

CHAPTER 195
NATURAL AREA RESERVES SYSTEM

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Note

L 2014, c 218, §8 purports to amend this chapter.

Department of transportation's bridge rehabilitation and replacement program; temporary exemption from certain construction requirements of this chapter through June 30, 2017 or until completion. L 2012, c 218.

Cross References

Environmental courts, jurisdiction over proceedings arising under this chapter, see §604A-2.

Case Notes

Claim for relief against state officials based on alleged illegality of exchange of ceded lands was barred by State's sovereign immunity. 73 H. 578, 837 P.2d 1247.

" **§195-1 Findings and declaration of necessity.** The legislature finds and declares that (1) the State of Hawaii possesses unique natural resources, such as geological and volcanological features and distinctive marine and terrestrial plants and animals, many of which occur nowhere else in the world, that are highly vulnerable to loss by the growth of population and technology; (2) these unique natural assets should be protected and preserved, both for the enjoyment of future generations, and to provide base lines against which changes which are being made in the environments of Hawaii can be measured; (3) in order to accomplish these purposes the present system of preserves, sanctuaries and refuges must be strengthened, and additional areas of land and shoreline suitable for preservation should be set aside and administered solely and specifically for the aforesaid purposes; and (4) that a statewide natural area reserves system should be established to preserve in perpetuity specific land and water areas which support communities, as relatively unmodified as possible, of the natural flora and fauna, as well as geological sites, of Hawaii. [L 1970, c 139, pt of §1]

" **§195-2 Definitions.** As used in this chapter, unless otherwise indicated by the context:

"Board" means the board of land and natural resources.

"Commission" means the natural area reserves system commission.

"Cooperating entity" or "cooperator" means a private nonprofit land-holding organization or any other body deemed by

the department as satisfactorily able to assist in the identification, acquisition, and management of natural area reserves.

"Department" means the department of land and natural resources.

"Heritage program" means a comprehensive natural resource inventory data base for public information that includes the location of rare plants, animals, and natural communities (ecosystems) in the State.

"Landowner" means any person or entity having the fee simple interest in land in the State.

"Natural area reserve" means an area designated as a part of the Hawaii natural area reserves system, pursuant to criteria established by the commission. [L 1970, c 139, pt of §1; am L 1987, c 350, §2; am L 1991, c 326, §2]

" **§195-3 Hawaii natural area reserves system.** There shall be a Hawaii natural area reserves system, hereinafter called the "reserves system", which shall consist of areas in the State of Hawaii which are designated in the manner hereinafter provided as natural area reserves. The reserve system shall be managed by the department of land and natural resources. [L 1970, c 139, pt of §1]

" **§195-4 Powers and duties of the department.** (a) To preserve, manage, and protect the reserves system, the department is authorized, in addition to any other powers, to:

- (1) Designate and bring under its control and management, as part of the reserves system, any areas as follows:
 - (A) State owned land under the jurisdiction of the department may be set aside as a natural area reserve by resolution of the department, subject to the approval of the governor by executive order setting the land aside for that purpose;
 - (B) New natural area reserves may be established:
 - (i) By gift, devise, grant, reimbursement to cooperators, exchange, or purchase of land or any interest therein, including, but not limited to, conservation easements;
 - (ii) By eminent domain pursuant to chapter 101; or
 - (iii) By the setting aside of state owned land for that purpose by the governor, as provided in section 171-11;
- (2) Cooperate or contract with any federal, state, or county governmental agency, quasi-governmental agency,

private organization, or individual in carrying out the purpose of this chapter;

- (3) Acquire by gift, devise, grant, or donation any personal property to be used in the acquisition or management, or both, of natural area reserves;
- (4) Implement, after consultation with the commission and based on the most comprehensive up-to-date compilation of scientific data, the acquisition, management, protection, and use of natural area reserves; and
- (5) Prepare and take the necessary steps to implement the management plan set forth in section 195-11.

(b) The department, with at least twenty days public notice, shall conduct one or more public hearings before terminating state funding for a management plan approved by the board under the natural area partnership program, requesting the governor to revoke or modify an executive order that sets aside lands for the reserves system, or prior to the designation of the following types of lands into the reserves system:

- (1) State lands under the jurisdiction of the department;
- (2) State lands that are removed from other uses or modified by the governor through an executive order that sets aside land for the natural area reserves system;
- (3) Lands acquired by eminent domain pursuant to chapter 101; and
- (4) State lands proposed by the governor for inclusion into the reserves system, as provided in section 171-11.

