



GOV. MSG. NO. 860

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 7, 2008

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on July 7, 2008, the following bill was signed into law:

HB3178 SD2 CD1

A BILL FOR AN ACT RELATING TO CIVIL
PENALTIES FOR VIOLATIONS ON PUBLIC LANDS.
(ACT 215)

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

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:

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

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

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



1 "§171-6 Powers. Except as otherwise provided by law, the
2 board of land and natural resources shall have the powers and
3 functions granted to the heads of departments and the board of
4 land and natural resources under chapter 26.

5 In addition to the foregoing, the board may:

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



- 1 or permit, and the qualifications of any person to
2 draw, bid, or negotiate for public land;
- 3 (7) Reduce or waive the lease rental at the beginning of
4 the lease on any lease of public land to be used for
5 any agricultural or pastoral use, or for resort,
6 commercial, industrial, or other business use where
7 the land being leased requires substantial
8 improvements to be placed thereon; provided that such
9 reduction or waiver shall not exceed two years for
10 land to be used for any agricultural or pastoral use,
11 or exceed one year for land to be used for resort,
12 commercial, industrial, or other business use;
- 13 (8) Delegate to the chairperson or employees of the
14 department of land and natural resources, subject to
15 the board's control and responsibility, such powers
16 and duties as may be lawful or proper for the
17 performance of the functions vested in the board;
- 18 (9) Utilize arbitration under chapter 658A to settle any
19 controversy arising out of any existing or future
20 lease;
- 21 (10) Set, charge, and collect reasonable fees in an amount
22 sufficient to defray the cost of performing or



1 otherwise providing for the inspection of activities
2 permitted upon the issuance of a land license
3 involving a commercial purpose;

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

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

11 (A) Be fined not more than ~~[\$500]~~ \$1,000 a day for
12 the first offense ~~[and shall be liable for~~
13 ~~administrative costs incurred by the department~~
14 ~~and for payment of damages. Upon the second~~
15 ~~offense and thereafter, the violator shall (A)~~
16 ~~be];~~

17 (B) Be fined not less than ~~[\$500]~~ \$1,000 nor more
18 than ~~[\$2,000]~~ \$4,000 per day ~~[+ (B) if]~~ upon the
19 second offense and thereafter;

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



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

9 (A) Fined not more than [~~\$500 a day and shall be~~
10 liable] \$5,000 per violation for a first
11 violation or a violation beyond five years of the
12 last violation, provided that, after written or
13 verbal notification from the department, an
14 additional \$1,000 per day per violation may be
15 assessed for each day in which the violation
16 persists;

17 (B) Fined not more than \$10,000 per violation for a
18 second violation within five years of the last
19 violation, provided that, after written or verbal
20 notification from the department, an additional
21 \$2,000 per day per violation may be assessed for
22 each day in which the violation persists;



1 (C) Fined not more than \$20,000 per violation for a
2 third or subsequent violation within five years
3 of the last violation, provided that, after
4 written or verbal notification from the
5 department, an additional \$4,000 per day per
6 violation may be assessed for each day in which
7 the violation persists; and

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

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

18 In arriving at an appropriate fine, the board may
19 consider the market value of the natural resource
20 damaged or taken and any other factor it deems
21 appropriate, such as the loss of the natural resource
22 to its natural habitat and environment and the cost of



1 restoration or replacement. The remedies provided for
2 in this paragraph are cumulative and in addition to
3 any other remedies allowed by law.

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

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

18 (17) Pledge or assign all or any part of the receipts and
19 revenues of the department. The revenue bonds shall
20 be payable from and secured solely by the revenue
21 derived by the department from the industrial park or
22 parks for which the bonds are issued;



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

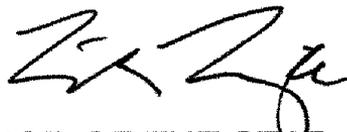
5 (19) Do any and all things necessary to carry out its
6 purposes and exercise the powers granted in this
7 chapter."

8 SECTION 3. This Act does not affect rights and duties that
9 matured, penalties that were incurred, and proceedings that were
10 begun 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 upon its approval.

APPROVED this 7 day of JUL , 2008



GOVERNOR OF THE STATE OF HAWAII

