

ACT 140

S.B. NO. 2954

A Bill for an Act Relating to the Land Fire Protection law.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 185, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§185- **Definitions.** As used in this chapter, unless the context otherwise requires:

"Administrator" means the administrator of forestry and wildlife.

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

"Branch" means an area comprising a county of the State.

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

"Manager" means the forestry and wildlife manager of a designated branch."

SECTION 2. Section 185-1, Hawaii Revised Statutes, is amended to read as follows:

"§185-1 Responsible agency. The department [of land and natural resources] shall take measures for the prevention, control, and extinguishment of [forest] wildland fires [on state owned and private lands] within [the] forest reserves, [game management areas,] public hunting areas, wildlife and plant sanctuaries, and natural area reserves [of the State] and shall cooperate with established fire control agencies of the counties and the federal government in developing plans and programs and mutual aid agreements for assistance for the prevention, control, and extinguishment of fires on forest, [pasture, and] grass, brush, and watershed lands not within [forest reserves, game management areas, public hunting areas, and natural area reserves.] the department's fire protection responsibilities described above."

SECTION 3. Section 185-2, Hawaii Revised Statutes, is amended to read as follows:

"§185-2 [Fire wardens] Administrator and [foresters.] managers. The [state forester] administrator shall be responsible for coordinating the work of [fire wardens] managers and reviewing their plans for fire protection and control[.] within the meaning of this chapter. [The forester] A manager shall be in charge of [state] lands within forest reserves [on each island], public hunting areas, wildlife and plant sanctuaries, and natural area reserves for the manager's branch, and shall be [the chief fire warden for that island and shall be] in charge [of all fire wardens on the island; provided that if members of the county or federal fire departments are fire wardens the chain of command will be defined by a mutual aid agreement between the department of land and natural resources and the county or federal government as provided in section 185-1. Fire wardens shall be appointed by the department of land and natural resources to serve without pay, for as many districts as in the opinion of the department may be needed for each island to give an adequate coverage and they shall be responsible for enforcing the fire prevention sections of this chapter in the district to which they are appointed.] or in support of all measures for the prevention, control, and execution of wildland fire protection in the manager's branch."

SECTION 4. Section 185-3, Hawaii Revised Statutes, is amended to read as follows:

"§185-3 Powers and duties of [foresters] the administrator and [fire wardens.] managers. (a) The administrator [of forestry and wildlife] shall be responsible to the board [of land and natural resources] for supervision of the organization plans and actions of the [fire warden.] managers.

(b) The administrator [of forestry and wildlife] shall have the power and duty to:

- (1) Review and approve plans[,] prepared by the [chief fire wardens, zoning each island under the chief fire warden's jurisdiction into fire districts;] managers;
 - [(2) Recommend to the board the appointment of a fire warden for each fire district in accordance with section 185-2;
 - (3) Appoint special fire wardens who shall serve without compensation but who shall have the same benefits, powers, and duties as district fire wardens during the term of their appointments pending the filling of vacant fire warden positions by the board or during periods when a fire warden is unable, because of illness, absence from the district, or for any valid reason, to perform or attend to the fire warden's duties for periods not to exceed two months;
 - [(4)] (2) Establish procedures and guidelines for the prevention, control, and extinguishment of fires coming within the meaning of [fires in] this chapter;
 - [(5)] (3) Establish procedures, guidelines, and conditions for the issuance of [fire] burning permits and for determining periods when forest [areas] reserves, public hunting areas, wildlife and plant sanctuaries, and natural area reserves shall be closed;
 - [(6)] (4) Close [forest areas] or partially close forest reserves, public hunting areas, wildlife and plant sanctuaries, and natural area reserves, by restricting certain activities when necessary;
 - [(7)] (5) Summon, when necessary, [men and] additional firefighting assistance, equipment, supplies, and materials needed to extinguish fires; and
 - [(8) Act as fire boss or assign a fire boss to supervise the operations of controlling and extinguishing fires;
 - (9) Arrest without warrant any person who in the presence of the administrator of forestry and wildlife commits any of the offenses prohibited by this chapter; and
 - [(10)] (6) Do any act which the [chief fire warden or district warden] manager is empowered to perform under this chapter.
- (c) The [chief fire warden of each island] manager shall have the power and duty to:
- (1) Prepare a [master] plan for [zoning the island into] fire [districts;] protection within the meaning of section 185-1;
 - [(2) Make recommendations to the administrator of forestry and wildlife who will then recommend to the board for the appointment of fire wardens for each fire district;
 - (3)] (2) Take necessary measures for the prevention, control, and extinguishment of fires coming within the meaning of this chapter;
 - [(4) Supervise the work of fire wardens, and, when necessary, recommend to the administrator of forestry and wildlife for the appointment for periods of time limited to two months of special fire wardens to serve without compensation who shall have the same powers as district fire wardens during their term of appointment;
 - (5)] (3) Issue fire warning notices during dry periods or other seasons when fire hazards are great;
 - [(6)] (4) Close forest reserves, [game management areas,] public hunting areas, wildlife and plant sanctuaries, and natural area reserves to public access or restrict their use during dry periods when necessary, to reduce fire risk[, except it shall be lawful for the owner or the owner's agents or other persons regularly engaged in harvesting,

