

JAN 24 2018

A BILL FOR AN ACT

RELATING TO GOVERNMENT.

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

SECTION 1. Section 6E-10.5, Hawaii Revised Statutes, is amended to read as follows:

"~~[+]§6E-10.5[+]~~ **Enforcement.** (a) If the board of land and natural resources determines that any person has violated or is violating this chapter, or any rule adopted pursuant to this chapter, the board shall serve written notice by certified mail or personal service upon the alleged violator or violators specifying the alleged violation and may include with the notice:

(1) An order specifying a reasonable time during which that person shall be required to take such measures as may be necessary to correct the violation and to give periodic progress reports;

(2) An order imposing penalties provided in section 6E-11.6; and

(3) ~~[An order that the alleged violator or violators appear before the board for a hearing at a time and~~



1 ~~place specified in the notice or to be set later and~~
2 ~~answer the charges complained of.]~~ Notice that the
3 alleged violator or violators may seek relief from a
4 determination of violation and penalties by timely
5 filing a civil action before the circuit court having
6 jurisdiction over the location of the alleged
7 violation.

8 (b) If the board determines that any person is continuing
9 to violate this chapter or any rule adopted pursuant to this
10 chapter after having been served notice of violation, the board
11 shall serve written notice by certified mail or personal service
12 upon the alleged violator or violators specifying the alleged
13 violation. With the notice, the board:

14 (1) Shall order the alleged violator or violators to
15 submit a written schedule within thirty days
16 specifying the measures to be taken and the time
17 within which the measures shall be taken to bring that
18 person into compliance with this chapter or any rule
19 adopted thereunder. The board shall accept or modify
20 the submitted schedule within sixty days of receipt of
21 the schedule. Any schedule not acted upon after sixty



1 days of receipt by the board shall be deemed accepted
2 by the board;

3 (2) Shall order the alleged violator or violators to cease
4 ~~[and desist from]~~ the activities that violate this
5 chapter or any rule adopted thereunder, if that person
6 does not submit a written schedule to the board within
7 thirty days. This order shall remain in effect until
8 the board accepts the written schedule; and

9 (3) May impose penalties as provided in section 6E-11.6[+
10 and

11 ~~(4) May order the alleged violator or violators to appear~~
12 ~~before the board for a hearing to answer the charges~~
13 ~~issued, at a time and place specified in the notice or~~
14 ~~otherwise set by the board].~~

15 (c) If the board determines that any person has violated
16 an accepted schedule or an order issued pursuant to this
17 section, the board shall impose penalties by sending a notice in
18 writing, either by certified mail or by personal service to that
19 person, describing such non-adherence or violation with
20 reasonable particularity.



1 (d) Any order issued pursuant to this chapter shall become
2 final, unless the person or persons named therein ~~[requests in~~
3 ~~writing, not later than twenty days after notice of violation~~
4 ~~and order is served, a hearing before the board. Upon request~~
5 ~~for a hearing, the board shall require that the alleged violator~~
6 ~~or violators appear before the board for a hearing to answer the~~
7 ~~charges issued, at a time and place specified in the notice or~~
8 ~~otherwise set by the board.] timely file a civil action~~
9 ~~contesting the order in the circuit court having jurisdiction~~
10 ~~over the location of the alleged violation.~~

11 Any penalty imposed pursuant to this chapter shall become
12 due and payable twenty days after the notice of penalty is
13 served, unless the person or persons named therein ~~[requests in~~
14 ~~writing a hearing before the board.] timely file a civil action~~
15 ~~contesting the order in the circuit court having jurisdiction~~
16 ~~over the location of the alleged violation. Whenever a [hearing~~
17 ~~is requested on] civil action is filed in the applicable circuit~~
18 ~~court contesting~~ any penalty imposed pursuant to this chapter,
19 the penalty shall become due and payable only upon completion of
20 all review proceedings and the issuance of a final order
21 confirming the penalty in whole or in part.



1 (e) ~~[Any hearing conducted pursuant to this section shall~~
2 ~~be conducted as a contested case under chapter 91.]~~ If, after a
3 ~~[hearing held]~~ civil action is filed pursuant to this section,
4 the ~~[board]~~ circuit court finds that a violation or violations
5 has occurred, the board, consistent with any order of the
6 circuit court, shall:

- 7 (1) Affirm or modify any penalties imposed;
8 (2) Modify or affirm the order previously issued; or
9 (3) Issue an appropriate order or orders for the
10 prevention, abatement, or control of the violation or
11 for the taking of such other corrective action as may
12 be appropriate.

13 Any order issued after ~~[a hearing]~~ the issuance of an applicable
14 circuit court ruling may prescribe timetables for necessary
15 action in preventing, abating, or controlling the violation.

