
A BILL FOR AN ACT

RELATING TO PUBLIC LANDS.

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

1 SECTION 1. Chapter 171, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 **"§171- Transiting public lands; commercial activity.**

5 (a) No person shall transit unencumbered public lands in the
6 conservation district for the purpose of participating in any
7 commercial activity without the proposed commercial activity
8 first obtaining a conservation district use permit, unless
9 proposed transiting of the unencumbered land is within an area
10 of the conservation district that is regulated by a management
11 plan approved by the board of land and natural resources or any
12 other governmental or community-based organization that permits
13 the commercial activity.

14 (b) When determining whether to grant a conservation
15 district use permit for the transiting of the unencumbered
16 public lands in the conservation district for the purpose of a
17 commercial activity, the board shall evaluate whether:



1 (1) The proposed commercial activity, singularly or as
2 part of cumulative commercial activities, will have a
3 significant effect on the quality of the environment,
4 including actions that irrevocably commit a natural
5 resource, curtail the range of beneficial uses of the
6 environment, are contrary to the State's environmental
7 policies or long-term environmental goals, or
8 adversely affect the economic welfare, social welfare,
9 or cultural practices of the community and State;

10 (2) The proposed commercial activity, singularly or as
11 part of cumulative commercial activities, will
12 significantly burden public agencies to provide
13 streets or roads, sewers, water, drainage, or other
14 public services or facilities;

15 (3) There are measures to mitigate the adverse effects or
16 burdens referred to in paragraphs (1) and (2); and

17 (4) There are specific procedures for emergency and minor
18 transits.

19 (c) Nothing in this section shall be construed to apply

20 to:

21 (1) Personnel or agents of the department of land and
22 natural resources; or



1 (2) Emergency personnel, including medical, fire, and
2 police personnel, in their official capacity.

3 (d) As used in this section:

4 "Commercial activity" means to engage in any action or to
5 attempt to engage in any action for compensation in any form,
6 including but not limited to providing, or attempting to
7 provide, guide services, charters, tours, and transportation to
8 and from the location for which services are provided.

9 "Emergency transit" means an action by the board
10 authorizing a transit in cases of emergency requiring immediate
11 action to prevent substantial physical harm to persons or
12 property.

13 "Minor transit" means an action by the board authorizing
14 transit situations that have no significant effect on the
15 quality of the environment, nor adversely affect the economic
16 welfare, social welfare, or cultural practices of the community
17 or the State.

18 "Transit" means to pass over or through the unencumbered
19 lands.

20 (e) The department shall adopt rules pursuant to chapter
21 91 necessary for the implementation and enforcement of this
22 section."



1 SECTION 2. Section 171-6, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§171-6 Powers.** Except as otherwise provided by law, the
4 board of land and natural resources shall have the powers and
5 functions granted to the heads of departments and the board of
6 land and natural resources under chapter 26.

7 In addition to the foregoing, the board may:

- 8 (1) Adopt a seal;
- 9 (2) Administer oaths;
- 10 (3) Prescribe forms of instruments and documents;
- 11 (4) Adopt rules which, upon compliance with chapter 91,
12 shall have the force and effect of law;
- 13 (5) Set, charge, demand, and collect reasonable fees for
14 the preparation of documents to be issued, for the
15 surveying of public lands, and for the issuing of
16 certified copies of its government records, which
17 fees, when collected, shall be deposited into the
18 state general fund, unless otherwise specified in
19 this chapter;
- 20 (6) Establish additional restrictions, requirements, or
21 conditions, not inconsistent with those prescribed in
22 this chapter, relating to the use of particular land



- 1 being disposed of, the terms of sale, lease, license,
2 or permit, and the qualifications of any person to
3 draw, bid, or negotiate for public land;
- 4 (7) Reduce or waive the lease rental at the beginning of
5 the lease on any lease of public land to be used for
6 any agricultural or pastoral use, or for resort,
7 commercial, industrial, or other business use where
8 the land being leased requires substantial
9 improvements to be placed thereon; provided that such
10 reduction or waiver shall not exceed two years for
11 land to be used for any agricultural or pastoral use,
12 or exceed one year for land to be used for resort,
13 commercial, industrial, or other business use;
- 14 (8) Delegate to the chairperson or employees of the
15 department of land and natural resources, subject to
16 the board's control and responsibility, such powers
17 and duties as may be lawful or proper for the
18 performance of the functions vested in the board;
- 19 (9) Utilize arbitration under chapter 658A to settle any
20 controversy arising out of any existing or future
21 lease;



- 1 (10) Set, charge, and collect reasonable fees in an amount
2 sufficient to defray the cost of performing or
3 otherwise providing for the inspection of activities
4 permitted upon the issuance of a land license
5 involving a commercial purpose;
- 6 (11) Appoint masters or hearing officers to conduct public
7 hearings as provided by law and under such conditions
8 as the board by rules shall establish;
- 9 (12) Bring such actions as may be necessary to remove or
10 remedy encroachments upon public lands. Any person
11 causing an encroachment upon public land shall ~~be~~
12 ~~subject to a fine of~~ ;
- 13 (A) Be fined not more than \$500 a day for the first
14 offense ~~[and shall be liable for administrative~~
15 ~~costs incurred by the department and for payment~~
16 ~~of damages. Upon the second offense and~~
17 ~~thereafter, the violator shall (A) be];~~
- 18 (B) Be fined not less than \$500 nor more than \$2,000
19 per day ~~[, (B) if]~~ for a second or any subsequent
20 offense;



