



GOV. MSG. NO. 1256

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

June 23, 2011

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on June 23, 2011, the following bill was signed into law:

HB117 HD2 SD2 CD1

RELATING TO SPECIAL MANAGEMENT AREAS
Act 153 (11)

Aloha
Signed
Neil Abercrombie

NEIL ABERCROMBIE
Governor, State of Hawaii

ORIGINAL

Approved by the Governor

JUN 23 2011

on

HOUSE OF REPRESENTATIVES
TWENTY-SIXTH LEGISLATURE, 2011
STATE OF HAWAII

ACT 153
H.B. NO.

117
H.D. 2
S.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO SPECIAL MANAGEMENT AREAS.

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

1 SECTION 1. The legislature finds that the cost of
2 purchasing and importing construction materials, along with the
3 cost of labor, has risen at a rate that has increased the
4 overall cost of projects that, in the past, may have been viewed
5 as insubstantial or minor. Furthermore, the increase in the
6 number of these minor projects and the shortage of personnel
7 that the various county planning departments are experiencing,
8 have significantly slowed the review and processing of minor
9 projects within the special management areas of the counties.

10 The purpose of this Act is to expedite and facilitate work
11 on projects that have been or may be stalled due to delays
12 relating to special management area permitting requirements.

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

15 "**§171-6 Powers.** Except as otherwise provided by law, the
16 board of land and natural resources shall have the powers and
17 functions granted to the heads of departments and the board of
18 land and natural resources under chapter 26.



- 1 In addition to the foregoing, the board may:
- 2 (1) Adopt a seal;
- 3 (2) Administer oaths;
- 4 (3) Prescribe forms of instruments and documents;
- 5 (4) Adopt rules which, upon compliance with chapter 91,
- 6 shall have the force and effect of law;
- 7 (5) Set, charge, demand, and collect reasonable fees for
- 8 the preparation of documents to be issued, for the
- 9 surveying of public lands, and for the issuing of
- 10 certified copies of its government records, which
- 11 fees, when collected, shall be deposited into the
- 12 state general fund, unless otherwise specified in this
- 13 chapter;
- 14 (6) Establish additional restrictions, requirements, or
- 15 conditions, not inconsistent with those prescribed in
- 16 this chapter, relating to the use of particular land
- 17 being disposed of, the terms of sale, lease, license,
- 18 or permit, and the qualifications of any person to
- 19 draw, bid, or negotiate for public land;
- 20 (7) Reduce or waive the lease rental at the beginning of
- 21 the lease on any lease of public land to be used for
- 22 any agricultural or pastoral use, or for resort,



- 1 commercial, industrial, or other business use where
2 the land being leased requires substantial
3 improvements to be placed thereon; provided that such
4 reduction or waiver shall not exceed two years for
5 land to be used for any agricultural or pastoral use,
6 or exceed one year for land to be used for resort,
7 commercial, industrial, or other business use;
- 8 (8) Delegate to the chairperson or employees of the
9 department of land and natural resources, subject to
10 the board's control and responsibility, such powers
11 and duties as may be lawful or proper for the
12 performance of the functions vested in the board;
- 13 (9) [~~Utilize~~] Use arbitration under chapter 658A to settle
14 any controversy arising out of any existing or future
15 lease;
- 16 (10) Set, charge, and collect reasonable fees in an amount
17 sufficient to defray the cost of performing or
18 otherwise providing for the inspection of activities
19 permitted upon the issuance of a land license
20 involving a commercial purpose;



- 1 (11) Appoint masters or hearing officers to conduct public
2 hearings as provided by law and under such conditions
3 as the board by rules shall establish;
- 4 (12) Bring such actions as may be necessary to remove or
5 remedy encroachments upon public lands. Any person
6 causing an encroachment upon public land shall:
- 7 (A) Be fined not more than \$1,000 a day for the first
8 offense;
- 9 (B) Be fined not less than \$1,000 nor more than
10 \$4,000 per day upon the second offense and
11 thereafter;
- 12 (C) If required by the board, restore the land to its
13 original condition if altered and assume the
14 costs thereof;
- 15 (D) Assume such costs as may result from adverse
16 effects from such restoration; and
- 17 (E) Be liable for administrative costs incurred by
18 the department and for payment of damages;
- 19 (13) Set, charge, and collect interest and a service charge
20 on delinquent payments due on leases, sales, or other
21 accounts. The rate of interest shall not exceed one
22 per cent a month and the service charge shall not



