

JAN 25 2023

A BILL FOR AN ACT

RELATING TO ADMINISTRATIVE PENALTIES ON PUBLIC LANDS.

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

1 SECTION 1. Section 171-6.4, Hawaii Revised Statutes, is
2 amended to read as follows:

3 " [f] §171-6.4 [f] **General administrative penalties.** (a)

4 Except as otherwise provided by law, the board or its authorized
5 representative by proper delegation may set, charge, and collect
6 administrative fines or bring legal action to recover
7 administrative fees and costs as documented by receipts or
8 affidavit, including attorneys' fees and costs; or bring legal
9 action to recover administrative fines, fees, and costs,
10 including attorneys' fees and costs, or payment for damages
11 resulting from a violation of this chapter or any rule adopted
12 pursuant to this chapter. The administrative fines shall be as
13 follows:

- 14 (1) For a first violation, a fine of not more than \$2,500;
15 (2) For a second violation within five years of a previous
16 violation, a fine of not more than \$5,000;

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

4 (b) Any criminal action against a person for any violation
5 of this chapter or any rule adopted pursuant to this chapter
6 shall not be deemed to preclude the State from pursuing civil
7 legal action against that person. Any civil legal action
8 against a person to recover administrative fines and costs for
9 any violation of this chapter or any rule adopted pursuant to
10 this chapter shall not be deemed to preclude the State from
11 pursuing any criminal action against that person. Each day of
12 each violation shall constitute a separate offense.

13 (c) Noncompliance of administrative enforcement action
14 against a landowner for a land use, as defined in chapter 183C,
15 violation or for a currently unauthorized structure encroaching
16 on public lands (including but not limited to submerged lands or
17 lands within the shoreline) that falls, slides, or came onto
18 public land, or arises from or benefits an adjoining or abutting
19 private land shall affect title as referred to in section 501-
20 151 and result in a lien attaching to the adjoining or abutting
21 private land."

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1 SECTION 2. Section 501-151, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§501-151 Pending actions, judgments; recording of,
4 notice. No writ of entry, action for partition, or any action
5 affecting the title to real property or the use
6 and occupancy thereof or the buildings thereon, and no judgment,
7 nor any appeal or other proceeding to vacate or reverse any
8 judgment, shall have any effect upon registered land as against
9 persons other than the parties thereto, unless a full memorandum
10 thereof, containing also a reference to the number
11 of the certificate of title of the land affected is filed or
12 recorded and registered. Except as otherwise provided, every
13 judgment shall contain or have endorsed on it the State of
14 Hawaii general excise taxpayer identification number, the
15 federal employer identification number, or the last four digits
16 only of the social security number for persons, corporations,
17 partnerships, or other entities against whom the judgment is
18 rendered. If the judgment debtor has no social security number,
19 State of Hawaii general excise taxpayer identification number,
20 or federal employer identification number, or if that
21 information is not in the possession of the party seeking
22 registration of the judgment, the judgment shall be accompanied

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1 by a certificate that provides that the information does not
2 exist or is not in the possession of the party seeking
3 registration of the judgment. Failure to disclose or disclosure
4 of an incorrect social security number, State of Hawaii general
5 excise taxpayer identification number, or federal employer
6 identification number shall not in any way adversely affect or
7 impair the lien created upon recording of the judgment. This
8 section does not apply to attachments, levies of execution, or
9 to proceedings for the probate of wills, or for administration
10 in a probate court; provided that in case notice of the pendency
11 of the action has been duly registered it is sufficient to
12 register the judgment in the action within sixty days after the
13 rendition thereof.

14 As used in this chapter, "judgment" includes an order or
15 decree having the effect of a judgment.

16 Notice of the pendency of an action in a United States
17 District Court, as well as a court of the State of Hawaii, may
18 be recorded.

19 Notice of opening a dispute resolution case as provided in
20 section 667-79 may be recorded.

21 Foreclosure notice as provided in section 667-23 may be
22 recorded.

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1 The party seeking registration of a judgment shall redact
2 the first five digits of any social security number by blocking
3 the numbers out on the copy of the judgment to be filed or
4 recorded.

5 As used in this section, "action" includes an
6 administrative enforcement action by any state or county agency,
7 board, or commission against a landowner for a land use
8 violation or a currently unauthorized structure encroaching on
9 public lands (including but not limited to submerged lands or
10 lands within the shoreline) that falls, slides, or came onto
11 public land, or arises from or benefits an adjoining or abutting
12 private land."