16 ~~[If, after a hearing on an order or penalty contained in a~~
17 ~~notice, the board finds that no violation has occurred or is~~
18 ~~occurring, the board shall rescind the order or penalty.]~~

19 (f) If the amount of any penalty is not paid to the
20 department within thirty days after it becomes due and payable,
21 the board may institute a civil action in the name of the State



1 to collect the administrative penalty, which shall be a
2 government realization. In any proceeding to collect the
3 administrative penalty imposed, the board need only show that:

4 (1) Notice was given;

5 (2) ~~[A hearing was held,]~~ An opportunity was provided for
6 the alleged violator or violators to contest the
7 penalty by filing a civil action in circuit court, or
8 the time granted for [requesting a hearing] contesting
9 the penalty has run without [such a request,] a civil
10 action being filed;

11 (3) The administrative penalty was imposed; and

12 (4) The penalty remains unpaid.

13 ~~[(g) In connection with any hearing held pursuant to this~~
14 ~~section, the board may subpoena the attendance of witnesses and~~
15 ~~the production of evidence on behalf of all parties.]"~~

16 SECTION 2. Section 46-4, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) This section and any ordinance, rule, or regulation
19 adopted in accordance with this section shall apply to lands not
20 contained within the forest reserve boundaries as established on
21 January 31, 1957, or as subsequently amended.



1 Zoning in all counties shall be accomplished within the
2 framework of a long-range, comprehensive general plan prepared
3 or being prepared to guide the overall future development of the
4 county. Zoning shall be one of the tools available to the
5 county to put the general plan into effect in an orderly manner.

6 Zoning in the counties of Hawaii, Maui, and Kauai means the
7 establishment of districts of such number, shape, and area, and
8 the adoption of regulations for each district to carry out the
9 purposes of this section. In establishing or regulating the
10 districts, full consideration shall be given to all available
11 data as to soil classification and physical use capabilities of
12 the land to allow and encourage the most beneficial use of the
13 land consonant with good zoning practices. The zoning power
14 granted herein shall be exercised by ordinance which may relate
15 to:

16 (1) The areas within which agriculture, forestry,
17 industry, trade, and business may be conducted;

18 (2) The areas in which residential uses may be regulated
19 or prohibited;

20 (3) The areas bordering natural watercourses, channels,
21 and streams, in which trades or industries, filling or



1 dumping, erection of structures, and the location of
2 buildings may be prohibited or restricted;

3 (4) The areas in which particular uses may be subjected to
4 special restrictions;

5 (5) The location of buildings and structures designed for
6 specific uses and designation of uses for which
7 buildings and structures may not be used or altered;

8 (6) The location, height, bulk, number of stories, and
9 size of buildings and other structures;

10 (7) The location of roads, schools, and recreation areas;

11 (8) Building setback lines and future street lines;

12 (9) The density and distribution of population;

13 (10) The percentage of a lot that may be occupied, size of
14 yards, courts, and other open spaces;

15 (11) Minimum and maximum lot sizes; and

16 (12) Other regulations the boards or city council find
17 necessary and proper to permit and encourage the
18 orderly development of land resources within their
19 jurisdictions.

20 The council of any county shall prescribe rules,
21 regulations, and administrative procedures and provide personnel



1 it finds necessary to enforce this section and any ordinance
2 enacted in accordance with this section~~[-]~~; provided that a
3 county shall not conduct contested case hearings regarding
4 disputes over the use of land; provided further that a party
5 aggrieved by an administrative decision regarding the use of
6 land may seek relief by filing a civil claim in the circuit
7 court having jurisdiction over the location in which the dispute
8 arises. The ordinances may be enforced by appropriate fines and
9 penalties, civil or criminal, or by court order at the suit of
10 the county or the owner or owners of real estate directly
11 affected by the ordinances.

12 Any civil fine or penalty provided by ordinance under this
13 section may be imposed by the district court~~[, or by the zoning~~
14 ~~agency after an opportunity for a hearing pursuant to chapter~~
15 ~~91. The proceeding shall not be a prerequisite for any~~
16 ~~injunctive relief ordered by the circuit court].~~

17 Nothing in this section shall invalidate any zoning
18 ordinance or regulation adopted by any county or other agency of
19 government pursuant to the statutes in effect prior to July 1,
20 1957.



1 The powers granted herein shall be liberally construed in
2 favor of the county exercising them, and in such a manner as to
3 promote the orderly development of each county or city and
4 county in accordance with a long-range, comprehensive general
5 plan to ensure the greatest benefit for the State as a whole.
6 This section shall not be construed to limit or repeal any
7 powers of any county to achieve these ends through zoning and
8 building regulations, except insofar as forest and water reserve
9 zones are concerned and as provided in subsections (c) and (d).

