

JAN 28 2009

A BILL FOR AN ACT

RELATING TO CONSERVATION AND RESOURCES ENFORCEMENT PROGRAM.

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

1 SECTION 1. Section 199-1, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~§199-1 [Board of land and natural resources,]~~ Department
4 of public safety; powers and duties. The [~~board of land and~~
5 ~~natural resources shall establish within the department of land~~
6 ~~and natural resources a~~] department of public safety shall have
7 jurisdiction over the conservation and resources enforcement
8 program relating to the enforcement of title 12, chapters 6D,
9 6E, and 6K, and rules adopted thereunder, and shall employ or
10 appoint, and remove, the following persons, subject to chapter
11 76 and section 78-1, who shall be provided with suitable badges
12 or insignia of office by the [~~department of land and natural~~
13 ~~resources~~] department of public safety:

14 (1) [~~An enforcement chief of the department of land and~~
15 ~~natural resources,~~] A deputy director of public
16 safety, who shall be the head of the conservation and
17 resources enforcement program and shall have charge,



1 direction, and control, subject to the direction and
 2 control of the [~~board,~~] director of public safety of
 3 all matters relating to the enforcement of title 12,
 4 chapters 6D, 6E, and 6K, and rules adopted thereunder
 5 and such other matters as the board may from time to
 6 time direct[~~. The enforcement chief shall be an~~
 7 ~~administrator experienced in conservation and~~
 8 ~~resources law enforcement and management]; and~~

9 (2) Personnel and enforcement officers of the conservation
 10 and resources enforcement program, including but not
 11 limited to enforcement officers on a voluntary basis
 12 and without pay."

13 SECTION 2. Section 199-4, Hawaii Revised Statutes, is
 14 amended as follows:

15 1. By amending its title to read:

16 "**§199-4 [Board of land and natural resources,] Department**
 17 **of public safety; police powers.**"

18 2. By amending subsection (a) to read:

19 "(a) The [~~board of land and natural resources]~~ department
 20 of public safety shall have police powers and may appoint and
 21 commission enforcement officers within the conservation and
 22 resources enforcement program. Persons appointed and



1 commissioned under this section shall have and may exercise all
2 of the powers and authority of a police officer, including the
3 power of arrest, and in addition to enforcing title 12, chapters
4 6D, 6E, and 6K, and rules adopted thereunder, may enforce all
5 other state laws and rules, and county ordinances within all
6 lands and waters of the State; provided that such powers shall
7 remain in force and effect only while in actual performance of
8 their duties, which shall include off-duty employment when
9 [~~such~~] that employment is for other state departments or
10 agencies. These enforcement officers shall consist of personnel
11 whose primary duty [~~will~~] shall be the enforcement of title 12,
12 chapters 6D, 6E, and 6K, and the rules adopted thereunder within
13 the areas under the jurisdiction of the department of [~~land and~~
14 ~~natural resources.~~] public safety."

15 SECTION 3. Section 199-6, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§199-6 Failure to obey a summons.** (a) Any person who
18 fails to appear at the place and within the time specified in
19 the summons or citation issued by the officers or their agents
20 or subordinates, upon that person's arrest for violation of
21 title 12, chapters 6D, 6E, and 6K, and rules adopted thereunder,
22 shall be guilty of a petty misdemeanor and, upon conviction,



1 shall be fined not more than \$500 or be imprisoned not more than
2 thirty days, or both.

3 If any person fails to comply with a summons or citation
4 issued, or if any person fails or refuses to deposit bail as
5 required and within the time permitted, the officers shall cause
6 a complaint to be entered against the person and secure the
7 issuance of a warrant for the person's arrest.

8 (b) When a complaint is made to any prosecuting officer of
9 the violation of title 12, chapters 6D, 6E, and 6K, and rules
10 adopted thereunder, the officer who issued the summons or
11 citation shall subscribe to it under oath administered by
12 another official or officials of the department of [~~land and~~
13 ~~natural resources~~] public safety whose names have been submitted
14 to the prosecuting officer and who have been designated by the
15 [~~chairperson of the board of land and natural resources~~]
16 director of public safety to administer [~~the same.~~] oaths."

17 SECTION 4. Section 199-7, Hawaii Revised Statutes, is
18 amended as follows:

19 1. By amending subsection (a) to read:

20 "(a) Any police officer or agent of the department of
21 [~~land and natural resources~~] public safety upon whom the [~~board~~
22 ~~of land and natural resources~~] director of public safety has



1 conferred powers of police officers, shall have the authority to
2 conduct searches on probable cause as provided by law and to
3 seize any equipment, article, instrument, aircraft, vehicle,
4 vessel, business records, or natural resource used or taken in
5 violation of the provisions contained in chapters 6D, 6E, and
6 6K, or title 12, or any rules adopted thereunder. For purposes
7 of this section, "natural resource" includes any archaeological
8 artifacts, minerals, any aquatic life or wildlife or parts
9 thereof, including their eggs, and any land plants or parts
10 thereof, including seeds."

11 2. By amending subsections (c) and (d) to read:

12 "(c) The department of [~~land and natural resources~~] public
13 safety shall compile a list of all equipment, articles,
14 instruments, aircraft, vehicles, vessels, or any natural
15 resource forfeited as provided in this section and shall publish
16 the list in its annual report.

