

S.B. NO. 2852

JAN 25 2012

A BILL FOR AN ACT

RELATING TO AQUATIC RESOURCE VIOLATIONS.

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

1 SECTION 1. Section 187A-12.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~[§]187A-12.5[§]~~ **General administrative penalties.** (a)
4 Except as otherwise provided by law, the board is authorized to
5 set, charge, and collect administrative fines, to require the
6 performance of natural resource related community services, and
7 to recover administrative fees and costs, including attorney's
8 fees and costs, or bring legal action to recover administrative
9 fines, fees, and costs, including attorney's fees and costs, or
10 payment for damages or for the cost to correct damages resulting
11 from a violation of ~~[subtitle 5 of title 12]~~ chapters 187A
12 through 190, or any rule adopted thereunder.

13 (b) For violations involving threatened or endangered
14 species, the administrative fines shall be as follows:

15 (1) For a first violation, a fine of not more than \$5,000;

16 (2) For a second violation within five years of a previous
17 violation, a fine of not more than \$10,000; and

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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 \$15,000.

4 (c) For all other violations the administrative fines
5 shall be as follows:

6 (1) For a first violation, a fine of not more than \$1,000;

7 (2) For a second violation within five years of a previous
8 violation, a fine of not more than \$2,000; and

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

11 (d) In addition to subsection (b), a fine of up to \$5,000
12 may be levied for each specimen of threatened or endangered
13 aquatic life taken, killed, or injured in violation of [~~subtitle~~
14 ~~5 of title 12~~] chapters 187A through 190, or any rule adopted
15 thereunder.

16 (e) In addition to subsection (c), a fine of up to \$1,000
17 may be levied for each specimen of all other aquatic life taken,
18 killed, or injured in violation of [~~subtitle 5 of title 12~~]
19 chapters 187A through 190, or any rule adopted thereunder.

20 (f) In addition to, or in lieu of, the administrative
21 finest listed in subsections (b) to (e), for any violation of
22 chapters 187A through 190, or any rule adopted thereunder, the
23 board may further require the performance of natural resource

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1 related community services under the supervision of a
2 governmental agency, or benevolent or charitable organization,
3 or other community service group, provided that the person who
4 performs such services shall not be deemed to be an employee of
5 the governmental agency or assigned work site for any purpose.
6 The maximum amount of hours of service that the board may impose
7 is as follows:

8 (1) For a first violation, up to one hundred hours;

9 (2) For a second violation within five years of a
10 previous violation, up to two hundred hours; and

11 (3) For a third or subsequent violation within five
12 years of a previous violation, up to three hundred
13 hours.

14 Any services imposed under this subsection shall be
15 performed during a time that does not directly interfere with
16 the performing person's school attendance or employment.

17 (g) Upon a finding by the board that a person has failed
18 to pay any administrative fines, fees, costs, or damages or
19 complete performance of any natural resource related community
20 service imposed by the board, and that the individual is the
21 holder of or an applicant for a driver's license issued by a
22 licensing authority in the State, the board may issue notice to
23 the person of the board's intent to certify the person as

1 noncompliant with administrative penalties imposed by the board,
2 the department shall direct the examiner of drivers to deny or
3 suspend any driver's license, or deny any application for
4 renewal or reinstatement or reactivation of any driver's license
5 issued to such person, and the notice shall:

6 (1) Be sent by regular mail to both the last known address
7 of record of the person as shown in the records of the
8 licensing authority, if such record exists, and the
9 last known address of record of the person as shown in
10 the records of the department;

11 (2) Contain the identification of any licenses subject to
12 suspension, nonrenewal, nonreinstatement, or denial;

13 (3) Contain a copy of the board determination or
14 determinations resulting from setting or charging any
15 administrative fines, fees, costs, or natural resource
16 related community service to be paid or performed by
17 the person;

18 (4) Specify the amount of money or number of hours of
19 natural resource related community service left to be
20 paid or performed by the person pursuant to the
21 board's determination or determinations in paragraph

22 (3);