1 (C) If required by the board, restore the land to its
2 original condition if altered and assume the
3 costs thereof; [~~and (C) assume such~~]

4 (D) Assume any costs [~~as~~] that may result from
5 adverse effects from [~~such~~] the restoration; and

6 (E) Be liable for administrative costs incurred by
7 the department and for payment of damages;

8 (13) Set, charge, and collect interest and a service charge
9 on delinquent payments due on leases, sales, or other
10 accounts. The rate of interest shall not exceed one
11 per cent a month and the service charge shall not
12 exceed \$50 a month for each delinquent payment;
13 provided that the contract shall state the interest
14 rate and the service charge and be signed by the party
15 to be charged;

16 (14) Set, charge, and collect additional rentals for the
17 unauthorized use of public lands by a lessee,
18 licensee, grantee, or permittee who is in violation of
19 any term or condition of a lease, license, easement,
20 or revocable permit, retroactive to the date of the
21 occurrence of the violation. Such amounts shall be
22 considered delinquent payments and shall be subject to



1 interest and service charges as provided in paragraph
2 (13);

3 (15) Set, charge, and collect reasonable fines for
4 violation of this chapter or any rule adopted
5 thereunder. Any person engaging in any prohibited use
6 of public lands, conducting any prohibited activity on
7 public lands, or violating any of the other provisions
8 of this chapter or any rule adopted thereunder, for
9 which violation a penalty is not otherwise provided,
10 shall be [~~fin~~ed]:

11 (A) Fined not more than [~~\$500 a day and shall be~~
12 liable] \$2,500 per violation for a first
13 violation or a violation occurring after five
14 years of a previous violation; provided that,
15 after written or verbal notification from the
16 department, an additional \$500 per day per
17 violation may be assessed for each day in which
18 the violation persists;

19 (B) Fined not more than \$5,000 per violation for a
20 second violation occurring within five years of
21 the last violation; provided that, after written
22 or verbal notification from the department, an



1 additional \$1,000 per day per violation may be
2 assessed for each day in which the violation
3 persists;

4 (C) Fined not more than \$10,000 per violation for a
5 third or subsequent violation occurring within
6 five years of the last violation; provided that,
7 after written or verbal notification from the
8 department, an additional \$2,000 per day per
9 violation may be assessed for each day in which
10 the violation persists; and

11 (D) Liable for administrative costs and expenses
12 incurred by the department and for payment for
13 damages[+], including but not limited to natural
14 resource damages.

15 In addition to fines, administrative costs, and
16 damages provided for in this paragraph, when
17 violations include or result in damage to or theft of
18 natural resources, the board may also establish,
19 charge, and collect a fine that, in the board's
20 discretion, is appropriate considering the value of
21 the natural resource that is damaged or stolen. In
22 determining an appropriate fine, the board may



1 consider the market value of the natural resource
2 damaged or stolen and any other factors that it deems
3 appropriate, including the loss of the natural
4 resource to its natural habitat and environment and
5 the cost of restoration or replacement. The remedies
6 provided for in this paragraph are cumulative and are
7 in addition to any other remedies allowed by law.

8 No person shall be sanctioned pursuant to this
9 section for the exercise of native Hawaiian gathering
10 rights and traditional cultural practices as
11 authorized by law or as permitted by the department
12 pursuant to article XII, section 7, of the Hawaii
13 State Constitution;

14 (16) Issue revenue bonds, subject to the approval of the
15 legislature. All revenue bonds shall be issued
16 pursuant to part III of chapter 39, except as provided
17 in this chapter. All revenue bonds shall be issued in
18 the name of the department and not in the name of the
19 State. The final maturity date of the revenue bonds
20 may be any date not exceeding thirty years from the
21 date of issuance;



1 (17) Pledge or assign all or any part of the receipts and
 2 revenues of the department. The revenue bonds shall
 3 be payable from and secured solely by the revenue
 4 derived by the department from the industrial park or
 5 parks for which the bonds are issued;

6 (18) Reimburse the state general fund for debt service on
 7 general obligation bonds or reimbursable general
 8 obligation bonds issued by the State for purposes of
 9 this chapter; and

10 (19) Do any and all things necessary to carry out its
 11 purposes and exercise the powers granted in this
 12 chapter."

13 SECTION 3. Section 183C-2, Hawaii Revised Statutes, is
 14 amended by amending the definition of "land use" to read as
 15 follows:

16 "Land use" means:

17 (1) The placement or erection of any solid material on
 18 land;

19 (2) The grading, removing, harvesting, dredging, mining,
 20 or extraction of any material or natural resource on
 21 land;

22 (3) The subdivision of land; [e#]



1 (4) The construction, reconstruction, demolition, or
2 alteration of any structure, building, or facility on
3 land[-]; or

4 (5) The transit of unencumbered lands in the conservation
5 district for the purpose of conducting a commercial
6 activity."

7 SECTION 4. This Act does not affect rights and duties or
8 community agreements that matured, penalties that were incurred,
9 and proceedings that were begun, before its effective date.

10 SECTION 5. New statutory material is underscored.

11 SECTION 6. This Act shall take effect on January 1, 2009.



Report Title:

Public Lands; Commercial Activity

Description:

Prohibits a person from transiting unencumbered public lands in the conservation district for any commercial activity purpose without a conservation district use permit unless the unencumbered land is within an area that is regulated through a management plan that permits the commercial activity. Increases penalties for persons engaging in any prohibited use of or activity on public lands or violating laws relating to the management and disposition of public lands. Effective 01/01/09.
(HB2332 HD1)

