

ACT 27

S.B. NO. 1332

A Bill for an Act Relating to Conservation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Findings and purpose. The legislature finds that the natural fishponds of the State are a precious environmental, economic and social resource worthy of systematic protection. While many fishponds are owned by the State, and protected by rules of the board of land and natural resources, a large number of fishponds are owned by persons, who pay real

property taxes upon such submerged areas as would be assessed upon property above sea level.

The legislature finds that many fishponds have been filled, and that the further loss of these resources must be prevented. Owners who wish to maintain the fishponds in their natural state must be permitted to perform periodic repairs, which are in some cases extensive due to the age of the fishpond walls and the susceptibility of the walls to damage by natural forces. But past expressions of concern by the legislature have created an unwieldy bureaucracy which fishpond owners must face to obtain permission to make repairs: aspects of repairs are under the jurisdiction of the board of land and natural resources, when the fishpond is located in a conservation district and the land use commission and the county planning agency, when the fishpond is located within a shoreline setback area. An environmental impact statement may also be required. Obtaining permission to make necessary repairs may involve months of reporting and negotiation, and emergency repairs necessary to safeguard the fishpond from natural damages are virtually impossible.

The same situation of bureaucracy and endless red tape faces persons engaging in aquaculture, an industry which is, according to prior enactment of the legislature, to be enhanced and encouraged as a matter of state policy.

The purpose of this Act is to clarify the regulatory responsibilities of state and county agencies in regard to maintenance, repair, and improvement of fishponds and aquaculture areas, and to ensure that proper environmental safeguards are coupled with conditions encouraging retention of fishponds and aquaculture areas.

SECTION 2. The Hawaii Revised Statutes is amended by adding two new sections to be appropriately designated and to read:

"Sec. - Fishponds; rules. (a) The board of land and natural resources shall adopt rules concerning the application and issuance of permits for the repair and maintenance of fishponds pursuant to section 183-41. The rules shall specify the extent:

- (1) Of repairs and maintenance for which no permit is necessary, but for which the owner shall be required to notify the board in writing of his intent to perform them which notification shall be submitted not less than ten days before performing the repairs or maintenance, and for which receipt and lack of action by the board within the ten-day notice period shall constitute approval;
 - (2) Of repairs and maintenance for which a permit shall be required which shall be requested in writing by the owner; and
- (b) For the purposes of this section:
- (1) "Emergency repairs" means that work necessary to repair damages to fishponds arising from natural forces or events of human creation not due to the wilful neglect of the owner, of such a character that the efficiency, esthetic character or health of the fishpond, neighboring activities of persons, or existing flora or fauna will be endangered in the absence of correction of existing conditions by repair or maintenance.

- (2) "Repairs and maintenance" of fishponds means any work performed relative to the walls, floor, or other traditional natural feature of the fishpond and its appurtenances, the purposes of which are to maintain the fishpond in its natural state and safeguard it from damage from environmental and natural forces.

Repairs and maintenance and emergency repair of fishponds shall not be construed as actions "proposing any use" within the context of section 343-4.

Sec. - Aquaculture farms; rules. (a) The board of land and natural resources shall adopt rules for review of applications, and issuance of permits for aquaculture farms, pursuant to section 183-41. The rules shall specify permitted uses; provided that all uses endorsed by the board of agriculture pursuant to chapter 219 shall be permitted uses; uses for which an environmental impact statement shall be necessary, pursuant to chapter 343, as well as those actions of repair and maintenance which shall not be subject to the permit and environmental impact statement provisions, including but not limited to emergency repairs.

(b) For the purposes of this section, "aquaculture" means all activities as defined in section 219-2, when carried out by a qualified aquaculturist as defined by section 219-2."

SECTION 3. Chapter 205, Hawaii Revised Statutes, is amended by amending section 205-36 to read:

"Sec. 205-36 Exemptions. Tunnels, canals, basins, and ditches, together with associated structures used by public utilities as the term is defined in section 269-1, wharves, docks, piers, and other harbor and water front improvements and any other maritime facility and water sport recreational facilities may be permitted within the shoreline area; provided that the plans therefor are submitted for review and are approved by the agency after a public hearing has been held and that the appropriate state body has found that the proposed structures will result only in a minimum interference with natural shoreline processes; provided further that any such structure constructed by a governmental body shall be exempt from the provisions of this part except as to the requirement that two public hearings shall be held by the governmental body charged with such construction, once when the project is first conceived and again when the project is substantially designed and planned, but prior to the letting of the contract. Repair and maintenance of fishponds, and improvements for aquaculture farms shall be exempt from this chapter, upon issuance of a permit or waiver of the requirements for same by the board of land and natural resources."

SECTION 4. New statutory material is underscored. In printing this Act, the revisor of statutes need not include the underscoring.*

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

(Approved May 1, 1975.)

*Edited accordingly.