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1 (5) Contain a statement that if the person satisfies the
2 outstanding payment or services indicated in paragraph
3 (4) within thirty days of the mailing date of the
4 notice of intent, the board shall not pursue the
5 certification action;

6 (6) Contain a statement that the person may contest the
7 suspension, nonrenewal, nonreactivation, or denial of
8 a license by requesting a hearing in writing within
9 thirty days of the date of issuance of the notice of
10 intent to suspend, not reactivate or otherwise deny
11 the license; and

12 (7) Contain a statement that if the person makes a timely
13 request as specified in paragraph (6), the board shall
14 stay the certification action until a decision is
15 made.

16 For the purposes of this subsection and subsection (h), the
17 date of issuance shall be two days following the date of mailing
18 of the notice of intent to certify. Board action under this
19 subsection shall not preclude the board from pursuing other
20 legal action to collect outstanding fines or fees as authorized
21 by law.

22 (h) The board shall certify in writing to the examiner of
23 drivers that a person notified pursuant to subsection (g) has

1 failed to pay or perform any administrative fine, fee, natural
2 resource related community service, or costs imposed by the
3 board, and shall authorize the immediate suspension, nonrenewal,
4 nonreactivation, or denial of any driver's license held or
5 applied for by the person if the person:

6 (1) Fails to satisfy the outstanding administrative fines,
7 fees, costs, or natural resource related community
8 service within thirty days of the date of mailing of
9 the notice of intent to certify;

10 (2) Fails to contact the agency in writing within thirty
11 days of the date of mailing of the notice requesting a
12 hearing to contest the certification; or

13 (3) Fails to successfully contest the notice after being
14 provided with such a hearing.

15 The board shall provide a copy of the certification to the
16 person by regular mail to the address or addresses described in
17 subsection (g)(1). Notwithstanding any other provision
18 affecting the status of a person's driver's license, upon
19 receipt of the certification, the examiner of drivers shall
20 suspend any driver's license that the person holds or deny any
21 driver's license for which the person applies without further
22 review or hearing concerning the suspension, nonrenewal,
23 nonreactivation, or denial. Notwithstanding the provisions of

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1 any other law setting terms of suspension, revocation, denial,
2 termination, renewal, reinstatement, or reactivation of a
3 driver's license, a certification issued by the board
4 suspending, not renewing, not reinstating, not reactivating, or
5 denying a driver's license shall be implemented by the examiner
6 of drivers and continue in effect until the examiner of drivers
7 receives a written release from the board.

8 (i) Upon the complete payment or performance of all
9 administrative penalties imposed by the board by a person
10 subject to certification under subsection (h), upon approval by
11 the board, the department shall provide the person with written
12 confirmation of the payment or performance, and issue a written
13 release canceling the certification in writing to the examiner
14 of drivers.

15 (j) If a driver's license is suspended or denied under
16 this section, the examiner of drivers may charge a fee for
17 reinstating a driver's license, and any funds paid by the
18 individual to the examiner of drivers shall not be refunded.
19 The examiner of drivers may also charge the individual a
20 reasonable fee to cover the administrative costs incurred in
21 complying with this section.

22 (k) The board may delegate to a hearings officer or
23 officers its authority to take any action or render any decision

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1 under this section, including its final decision-making power in
2 any contested case proceeding requested pursuant to chapter 91.

3 (1) The board may adopt rules pursuant to chapter 91
4 necessary for the implementation of this section. The examiner
5 of drivers may adopt rules pursuant to chapter 91 for the
6 implementation and administration of this section.

7 ~~[(f)]~~ (m) Any criminal penalty for any violation of
8 ~~[subtitle 5 of title 12]~~ chapters 187A through 190, or any rule
9 adopted thereunder shall not be deemed to preclude the State
10 from recovering additional administrative fines, fees, and
11 costs, including attorney's fees and costs~~[-]~~; or imposing
12 natural resource related community service."

