

JAN 24 2013

A BILL FOR AN ACT

RELATING TO ENFORCEMENT OF VIOLATIONS BY THE DEPARTMENT OF LAND
AND NATURAL RESOURCES.

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

1 SECTION 1. 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

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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

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- 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~~] title 12 and chapters 6D
5 and 6E, or any rule adopted thereunder. Any person
6 engaging in any prohibited use of public lands or
7 conducting any prohibited activity on public lands, or
8 violating any of the other provisions of [~~this~~
9 ~~chapter~~] title 12 or chapter 6D or 6E, or any rule
10 adopted thereunder, for which violation a penalty is
11 not otherwise provided, shall be:

12 (A) Fined not more than \$5,000 per violation for a
13 first violation or a violation beyond five years
14 of the last violation; provided that, after
15 written or verbal notification from the
16 department, an additional \$1,000 per day per
17 violation may be assessed for each day in which
18 the violation persists;

19 (B) Fined not more than \$10,000 per violation for a
20 second violation within five years of the last
21 violation; provided that, after written or verbal
22 notification from the department, an additional

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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

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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) Authorize the performance of natural or cultural
15 resource-related community service in lieu of or in
16 addition to any administrative fines imposed pursuant
17 to an administrative enforcement of any of the
18 provisions of title 12 or chapter 6D or 6E, or any
19 rule adopted thereunder; under the supervision of a
20 governmental agency, a benevolent or charitable
21 organization, or a community service group deemed
22 appropriate by the board until satisfactory compliance

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1 is certified by the board or its designated agent,
2 provided that the person who performs such services
3 shall not be considered to be an employee of the board
4 or the supervising entity, and the community service
5 shall not constitute employment;

6 (21) Suspend or revoke a license or permit issued under the
7 authority of the board or department, or deny any
8 application for the issuance of such a license or
9 permit, if the board finds that the licensee,
10 permittee, or applicant is in violation of any of the
11 provisions of title 12 or chapter 6D or 6E, or any
12 rule adopted thereunder until satisfactory compliance
13 is certified by the board or its designated agent;

14 (22) Direct the appropriate county authorities of motor
15 vehicles to deny any application for the registration
16 of a motor vehicle if the board finds that the
17 applicant failed to discharge a condition imposed by
18 the board pursuant to any of the provisions of title
19 12 or chapter 6D or 6E, or any rule adopted thereunder
20 until satisfactory compliance is certified by the
21 board or its agent; and

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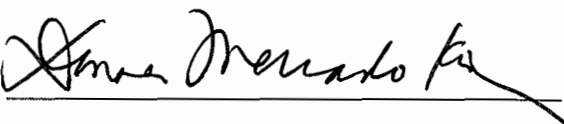
1 [~~20~~] (23) Do any and all things necessary to carry out its
2 purposes and exercise the powers granted in this
3 chapter."

4 SECTION 2. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY: 

9

BY REQUEST

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Report Title:

Cultural and Natural Resources; Enforcement and Penalties

Description:

Provides alternative civil enforcement options that may be utilized by the Board of Land and Natural Resources in the processing of natural and cultural resource violation cases.

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

JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO ENFORCEMENT OF VIOLATIONS BY THE DEPARTMENT OF LAND AND NATURAL RESOURCES.

PURPOSE: To provide alternative civil enforcement options that may be utilized by the Board of Land and Natural Resources (Board) in the processing of natural and cultural resource violation cases.

MEANS: Amend section 171-6, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Currently, various chapters within title 12 (Conservation and Resources), HRS, provide the Board with authority to administratively levy civil fines for violations of natural and cultural resource laws and regulations. While the Board's use of this administrative fine authority may provide a level of flexibility and consistency that could prove advantageous in addressing regulatory noncompliance, the expanded use of this compliance mechanism has been restricted by concerns that:

- (1) A potential violator may not have the financial means to pay for monetary sanctions but may be willing to perform certain community services which may do more good for the public than payment of a fine;
- (2) A potential violator may not voluntarily respond to a violation notice or pay the imposed penalties while still utilizing a related or unrelated permit or license granted by the Board; and
- (3) Existing collection mechanisms for outstanding administrative fines and other penalties require the Department to go through judicial processes which

may be both costly and time-consuming for the Department, especially in relatively minor cases.

This bill addresses the stated concerns by:

- (1) Authorizing the Board to impose, in lieu of or in addition to monetary fines, resource-related community services for violations of title 12, HRS, or chapter 6D or 6E, HRS, or any rule adopted thereunder;
- (2) Authorizing the Board to suspend, revoke, or deny the application for issuance of a permit or license administered by the Board; and
- (3) Providing a process in which a resource law violator may be precluded from registering a motor vehicle until satisfactory compliance is certified by the Board.

Impact on the public: By providing for transformative penalties such as resource-related community service, permit and license suspension and revocation, and denial of motor vehicle registration, this bill would allow the Board to more flexibly, consistently, and effectively address resource violations and to better safeguard and conserve the State's natural and cultural resources.

Impact on the department and other agencies: This bill would provide the Board with the above-mentioned authorities to ensure fast, and efficient resource law compliance and enforcement. If passed, it may generate additional income for the Department from the improved compliance in civil enforcement. The community service option as an alternative to monetary fines may also expand the Department's scope of community outreach and public awareness education in resources conservation and protection.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: LNR 101.

OTHER AFFECTED
AGENCIES: County Motor Vehicle Registration.

EFFECTIVE DATE: Upon approval.