

JAN 20 2010

S.B. NO. 2085

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# A BILL FOR AN ACT

RELATING TO FISHING ENFORCEMENT.

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

1           SECTION 1. The legislature finds that overfishing of  
2 Hawaii's reef and poaching mainly occur because Hawaii lacks  
3 marine enforcement and imposes minimal fines when enforcement  
4 does occur.

5           The purpose of this Act is to:

- 6           (1) Increase administrative fines and criminal penalties  
7           for fishing violations; and  
8           (2) Require that the moneys collected be used for fishing  
9           enforcement activities.

10          SECTION 2. Notwithstanding chapter 91, Hawaii Revised  
11 Statutes, or any other law to the contrary, the department of  
12 land and natural resources shall increase by \$500 any  
13 administrative fine or penalty established by administrative  
14 rules pursuant to chapters 187A, 188, 189, and 190, Hawaii  
15 Revised Statutes, relating to limitations on fishing, as defined  
16 in section 187A-1, Hawaii Revised Statutes.



1 SECTION 3. Chapter 187A, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 "§187A- Fishing enforcement special fund. (a) There is  
5 established in the department a fishing enforcement special  
6 fund.

7 (b) The following proceeds shall be retained by or  
8 transmitted to the department for deposit into the fishing  
9 enforcement special fund:

10 (1) Moneys collected as administrative fines or penalties,  
11 including attorney fees or costs, for fishing  
12 violations as authorized under section 187A-12.5;

13 (2) Moneys, other than informers' fees authorized under  
14 section 187A-14, collected as fines or bail  
15 forfeitures for fishing violations of this chapter and  
16 chapters 188, 189, and 190;

17 (3) Moneys collected for any violation of any law or rule  
18 relating to fishing limitations;

19 (4) Any moneys appropriated by the legislature to the  
20 special fund;

21 (5) Any moneys received from grants, donations, or the  
22 proceeds from contributions; and



1       (6) The interest or return on investments earned from  
2           moneys in the special fund.

3       (c) Expenditures from the fishing enforcement special fund  
4 shall be limited to activities relating to the enforcement of  
5 fishing limitations. Activities may include:

6       (1) Education programs to inform the public of fishing  
7           limitations;

8       (2) Training programs for state or county employees for  
9           fishing enforcement; and

10       (3) Legal costs incurred for fishing enforcement  
11           proceedings.

12       (d) The proceeds of the fishing enforcement special fund  
13 shall not be used as security for, or pledged to the payment of  
14 principal or interest on, any bonds or instruments of  
15 indebtedness."

16       SECTION 4. Section 187A-12.5, Hawaii Revised Statutes, is  
17 amended to read as follows:

18       "~~§~~187A-12.5~~§~~ **General administrative penalties.** (a)  
19 Except as otherwise provided by law, the board is authorized to  
20 set, charge, and collect administrative fines and to recover  
21 administrative fees and costs, including attorney's fees and  
22 costs, or bring legal action to recover administrative fines,



1 fees, and costs, including attorney's fees and costs, or payment  
2 for damages or for the cost to correct damages resulting from a  
3 violation of subtitle 5 of title 12 or any rule adopted  
4 thereunder.

5 (b) For violations involving threatened or endangered  
6 species, the administrative fines shall be as follows:

7 (1) For a first violation, a fine of not more than \$5,000;  
8 provided that for any fishing violation, a fine of not  
9 more than \$5,500;

10 (2) For a second violation within five years of a previous  
11 violation, a fine of not more than \$10,000; provided  
12 that for any fishing violation, a fine of not more  
13 than \$10,500; and

14 (3) For a third or subsequent violation within five years  
15 of the last violation, a fine of not more than  
16 \$15,000[-]; provided that for any fishing violation, a  
17 fine of not more than \$15,500.

