

JAN 24 2019

A BILL FOR AN ACT

RELATING TO STATE LANDS.

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

1 SECTION 1. The legislature finds that sea-level rise is
2 greatly affecting the coastal lands of the islands and will
3 continue to do so in the upcoming decades. The legislature also
4 finds that it is imperative for the State to address the
5 armoring or ceding of lands as a whole and create a
6 comprehensive plan. The legislature further finds that allowing
7 individual coastal landowners to fill in land or create
8 structures around their property will cause damage to the
9 shorelines and will frustrate the sea-level rise adaptation
10 planning by the State.

11 Accordingly, the purpose of this Act is to implement
12 regulations and enforcement rules for landowners with abutting
13 submerged public lands or land beneath tidal waters.

14 SECTION 2. Section 171-53, Hawaii Revised Statutes, is
15 amended by amending subsections (a), (b), and (c) to read as
16 follows:



1 "(a) Any submerged public land or land beneath tidal
2 waters shall not hereafter be reclaimed by private abutting
3 owners, except as [hereinafter] provided[-] in subsections (b)
4 and (c). A person who violates this section shall be subject
5 to:

6 (1) A fine of not less than \$500 per day, commencing at
7 the start of the construction of any structure or
8 filling in of land on submerged public land or land
9 beneath tidal waters;

10 (2) An injunction on any filling or building efforts; and

11 (3) Removal of anything used to fill in land or any
12 structure at the owner's or lessee's expense.

13 (b) ~~As to presently reclaimed land, the board [of land and~~
14 ~~natural resources, after finding that its disposition is not~~
15 ~~prejudicial to the best interest of the State, community or area~~
16 ~~in which such reclaimed land is located and after giving public~~
17 ~~notice in accordance with section 171-16(d) of its intention to~~
18 ~~dispose,]~~ may dispose of it, without recourse to public auction,
19 to the abutting owner, by sale or lease; provided that the
20 following conditions are met:

21 (1) The board shall make a finding that:



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- 1 (A) Its disposition is not prejudicial to the best
2 interest of the State, community, or area in
3 which the reclaimed land is located;
- 4 (B) Less than fifty per cent of the presently
5 reclaimed land has been destroyed;
- 6 (C) The reclaimed land does not prevent public shore
7 access;
- 8 (D) The owner or lessee shall assume all costs
9 associated with the repair, maintenance, and
10 restoration of the reclaimed land;
- 11 (E) The continued presence of the reclaimed land does
12 not significantly impact the surrounding
13 environment or shoreline; and
- 14 (F) The owner or lessee meets all other provisions
15 and requirements for permitting pursuant to
16 chapter 205A and any stipulations of the board;
- 17 (2) The board shall give public notice in accordance with
18 section 171-16(d) of its intention to dispose of the
19 reclaimed land; and
- 20 (3) If the disposition is made by lease:

1 (A) All structures shall be removed at the lessee's
2 expense upon termination of the lease;

3 (B) The lessee shall assume all liabilities attached
4 to the leased land; and

5 (C) The State shall waive all liabilities attached to
6 the leased lands;

7 provided further that if the reclaimed land has been filled in
8 or made with the prior approval of government authorities, and
9 not otherwise filled in or made contrary to the public interest,
10 it may be disposed of at fair market value or fair market rental
11 of the submerged public land, but if the reclaimed land has been
12 filled or made otherwise, it shall be disposed of at the fair
13 market value or fair market rental of the reclaimed land.

14 (c) The board, with the prior approval of the governor and
15 the prior authorization of the legislature by concurrent
16 resolution, may lease state submerged lands and lands beneath
17 tidal waters under the terms, conditions, and restrictions
18 provided in this chapter; provided that:

19 (1) The lease is essential to protect water-dependent
20 uses, beaches, or existing structures from erosion;



- 1 (2) Any structure placed on the submerged lands shall not
2 create net adverse shoreline sand movement downdrift;
- 3 (3) The reclaimed land shall not prevent public shore
4 access;
- 5 (4) The continued presence of the alterations to the
6 submerged lands has no more than a de minimus impact
7 on the surrounding environment or shoreline;
- 8 (5) The State waives all liabilities attached to the
9 leased lands;
- 10 (6) The lessee fully assumes all costs associated with the
11 repair, maintenance, and restoration of the reclaimed
12 land;
- 13 (7) The lessee agrees to remove all structures at lessee's
14 expense upon termination of the lease;
- 15 (8) The lessee assumes all liabilities attached to the
16 leased lands; and
- 17 (9) The lessee meets all other provisions and requirements
18 for permitting pursuant to chapter 205A and
19 stipulations made by the board;
- 20 provided further that the authorization of the legislature shall
21 not be required for leases issued under chapter 190D; and



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1 provided further that the approval of the governor and
 2 authorization of the legislature shall not be required for any
 3 grant of easement or lease of state submerged lands or lands
 4 beneath tidal waters used for moorings, cables, or pipelines;
 5 provided further that this exemption shall not apply to
 6 easements for cables used for interisland electrical
 7 transmission or slurry pipelines used for transportive
 8 materials, mined at sea, or waste products from the processing
 9 of the same.

10 The lease shall provide that the lands shall be reclaimed
 11 at the expense of the lessee. Title to the reclaimed lands
 12 shall remain in the State."

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

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

18 SECTION 5. This Act shall take effect on April 22, 2020.

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INTRODUCED BY:

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Report Title:

BLNR; Submerged Lands; Sea-Level Rise; Penalties; Easements

Description:

Establishes penalties for failure to comply with certain submerged land reclamation regulations. Adds requirements for presently reclaimed land to be disposed of by the Board of Land and Natural Resources, without recourse to public auction, to an abutting owner, by sale, or by lease. Provides requirements for the Board to lease state submerged lands and lands beneath tidal waters.

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

