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S.B. NO. 1645

A Bill for an Act Relating to Chapter 183C.

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

SECTION 1. Section 26-16, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The functions and authority heretofore exercised by the board of commissioners of agriculture and forestry (except the management of state parks and the conservation, development, and utilization of forest resources, including regulatory powers over the forest reserve provided in [section 183-41,] Act 234, section 2, Session Laws of Hawaii 1957, and of fish and game resources transferred to the department of land and natural resources), by the farm loan board as heretofore constituted, and by the University of Hawaii with respect to the crop and livestock reporting service and market news service, are transferred to the department of agriculture established by this chapter.”

SECTION 2. Section 171-58.5, Hawaii Revised Statutes, is amended to read as follows:

“**§171-58.5 Prohibitions.** The mining or taking of sand, dead coral or coral rubble, rocks, soil, or other marine deposits seaward from the shoreline is prohibited with the following exceptions:

- (1) The taking from seaward of the shoreline of such materials, not in excess of one gallon per person per day for reasonable, personal, noncommercial use;

- (2) For the replenishment or protection of public shoreline areas and adjacent public lands seaward of the shoreline, or construction or maintenance of state approved lagoons, harbors, launching ramps, or navigational channels with a permit authorized under [section 183-41;] chapter 183C;
- (3) The clearing of such materials from existing drainage pipes and canals and from the mouths of streams including clearing for the purposes under section 46-11.5; provided that the sand removed shall be placed on adjacent areas unless this placement would result in significant turbidity; or
- (4) The cleaning of areas seaward of the shoreline for state or county maintenance purposes including the purposes under section 46-12; provided that the sand removed shall be placed on adjacent areas unless such placement would result in significant turbidity.”

SECTION 3. Section 183-42, Hawaii Revised Statutes, is amended to read as follows:

“§183-42 Strip mining; prior approval of license or permit. No original permit or license for strip mining on land within the forest reserve boundaries shall be issued by any officer or agency of the State without the prior approval and concurrence of the department. In determining whether to grant or withhold such approval, the department shall be guided by the standards set forth in [section 183-41.] chapter 183C.”

SECTION 4. Section 183-44, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The board [of land and natural resources] shall adopt rules concerning the application and issuance of permits for the repair, strengthening, reinforcement, and maintenance of fishponds pursuant to [section 183-41.] chapter 183C. The rules shall specify the extent:

- (1) Of repairs, strengthening, reinforcement, and maintenance for which no permit is necessary, but for which the owner shall be required to notify the board in writing of the owner’s intent to perform them which notification shall be submitted not less than ten days before performing the repairs, strengthening, reinforcement, 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, strengthening, reinforcement, and maintenance for which a permit shall be required which shall be requested in writing by the owner.”

SECTION 5. Section 188-68, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The intentional taking, breaking, or damaging with crowbar, chisel, or any other implement of any rock or coral to which marine life is visibly attached or affixed, or live stony coral of the taxonomic order, Madreporaria, including the Fungidae or Pocilloporidae families, is prohibited except with a permit authorized under section 187A-6 or [section 183-41] chapter 183C or by the department under rules adopted pursuant to chapter 91 necessary for collecting marine life visibly attached to rocks placed in the water for a commercial purpose.”

SECTION 6. Section 190D-11, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The department shall process the conservation district use application pursuant to [section 183-41] chapter 183C and rules adopted under this chapter. Within sixty days after the submission of a conservation district use application with a request for a lease for marine activities in state marine waters or submerged lands and the receipt of the related environmental assessment or environmental impact statement, the department shall issue a public notice that the application has been received. The public notice shall describe the marine waters or submerged lands, or both, for which application has been made, the nature of the exclusive use sought, and the purpose for which the application has been made. The notice shall be published on three separate days in a newspaper of general distribution in the State and in the county nearest the marine waters or submerged lands for which application has been made. The public notice shall invite public comment.”

SECTION 7. Section 195F-2, Hawaii Revised Statutes, is amended by amending the definition of “potential natural area reserve” to read:

““Potential natural area reserve” means land or water areas within the protective subzone of the conservation district established pursuant to [section 183-41,] chapter 183C, intact native natural communities identified by the heritage program under chapter 195, and other lands or waters meeting criteria established by the natural area reserves system commission.”

SECTION 8. Section 205-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There shall be four major land use districts in which all lands in the State shall be placed: urban, rural, agricultural, and conservation. The land use commission shall group contiguous land areas suitable for inclusion in one of these four major districts. The commission shall set standards for determining the boundaries of each district, provided that:

- (1) In the establishment of boundaries of urban districts those lands that are now in urban use and a sufficient reserve area for foreseeable urban growth shall be included;
- (2) In the establishment of boundaries for rural districts, areas of land composed primarily of small farms mixed with very low density residential lots, which may be shown by a minimum density of not more than one house per one-half acre and a minimum lot size of not less than one-half acre shall be included, except as herein provided;
- (3) In the establishment of the boundaries of agricultural districts the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation; and
- (4) In the establishment of the boundaries of conservation districts, the “forest and water reserve zones” provided in [section 183-41] Act 234, section 2, Session Laws of Hawaii 1957, are renamed “conservation districts” and, effective as of July 11, 1961, the boundaries of the forest and water reserve zones theretofore established pursuant to [section 183-41,] Act 234, section 2, Session Laws of Hawaii 1957, shall constitute the boundaries of the conservation districts; provided that thereafter the power to determine the boundaries of the conservation districts shall be in the commission.

