

ACT 142

S.B. NO. 2968

A Bill for an Act Relating to Natural Resource Violations.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. Hawaii's fragile natural resources demand the highest level of protection from overuse and abuse. An effective enforcement program is essential for proper stewardship of Hawaii's natural resources. Part of an effective enforcement program is to allow for tiered penalties that provide serious consequences for the most serious violations and allow for lesser penalties for lesser violations. It should also include the ability to process quickly and efficiently the more minor infractions of the regulations that govern the use of our natural resources so that greater enforcement resources can be dedicated to more serious violations.

Ten years ago, the department of land and natural resources had a major backlog of pending cases of alleged violations of sections 183-41 and 183-43, Hawaii Revised Statutes, governing the use of the conservation district (now chapter 183C, Hawaii Revised Statutes). Most of the alleged violations were minor but under sections 183-41 and 183-43, Hawaii Revised Statutes, the only way to resolve violations was to go to the board of land and natural resources and be subject to a fine of up to \$2,000 per day.

In an effort to streamline the process and reduce the sizable backlog of cases, the board of land and natural resources approved a voluntary program whereby the alleged violator could opt out of appearing before the board of land and natural resources and either pay a fine or request a hearing from a hearings officer under section 171-6(8), Hawaii Revised Statutes. The hearings officer administrative penalty system has been a pilot program at the department of land and natural resources since 1994. The system allows an alleged violator to opt out for a hearings officer who presides over minor violations of title 12 and chapter 6E, Hawaii Revised Statutes, in the same way a traffic court does for minor traffic violations. This system has expedited the processing of minor violations, resulting in surer punishment for offenders and more time for departmental enforcement officers to concentrate their limited resources on more serious violations, and has resulted in more enforcement of departmental rules. Given the success of the pilot program, the department of land and natural resources would like to implement this system department-wide but cannot do so without specific statutory authority.

The purpose of this Part is to give the department of land and natural resources authority to implement a system similar to the administrative hearing system as a mandatory department-wide program.

SECTION 2. The Hawaii Revised Statutes is amended by adding to title 12 a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
CIVIL NATURAL RESOURCE VIOLATIONS ACT**

§ -1 Civil natural resource violations system authorization. (a) There is established, within the department of land and natural resources, a civil natural resource violations system, whose purpose shall be to process violations of departmental regulations for which administrative penalties have been authorized by law or rules adopted thereunder.

(b) The department shall adopt, amend, and repeal rules, subject to chapter 91, for the purposes of this chapter.

(c) The rules may include, but are not limited to, the following:

- (1) Notice of natural resource infraction;
- (2) A form of the answer that shall be made pursuant to a notice of natural resource infraction, which answer may be an admission of the infraction, a denial of the infraction, or an admission of the infraction with mitigating circumstances;
- (3) The action to be taken after an answer is received or when a person fails to answer the notice of natural resource infraction;
- (4) Administrative hearings under this chapter;
- (5) The imposition and enforcement of monetary assessments made pursuant to this chapter; and
- (6) Means of assuring that the alleged violator who answers the notice of natural resource infraction by an admission of the infraction or an admission of the infraction with mitigating circumstances has knowingly and voluntarily elected to use the civil natural resource violations system and waive the appeal provided for in section 91-14.

§ -2 **Applicability.** Notwithstanding any other provision of law to the contrary, all natural resource infractions that the department identifies as subject to administrative penalties may be adjudicated pursuant to this chapter. This chapter may be applied by all of the divisions of the department.”

SECTION 3. Chapter 6K, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§6K- **Administrative violation system.** With the mutual consent of both the commission and the department, the commission may use the civil natural resource violations system of the department of land and natural resources; provided that the commission shall act whenever the board is authorized to act, to process violations of chapter 6K or any rules adopted thereunder.”

SECTION 4. Chapter 171, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§171- **General administrative penalties.** (a) Except as otherwise provided by law, the board or its authorized representative by proper delegation may set, charge, and collect administrative fines or bring legal action to recover administrative fees and costs as documented by receipts or affidavit, including attorneys’ fees and costs; or bring legal action to recover administrative fines, fees, and costs, including attorneys’ fees and costs, or payment for damages resulting from a violation of this chapter or any rule adopted pursuant to this chapter. The administrative fines shall be as follows:

- (1) For a first violation, a fine of not more than \$2,500;
- (2) For a second violation within five years of a previous violation, a fine of not more than \$5,000;
- (3) For a third or subsequent violation within five years of the last violation, a fine of not more than \$10,000.

(b) Any criminal action against a person for any violation of this chapter or any rule adopted pursuant to this chapter shall not be deemed to preclude the State from pursuing civil legal action against that person. Any civil legal action against a person to recover administrative fines and costs for any violation of this chapter or any rule adopted pursuant to this chapter shall not be deemed to preclude the State

from pursuing any criminal action against that person. Each day of each violation shall constitute a separate offense.”

SECTION 5. Chapter 174C, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§174C- Administrative violation system.** With the mutual consent of both the commission and the department, the commission may use the civil natural resource violations system of the department of land and natural resource; provided that the commission shall act whenever the board is authorized to act, to process violations of chapter 174C or any rules adopted thereunder.”

SECTION 6. Section 174C-15, Hawaii Revised Statutes, is amended to read as follows:

“**[H]§174C-15[] Penalties and common law remedies.** (a) The commission may enforce its rules and orders adopted pursuant to this chapter by suit for injunction or for damages or both.

