

S.B. NO. 1127

JAN 28 2015

A BILL FOR AN ACT

RELATING TO ENFORCEMENT ACTIONS BY THE BOARD OF LAND AND NATURAL RESOURCES.

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

1 SECTION 1. Chapter 286, Hawaii Revised Statutes, is
2 amended by adding to part III a new section to be appropriately
3 designated and to read as follows:

4 "§286- Denial of application for failure to discharge a
5 condition imposed by the board of land and natural resources.

6 In addition to any other acts or conditions provided by law, the
7 director of finance of the appropriate county shall deny any
8 application for registration if the director of finance has
9 received notification from the board of land and natural
10 resources pursuant to section 171-6(21) that the applicant has
11 failed to discharge a condition imposed by the board of land and
12 natural resources pursuant to any of the provisions of title 12
13 or chapter 6D or 6E, or any rule adopted thereunder. Unless
14 otherwise provided by law, the director of finance shall not
15 approve the application for registration until receipt of
16 certification of satisfactory compliance from the board of land
17 and natural resources pursuant to section 171-6(21)."

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1 SECTION 2. 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
18 state general fund, unless otherwise specified in this
19 chapter;
- 20 (6) Establish additional restrictions, requirements, or
21 conditions, not inconsistent with those prescribed in
22 this chapter, relating to the use of particular land

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1 being disposed of, the terms of sale, lease, license,
2 or permit, and the qualifications of any person to
3 draw, bid, or negotiate for public land;

4 (7) Reduce or waive the lease rental at the beginning of
5 the lease on any lease of public land to be used for
6 any agricultural or pastoral use, or for resort,
7 commercial, industrial, or other business use where
8 the land being leased requires substantial
9 improvements to be placed thereon; provided that
10 [~~such~~] the reduction or waiver shall not exceed two
11 years for land to be used for any agricultural or
12 pastoral use, or exceed one year for land to be used
13 for resort, commercial, industrial, or other business
14 use;

15 (8) Delegate to the chairperson or employees of the
16 department of land and natural resources, subject to
17 the board's control and responsibility, [~~such~~] powers
18 and duties as may be lawful or proper for the
19 performance of the functions vested in the board;

20 (9) Use arbitration under chapter 658A to settle any
21 controversy arising out of any existing or future
22 lease;

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- 1 (10) Set, charge, and collect reasonable fees in an amount
2 sufficient to defray the cost of performing or
3 otherwise providing for the inspection of activities
4 permitted upon the issuance of a land license
5 involving a commercial purpose;
- 6 (11) Appoint masters or hearing officers to conduct public
7 hearings as provided by law and under [such]
8 conditions as the board by rules shall establish;
- 9 (12) Bring [such] actions as may be necessary to remove or
10 remedy encroachments upon public lands. Any person
11 causing an encroachment upon public land shall:
- 12 (A) Be fined not more than \$1,000 a day for the first
13 offense;
- 14 (B) Be fined not less than \$1,000 nor more than
15 \$4,000 per day upon the second offense and
16 thereafter;
- 17 (C) If required by the board, restore the land to its
18 original condition if altered and assume the
19 costs thereof;
- 20 (D) Assume [such] costs [as may] that result from
21 adverse effects from [such] restoration; and

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- 1 (E) Be liable for administrative costs incurred by
2 the department and for payment of damages;
- 3 (13) Set, charge, and collect interest and a service charge
4 on delinquent payments due on leases, sales, or other
5 accounts. The rate of interest shall not exceed one
6 per cent a month and the service charge shall not
7 exceed \$50 a month for each delinquent payment;
8 provided that the contract shall state the interest
9 rate and the service charge and be signed by the party
10 to be charged;
- 11 (14) Set, charge, and collect additional rentals for the
12 unauthorized use of public lands by a lessee,
13 licensee, grantee, or permittee who is in violation of
14 any term or condition of a lease, license, easement,
15 or revocable permit, retroactive to the date of the
16 occurrence of the violation. [~~Such~~] The amounts shall
17 be considered delinquent payments and shall be subject
18 to interest and service charges as provided in
19 paragraph (13);
- 20 (15) Set, charge, and collect reasonable fines for
21 violation of [~~this chapter~~] title 12 and chapters 6D
22 and 6E, or any rule adopted thereunder. Any person

1 engaging in any prohibited use of public lands or
2 conducting any prohibited activity on public lands, or
3 violating any of the other provisions of [~~this~~
4 ~~chapter~~] title 12 or chapter 6D or 6E, or any rule
5 adopted thereunder, for which violation a penalty is
6 not otherwise provided, shall be:

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

14 (B) Fined not more than \$10,000 per violation for a
15 second violation within five years of the last
16 violation; provided that, after written or verbal
17 notification from the department, an additional
18 \$2,000 per day per violation may be assessed for
19 each day in which the violation persists;

20 (C) Fined not more than \$20,000 per violation for a
21 third or subsequent violation within five years
22 of the last violation; provided that, after

1 written or verbal notification from the
2 department, an additional \$4,000 per day per
3 violation may be assessed for each day in which
4 the violation persists; and

5 (D) Liable for administrative costs and expenses
6 incurred by the department and for payment for
7 damages, including but not limited to natural
8 resource damages.