In establishing the boundaries of the districts in each county, the commission shall give consideration to the master plan or general plan of the county.”

SECTION 9. Section 205-5.1, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) The board of land and natural resources shall have the responsibility for designating areas as geothermal resource subzones as provided under section 205-5.2; except that the total area within an agricultural district which is the subject of a geothermal mining lease approved by the board of land and natural resources, any part or all of which area is the subject of a special use permit issued by the county for geothermal development activities, on or before May 25, 1984, is designated as a geothermal resource subzone for the duration of the lease. The designation of geothermal resource subzones shall be governed exclusively by this section and section 205-5.2, except as provided therein. The board shall adopt, amend, or repeal rules related to its authority to designate and regulate the use of geothermal resource subzones in the manner provided under chapter 91.

The authority of the board to designate geothermal resource subzones shall be an exception to those provisions of this chapter and of section 46-4 authorizing the land use commission and the counties to establish and modify land use districts and to regulate uses therein. The provisions of this section shall not abrogate nor supersede the provisions of chapters 182, 183, and [183.] 183C.

(c) The use of an area for geothermal development activities within a geothermal resource subzone shall be governed by the board within the conservation district and, except as herein provided, by state and county statutes, ordinances, and rules not inconsistent herewith within agricultural, rural, and urban districts, except that no land use commission approval or special use permit procedures under section 205-6 shall be required for the use of such subzones. In the absence of provisions in the county general plan and zoning ordinances specifically relating to the use and location of geothermal development activities in an agricultural, rural, or urban district, the appropriate county authority may issue a geothermal resource permit to allow geothermal development activities. “Appropriate county authority” means the county planning commission unless some other agency or body is designated by ordinance of the county council. Such uses as are permitted by county general plan and zoning ordinances, by the appropriate county authority, shall be deemed to be reasonable and to promote the effectiveness and objectives of this chapter. Chapters 177, 178, 182, 183, 183C, 205A, 226, 342, and 343 shall apply as appropriate. If provisions in the county general plan and zoning ordinances specifically relate to the use and location of geothermal development activities in an agricultural, rural, or urban district, the provisions shall require the appropriate county authority to conduct a public hearing on any application for a geothermal resource permit to determine whether the use is in conformity with the criteria specified in subsection (e) for granting geothermal resource permits; provided that within the urban, rural, and agricultural land use districts, direct use applications of geothermal resources are permitted without any application for a geothermal resource permit both within and outside of areas designated as geothermal resource subzones pursuant to section 205-5.2 if such direct use applications are in conformance with all other applicable state and county land use regulations and are in conformance with this chapter.”

SECTION 10. Section 205-5.2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The board’s assessment of each potential geothermal resource subzone area shall examine factors to include, but not be limited to:

- (1) The area's potential for the production of geothermal energy;
- (2) The prospects for the utilization of geothermal energy in the area;
- (3) The geologic hazards that potential geothermal projects would encounter;
- (4) Social and environmental impacts;
- (5) The compatibility of geothermal development and potential related industries with present uses of surrounding land and those uses permitted under the general plan or land use policies of the county in which the area is located;
- (6) The potential economic benefits to be derived from geothermal development and potential related industries; and
- (7) The compatibility of geothermal development and potential related industries with the uses permitted under [sections 183-41] chapter 183C and section 205-2, where the area falls within a conservation district.

In addition, the board shall consider, if applicable, objectives, policies and guidelines set forth in part I of chapter 205A, and the provisions of chapter 226."

SECTION 11. Section 205-15, Hawaii Revised Statutes, is amended to read as follows:

"§205-15 Conflict. Except as specifically provided by this chapter and the regulations adopted thereto, neither the authority for the administration of the provisions of [section 183-41] chapter 183C nor the authority vested in the counties under the provisions of section 46-4 shall be affected."

SECTION 12. Section 205A-41, Hawaii Revised Statutes, is amended by amending the definition of "board approval" to read:

""Board approval" means approval by the board of land and natural resources pursuant to [section 183-41.] chapter 183C."

SECTION 13. Section 205A-43.6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The authority of the board of land and natural resources to determine the shoreline and enforce rules established under [section 183-41] chapter 183C shall not be diminished by a manmade structure in violation of this part.”

SECTION 14. Section 220-1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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.] chapter 183C. 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.”

SECTION 15. Section 607-25, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

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“(c) For purposes of this section, the permits or approvals required by law shall include compliance with the requirements for permits or approvals established by chapters 6E, 46, 54, 171, 174C, 180C, 183, 183C, 184, 195, 195D, 205, 205A, 266, 342B, 342D, 342F, 342H, 342J, 342L, 342N, and 343 and ordinances or rules adopted pursuant thereto under chapter 91.”

SECTION 16. This Act does not affect the rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 17. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 18. This Act shall take effect upon its approval.

(Approved May 25, 1995.)