18 (c) For all other violations the administrative fines  
19 shall be as follows:

20 (1) For a first violation, a fine of not more than \$1,000;  
21 provided that for any fishing violation, a fine of not  
22 more than \$1,500;



1           (2) For a second violation within five years of a previous  
2 violation, a fine of not more than \$2,000; provided  
3 that for any fishing violation, a fine of not more  
4 than \$2,500; and

5           (3) For a third or subsequent violation within five years  
6 of the last violation, a fine of not more than  
7 \$3,000[-]; provided that for any fishing violation, a  
8 fine of not more than \$3,500.

9           (d) In addition to subsection (b), a fine of up to  
10 [~~\$5,000~~] \$5,500 may be levied for each specimen of threatened or  
11 endangered aquatic life taken, killed, or injured in violation  
12 of subtitle 5 of title 12 or any rule adopted thereunder.

13           (e) In addition to subsection (c), a fine of up to  
14 [~~\$1,000~~] \$1,500 may be levied for each specimen of all other  
15 aquatic life taken, killed, or injured in violation of subtitle  
16 5 of title 12 or any rule adopted thereunder.

17           (f) Any criminal penalty for any violation of subtitle 5  
18 of title 12 or any rule adopted thereunder shall not be deemed  
19 to preclude the State from recovering additional administrative  
20 fines, fees, and costs, including attorney's fees and costs.

21           (g) Any criminal penalty and any administrative fine for  
22 any fishing violation of subtitle 5 of title 12 or any rule



1 adopted thereunder relating to fishing limitations shall be  
2 deposited in the fishing enforcement special fund, pursuant to  
3 section 187A- ."

4 SECTION 5. Section 188-70, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "§188-70 Penalties. (a) Any person violating any  
7 provision of or any rule adopted pursuant to this chapter,  
8 except sections 188-23 and 188-39.5, is guilty of a petty  
9 misdemeanor and, in addition to any other penalties, shall be  
10 fined not less than:

- 11 (1) \$100 for a first offense; provided that for a fishing  
12 violation, not less than \$600;  
13 (2) \$200 for a second offense; provided that for a fishing  
14 violation, not less than \$700; and  
15 (3) \$500 for a third or subsequent offense[-]; provided  
16 that for a fishing violation, not less than \$1000.

17 (b) Any person violating section 188-23, is guilty of a  
18 class C felony and shall be sentenced pursuant to chapter 706;  
19 provided that the court, in addition to any term of imprisonment  
20 or any other terms and conditions of probation, shall order the  
21 defendant to pay a fine of not less than [~~\$1,000-~~] \$1,500.

22 Notwithstanding section 706-669 and any other law to the



1 contrary, any person in violation of [~~subsection~~] section 188-23  
2 (b), as a first offense, shall be sentenced to a mandatory  
3 minimum period of imprisonment without possibility of parole for  
4 thirty days. Repeat offenders shall be sentenced pursuant to  
5 chapter 706.

6 (c) The fines specified in this section shall not be  
7 suspended or waived.

8 (d) Any fine collected for a fishing violation pursuant to  
9 this section shall be deposited in the fishing enforcement  
10 special fund, pursuant to section 187A- ."

11 SECTION 6. Section 190-5, Hawaii Revised Statutes, is  
12 amended by amending subsection (b) to read as follows:

13 "(b) The punishment, in addition to any other penalties,  
14 shall be a fine of not less than:

15 (1) \$250 for a first offense; provided that for a fishing  
16 violation, not less than \$750;

17 (2) \$500 for a second offense; provided that for a fishing  
18 violation, not less than \$1000; and

19 (3) \$1,000 for a third or subsequent offense [-]; provided  
20 that for a fishing violation, not less than \$1,500."

21 SECTION 7. Statutory material to be repealed is bracketed  
22 and stricken. New statutory material is underscored.



1 SECTION 8. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4 SECTION 9. This Act shall take effect on July 1, 2010.  
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INTRODUCED BY:

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**Report Title:**

Keiki Caucus; Fishing Enforcement; Special Fund

**Description:**

Increases criminal penalties and administrative fines for violations of fishing limitations and rules; establishes the fishing enforcement special fund; deposits any collected criminal penalties and administrative fines for fishing violations in the fishing enforcement special fund.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

