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# 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 199, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4           "§199- Additional powers of board of land and natural  
5 resources to enforce final orders. (a) The board of land and  
6 natural resources may suspend or revoke a license or permit  
7 issued under the authority of the board or the department of  
8 land and natural resources, or deny any application for the  
9 issuance or renewal of such a license or permit, if the board  
10 finds that the licensee, permittee, or applicant has failed to  
11 comply with a final order of the board issued under title 12 or  
12 chapter 6D or 6E, or any rule adopted thereunder, until  
13 satisfactory compliance is certified by the board or its  
14 designated agent.

15           (b) The board of land and natural resources shall direct  
16 the appropriate county motor vehicle authorities to deny any  
17 application for the registration of a motor vehicle upon



1 notification that the owner of the vehicle has failed to pay a  
2 fine pursuant to a final decision and order by the board under  
3 title 12 or chapter 6D or 6E, or any rule adopted thereunder;  
4 provided that the board shall first adopt administrative rules  
5 pursuant to chapter 91 that:

- 6       (1) Identify the types of violations that warrant denial  
7       of a registration;  
8       (2) Specify the procedures to be followed to ensure that  
9       administrative procedures for processing alleged  
10       violations at the hearings level and administrative  
11       appeals are exhausted prior to issuance of a final  
12       decision and order that will be forwarded to the  
13       appropriate county director of finance; and  
14       (3) Specify the method of notifying the director of  
15       finance of the appropriate county."

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

19       "§286- Denial of application for failure to discharge a  
20 fine imposed by final decision and order of the board of land  
21 and natural resources. In addition to any other acts or



1 conditions provided by law, pursuant to section 171-6(21) and  
2 199- , the director of finance of the appropriate county shall  
3 deny any application for registration of a motor vehicle if the  
4 director of finance has received from the board of land and  
5 natural resources notification of failure to pay a fine due  
6 under a final decision and order by the board of land and  
7 natural resources issued under title 12 or chapter 6D or 6E, or  
8 any rule adopted thereunder. Unless otherwise provided by law,  
9 the director of finance shall not approve the application for  
10 registration of a motor vehicle until receipt of certification  
11 of satisfactory compliance from the board of land and natural  
12 resources or its designated agent pursuant to section 171-  
13 6(20)."

14 SECTION 3. Section 171-6, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "§171-6 Powers. Except as otherwise provided by law, the  
17 board of land and natural resources shall have the powers and  
18 functions granted to the heads of departments and the board of  
19 land and natural resources under chapter 26.

20 In addition to the foregoing, the board may:

21 (1) Adopt a seal;



- 1           (2) Administer oaths;
- 2           (3) Prescribe forms of instruments and documents;
- 3           (4) Adopt rules which, upon compliance with chapter 91,  
4           shall have the force and effect of law;
- 5           (5) Set, charge, demand, and collect reasonable fees for  
6           the preparation of documents to be issued, for the  
7           surveying of public lands, and for the issuing of  
8           certified copies of its government records, which  
9           fees, when collected, shall be deposited into the  
10          state general fund, unless otherwise specified in this  
11          chapter;
- 12          (6) Establish additional restrictions, requirements, or  
13          conditions, not inconsistent with those prescribed in  
14          this chapter, relating to the use of particular land  
15          being disposed of, the terms of sale, lease, license,  
16          or permit, and the qualifications of any person to  
17          draw, bid, or negotiate for public land;
- 18          (7) Reduce or waive the lease rental at the beginning of  
19          the lease on any lease of public land to be used for  
20          any agricultural or pastoral use, or for resort,  
21          commercial, industrial, or other business use where



1 the land being leased requires substantial  
2 improvements to be placed thereon; provided that  
3 [~~such~~] the reduction or waiver shall not exceed two  
4 years for land to be used for any agricultural or  
5 pastoral use, or exceed one year for land to be used  
6 for resort, commercial, industrial, or other business  
7 use;

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

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

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



- 1       (11) Appoint masters or hearing officers to conduct public
- 2           hearings as provided by law and under [such]
- 3           conditions as the board by rules shall establish;
- 4       (12) Bring [such] actions as may be necessary to remove or
- 5           remedy encroachments upon public lands. Any person
- 6           causing an encroachment upon public land shall:
- 7           (A) Be fined not more than \$1,000 a day for the first
- 8                 offense;
- 9           (B) Be fined not less than \$1,000 nor more than
- 10                 \$4,000 per day upon the second offense and
- 11                 thereafter;
- 12           (C) If required by the board, restore the land to its
- 13                 original condition if altered and assume the
- 14                 costs thereof;
- 15           (D) Assume [such] costs [as may] that result from
- 16                 adverse effects from [such] restoration; and
- 17           (E) Be liable for administrative costs incurred by
- 18                 the department and for payment of damages;
- 19       (13) Set, charge, and collect interest and a service charge
- 20           on delinquent payments due on leases, sales, or other
- 21           accounts. The rate of interest shall not exceed one



