

**ACT 367**

**S.B. NO. 242**

**A Bill for an Act Relating to Public Lands.**

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

SECTION 1. Section 171-58, Hawaii Revised Statutes, is amended to read as follows:

**"§171-58 Minerals and water rights. (a)** Except as provided herein, the right to any mineral or surface or ground water shall not be included in any lease, agreement, or sale, [such] this right being reserved to the State; provided that the board [of land and natural resources] may make provisions in [such] the lease, agreement, or sale, for the payment of just compensation to the surface owner for improvements taken as a condition precedent to the exercise by the State of any reserved rights to enter, sever, and remove minerals or to capture, divert, or impound water.

**(b)** Disposition of mineral rights shall be in accordance with the laws relating [thereto] to the disposition of mineral rights enacted or hereafter enacted by the legislature.

**(c)** Disposition of water rights may be made by lease at public auction as provided in this chapter or by permit for temporary use on a month-to-month basis under such conditions which will best serve the interests of the State and subject to a maximum term of one year and other restrictions under the law; provided that any disposition by lease shall be subject to disapproval by the legislature or by two-thirds vote of either the senate or the house of representatives or by majority vote of both, in any regular or special session next following the dates of such disposition[.]; provided further that after a certain land or water use has been authorized by the board subsequent to public hearings and conservation district use application and environmental impact statement approvals, water used in non-polluting ways, for non-consumptive purposes because it is returned to the same stream or other body of water from which it was drawn, essentially not affecting the volume and quality of water or biota in the stream or other body of water, also may be leased by the board with the prior approval of the governor and the prior authorization of the legislature by concurrent resolution.

**(d)** Any lease of water rights shall contain a covenant on the part of the lessee that the lessee shall provide from waters leased from the State under the lease or from any water sources privately owned by the lessee to any farmer or rancher engaged in irrigated pasture operations, crop farming, pen feeding operations, or raising of grain and forage crops, or for such public uses and purposes as may be determined by the board, at the same rental price paid under the lease, plus the proportionate actual costs, as determined by the board, to make such waters available, so much of the waters as are determined by the board to be surplus to the lessee's needs and for such minimum period as the board shall accordingly determine; provided that in lieu of payment for such waters as the State may take for public uses and purposes the board may elect to reduce the rental price under the lease of water rights in proportion to the value of the waters and the proportionate actual costs of making the waters available. Subject to the applicable provisions of section 171-37(3), the board [may], at any time during the term of the lease of water rights, may withdraw from waters leased from the State and from sources privately owned by the lessee so much water as it may deem necessary to (1) preserve human life and (2) preserve animal life, in that order of priority; and that from waters leased from the State the board [may], at any time during the term of the lease of water rights, may also withdraw so much water as it may deem necessary to preserve crops; provided that payment for the waters shall be made in the same manner as provided herein."

SECTION 2. Section 171-53, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The board, with the prior approval of the governor and the prior authorization of the legislature by concurrent resolution, may lease submerged lands[,] and lands beneath tidal waters [which it deems suitable for reclamation,] under the terms, conditions, and restrictions provided in this chapter[.]; provided that the approval of the governor and authorization of the legislature shall not be required for any grant of easement or lease of submerged lands or lands beneath tidal waters used for moorings, cables, or pipelines; provided further that this exemption shall not apply to easements for cables used for interisland electrical transmission or slurry pipelines used for transportive materials, mined at sea, or waste products from the processing of the same.

The lease shall provide that the lands shall be reclaimed at the expense of the lessee. Title to the reclaimed lands shall remain in the State.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon approval provided that Section 1 be retroactive to July 1, 1986.

(Approved July 3, 1987.)