

ACT 177

H.B. NO. 1763

A Bill for an Act Relating to Hawaiian Fishponds.

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

SECTION 1. The legislature finds that the Constitution of the State of Hawaii pledges to protect and preserve the natural resources of the State and the customary rights exercised by the aboriginal people of Hawaii for the purposes of subsistence. Among the most traditional means of ensuring a source of sustenance on a daily basis was the cultivation of fish and other edible aquatic species in the Hawaiian fishpond system or “loko i‘a”. Although the loko i‘a continue to represent a viable source of sustenance for the people of the State, the plethora of regulatory requirements that directly and indirectly impact the reconstruction, restoration, and operation of Hawaiian loko i‘a inhibits their revitalization throughout the State. The purpose of this Act is to streamline the permitting process for the reconstruction, restoration, repair, and use of certain Hawaiian loko i‘a.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER HAWAIIAN FISHPONDS

§ -1 **Definitions.** As used in this chapter:

“Hawaiian fishponds” means the unique, traditional system and methodology of aquaculture practiced by the aboriginal people of Hawaii, and found nowhere else in the world. Generally referred to as “loko i’a”, the system mastered by ancient Hawaiians includes but is not limited to loko kuapa, loko umeiki, and loko pu‘uone. Loko i’a are natural or artificial enclosures; loko kuapa are enclosures built upon a reef, loko umeiki are a type of permanent fish-trap structure, and loko pu‘uone are enclosed by sand. The term does not include any fishpond designed in a manner or constructed for purposes other than those associated with traditional loko i’a management and culture.

§ -2 **Exemption from environmental impact statement law.** The proposed reconstruction, restoration, repair, or use of any Hawaiian fishpond shall be exempt from the requirements of chapter 343; provided that it will comply with the following conditions:

- (1) The fishpond is not adjacent to a sandy beach;
- (2) The fishpond stocks only native aquatic organisms;
- (3) The fishpond does not operate as an intensive culture system in which cultured organisms require frequent or periodic artificial feeding, artificial aeration of water, or artificial pumping of water through the fishponds for their growth and survival;
- (4) Bulk chemicals are not added to the water for the control of pathogens or parasites;
- (5) Coastal access is allowed to any person mauka of the fishpond and makai of walls;
- (6) The fishpond and its operations do not harm any threatened or endangered species; and
- (7) The fishpond is not used for water recreational purposes except those recreational activities customarily and traditionally practiced in Hawaiian fishponds prior to 1778.

§ -3 **Department assistance.** The department of land and natural resources shall actively assist applicants applying for permits, certifications, and approvals to reconstruct, restore, repair, and use Hawaiian fishponds. The program shall assist applicants in sending permit applications to all affected agencies.”

SECTION 3. Chapter 342D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§342D- **Hawaiian fishponds.** The department shall process applications for permits and water quality certifications for the reconstruction, restoration, repair, or reuse of any Hawaiian fishpond as defined in section -1 before all other permits and certifications. The director shall render a decision on the completeness of any application for that permit or water quality certification within thirty days of receipt. Applications for fishpond reconstruction, restoration, or repair that are incomplete shall be denied without prejudice. The director shall render a decision on any complete application for a permit or water quality certification for any fishpond within one hundred fifty days.”

SECTION 4. Section 183C-6, Hawaii Revised Statutes, is amended to read as follows:

“[[§183C-6]] Permits and site plan approvals. (a) The department shall regulate land use in the conservation district by the issuance of permits.

(b) The department shall render a decision on a completed application for a permit within one-hundred-eighty days of its acceptance by the department. If within one-hundred-eighty days after acceptance of a completed application for a permit, the department shall fail to give notice, hold a hearing, and render a decision, the owner may automatically put the owner's land to the use or uses requested in the owner's application. When an environmental impact statement is required pursuant to chapter 343, or when a contested case hearing is requested pursuant to chapter 91, the one-hundred-eighty days may be extended an additional ninety days at the request of the applicant. Any request for additional extensions shall be subject to the approval of the board.

(c) The department shall hold a public hearing in every case involving the proposed use of land for commercial purposes, at which hearing interested persons shall be afforded a reasonable opportunity to be heard. Notice of the time and place of the hearing shall be published at least once in a newspaper of general circulation in the State and in the county in which the property is located. The notice shall be given not less than twenty days prior to the date set for the hearing. The hearing shall be held in the county in which the land is located and may be delegated to an agent or representative of the board as may otherwise be provided by law and in accordance with rules adopted by the board. For the purposes of its public hearing or hearings, the department shall have the power to summon witnesses, administer oaths, and require the giving of testimony. As used in this paragraph, the term “commercial purposes” shall not include the use of land for utility purposes.

(d) The department shall regulate the construction, reconstruction, demolition, or alteration of any structure, building, or facility by the issuance of site plan approvals.

(e) Any permit for the reconstruction, restoration, repair, or use of any Hawaiian fishpond exempted from the requirements of chapter 343 under section -2 shall provide for compliance with the conditions of section -2.”

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval.

(Approved June 14, 1995.)

Note

1. Edited pursuant to HRS §23G-16.5.