10 Neither this section nor any ordinance enacted pursuant to
11 this section shall prohibit the continued lawful use of any
12 building or premises for any trade, industrial, residential,
13 agricultural, or other purpose for which the building or
14 premises is used at the time this section or the ordinance takes
15 effect; provided that a zoning ordinance may provide for
16 elimination of nonconforming uses as the uses are discontinued,
17 or for the amortization or phasing out of nonconforming uses or
18 signs over a reasonable period of time in commercial,
19 industrial, resort, and apartment zoned areas only. In no event
20 shall such amortization or phasing out of nonconforming uses
21 apply to any existing building or premises used for residential



(single-family or duplex) or agricultural uses. Nothing in this section shall affect or impair the powers and duties of the director of transportation as set forth in chapter 262."

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

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

In addition to the foregoing, the board may:

- (1) Adopt a seal;
- (2) Administer oaths;
- (3) Prescribe forms of instruments and documents;
- (4) Adopt rules which, upon compliance with chapter 91, shall have the force and effect of law;
- (5) Set, charge, demand, and collect reasonable fees for the preparation of documents to be issued, for the surveying of public lands, and for the issuing of certified copies of its government records, which fees, when collected, shall be deposited into the



1 state general fund, unless otherwise specified in this
2 chapter;

3 (6) Establish additional restrictions, requirements, or
4 conditions, not inconsistent with those prescribed in
5 this chapter, relating to the use of particular land
6 being disposed of, the terms of sale, lease, license,
7 or permit, and the qualifications of any person to
8 draw, bid, or negotiate for public land;

9 (7) Reduce or waive the lease rental at the beginning of
10 the lease on any lease of public land to be used for
11 any agricultural or pastoral use, or for resort,
12 commercial, industrial, or other business use where
13 the land being leased requires substantial
14 improvements to be placed thereon; provided that such
15 reduction or waiver shall not exceed two years for
16 land to be used for any agricultural or pastoral use,
17 or exceed one year for land to be used for resort,
18 commercial, industrial, or other business use;

19 (8) Delegate to the chairperson or employees of the
20 department of land and natural resources, subject to
21 the board's control and responsibility, such powers



1 and duties as may be lawful or proper for the
2 performance of the functions vested in the board;

3 (9) Use arbitration under chapter 658A to settle any
4 controversy arising out of any existing or future
5 lease;

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

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

14 (12) Bring such actions as may be necessary to remove or
15 remedy encroachments upon public lands. Any person
16 causing an encroachment upon public land shall:

17 (A) Be fined not more than \$1,000 a day for the first
18 offense;

19 (B) Be fined not less than \$1,000 nor more than
20 \$4,000 per day upon the second offense and
21 thereafter;



(C) If required by the board, restore the land to its original condition if altered and assume the costs thereof;

(D) Assume such costs as may result from adverse effects from such restoration; and

(E) Be liable for administrative costs incurred by the department and for payment of damages;

(13) Set, charge, and collect interest and a service charge on delinquent payments due on leases, sales, or other accounts. The rate of interest shall not exceed one per cent a month and the service charge shall not exceed \$50 a month for each delinquent payment; provided that the contract shall state the interest rate and the service charge and be signed by the party to be charged;

(14) Set, charge, and collect additional rentals for the unauthorized use of public lands by a lessee, licensee, grantee, or permittee who is in violation of any term or condition of a lease, license, easement, or revocable permit, retroactive to the date of the occurrence of the violation. Such amounts shall be



1 considered delinquent payments and shall be subject to
2 interest and service charges as provided in paragraph
3 (13);

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

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

19 (B) Fined not more than \$10,000 per violation for a
20 second violation within five years of the last
21 violation; provided that, after written or verbal



1 notification from the department, an additional
2 \$2,000 per day per violation may be assessed for
3 each day in which the violation persists;

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

11 (D) Liable for administrative costs and expenses
12 incurred by the department and for payment for
13 damages, including but not limited to natural
14 resource damages.

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

21 In arriving at an appropriate fine, the board may



1 consider the market value of the natural resource
2 damaged or taken and any other factor it deems
3 appropriate, such as the loss of the natural resource
4 to its natural habitat and environment and the cost of
5 restoration or replacement. The remedies provided for
6 in this paragraph are cumulative and in addition to
7 any other remedies allowed by law.

8 No person shall be sanctioned pursuant to this section
9 for the exercise of native Hawaiian gathering rights
10 and traditional cultural practices as authorized by
11 law or as permitted by the department pursuant to
12 article XII, section 7, of the Hawaii [state
13 ~~constitution,~~] State Constitution;

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



1 (17) Pledge or assign all or any part of the receipts and
2 revenues of the department. The revenue bonds shall
3 be payable from and secured solely by the revenue
4 derived by the department from the industrial park or
5 parks for which the bonds are issued;

6 (18) Reimburse the state general fund for debt service on
7 general obligation bonds or reimbursable general
8 obligation bonds issued by the State for purposes of
9 this chapter;

10 (19) Notwithstanding part II of chapter 205A to the
11 contrary, plan, design, construct, operate, and
12 maintain any lands or facilities under the
13 jurisdiction of the division of boating and ocean
14 recreation of the department without the need to
15 obtain a special management area minor permit or
16 special management area use permit; and

17 (20) Do any and all things necessary to carry out its
18 purposes and exercise the powers granted in this
19 chapter[~~-~~];

20 provided that the board shall not conduct contested case
21 hearings; provided further that a party aggrieved by a decision



1 of the board may contest the decision by filing a civil action
2 in the circuit court having jurisdiction over the location in
3 which the dispute arises."