1 exceed \$50 a month for each delinquent payment;
2 provided that the contract shall state the interest
3 rate and the service charge and be signed by the party
4 to be charged;

5 (14) Set, charge, and collect additional rentals for the
6 unauthorized use of public lands by a lessee,
7 licensee, grantee, or permittee who is in violation of
8 any term or condition of a lease, license, easement,
9 or revocable permit, retroactive to the date of the
10 occurrence of the violation. Such amounts shall be
11 considered delinquent payments and shall be subject to
12 interest and service charges as provided in paragraph
13 (13);

14 (15) Set, charge, and collect reasonable fines for
15 violation of this chapter or any rule adopted
16 thereunder. Any person engaging in any prohibited use
17 of public lands or conducting any prohibited activity
18 on public lands, or violating any of the other
19 provisions of this chapter or any rule adopted
20 thereunder, for which violation a penalty is not
21 otherwise provided, shall be:



- 1 (A) Fined not more than \$5,000 per violation for a
2 first violation or a violation beyond five years
3 of the last violation[7]; provided that, after
4 written or verbal notification from the
5 department, an additional \$1,000 per day per
6 violation may be assessed for each day in which
7 the violation persists;
- 8 (B) Fined not more than \$10,000 per violation for a
9 second violation within five years of the last
10 violation[7]; provided that, after written or
11 verbal notification from the department, an
12 additional \$2,000 per day per violation may be
13 assessed for each day in which the violation
14 persists;
- 15 (C) Fined not more than \$20,000 per violation for a
16 third or subsequent violation within five years
17 of the last violation[7]; provided that, after
18 written or verbal notification from the
19 department, an additional \$4,000 per day per
20 violation may be assessed for each day in which
21 the violation persists; and



1 (D) Liable for administrative costs and expenses
2 incurred by the department and for payment for
3 damages, including but not limited to natural
4 resource damages.

5 In addition to the fines, administrative costs, and
6 damages provided for hereinabove, for damage to or
7 theft of natural resources, the board may also set,
8 charge, and collect a fine that, in its discretion, is
9 appropriate considering the value of the natural
10 resource that is damaged or the subject of the theft.

11 In arriving at an appropriate fine, the board may
12 consider the market value of the natural resource
13 damaged or taken and any other factor it deems
14 appropriate, such as the loss of the natural resource
15 to its natural habitat and environment and the cost of
16 restoration or replacement. The remedies provided for
17 in this paragraph are cumulative and in addition to
18 any other remedies allowed by law.

19 No person shall be sanctioned pursuant to this section
20 for the exercise of native Hawaiian gathering rights
21 and traditional cultural practices as authorized by
22 law or as permitted by the department pursuant to



1 article XII, section 7, of the Hawaii [~~state~~
2 ~~constitution,~~] State Constitution;

3 (16) Issue revenue bonds, subject to the approval of the
4 legislature. All revenue bonds shall be issued
5 pursuant to part III of chapter 39, except as provided
6 in this chapter. All revenue bonds shall be issued in
7 the name of the department and not in the name of the
8 State. The final maturity date of the revenue bonds
9 may be any date not exceeding thirty years from the
10 date of issuance;

11 (17) Pledge or assign all or any part of the receipts and
12 revenues of the department. The revenue bonds shall
13 be payable from and secured solely by the revenue
14 derived by the department from the industrial park or
15 parks for which the bonds are issued;

16 (18) Reimburse the state general fund for debt service on
17 general obligation bonds or reimbursable general
18 obligation bonds issued by the State for purposes of
19 this chapter; [~~and~~]

20 (19) Notwithstanding part II of chapter 205A to the
21 contrary, plan, design, construct, operate, and
22 maintain any lands or facilities under the



1 jurisdiction of the division of boating and ocean
2 recreation of the department without the need to
3 obtain a special management area minor permit or
4 special management area use permit; and

5 [~~(19)~~] (20) Do any and all things necessary to carry out its
6 purposes and exercise the powers granted in this
7 chapter."