processing or moving farm or forest products to enter the closed area for essential residential or commercial purposes];

(5) Close public access to areas in which fire control operations are ongoing;

[(7)] (6) Issue burning permits [and authorize fire wardens to issue burning permits] as provided in section 185-7;

[(8)] (7) Receive, audit, and if correct, approve and transmit to the [board] department through the administrator [of forestry and wildlife], all reports and accounts for expenses incurred in the prevention, control, and extinguishment of any fires which come within the meaning of this chapter;

[(9)] (8) Summon, when necessary, additional firefighting assistance, equipment, supplies, or materials to assist [fire wardens] in fighting a fire;

[(10)] (9) Assume full responsibility[, upon relieving any fire warden of such responsibility,] for directing the control and extinguishment of any fire coming within the meaning of this chapter, including directing the control and extinguishment of any fire on or threatening any [government or private lands in forest reserves, game management areas, public hunting areas, and natural area reserves;] lands included in section 185-1 as may be provided for under mutual aid agreements with other fire control agencies; and

[(11)] (10) Conduct educational work in the protection of forest[, pasture, and brush lands] reserves, public hunting areas, wildlife and plant sanctuaries, and natural area reserves against fires[;].

[(12)] Arrest without warrant any person committing in the chief fire warden's presence any of the offenses prohibited by this chapter.

(d) The district fire warden shall have the following duties and powers within the district fire warden's assigned district:

(1) Advise the chief fire warden of the need of fire warning notices; and, if issued, assist in posting the warnings;

(2) Issue burning permits, when authorized by the chief fire warden;

(3) Summon and have control of (unless relieved by the administrator of forestry and wildlife or chief fire warden as herein provided) all persons, equipment, apparatus, supplies, and materials used or needed for fighting a fire;

(4) Authority to incur expenses for the purposes of and in accordance with this [chapter], provided that the district fire warden may relinquish such authority to the chief fire warden of the island;

(5) Submit to the chief fire warden a correct and itemized account of expenses, together with a report of the fire on forms supplied by the department;

(6) Arrest without warrant any person committing in the district fire warden's presence any of the offenses prohibited by this chapter.]”

SECTION 5. Section 185-4, Hawaii Revised Statutes, is amended to read as follows:

“§185-4 Payment for firefighting. (a) No federal or county agency summoned by [a fire warden] the administrator or manager to assist in extinguishing a fire shall be reimbursed for expenses incurred in such firefighting[.] unless specified by mutual aid agreement.

(b) No owner, lessee, or occupier of any lands upon which a fire has occurred, nor any employee of such persons, nor any person who has any vested interest in and to the lands or [his] that person's employees shall be entitled to the compensation provided for in this chapter, for [his] services and materials rendered in and upon the land in the extinguishment of any fire; provided that the prohibition [contained in this paragraph] shall not apply to owners or persons holding interests to any lands which have been surrendered to the department [of land and natural resources] under agreement as a public forest reserve for a period of ten years or more or as a public [shooting ground] hunting area for a period of five years or more or to any owner who suffered a fire as a result of [his] allowing [his] use of the owner's land [to be used] by the general public without compensation.

[The department shall pay all expenses for wages of persons, use of equipment, supplies, or materials summoned or used by the state forester, or a fire warden, for controlling and extinguishing any fire coming within the meaning of this chapter.]

(c) All reimbursable expenses incurred in controlling or extinguishing a fire by the [state forester,] administrator or a [fire warden,] manager shall be payable from the firefighter's contingency fund, provided the fire suppression budget is exceeded, and the owner, lessee, or agency having control over the lands has not been negligent in starting or failing to control or extinguish a fire. Any person, agency, or corporation summoned by the [state forester,] administrator or a [fire warden] manager to assist in extinguishing a fire eligible under this chapter to claim for reimbursement for wages, equipment use, supplies, or materials must submit an itemized statement of such claims to the [chief fire warden] administrator through the [district fire warden] manager within [sixty] forty-five working days after the fire has been extinguished in order to have it honored.