9 In addition to the fines, administrative costs, and
10 damages provided for hereinabove, for damage to or
11 theft of natural resources, the board may also set,
12 charge, and collect a fine that, in its discretion, is
13 appropriate considering the value of the natural
14 resource that is damaged or the subject of the
15 theft. In arriving at an appropriate fine, the board
16 may consider the market value of the natural resource
17 damaged or taken and any other factor it deems
18 appropriate, such as the loss of the natural resource
19 to its natural habitat and environment and the cost of
20 restoration or replacement. The remedies provided for
21 in this paragraph are cumulative and in addition to
22 any other remedies allowed by law.

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1 No person shall be sanctioned pursuant to this section
2 for the exercise of native Hawaiian gathering rights
3 and traditional cultural practices as authorized by
4 law or as permitted by the department pursuant to
5 article XII, section 7, of the Hawaii state
6 constitution;

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

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

20 (18) Reimburse the state general fund for debt service on
21 general obligation bonds or reimbursable general

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1 obligation bonds issued by the State for purposes of
2 this chapter;

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

10 (20) Suspend or revoke a license or permit issued under the
11 authority of the board or department, or deny any
12 application for the issuance or renewal of such a
13 license or permit, if the board finds that the
14 licensee, permittee, or applicant has failed to
15 discharge a duty imposed by the board pursuant to any
16 of the provisions of title 12 or chapter 6D or 6E, or
17 any rule adopted thereunder, until satisfactory
18 compliance is certified by the board or its designated
19 agent;

20 (21) Direct the appropriate county motor vehicle
21 authorities to deny any application for the
22 registration of a motor vehicle if the board finds

1 that the applicant has failed to discharge a duty
2 imposed by the board pursuant to any of the provisions
3 of title 12 or chapter 6D or 6E, or any rule adopted
4 thereunder, until satisfactory compliance is certified
5 by the board or its designated agent; and

6 ~~[(20)]~~ (22) Do any and all things necessary to carry out its
7 purposes and exercise the powers granted in this
8 chapter."

9 SECTION 3. Section 171-6.4, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "~~[+]~~**§171-6.4**~~[+]~~ **General administrative penalties.** (a)

12 Except as otherwise provided by law, the board or its authorized
13 representative by proper delegation may set, charge, and collect
14 administrative fines or bring legal action to recover
15 administrative fees and costs as documented by receipts or
16 affidavit, including attorneys' fees and costs; or bring legal
17 action to recover administrative fines, fees, and costs,
18 including attorneys' fees and costs, or payment for damages
19 resulting from a violation of ~~[this chapter]~~ the provisions of
20 title 12 or chapter 6D or 6E, or any rule adopted ~~[pursuant to~~
21 ~~this chapter.]~~ thereunder. The administrative fines shall be as
22 follows:

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1 (1) For a first violation, a fine of not more than \$2,500;

2 (2) For a second violation within five years of a previous
3 violation, a fine of not more than \$5,000;

4 (3) For a third or subsequent violation within five years
5 of the last violation, a fine of not more than
6 \$10,000.

7 (b) Any criminal action against a person for any violation
8 of ~~[this chapter]~~ the provisions of title 12 or chapter 6D or
9 6E, or any rule adopted [pursuant to this chapter.] thereunder,
10 shall not be deemed to preclude the State from pursuing civil
11 legal action against that person. Any civil legal action
12 against a person to recover administrative fines and costs for
13 any violation of ~~[this chapter]~~ the provisions of title 12 or
14 chapter 6D or 6E, or any rule adopted [pursuant to this
15 chapter.] thereunder, shall not be deemed to preclude the State
16 from pursuing any criminal action against that person. Each day
17 of each violation shall constitute a separate offense."

18 SECTION 4. This Act does not affect rights and duties that
19 matured, penalties that were incurred, and proceedings that were
20 begun before its effective date.

21 SECTION 5. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.

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

2
3 INTRODUCED BY: *Amore Mercado R.*

4 BY REQUEST

Report Title:

Cultural and Natural Resources; Civil Enforcement of Resource Violations

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 ACTIONS BY THE BOARD 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: Add a new section to chapter 286 and amend sections 171-6 and 171-6.4, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Currently, various chapters within title 12 (Conservation and Resources) and chapters 6D and 6E, HRS, provide the Board with authority to administratively levy civil penalties for violations of natural and cultural resource laws and regulations. While the Board's use of this administrative penalty 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) An alleged violator may ignore to respond to a violation notice or the imposed penalties or delinquent obligations while still utilizing a related or unrelated permit or license granted by the Board;
- (2) Existing enforcement and collection mechanisms for outstanding administrative penalties and other delinquent obligations require the Board to go through judicial processes which may be both costly and time-consuming for the Board, especially in relatively minor cases or amounts; and

- (3) Certain HRS chapters administered by the Board do not provide adequate administrative penalty provisions.

This bill addresses the stated concerns by:

- (1) Authorizing the Board to suspend, revoke, or deny the application for issuance or renewal of a permit or license administered by the Board;
- (2) Providing a process in which a resource law violator or a delinquent party may be precluded from registering a motor vehicle until satisfactory compliance is certified by the Board; and
- (3) Expanding the applicability of sections 171-6(15) and 171-6.4, HRS, which provide the Board with general administrative penalties, to all chapters under title 12, HRS, and chapters 6D and 6E, HRS.

Impact on the public: By providing for transformative penalties such as permit and license denial, 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 financial delinquencies and to better safeguard and conserve the State's natural and cultural resources.

Impact on the department and other agencies: This bill proposes to 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.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION:

LNR 101.

OTHER AFFECTED
AGENCIES:

County Motor Vehicle Registration.

EFFECTIVE DATE:

Upon approval.