

JAN 21 2011

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# 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, is  
2 amended by 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  
18          activities are commercial or noncommercial, a



1 timetable for construction, deployment, and operation  
2 of facilities, and planned levels of production;

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

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

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

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

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

20 (b) The department shall process the application pursuant  
21 to chapter 183C. Within sixty days after the submission of a  
22 completed application with a request for a lease for marine



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

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

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

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

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

- 18 (1) Each lease shall specify the term of the lease and the  
19 nature of the exclusive use of the area being granted;
- 20 (2) Each lease shall specify the marine activities or  
21 other resources which may be cultivated, produced,  
22 harvested, removed, or used pursuant to the lease;



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



1 the water and state submerged lands to the  
2 satisfaction of the department in and upon the leased  
3 state marine waters, if the lease is forfeited for  
4 nonperformance or the board requires the removal or  
5 eradication of marine plants or animals pursuant to  
6 paragraph (11);

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

18 (7) Each lease for mariculture shall specify that the  
19 marine plants or animals described in the lease to be  
20 cultivated and contained within the leased area are  
21 the exclusive harvest of the lessee; provided that any  
22 marine plant or animal which escapes from the leased



1 area and is not clearly identifiable as the property  
2 of the lessee, shall become common property and may be  
3 taken or caught by any person, subject to the fishing  
4 laws of the State, without violating the rights of the  
5 lessee;

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

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

13 (B) The lessee is solely responsible for all costs of  
14 removal of [~~such~~] marine plants or animals; and

15 (C) If action must be taken by the department to  
16 eradicate escaped marine plants or animals, all  
17 costs of eradication shall be borne by the  
18 lessee; provided that the costs borne by the  
19 lessee shall be no greater than the amount of the  
20 bond required under paragraph (5);

21 (9) Leases may specify that the lessee shall construct and  
22 maintain gates, openings, or lanes at reasonable



1 distances from one another throughout a leased area  
2 which includes surface waters and in which any type of  
3 enclosure is an obstacle to free navigation, unless  
4 public transit in or through the enclosed waters will  
5 cause undue interference with the operation being  
6 conducted by the lessee within the leased area;

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

- 8 (A) All lessees mark off the areas under lease by  
9 appropriate ranges, monuments, stakes, buoys,  
10 fences, or any other devices placed so that they  
11 do not interfere unnecessarily with navigation  
12 and other traditional uses of the water surface;
- 13 (B) All lessees identify the area under lease and the  
14 names of the lessees on signs appropriately  
15 placed pursuant to specifications established by  
16 the board; and
- 17 (C) All limitations upon the use by the public of an  
18 ocean area under lease shall be clearly posted by  
19 the lessee pursuant to specifications established  
20 by the board;

21 (11) Leases shall specify that if the chairperson finds or  
22 has reasonable cause to believe that an activity



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





1 including forfeiture to and destruction by the State  
2 of any marine plant or animal species;  
3 (12) Each lease shall specify that the lease may be  
4 assigned in whole or in part, or amended, only if the  
5 board determines that [~~such~~] the assignment or  
6 amendment is in the public interest and meets the  
7 provisions of this chapter and consents to the  
8 assignments. The board may consent to the mortgage of  
9 a lease pursuant to section 171-22;

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

1 [such] an additional period the board may allow for  
 2 good cause, the board may revoke the lease; and  
 3 (14) Each lease shall contain a statement describing the  
 4 degree of exclusivity or access to the site by the  
 5 public that will be based on an analysis of the user  
 6 listing and descriptions provided in the application,  
 7 and comments made by the public and in consideration  
 8 of, but not limited to the following: compatibility  
 9 of the operation with existing uses, perceived  
 10 liability to the lessee and the public, and perceived  
 11 risk to the lessee's investment."

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

15 SECTION 4. Statutory material to be repealed is bracketed  
 16 and stricken. New statutory material is underscored.

17 SECTION 5. This Act shall take effect upon its approval.

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**Report Title:**

Submerged Lands Leasing; Environmental Impact Statement

**Description:**

Requires a conservation district use application that contains 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.

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

