H.B. NO. 3178

A BILL FOR AN ACT

RELATING TO CIVIL PENALTIES FOR VIOLATIONS ON PUBLIC LANDS.

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

SECTION 1. The State must remain vigilant in its duty to protect Hawaii's natural resources for the benefit of all of its residents and future generations. The legislature finds that in recent years, there has been an increase in the intentional violation of and blatant disregard for state natural resources laws. Consequently, the State has been under considerable strain in fulfilling that obligation, due to ineffective enforcement tools, limited resources, and a shortage of enforcement personnel. Existing civil penalties for most violations are nominal and do not appear to deter such behavior effectively.

Increasing penalties for civil violations of the State's natural resources laws is an effective means for deterring unlawful behavior by imposing serious consequences for such violations. The purpose of this Act is to increase civil penalty fine amounts for violations on public lands and to clarify penalties for encroachment on public lands.

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

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

In addition to the foregoing, the board may:

(1) Adopt a seal;

(2) Administer oaths;

(3) Prescribe forms of instruments and documents;

(4) Adopt rules which, upon compliance with chapter 91, shall have the force and effect of law;

(5) Set, charge, demand, and collect reasonable fees for the preparation of documents to be issued, for the surveying of public lands, and for the issuing of certified copies of its government records, which fees, when collected, shall be deposited into the state general fund, unless otherwise specified in this chapter;

(6) Establish additional restrictions, requirements, or conditions, not inconsistent with those prescribed in this chapter, relating to the use of particular land

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

(7) Reduce or waive the lease rental at the beginning of the lease on any lease of public land to be used for any agricultural or pastoral use, or for resort, commercial, industrial, or other business use where the land being leased requires substantial improvements to be placed thereon; provided that such reduction or waiver shall not exceed two years for land to be used for any agricultural or pastoral use, or exceed one year for land to be used for resort, commercial, industrial, or other business use;

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

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

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

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

(12) Bring such actions as may be necessary to remove or remedy encroachments upon public lands. Any person causing an encroachment upon public land shall [~~be subject to a fine of~~]:

(A) Be fined not more than $500 a day for the first offense [~~and shall be liable for administrative costs incurred by the department and for payment of damages. Upon the second offense and thereafter, the violator shall (A) be~~];

(B) Be fined not less than $500 nor more than $2,000 per day[~~; (B) if~~] upon the second offense and thereafter;

(C) If required by the board, restore the land to its original condition if altered and assume the costs thereof; [~~and (C) assume~~]

(D) Assume such costs as may result from adverse effects from such restoration; and

(E) Be liable for administrative costs incurred by the department and for payment of damages;

(13) Set, charge, and collect interest and a service charge on delinquent payments due on leases, sales, or other accounts. The rate of interest shall not exceed one per cent a month and the service charge shall not exceed $50 a month for each delinquent payment; provided that the contract shall state the interest rate and the service charge and be signed by the party to be charged;

(14) Set, charge, and collect additional rentals for the unauthorized use of public lands by a lessee, licensee, grantee, or permittee who is in violation of any term or condition of a lease, license, easement, or revocable permit, retroactive to the date of the occurrence of the violation. Such amounts shall be considered delinquent payments and shall be subject to

interest and service charges as provided in paragraph (13);

(15) Set, charge, and collect reasonable fines for violation of this chapter or any rule adopted thereunder. Any person engaging in any prohibited use of public lands or conducting any prohibited activity on public lands, or violating any of the other provisions of this chapter or any rule adopted thereunder, for which violation a penalty is not otherwise provided, shall be [~~fined~~]:

(A) Fined not more than [~~$500 a day and shall be liable~~] $2,500 per violation for a first violation or a violation beyond five years of a previous violation, provided that, after written or verbal notification from the department, an additional $500 per day per violation may be assessed for each day in which the violation persists;

(B) Fined not more than $5,000 per violation for a second violation within five years of the last violation, provided that, after written or verbal notification from the department, an additional

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

(C) Fined not more than $10,000 per violation for a third or subsequent violation within five years of the last violation, provided that, after written or verbal notification from the department, an additional $2,000 per day per violation may be assessed for each day in which the violation persists; and

(D) Liable for administrative costs and expenses incurred by the department and for payment for damages [~~,~~], including but not limited to natural resource damages.

In addition to the fines, administrative costs, and damages provided for hereinabove, for damage to or theft of natural resources, the board may also set, charge, and collect a fine that, in its discretion, is appropriate considering the value of the natural resource that is damaged or the subject of the theft. In arriving at an appropriate fine, the board may consider the market value of the natural resource damaged or taken and any other factor it deems

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

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

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

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

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

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

(19) Do any and all things necessary to carry out its purposes and exercise the powers granted in this chapter."

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

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

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

INTRODUCED BY: _____

BY REQUEST

JAN 22 2008

H.B. NO. 3178

Report Title:
Civil Penalties; Public Lands

Description:
Increases civil penalty fine amounts for violations on public lands and clarifies penalties for encroachment on public lands.

HB3178

JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO CIVIL PENALTIES FOR VIOLATIONS ON PUBLIC LANDS.

PURPOSE: To increase civil penalty fine amounts for violations on public lands and to clarify penalties for encroachment on public lands.

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

JUSTIFICATION: The State has a public trust obligation to protect Hawaii's natural resources for the benefit of all of its residents and future generations. There has been an increase in the intentional violation of and blatant disregard for state natural resources laws. Consequently, the Department has been under considerable strain in fulfilling that obligation, due to ineffective enforcement tools, limited resources, and a shortage of enforcement personnel.

Existing civil penalties for most violations are nominal and do not appear to be a serious deterrent for such behavior. Examples of such behavior include the operation of unpermitted surf schools and other unauthorized commercial activities on public beaches, operation of all-terrain vehicles on unencumbered or other restricted public lands, damage to archeological, historical, or geologic features, and destruction, defacing, or removal of natural features or natural resources on public lands. Increasing penalties for civil violations of the State's natural resources laws is an effective means for deterring unlawful behavior by imposing serious consequences for such violations.

The existing statutory remedy for encroachment on public lands requires the violator to restore public land, if altered, to its original condition and assume the costs thereof, but does not require the payment of administrative costs and damages incurred by the Department. Other infractions of chapter 171, HRS, or any rules adopted thereunder for which violation a penalty is not otherwise provided, require the violator to pay for administrative costs and damages incurred by the Department. This bill corrects that inconsistency by requiring the violator who encroaches on public land to be liable for administrative costs incurred by the Department and for payment of damages.

Finally, for theft and damage to natural resources, the bill provides the Board of Land and Natural Resources with some leeway in determining an appropriate fine by considering the market value of the natural resource damaged or taken, and such factors as the loss of the natural resource to its natural habitat and environment.

Impact on the public: Public access to public areas such as beaches will be enhanced by the removal of unauthorized operations crowding such areas. Public safety will be promoted by the reduction in unregulated and unsafe activities occurring in public areas.

Impact on the department and other agencies: This bill would provide the Department with more effective tools to enforce violations of our natural resources laws and maximize the impact of the State's limited resources and enforcement personnel.

GENERAL FUND: None.

OTHER FUNDS: None.

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PPBS PROGRAM DESIGNATION: LNR 101.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: Upon approval.