(d) There shall be established under the control of the department [of land and natural resources] a firefighter's contingency fund into which shall be deposited appropriations made by the legislature."

SECTION 6. Section 185-5, Hawaii Revised Statutes, is amended to read as follows:

"**§185-5 Rates of pay for [fire fighting,] firefighting.** Persons summoned by the [state forester] administrator or a [fire warden] manager or by anyone authorized by the [state forester] administrator or a [fire warden] manager for controlling or extinguishing a fire, within the meaning of this chapter, and who are eligible for compensation under this chapter, shall receive compensation at an hourly rate equivalent to the prevailing entry level rate of the civil service classification for the skill for which the person is called on to perform. The rental rates of equipment shall not exceed the prevailing interdepartmental rates for equipment of similar type as established by the department of accounting and general services and supplies or material expended shall be paid for at the actual cost of replacement."

SECTION 7. Section 185-7, Hawaii Revised Statutes, is amended to read as follows:

"**§185-7 Fire danger periods, burning permits, setting fires, penalties.** (a) During periods of weather when the [state forester determines that the possibility] threat of fire is particularly dangerous [on] within forest reserves, public

hunting areas, wildlife and plant sanctuaries, and natural area reserves in any [island] branch, the [chief fire warden of such island] manager shall establish a fire danger period by causing a fire warning to be issued by publishing a notice containing information setting forth the [fact] type of closure and a designation of the affected areas [within which burning is prohibited without a permit, in a paper of general circulation in the area affected] or by posting notices in public places with similar information. [During such periods no fires other than a fire contained in a closed, screened container, which shall prevent the spread of a fire shall be started for purposes of burning forest, pasture, or brush lands or for burning flammable material within 500 feet of forest, pasture, or brush land unless a burning permit is first obtained from the state forester or a fire warden as provided herein.] During fire danger periods, the manager may:

- (1) Totally close or limit use within an area;
- (2) Prohibit any burning;
- (3) Prohibit smoking in specified areas, including in automobiles operating in the area; and
- (4) Prohibit camping in certain areas.

However, in areas where fire control operations are in progress, a manager may prohibit public access and use without prior notice for purposes of effective fire control operations and public safety.

(b) The manager will minimize the threat of fires by maintaining control through the issuance and management of burning permits or the establishment of rules by the department, pursuant to chapter 91. On other lands where the department has direct fire protection responsibility, as described in section 185-1, and on adjoining property that offer a significant threat to those lands, the department shall establish agreements with the department or¹ health to require burning plans acceptable to the managers and the county fire chief. The issuance of permits shall be at the discretion of the issuing officer who shall take into account whether the issuance of a permit is compatible with safety. Holders of permits shall start no fires during a heavy wind or without sufficient help present to control same and shall maintain a constant watch over the fires until they have been extinguished. [Every]

(c) Any person who violates any restriction of a closure or any person who discards burning material within a closed fire area, or, every person who sets a fire on land within the closed fire area without a permit, or, every person who wilfully, maliciously, or negligently sets a fire which burns property not owned, leased, or controlled by the person shall be guilty of a misdemeanor. Any person violating this section shall be fined not less than [\$25] \$250 nor more than [\$5,000.] \$4,000 and shall be held liable for restitution for any suppression costs and damages to public or private property. Setting fires or causing them to be set or allowing them to escape shall be prima facie evidence of wilfulness, malice, or negligence under this section; provided that nothing herein contained shall apply to a person who, in good faith, sets a back fire to check a fire already burning. A "closed fire area" is defined as the area wherein [burning is prohibited] a total closure or specific burning restrictions are in effect during a fire danger period."

SECTION 8. Section 185-8, Hawaii Revised Statutes, is amended to read as follows:

"§185-8 Government agencies to assist. All agencies of the State or its political subdivisions shall assist in extinguishing any fire when duly summoned by the [state forester] administrator or any [fire warden.] manager."

SECTION 9. Section 185-9, Hawaii Revised Statutes, is amended to read as follows:

“§185-9 Obstructing the [state forester] administrator or [fire warden] managers; penalty. Any person who obstructs or interferes with or prevents the [state forester] administrator or any [fire warden] manager or any person in the performance of any duty authorized by this chapter shall be fined not less than [\$25] \$500 nor more than [\$500] \$2,000.”

SECTION 10. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 11. This Act shall take effect upon its approval.

(Approved June 8, 1994.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.