8 SECTION 3. Section 205A-22, Hawaii Revised Statutes, is
9 amended by amending the definitions of "development", "special
10 management area minor permit", and "special management area use
11 permit" to read as follows:

12 "Development" means any of the uses, activities, or
13 operations on land or in or under water within a special
14 management area that are included below:

- 15 (1) Placement or erection of any solid material or any
16 gaseous, liquid, solid, or thermal waste;
- 17 (2) Grading, removing, dredging, mining, or extraction of
18 any materials;
- 19 (3) Change in the density or intensity of use of land,
20 including but not limited to the division or
21 subdivision of land;



- 1 (4) Change in the intensity of use of water, ecology
2 related thereto, or of access thereto; and
- 3 (5) Construction, reconstruction, demolition, or
4 alteration of the size of any structure.
- 5 "Development" does not include the following:
- 6 (1) Construction or reconstruction of a single-family
7 residence that is less than seven thousand five
8 hundred square feet of floor area and is not part of a
9 larger development;
- 10 (2) Repair or maintenance of roads and highways within
11 existing rights-of-way;
- 12 (3) Routine maintenance dredging of existing streams,
13 channels, and drainage ways;
- 14 (4) Repair and maintenance of underground utility lines,
15 including but not limited to water, sewer, power, and
16 telephone and minor appurtenant structures such as pad
17 mounted transformers and sewer pump stations;
- 18 (5) Zoning variances, except for height, density, parking,
19 and shoreline setback;
- 20 (6) Repair, maintenance, or interior alterations to
21 existing structures;



- 1 (7) Demolition or removal of structures, except those
2 structures located on any historic site as designated
3 in national or state registers;
- 4 (8) Use of any land for the purpose of cultivating,
5 planting, growing, and harvesting plants, crops,
6 trees, and other agricultural, horticultural, or
7 forestry products or animal husbandry, or aquaculture
8 or mariculture of plants or animals, or other
9 agricultural purposes;
- 10 (9) Transfer of title to land;
- 11 (10) Creation or termination of easements, covenants, or
12 other rights in structures or land;
- 13 (11) Final subdivision approval;
- 14 ~~(11)~~ (12) Subdivision of land into lots greater than
15 twenty acres in size;
- 16 ~~(12)~~ (13) Subdivision of a parcel of land into four or
17 fewer parcels when no associated construction
18 activities are proposed; provided that any land which
19 is so subdivided shall not thereafter qualify for this
20 exception with respect to any subsequent subdivision
21 of any of the resulting parcels;



1 [~~(13)~~] (14) Installation of underground utility lines and
2 appurtenant aboveground fixtures less than four feet
3 in height along existing corridors;

4 [~~(14)~~] (15) Structural and nonstructural improvements to
5 existing single-family residences, where otherwise
6 permissible;

7 [~~(15)~~] (16) Nonstructural improvements to existing
8 commercial structures; and

9 [~~(16)~~] (17) Construction, installation, maintenance, repair,
10 and replacement of civil defense warning or signal
11 devices and sirens;

12 provided that whenever the authority finds that any excluded
13 use, activity, or operation may have a cumulative impact, or a
14 significant environmental or ecological effect on a special
15 management area, that use, activity, or operation shall be
16 defined as "development" for the purpose of this part.

17 "Special management area minor permit" means an action by
18 the authority authorizing development the valuation of which is
19 not in excess of [~~\$125,000~~] \$500,000 and which has no
20 substantial adverse environmental or ecological effect, taking
21 into account potential cumulative effects.



1 "Special management area use permit" means an action by the
2 authority authorizing development the valuation of which exceeds
3 [~~\$125,000~~] \$500,000 or which may have a substantial adverse
4 environmental or ecological effect, taking into account
5 potential cumulative effects."

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

9 SECTION 5. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 6. This Act shall take effect on July 1, 2011.

APPROVED this 23 day of JUN, 2011



GOVERNOR OF THE STATE OF HAWAII