4 SECTION 4. Section 174C-9, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "[+]§174C-9[+] **Proceedings before the commission**
7 **concerning water resources.** All proceedings before the
8 commission concerning the enforcement or application of any
9 provision of this chapter or any rule adopted pursuant thereto,
10 or the issuance, modification, or revocation of any permit or
11 license under this code by the commission, shall be conducted in
12 accordance with chapter 91[-]; provided that the commission
13 shall not conduct contested case hearings. Hearings regarding
14 particular water resources shall be conducted on the island
15 where those water resources are located."

16 SECTION 5. Section 174C-10, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "[+]§174C-10[+] **Dispute resolution.** ~~[The commission shall~~
19 ~~have jurisdiction statewide to hear any]~~ Any dispute regarding
20 water resource protection, water permits, or constitutionally
21 protected water interests, or where there is insufficient water



1 to meet competing needs for water, whether or not the area
2 involved has been designated as a water management area under
3 this chapter[~~-. The final decision on any matter shall be made~~
4 ~~by the commission.~~] may be adjudicated by the circuit court
5 having jurisdiction over the location in which the dispute
6 arises."

7 SECTION 6. Section 174C-11, Hawaii Revised Statutes, is
8 amended as follows:

9 1. By amending subsection (a) to read:

10 "(a) The chairperson may appoint hearings officers, not
11 subject to chapter 76, to hear and reach a preliminary decision
12 on any matter concerning the implementation or administration of
13 the state water code which the commission may refer to the
14 hearings officers by rule or otherwise[~~-~~]; provided that a
15 hearings officer shall not conduct contested case hearings."

16 2. By amending subsection (c) to read:

17 "(c) In conducting a hearing other than a contested case
18 hearing on any matter referred by the commission, a hearings
19 officer shall solicit and consider the views of the appropriate
20 county officials responsible for planning, economic development,
21 and resource management and such other county officials and



1 others as the commission shall direct. Any affected county
2 agency shall be admitted as a party upon request."

3 3. By amending subsection (f) to read:

4 "(f) [~~The commission shall adjudicate disputes~~] Disputes
5 where there is insufficient water to meet competing needs[-]
6 shall be adjudicated by the circuit court having jurisdiction
7 over the location in which the dispute arises."

8 SECTION 7. Section 183C-6, Hawaii Revised Statutes, is
9 amended by amending subsection (b) to read as follows:

10 "(b) The department shall render a decision on a completed
11 application for a permit within one hundred eighty days of its
12 acceptance by the department. If within one hundred eighty days
13 after acceptance of a completed application for a permit, the
14 department shall fail to give notice, hold a hearing, and render
15 a decision, the owner may automatically put the owner's land to
16 the use or uses requested in the owner's application. When an
17 environmental impact statement is required pursuant to chapter
18 343, [~~or when a contested case hearing is requested pursuant to~~
19 ~~chapter 91,~~] the one hundred eighty days shall be extended an
20 additional ninety days beyond the time necessary to complete the
21 requirements of chapter 343 [~~or chapter 91~~]. Any request for



1 additional extensions by the applicant shall be subject to the
2 approval of the board."

3 SECTION 8. Section 174C-12, Hawaii Revised Statutes, is
4 repealed.

5 [~~"§174C-12 Judicial review of rules and orders of the~~
6 ~~commission concerning the water code.~~ Except as otherwise
7 provided in this chapter, judicial review of rules and orders of
8 the commission under this chapter shall be governed by chapter
9 91. Trial de novo is not allowed on review of commission
10 actions under this chapter."]

11 SECTION 9. This Act does not affect rights and duties that
12 matured, penalties that were incurred, and proceedings that were
13 begun before its effective date.

14 SECTION 10. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 11. This Act shall take effect on July 1, 2018.

17
INTRODUCED BY:

Kaleneh (R/R)



S.B. NO. 3020

Report Title:

BLNR; CWRM; Counties; Disputes; Remedies

Description:

Provides that the Board of Land and Natural Resources and Commission on Water Resource Management shall not conduct contested case hearings, and counties shall not conduct contested case hearings regarding disputes over land use, but that decisions and disputes may be contested and adjudicated in circuit court. Effective 7/1/2018.

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