13 SECTION 2. Section 286-102, Hawaii Revised Statutes, is
14 amended by amending subsection (e) to read as follows:

15 "(e) In addition to other qualifications and conditions by
16 or pursuant to this part, the right of an individual to hold a
17 motor vehicle operator's license or permit issued by the county
18 is subject to the requirements of section 576D-13~~[-]~~, and
19 compliance with the terms of administrative penalties as imposed
20 by the board of land and natural resources pursuant to section
21 187A-12.5.

22 Upon receipt of certification from the child support
23 enforcement agency pursuant to section 576D-13 that an obligor

1 or individual who owns or operates a motor vehicle is not in
2 compliance with an order of support as defined in section 576D-1
3 or has failed to comply with a subpoena or warrant relating to a
4 paternity or child support proceeding, the examiner of drivers
5 shall suspend the license and right to operate motor vehicles
6 and confiscate the license of the obligor. The examiner of
7 drivers shall not reinstate an obligor's or individual's license
8 until the child support enforcement agency, the office of child
9 support hearings, or the family court issues an authorization
10 that states the obligor or individual is in compliance with an
11 order of support or has complied with a subpoena or warrant
12 relating to a paternity or child support hearing.

13 Upon receipt of certification from the board of land and
14 natural resources pursuant to section 187A-12.5 that a person
15 has failed to comply with administrative penalties imposed by
16 the board of land and natural resources, the examiner of drivers
17 shall deny or suspend any license to operate motor vehicles and
18 confiscate any license issued to the person. The examiner of
19 drivers shall not reinstate a person's license until the board
20 of land and natural resources issues a release canceling the
21 certification pursuant to section 187A-12.5.

22 The licensing authority may adopt rules pursuant to chapter
23 91 to implement and enforce the requirements of this section."

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

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

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

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INTRODUCED BY: 

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BY REQUEST

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Report Title:

Aquatic Resource Violations

Description:

Provides for transformative administrative penalty alternatives and an enhanced collection mechanism for outstanding fines and penalties resulting from aquatic resource violations.

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

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO AQUATIC RESOURCE VIOLATIONS.

PURPOSE: To provide for transformative administrative penalty alternatives, and for an enhanced collection mechanism for outstanding fines and penalties resulting from aquatic resource violations.

MEANS: Amend sections 187A-12.5 and 286-102(e), Hawaii Revised Statutes (HRS).

JUSTIFICATION: Currently, section 187A-12.5, HRS, provides the Board of Land and Natural Resources (Board) with authority to administratively levy significant fines for violations of aquatic resource laws and regulations. Commentators have noted that the Board's expanded use of this administrative fine authority may provide a level of flexibility and consistency that could prove advantageous in addressing regulatory noncompliance, an issue that has received considerable attention by fishers and other ocean users. However, the expanded use of this compliance mechanism has been restricted by concerns that: (1) potential violators may not have the means to pay significant financial penalties; and (2) existing collection mechanisms for outstanding administrative fines require the Department to go through civil collection processes that may be both costly and time-consuming for the Department.

This bill addresses the stated concerns by: (1) creating the authority of the Board to impose, in lieu of or in addition to monetary fines, natural resource related community service for violations of aquatic resource laws and regulations; and (2) providing a process by which violators with

outstanding fines or community service requirements may have their driver's license privileges suspended or revoked, after a thirty-day notification period and a reasonable opportunity to be heard.

Impact on the public: By providing for transformative penalties such as natural resource related community service, and an enhanced collection mechanism tied to licensing privileges, this bill would allow the Board to more flexibly, consistently, and creatively address aquatic resource violations to better safeguard and conserve the State's natural aquatic resources.

Impact on the department and other agencies: This bill would provide the Department with the authority to impose natural resource related community service for aquatic resource violations, and also provide a mechanism for the Department to encourage timely payment and performance of administrative fines and community service through revocation or suspension of driver's license privileges administered by the county examiners of drivers, without resorting to costly civil collection processes.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	LNR 401.
OTHER AFFECTED AGENCIES:	County Examiners of Drivers.
EFFECTIVE DATE:	Upon approval.