1 per cent a month and the service charge shall not  
2 exceed \$50 a month for each delinquent payment;  
3 provided that the contract shall state the interest  
4 rate and the service charge and be signed by the party  
5 to be charged;

6 (14) Set, charge, and collect additional rentals for the  
7 unauthorized use of public lands by a lessee,  
8 licensee, grantee, or permittee who is in violation of  
9 any term or condition of a lease, license, easement,  
10 or revocable permit, retroactive to the date of the  
11 occurrence of the violation. [~~Such~~] The amounts shall  
12 be considered delinquent payments and shall be subject  
13 to interest and service charges as provided in  
14 paragraph (13);

15 (15) Set, charge, and collect reasonable fines for  
16 violation of [~~this chapter~~] title 12 or chapter 6D or  
17 6E, or any rule adopted thereunder. Any person  
18 engaging in any prohibited use of public lands or  
19 conducting any prohibited activity on public lands, or  
20 violating any of the other provisions of [~~this~~  
21 ~~chapter~~] title 12 or chapter 6D or 6E, or any rule



1 adopted thereunder, for which violation a penalty is  
2 not otherwise provided, shall be:

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

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

16 (C) Fined not more than \$20,000 per violation for a  
17 third or subsequent violation within five years  
18 of the last violation; provided that, after  
19 written or verbal notification from the  
20 department, an additional \$4,000 per day per





1 violation may be assessed for each day in which  
2 the violation persists; and

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

7 In addition to the fines, administrative costs, and  
8 damages provided for hereinabove, for damage to or  
9 theft of natural resources, the board may also set,  
10 charge, and collect a fine that, in its discretion, is  
11 appropriate considering the value of the natural  
12 resource that is damaged or the subject of the theft.

13 In arriving at an appropriate fine, the board may  
14 consider the market value of the natural resource  
15 damaged or taken and any other factor it deems  
16 appropriate, such as the loss of the natural resource  
17 to its natural habitat and environment and the cost of  
18 restoration or replacement. The remedies provided for  
19 in this paragraph are cumulative and in addition to  
20 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) 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 comply  
15 with a final order of the board issued under title 12  
16 or chapter 6D or 6E, or any rule adopted thereunder,  
17 until satisfactory compliance is certified by the  
18 board or its designated agent;

19 (21) Direct the appropriate county motor vehicle  
20 authorities to deny any application for the  
21 registration of a motor vehicle upon notification that



1 the owner of the vehicle has failed to pay a fine  
 2 pursuant to a final decision and order by the board  
 3 under title 12 or chapter 6D or 6E, or any rule  
 4 adopted thereunder; provided that the board shall  
 5 first adopt administrative rules pursuant to chapter  
 6 91 that:

7 (A) Identify the types of violations that warrant  
 8 denial of a registration;

9 (B) Specify the procedures to be followed to ensure  
 10 that administrative procedures for processing  
 11 alleged violations at the hearings level and  
 12 administrative appeals are exhausted prior to  
 13 issuance of a final decision and order; and

14 (C) Specify the method of notifying the director of  
 15 finance of the appropriate county; and

16 ~~[(20)]~~ (22) Do any and all things necessary to carry out its  
 17 purposes and exercise the powers granted in this  
 18 chapter."

19 SECTION 4. Section 171-6.4, Hawaii Revised Statutes, is  
 20 amended to read as follows:



1 " ~~[+]~~ §171-6.4 ~~[+]~~ General administrative penalties. (a)

2 Except as otherwise provided by law, the board or its authorized  
3 representative by proper delegation may set, charge, and collect  
4 administrative fines or bring legal action to recover

5 administrative fees and costs as documented by receipts or  
6 affidavit, including attorneys' fees and costs; or bring legal  
7 action to recover administrative fines, fees, and costs,

8 including attorneys' fees and costs, or payment for damages

9 resulting from a violation of ~~[this chapter]~~ title 12 or chapter  
10 6D or 6E, or any rule adopted ~~[pursuant to this chapter.]~~

11 thereunder. The administrative fines shall be as follows:

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

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

15 (3) For a third or subsequent violation within five years  
16 of the last violation, a fine of not more than  
17 \$10,000.

18 (b) Any criminal action against a person for any violation  
19 of ~~[this chapter]~~ title 12 or chapter 6D or 6E, or any rule  
20 adopted ~~[pursuant to this chapter.]~~ thereunder, shall not be  
21 deemed to preclude the State from pursuing civil legal action



1 against that person. Any civil legal action against a person to  
2 recover administrative fines and costs for any violation of  
3 ~~[this chapter]~~ title 12 or chapter 6D or 6E, or any rule adopted  
4 ~~[pursuant to this chapter.]~~ thereunder, shall not be deemed to  
5 preclude the State from pursuing any criminal action against  
6 that person. Each day of each violation shall constitute a  
7 separate offense."

8 SECTION 5. This Act does not affect rights and duties that  
9 matured, penalties that were incurred, and proceedings that were  
10 begun before its effective date.

11 SECTION 6. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

13 SECTION 7. This Act shall take effect upon its approval.



**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.  
(SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