The notice shall be given in the county where the proposed natural area reserve or natural area partnership is located and also statewide. The notice shall contain, but not be limited to, the time and place of the hearing, the location of the land, and the proposed changes. [L 1970, c 139, pt of §1; am L 1987, c 350, §3; am L 1991, c 326, §3; am L 1992, c 180, §1; am L 1998, c 2, §52]

" **[\$195-5] Rules and regulations.** (a) The department of land and natural resources may, subject to chapter 91, make, amend and repeal rules and regulations having the force and effect of law, governing the use, control and protection of the areas included within the reserves system, provided that no rule or regulation which relates to the permitted use of any area assigned to the reserves system shall be valid and no use of any such area shall be permitted unless such rule or regulation or permitted use shall have been specifically approved by the natural area reserves system commission.

(b) The department may confer upon such of its employees as it deems reasonable and necessary the powers to serve and execute warrants and arrest offenders or issue citations in all matters relating to the enforcement within the reserves system of the law and rules and regulations applicable thereto. [L 1970, c 139, pt of §1]

" **§195-6 Natural area reserves system commission.** There shall be a natural area reserves system commission, hereinafter called the "commission". The commission shall consist of thirteen members who shall be appointed in the manner and serve for the term set in section 26-34. Six of the members of the commission shall be persons possessing scientific qualifications as evidenced by an academic degree in wildlife or marine biology, botany, forestry, ecology, resource management, biogeography, zoology, or geology; one member shall be a person possessing membership in a hiking organization organized in the State; one member shall be a person possessing membership in a hunting organization organized in the State; and one member shall be a person possessing a background in native Hawaiian traditional and customary practices. The chairperson of the board of land and natural resources, the director of the office of planning, the chairperson of the board of agriculture and the president of the University of Hawaii, or their designated representatives, shall serve as ex officio[,] voting members. The governor shall appoint the chairperson from one of the appointed members of the commission. The members shall receive no compensation for their services on the commission but shall be entitled to reimbursement for necessary expenses while attending meetings and while in the discharge of their duties.

The commission shall be a part of the department for administrative purposes as provided in section 26-35.

Any action taken by the commission shall be by a simple majority of its members. Seven members of the commission shall constitute a quorum to do business.

The commission may engage employees necessary to perform its duties, including administrative personnel, as provided by section 26-35.

The commission shall adopt rules guiding its conduct and shall maintain a record of its activities and actions. [L 1970, c 139, pt of §1; am L 1987, c 336, §8 and c 350, §4; am L 1993, c 274, §1; am L 1996, c 299, §3; am L 2013, c 4, §1]

" **§195-6.5 Natural area partnership program.** (a) There is established in the department, a natural area partnership program to provide state funds on a two-for-one basis with private funds for the management of private lands that are

dedicated to conservation. Payments shall be made from the natural area reserve fund with funds specifically appropriated for this purpose.

(b) In order to qualify under this program, an applicant shall be a landowner or a cooperating entity of private land of natural area reserve quality and shall agree to:

- (1) Dedicate the private land in perpetuity through transfer of fee title or a conservation easement to the State or a cooperating entity; provided that:
 - (A) The dedication may be revoked if state funding is terminated without the concurrence of the landowner and cooperating entity; and
 - (B) If a private landowner or cooperating entity elects to withdraw from the program, the perpetual conservation easement shall remain in effect;
- (2) Have the private land managed by the cooperating entity or qualified landowner according to a management plan prepared by the cooperating entity or landowner and approved by the board that meets the standards established by the department for the system. The management plan shall include provisions to allow public hunting wherever feasible; provided that:
 - (A) Hunting activities shall be in compliance with applicable laws; and
 - (B) Game animals shall not be introduced to any partnership area and hunting shall be conducted as a conservation purpose of this program.In-kind services such as heavy equipment and existing sources of labor may be utilized as a portion of the private contribution in implementing the management plan;
- (3) A penalty payback provision in the event the landowner or cooperating entity ceases to implement the approved management plan, unless the board approves modifications to the plan or state funding is terminated;
- (4) Submit an annual report to the board detailing the year's management accomplishments, areas needing technical advice, proposed modifications to the plan, and objectives and budget for the coming year. To facilitate the review, the department shall have the right to make inspections of the land after notifying the landowner; and

- (5) Any other conditions the department shall require by rules adopted pursuant to chapter 91. [L 1991, c 326, pt of §1; am L 1992, c 180, §2]

" **§195-6.6 Reports.** The department shall submit annually a comprehensive status report on the natural area reserves system and the natural area partnership program to include, but not be limited to:

- (1) A description of activities and accomplishments;
- (2) Compliance with chapter 42F requirements;
- (3) An analysis of the problems and issues encountered in meeting or failing to meet the objectives set forth in the management plans;
- (4) The status of public hunting opportunities;
- (5) The financial condition of the fund, including receipts and expenditures for the fund for the previous fiscal year; and
- (6) Plans and management objectives for the next fiscal year.

