
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. Chapter 286, Hawaii Revised Statutes, is
2 amended by adding a new section to part III 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(22) 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(22)."



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



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;



- 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



- 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 theft.

15 In arriving at an appropriate fine, the board may
16 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.



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



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) Authorize the performance of natural or cultural
11 resource-related community service in lieu of or in
12 addition to any administrative fines imposed pursuant
13 to an administrative enforcement of any of the
14 provisions of title 12 or chapter 6D or 6E, or any
15 rule adopted thereunder; provided that:

16 (A) The community service shall be under the
17 supervision of a governmental agency, a
18 benevolent or charitable organization, or a
19 community service group deemed appropriate by the
20 board until satisfactory compliance is certified
21 by the board or its designated agent;



1 (B) The person who performs the services shall not be
2 considered to be an employee of the board or the
3 supervising entity, and the community service
4 shall not constitute employment; and

5 (C) The board shall adopt rules pursuant to chapter
6 91 to implement this paragraph;

7 (21) Suspend or revoke a license or permit issued under the
8 authority of the board or department, or deny any
9 application for the issuance of a license or permit,
10 if the board finds that the licensee, permittee, or
11 applicant is in violation of any of the provisions of
12 title 12 or chapter 6D or 6E, or any rule adopted
13 thereunder, until satisfactory compliance is certified
14 by the board or its designated agent; provided that
15 the board shall adopt rules pursuant to chapter 91 to
16 implement this paragraph;

17 (22) Direct the appropriate county motor vehicle
18 authorities to deny any application for the
19 registration of a motor vehicle if the board finds
20 that the applicant failed to discharge a condition
21 imposed by the board pursuant to any of the provisions
22 of title 12 or chapter 6D or 6E, or any rule adopted

1 thereunder, until satisfactory compliance is certified
2 by the board or its agent; provided that the board
3 shall adopt rules pursuant to chapter 91 to implement
4 this paragraph; and

5 [~~+20~~] (23) Do any and all things necessary to carry out its
6 purposes and exercise the powers granted in this
7 chapter."

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

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

13 SECTION 5. This Act shall take effect on July 1, 2050.



Report Title:

Cultural and Natural Resources; Enforcement; Penalties

Description:

Provides alternative civil enforcement options that may be utilized by the BLNR in the processing of natural and cultural resource violation cases. Effective 07/01/2050. (SD2)

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