THE SENATE
THIRTIETH LEGISLATURE, 2019
STATE OF HAWAI'I

JAN 2, 2019

S.B. NO. 1125

A BILL FOR AN ACT

RELATING TO STATE LANDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAI'I:

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

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

SECTION 2. Section 171-53, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:
"(a) Any submerged public land or land beneath tidal waters shall not hereafter be reclaimed by private abutting owners, except as [hereinafter] provided[ ] in subsections (b) and (c). A person who violates this section shall be subject to:

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

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

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

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

(1) The board shall make a finding that:
(A) Its disposition is not prejudicial to the best interest of the State, community, or area in which the reclaimed land is located;

(B) Less than fifty per cent of the presently reclaimed land has been destroyed;

(C) The reclaimed land does not prevent public shore access;

(D) The owner or lessee shall assume all costs associated with the repair, maintenance, and restoration of the reclaimed land;

(E) The continued presence of the reclaimed land does not significantly impact the surrounding environment or shoreline; and

(F) The owner or lessee meets all other provisions and requirements for permitting pursuant to chapter 205A and any stipulations of the board;

(2) The board shall give public notice in accordance with section 171-16(d) of its intention to dispose of the reclaimed land; and

(3) If the disposition is made by lease:
(A) All structures shall be removed at the lessee's expense upon termination of the lease; 

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

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

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

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

(1) The lease is essential to protect water-dependent uses, beaches, or existing structures from erosion;
Any structure placed on the submerged lands shall not create net adverse shoreline sand movement downdrift;

The reclaimed land shall not prevent public shore access;

The continued presence of the alterations to the submerged lands has no more than a de minimus impact on the surrounding environment or shoreline;

The State waives all liabilities attached to the leased lands;

The lessee fully assumes all costs associated with the repair, maintenance, and restoration of the reclaimed land;

The lessee agrees to remove all structures at lessee's expense upon termination of the lease;

The lessee assumes all liabilities attached to the leased lands; and

The lessee meets all other provisions and requirements for permitting pursuant to chapter 205A and stipulations made by the board;

provided further that the authorization of the legislature shall not be required for leases issued under chapter 190D; and
provided further that the approval of the governor and
authorization of the legislature shall not be required for any
grant of easement or lease of state 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. This Act does not affect rights and duties that
matured, penalties that were incurred, and proceedings that were
begun before its effective date.

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

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

INTRODUCED BY:
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.

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