The report shall be submitted to the governor and the legislature no later than twenty days prior to the convening of each regular legislative session. [L 1991, c 326, pt of §1; am L 1992, c 180, §3; am L 1997, c 190, §6]

" **§195-7 Powers and duties.** The commission shall:

- (1) Establish criteria to be used in determining whether an area is suitable for inclusion with the reserves system;
- (2) Conduct studies of areas for possible inclusion within the reserves system;
- (3) Recommend to the governor and the department areas suitable for inclusion within the reserves system;
- (4) Establish policies and criteria regarding the management, protection, and permitted uses of areas which are part of the reserves system;
- (5) Advise the governor and the department on any matter relating to the preservation of Hawaii's unique natural resources;
- (6) Develop ways and means of extending and strengthening presently established preserves, sanctuaries, and refuges within the State;
- (7) Advise the department and other public agencies managing state-owned land or natural resources regarding areas under their respective jurisdictions which are or may be appropriate for designation as natural area reserves; and

- (8) In carrying out the above duties, consult the most comprehensive up-to-date compilation of scientific data on the communities of natural flora and fauna of Hawaii. [L 1970, c 139, pt of §1; am L 1987, c 350, §5]

" **§195-8 Penalty.** (a) Any person who violates any of the laws and rules applicable to the reserves system, upon conviction thereof, shall be guilty of a misdemeanor and shall be fined not less than \$1,000 or imprisoned not more than one year, or both, for each offense.

(b) Except as otherwise provided by law, the board or its authorized representative by proper delegation is authorized to set, charge, and collect administrative fines or bring legal action to recover administrative fees and costs as documented by receipts or affidavit, including attorneys' fees and costs; or bring legal action to recover administrative fines, fees, and costs, including attorneys' fees and costs, or payment for damages or for the cost to correct damages resulting from a violation of this chapter or any rule adopted thereunder. The administrative fines shall be as follows:

- (1) For a first violation, a fine of not more than \$2,500;
- (2) For a second violation within five years of a previous violation, a fine of not more than \$5,000; and
- (3) For a third or subsequent violation within five years of the last violation, a fine of not more than \$10,000.

(c) Any criminal action against a person for any violation of this chapter or any rule adopted thereunder shall not be deemed to preclude the State from pursuing civil legal action to recover administrative fines and costs against that person. Any civil legal action against a person to recover administrative fines and costs for any violation of this chapter or any rule adopted thereunder shall not be deemed to preclude the State from pursuing any criminal action against that person. [L 1970, c 139, pt of §1; am L 1981, c 74, §1; am L 2001, c 93, §1]

" **§195-9 Natural area reserve fund; heritage program; established.** (a) There is hereby established in the state treasury a special fund known as the natural area reserve fund to implement the purposes of this chapter, including the identification, establishment, and management of natural area reserves, the acquisition of private lands for new natural area reserves, the operation of the heritage program, and the provision of matching funds for the natural area partnership program. The fund shall be administered by the department.

(b) The fund shall consist of moneys received from any public or private sources. The fund shall be held separate and apart from all other moneys, funds, and accounts in the state treasury, except that any moneys received from the federal government or from private contributions shall be deposited and accounted for in accordance with conditions established by the agencies or persons from whom the moneys are received. Investment earnings credited to the assets of the fund shall become a part of the assets of the fund. Any balance remaining in the fund at the end of any fiscal year shall be carried forward in the fund for the next fiscal year. [L 1987, c 351, §1; am L 1988, c 32, §1; am L 1991, c 326, §4]

Cross References

Biological survey; designation, see §6E-61.

" **[\$195-10] Alienation of natural area reserves.** Natural area reserves shall be held in trust and shall not be alienated except to another public use upon a finding by the department of an imperative and unavoidable public necessity. [L 1987, c 350, pt of §1]

" **[\$195-11] Reserves system management plan.** The department, after consulting the most comprehensive up-to-date compilation of scientific data on the communities of the natural flora and fauna of Hawaii, shall prepare a comprehensive reserves system management plan based upon such information to accomplish the purposes of this chapter. [L 1987, c 350, pt of §1]

" **[\$195-12] Kaena point natural area reserve; vehicular access prohibited.** (a) The use of any vehicle within or traversing the Kaena point natural area reserve is prohibited, except as provided in this section. Any violation of this section shall be subject to section 195-8.

(b) The department may adopt rules pursuant to chapter 91 to allow a limited number of persons vehicular access to the Kaena point natural area reserve for department-permitted fishing and camping activities.

(c) This prohibition shall not apply to:

- (1) Vehicles operated by personnel or agents of the department of land and natural resources necessary for the management and maintenance of the Kaena point natural area reserve and its resources; and

(2) Emergency vehicles, including emergency medical ambulances, police department vehicles, and fire department vehicles.

(d) For purposes of this section, "vehicle" means every motorized device in, upon, or by which any person or property is or may be transported or drawn, including all-terrain vehicles and mopeds. [L 2006, c 89, §2]