

JAN 20 2012

A BILL FOR AN ACT

RELATING TO DEPARTMENT OF LAND AND NATURAL RESOURCES MARITIME
FACILITIES.

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

1 SECTION 1. Act 161, Session Laws of Hawaii 1980, granted
2 the department of transportation authority to plan, construct,
3 operate, and maintain harbors throughout the State without the
4 approval of county agencies. Act 272, Session Laws of Hawaii
5 1991, transferred ocean recreational boating and coastal
6 activities programs from the department of transportation to the
7 department of land and natural resources; however, Act 272 did
8 not transfer to the department of land and natural resources the
9 authority to plan, construct, operate, and maintain harbors
10 throughout the State without the approval of county agencies.

11 The legislature finds that projects that are being
12 implemented on lands or facilities under the division of boating
13 and ocean recreation of the department of land and natural
14 resources may be delayed due to the review and processing of
15 project permits within the various counties. The legislature
16 also finds that those projects should not be delayed by the
17 review and processing of project permits by the counties.



1 The purpose of this Act is to expedite and facilitate work
2 on projects implemented on lands or facilities under the
3 division of boating and ocean recreation of the department of
4 land and natural resources.

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

7 "**§171-6 Powers.** Except as otherwise provided by law, the
8 board of land and natural resources shall have the powers and
9 functions granted to the heads of departments and the board of
10 land and natural resources under chapter 26.

11 In addition to the foregoing, the board may:

- 12 (1) Adopt a seal;
- 13 (2) Administer oaths;
- 14 (3) Prescribe forms of instruments and documents;
- 15 (4) Adopt rules which, upon compliance with chapter 91,
16 shall have the force and effect of law;
- 17 (5) Set, charge, demand, and collect reasonable fees for
18 the preparation of documents to be issued, for the
19 surveying of public lands, and for the issuing of
20 certified copies of its government records, which
21 fees, when collected, shall be deposited into the



- 1 state general fund, unless otherwise specified in this
2 chapter;
- 3 (6) Establish additional restrictions, requirements, or
4 conditions, not inconsistent with those prescribed in
5 this chapter, relating to the use of particular land
6 being disposed of, the terms of sale, lease, license,
7 or permit, and the qualifications of any person to
8 draw, bid, or negotiate for public land;
- 9 (7) Reduce or waive the lease rental at the beginning of
10 the lease on any lease of public land to be used for
11 any agricultural or pastoral use, or for resort,
12 commercial, industrial, or other business use where
13 the land being leased requires substantial
14 improvements to be placed thereon; provided that such
15 reduction or waiver shall not exceed two years for
16 land to be used for any agricultural or pastoral use,
17 or exceed one year for land to be used for resort,
18 commercial, industrial, or other business use;
- 19 (8) Delegate to the chairperson or employees of the
20 department of land and natural resources, subject to
21 the board's control and responsibility, such powers



1 and duties as may be lawful or proper for the
2 performance of the functions vested in the board;

3 (9) Use arbitration under chapter 658A to settle any
4 controversy arising out of any existing or future
5 lease;

6 (10) Set, charge, and collect reasonable fees in an amount
7 sufficient to defray the cost of performing or
8 otherwise providing for the inspection of activities
9 permitted upon the issuance of a land license
10 involving a commercial purpose;

11 (11) Appoint masters or hearing officers to conduct public
12 hearings as provided by law and under such conditions
13 as the board by rules shall establish;

14 (12) Bring such actions as may be necessary to remove or
15 remedy encroachments upon public lands. Any person
16 causing an encroachment upon public land shall:

17 (A) Be fined not more than \$1,000 a day for the first
18 offense;

19 (B) Be fined not less than \$1,000 nor more than
20 \$4,000 per day upon the second offense and
21 thereafter;



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

4 (D) Assume such costs as may result from adverse
5 effects from such 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 or conducting any prohibited activity
7 on public lands, or violating any of the other
8 provisions of this chapter or any rule adopted
9 thereunder, for which violation a penalty is not
10 otherwise provided, shall be:
11 (A) Fined not more than \$5,000 per violation for a
12 first violation or a violation beyond five years
13 of the last violation; provided that, after
14 written or verbal notification from the
15 department, an additional \$1,000 per day per
16 violation may be assessed for each day in which
17 the violation persists;
18 (B) Fined not more than \$10,000 per violation for a
19 second violation within five years of the last
20 violation; provided that, after written or verbal
21 notification from the department, an additional



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

3 (C) Fined not more than \$20,000 per violation for a
4 third or subsequent violation within five years
5 of the last violation; provided that, after
6 written or verbal notification from the
7 department, an additional \$4,000 per day per
8 violation may be assessed for each day in which
9 the violation persists; and

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

14 In addition to the fines, administrative costs, and
15 damages provided for hereinabove, for damage to or
16 theft of natural resources, the board may also set,
17 charge, and collect a fine that, in its discretion, is
18 appropriate considering the value of the natural
19 resource that is damaged or the subject of the theft.

20 In arriving at an appropriate fine, the board may
21 consider the market value of the natural resource
22 damaged or taken and any other factor it deems



1 appropriate, such as the loss of the natural resource
2 to its natural habitat and environment and the cost of
3 restoration or replacement. The remedies provided for
4 in this paragraph are cumulative and in addition to
5 any other remedies allowed by law.

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

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

20 (17) Pledge or assign all or any part of the receipts and
21 revenues of the department. The revenue bonds shall
22 be payable from and secured solely by the revenue



1 derived by the department from the industrial park or
2 parks for which the bonds are issued;

3 (18) Reimburse the state general fund for debt service on
4 general obligation bonds or reimbursable general
5 obligation bonds issued by the State for purposes of
6 this chapter;

7 (19) Notwithstanding part II of chapter 205A to the
8 contrary, plan, design, construct, operate, and
9 maintain any lands or facilities under the
10 jurisdiction of the division of boating and ocean
11 recreation of the department without the need to
12 obtain a special management area minor permit or
13 special management area use permit; [~~and~~]

14 (20) Notwithstanding any law to the contrary, plan,
15 construct, operate, and maintain any lands or
16 facilities under the jurisdiction of the division of
17 boating and ocean recreation, including the
18 acquisition and use of lands necessary to stockpile
19 dredged spoils, without the approval of county
20 agencies; and



S.B. NO. 2381

1 [~~20~~] (21) Do any and all things necessary to carry out its
2 purposes and exercise the powers granted in this
3 chapter."

4 SECTION 3. This Act does not affect rights and duties that
5 matured, penalties that were incurred, and proceedings that were
6 begun before its effective date.

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

9 SECTION 5. This Act shall take effect upon its approval.

10

INTRODUCED BY:

Travis B. ...
Matt R.
Melanie ...
Steve ...



S.B. NO. 2381

Report Title:

DLNR; Permits; Development

Description:

Allows DLNR to work on projects within lands or facilities under the jurisdiction of the division of boating and ocean recreation without the approval of county agencies.

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