17 (d) Notwithstanding any other law to the contrary, the
18 department of [~~land and natural resources~~] public safety may
19 sell or take actions to cause the sale of any perishable natural
20 resource that is seized to prevent the waste of the natural
21 resource and to ensure the economic value of [~~such~~] the natural
22 resource; provided that the department may not sell or cause the



1 sale of any threatened or endangered species or any other
2 species whose sale is prohibited by law. The department of
3 ~~[land and natural resources]~~ public safety may require the
4 person or persons who took the natural resources to sell the
5 seized natural resources at fair market value. The department
6 of ~~[land and natural resources]~~ public safety may require any
7 person purchasing any seized natural resource to deliver the
8 proceeds of the sale to the department of ~~[land and natural~~
9 ~~resources]~~ public safety or its authorized representative. Any
10 person who refuses to sell the seized natural resources at fair
11 market value or any person who fails to deliver the proceeds of
12 the sale, as directed by the department of ~~[land and natural~~
13 ~~resources,]~~ public safety shall be in violation of this
14 subsection and punishable as provided by law. The department of
15 ~~[land and natural resources]~~ public safety shall deposit and
16 keep the proceeds of the sale in an interest bearing account
17 until such time as the suspected violation is settled between
18 the person or persons who took the natural resource, consignee
19 or consignees, if any, and the department of ~~[land and natural~~
20 ~~resources,]~~ public safety. Should a settlement not be reached,
21 the department of ~~[land and natural resources]~~ public safety
22 shall submit the proceeds of the sale to the court. The



1 proceeds of the sale, after deducting any reasonable costs of
2 the sale incurred by the department of [~~land and natural~~
3 ~~resources,~~] public safety shall be subject to any administrative
4 or judicial proceedings in the same manner as the seized natural
5 resource would have been, including an action in rem for the
6 forfeiture of the proceeds. Seizure and sale of a natural
7 resource is without prejudice to any other remedy or sanction
8 authorized by law."

9 SECTION 5. Section 199D-1, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) There is established, within the department of [~~land~~
12 ~~and natural resources,~~] public safety a civil natural resource
13 violations system, whose purpose shall be to process violations
14 of departmental regulations for which administrative penalties
15 have been authorized by law or rules adopted thereunder."

16 SECTION 6. Section 199-2, Hawaii Revised Statutes, is
17 repealed.

18 [~~§199-2 Board of land and natural resources, delegation~~
19 ~~of authority.~~ The board of land and natural resources may
20 delegate to enforcement officers within the conservation and
21 resources enforcement program, such authority as may be required



1 ~~for enforcement of title 12, chapters 6D, 6E, and 6K, and rules~~
2 ~~adopted thereunder."]~~

3 SECTION 7. All administrative rules adopted by the board
4 of land and natural resources relating to chapter 199, Hawaii
5 Revised Statutes, shall be deemed to be in effect under the
6 department of public safety as of the effective date of this Act
7 until such time as these rules are amended or repealed by the
8 director of public safety; provided that the director of public
9 safety may adopt rules as provided under section 353C-2, Hawaii
10 Revised Statutes.

11 SECTION 8. All rights, powers, functions, and duties of
12 the department of land and natural resources, conservation and
13 resources enforcement division, are transferred to the
14 department of public safety.

15 All officers and employees whose functions are transferred
16 by this Act shall be transferred with their functions and shall
17 continue to perform their regular duties upon their transfer,
18 subject to the state personnel laws and this Act.

19 No officer or employee of the State having tenure shall
20 suffer any loss of salary, seniority, prior service credit,
21 vacation, sick leave, or other employee benefit or privilege as
22 a consequence of this Act, and the officer or employee may be

1 transferred or appointed to a civil service position without the
2 necessity of examination; provided that the officer or employee
3 possesses the minimum qualifications for the position to which
4 transferred or appointed; and provided that subsequent changes
5 in status may be made pursuant to applicable civil service and
6 compensation laws.

7 An officer or employee of the State who does not have
8 tenure and who may be transferred or appointed to a civil
9 service position as a consequence of this Act shall become a
10 civil service employee without the loss of salary, seniority,
11 prior service credit, vacation, sick leave, or other employee
12 benefits or privileges and without the necessity of examination;
13 provided that the officer or employee possesses the minimum
14 qualifications for the position to which transferred or
15 appointed.

16 If an office or position held by an officer or employee
17 having tenure is abolished, the officer or employee shall not
18 thereby be separated from public employment, but shall remain in
19 the employment of the State with the same pay and classification
20 and shall be transferred to some other office or position for
21 which the officer or employee is eligible under the personnel



1 laws of the State as determined by the head of the department or
2 the governor.

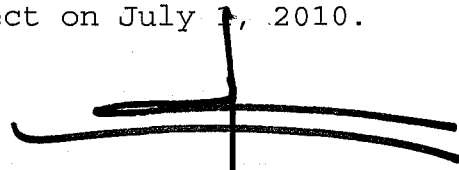
3 SECTION 9. All appropriations, records, equipment,
4 machines, files, supplies, contracts, books, papers, documents,
5 maps, and other personal property heretofore made, used,
6 acquired, or held by the department of land and natural
7 resources, conservation and resources enforcement division,
8 relating to the functions transferred to the department of
9 public safety shall be transferred with the functions to which
10 they relate.

11 SECTION 10. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 11. This Act shall take effect on July 1, 2010.

14

INTRODUCED BY: _____


By Request



Report Title:

Conservation and Resources

Description:

Transfers conservation and resources enforcement program from the department of land and natural resources to the department of public safety. Effective 7/1/10.