13 SECTION 3. Section 634-51, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§634-51 Recording of notice of pendency of action.**

16 [+] (a) [+] In any action concerning real property or affecting
17 the title or the right of possession of real property, the
18 plaintiff, at the time of filing the complaint, [~~any State or~~
19 ~~County agency, board or commission imposing an administrative~~
20 ~~enforcement action,~~] and any other party at the time of filing a
21 pleading in which affirmative relief is claimed, or at any time

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1 afterwards, may record in the bureau of conveyances a notice of
2 the pendency of the action, containing the names or designations
3 of the parties, as set out in the summons or pleading, the
4 object of the action or claim for affirmative relief, and a
5 description of the property affected thereby. From and after
6 the time of recording the notice, a person who becomes a
7 purchaser or encumbrancer of the property affected shall be
8 deemed to have constructive notice of the pendency of the action
9 and be bound by any judgment entered therein if the person
10 claims through a party to the action; provided that in the case
11 of registered land, section 501-151, sections 501-241 to 501-
12 248, and part II of chapter 501 shall govern.

13 [+] (b) [+] This section authorizes the recording of a
14 notice of the pendency of an action in a United States District
15 Court, as well as a state court.

16 As used in this section, "action" includes an
17 administrative enforcement action by any state or county agency,
18 board, or commission against a landowner for a land use
19 violation or a currently unauthorized structure encroaching on
20 public lands (including but not limited to submerged lands or
21 lands within the shoreline) that falls, slides, came onto public

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1 land, or arises from or benefits an adjoining or abutting
2 private land."

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

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

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INTRODUCED BY: 

8

BY REQUEST

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Report Title:

Administrative Penalties; Lien on Private Lands

Description:

Authorizes the Board of Land and Natural Resources to place a lien on property for noncompliance with administrative enforcement action.

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

JUSTIFICATION SHEET

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DEPARTMENT: Land and Natural Resources

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

PURPOSE: To authorizes the Board of Land and Natural Resources (Board) to place a lien on adjoining or abutting private property for noncompliance of administrative enforcement actions for encroaching land uses upon public lands.

MEANS: Amend sections 171-6.4, 501-151, and 634-51, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Coastal erosion and rising seas are threatening our iconic public trust beaches and threatening shoreline homes throughout the State. Private property owners whose property abuts public beaches are building erosion control structures on public beaches, and encroaching upon public trust land, to protect their private properties. Shoreline hardening protects private property but destroys the public beaches for which Hawaii is world-renowned. Moreover, debris from illegal structures such as rock, concrete, rebar, and textiles create public hazards along the shoreline and in the water.

Section 171-6.4, HRS, is proposed to be amended to address noncompliance of administrative enforcement actions for encroachments upon public lands.

Section 501-151, HRS, is proposed to be amended to define "action" to include administrative enforcement action for encroachments on public land.

Section 634-51, HRS, is proposed to be amended to include state or county agency, board, or commission as a party for notice of pendency of action and define "action" to

include administrative enforcement action for encroachments on public land.

These amendments would aid the Department in resolving encroaching structures that are largely unpermitted or remain under expired permits far beyond their allotted authorization. Unpermitted and illegal structures present an enforcement challenge when the shoreline property changes ownership.

This bill would also help support compliance with chapter 205A, HRS, by providing further remedies to ensure removal of expired temporary erosion control structures that have become de facto seawalls and encroachments on public lands.

Lien recordation will assist in the collection of civil penalties, abatement costs, administrative costs as directed by the Board. A lien on property to address noncompliance of administrative enforcement actions for encroachments upon public lands will deter future violations and maintain the integrity of laws to protect public lands.

Impact on the public: The bill would support the removal of harmful and dangerous unpermitted erosion control structures from state lands, thereby improving access to and helping to preserve public trust resources.

Impact on the department and other agencies: This bill is an effort to provide greater accountability for private property owners adjacent to state lands for the removal of unpermitted encroachments. As such, it will reduce the enforcement burden on the Department.

GENERAL FUND: None.

OTHER FUNDS: None.

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PPBS PROGRAM
DESIGNATION: LNR 101.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.