessee abandons a
11 leased area, the board may order the removal or sale
12 at public auction of all improvements, assets, marine
13 plants or animals, and equipment remaining in and upon
14 the leased area, and shall transmit to the state
15 general fund the entire amount received from any
16 public auction and any proceeds received from the
17 lessee's performance bond. Alternatively, the board
18 may permit the use of the improvements, assets, marine
19 plants or animals, and equipment for purposes which
20 benefit the general public;

21 (7) Each lease for mariculture shall specify that the
22 marine plants or animals described in the lease to be



1 cultivated and contained within the leased area are
2 the exclusive harvest of the lessee; provided that any
3 marine plant or animal which escapes from the leased
4 area and is not clearly identifiable as the property
5 of the lessee, shall become common property and may be
6 taken or caught by any person, subject to the fishing
7 laws of the State, without violating the rights of the
8 lessee;

9 (8) Each lease for mariculture shall specify that:

10 (A) The lessee is responsible for the removal of any
11 cultivated marine plants or animals found outside
12 the leased area but within state marine waters if
13 removal is required to protect the environment or
14 public health and safety, and removal is demanded
15 by the board;

16 (B) The lessee is solely responsible for all costs of
17 removal of ~~such~~ marine plants or animals; and

18 (C) If action must be taken by the department to
19 eradicate escaped marine plants or animals, all
20 costs of eradication shall be borne by the
21 lessee; provided that the costs borne by the



1 lessee shall be no greater than the amount of the
2 bond required under paragraph (5);

3 (9) Leases may specify that the lessee shall construct and
4 maintain gates, openings, or lanes at reasonable
5 distances from one another throughout a leased area
6 which includes surface waters and in which any type of
7 enclosure is an obstacle to free navigation, unless
8 public transit in or through the enclosed waters will
9 cause undue interference with the operation being
10 conducted by the lessee within the leased area;

11 (10) Leases may require, where necessary, that:

12 (A) All lessees mark off the areas under lease by
13 appropriate ranges, monuments, stakes, buoys,
14 fences, or any other devices placed so that they
15 do not interfere unnecessarily with navigation
16 and other traditional uses of the water surface;

17 (B) All lessees identify the area under lease and the
18 names of the lessees on signs appropriately
19 placed pursuant to specifications established by
20 the board; and

21 (C) All limitations upon the use by the public of an
22 ocean area under lease shall be clearly posted by



1 the lessee pursuant to specifications established
2 by the board;

3 (11) Leases shall specify that if the chairperson finds or
4 has reasonable cause to believe that an activity
5 conducted by the lessee in or upon the area described
6 in the lease is causing an immediate danger to human
7 or marine life or the environment of the state marine
8 waters, the chairperson may direct a temporary or
9 permanent suspension of commercial or research
10 activities in the affected area. The chairperson
11 shall then notify the board. The board shall
12 immediately order the lessee or lessees affected by
13 [~~such~~] the notice to show cause why their activities
14 should not be terminated, or why any structures,
15 cultivated marine plants or animals, or equipment
16 should not be removed from state marine waters. The
17 board shall proceed to hold a public hearing and issue
18 its order with respect to [~~such~~] the hearing within a
19 reasonable period. In its order following [~~such~~] the
20 hearing, the board may direct a temporary or permanent
21 suspension of commercial or research activities in the
22 affected area, removal of equipment or cultivated

1 marine plants or animals, or [~~such~~] other measures as
2 shall be deemed necessary for protection of human or
3 marine life and environment of state marine waters,
4 including forfeiture to and destruction by the State
5 of any marine plant or animal species;

6 (12) Each lease shall specify that the lease may be
7 assigned in whole or in part, or amended, only if the
8 board determines that [~~such~~] the assignment or
9 amendment is in the public interest and meets the
10 provisions of this chapter and consents to the
11 assignments. The board may consent to the mortgage of
12 a lease pursuant to section 171-22;

13 (13) Each lease shall specify that the lease may be revoked
14 by the board for violation of any lease provision.
15 The board shall deliver a written notice of the breach
16 or default of any lease agreement by registered or
17 certified mail to the party in default and to each
18 holder of record having any security interest in the
19 state marine waters covered by or subject to the
20 lease, making demand upon the party to cure or remedy
21 the breach or default within sixty days from the date
22 of receipt of the notice. Upon failure of the party



1 to cure or remedy the breach or default within sixty
2 days from the date of receipt of the notice, or within
3 [~~such~~] an additional period the board may allow for
4 good cause, the board may revoke the lease; and

5 (14) Each lease shall contain a statement describing the
6 degree of exclusivity or access to the site by the
7 public that will be based on an analysis of the user
8 listing and descriptions provided in the application,
9 and comments made by the public and in consideration
10 of, but not limited to the following: compatibility
11 of the operation with existing uses, perceived
12 liability to the lessee and the public, and perceived
13 risk to the lessee's investment."

14 SECTION 3. This Act does not affect rights and duties that
15 matured, penalties that were incurred, and proceedings that were
16 begun before its effective date.

17 SECTION 4. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 5. This Act shall take effect on July 1, 2010.

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INTRODUCED BY:

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Report Title:

Submerged Lands Leasing; Environmental Impact Statement

Description:

Requires a conservation district use application to contain an environmental impact statement. Requires a commercial lessee of submerged lands to pay a portion of gross proceeds of sales in addition to annual rent.

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