(b) Any person who violates any provision of this chapter, or any rule adopted pursuant to this chapter, may be subject to a fine imposed by the commission. Such fine shall not exceed [~~\$1,000.~~] \$5,000. For a continuing offense, each day during which the offense is committed is a separate violation.

(c) No provision of this chapter shall bar the right of any injured person to seek other legal or equitable relief against a violator of this chapter.

(d) Except as otherwise provided by law, the commission or its authorized representative by proper delegation may set, charge, and collect administrative fines or bring legal action to recover administrative fees and costs as documented by receipts or affidavit, including attorneys’ fees and costs; or bring legal action to recover administrative fines, fees, and costs, including attorneys’ fees and costs, or payment for damages resulting from a violation of this chapter or any rule adopted pursuant to this chapter.”

SECTION 7. Section 171-6.5, Hawaii Revised Statutes, is repealed.

PART II

SECTION 8. Section 199-1, Hawaii Revised Statutes, is amended to read as follows:

“**[H]§199-1[] Board of land and natural resources, powers and duties.** The board of land and natural resources shall establish within the department of land and natural resources a conservation and resources enforcement program relating to the enforcement of [~~chapters under~~] title 12 [~~entitled “Conservation and Resources,”~~] chapters 6D, 6E, and 6K, and rules [~~and regulations promulgated~~] adopted thereunder, and shall employ or appoint, and remove, the following persons, subject to chapter 76 and section 78-1, who shall be provided with suitable badges or insignia of office by the department of land and natural resources:

- (1) An enforcement chief of the department of land and natural resources, who shall be the head of the conservation and resources enforcement program and shall have charge, direction, and control, subject to the direction and control of the board, of all matters relating to the enforcement of [~~state conservation and resources laws~~] title 12, chapters 6D, 6E, and 6K, and rules [~~and regulations promulgated~~] adopted thereunder and such other matters as the board may from time to time direct.

The enforcement chief shall be an administrator experienced in conservation and resources law enforcement and management[-]; and

- (2) Personnel and enforcement officers of the conservation and resources enforcement program, including but not limited to enforcement officers on a voluntary basis and without pay.”

SECTION 9. Section 199-2, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§199-2]]~~ **Board of land and natural resources, delegation of authority.** The board of land and natural resources may delegate to enforcement officers within the conservation and resources enforcement program, such authority as may be required for enforcement of ~~[state conservation and resources laws]~~ title 12, chapters 6D, 6E, and 6K, and rules [and regulations promulgated] adopted thereunder.”

SECTION 10. Section 199-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The conservation and resources enforcement officers, with respect to all state lands, including public lands, state parks, forest reserves, forests, aquatic life and wildlife areas, Kaho’olawe island reserve, and any other lands and waters ~~[subject to the jurisdiction of the department of land and natural resources,]~~ within the State, shall:

- (1) Enforce title 12, chapters 6D, 6E, and 6K, and rules adopted thereunder;
- (2) Investigate complaints, gather evidence, conduct investigations, and conduct field observations and inspections as required or assigned;
- (3) Cooperate with enforcement authorities of the State, counties, and federal government in development of programs and mutual aid agreements for conservation and resources enforcement activities within the State;
- (4) Cooperate with established search and rescue agencies of the counties and the federal government in developing plans and programs and mutual aid agreements for search and rescue activities within the State;
- (5) Check and verify all leases, permits, and licenses issued by the department of land and natural resources;
- (6) Enforce the laws relating to firearms, ammunition, and dangerous weapons contained in chapter 134;
- (7) Enforce the laws in chapter 291E relating to operating a vessel on or in the waters of the State while using intoxicants;
- (8) Whether through a specifically designated marine patrol or otherwise, enforce the rules in the areas of boating safety, conservation, and search and rescue relative to the control and management of boating facilities owned or controlled by the State, ocean waters, and navigable streams and any activities thereon or therein, and beaches encumbered with easements in favor of the public, and the rules regulating vessels and their use in the waters of the State; and
- (9) Carry out other duties and responsibilities as the board of land and natural resources from time to time may direct.”

SECTION 11. Section 199-4, Hawaii Revised Statutes, is amended to read as follows:

“§199-4 Board of land and natural resources, police powers. (a) The board of land and natural resources shall have police powers and may appoint and commission enforcement officers within the conservation and resources enforcement program. Persons appointed and commissioned under this section shall have and may exercise all of the powers and authority of a police officer, including the power of arrest, and [shall] in addition to enforcing title 12, chapters 6D, 6E, and 6K, and rules adopted thereunder, may enforce all other state laws and rules, and county ordinances within all [state lands, state shorewaters and shores, and county parks;] lands and waters of the State; provided that such powers shall remain in force and effect only while in actual performance of their duties, which shall include off-duty employment when such employment is for other state departments or agencies. These enforcement officers shall consist of personnel whose primary duty will be the enforcement of title 12, [entitled “Conservation and Resources,”] chapters 6D, 6E, and 6K, and the rules adopted thereunder within the areas under the jurisdiction of the department of land and natural resources.

(b) An enforcement officer, upon arresting any person for violation of title 12 [and rules], chapter 6D, 6E, or 6K, or any rule adopted thereunder, may immediately take the person arrested to a police station or before a district judge, or take the name, address, and the number of the fishing, hunting, or other licenses or permits, if any, of the person, and note the violation of the law or rule by the person, and issue the person a summons or citation, printed in the form described in section 199-5, warning the person to appear and to answer to the charge against the person at a certain place and time within seven days after the arrest. Any person failing to obey a summons issued pursuant to this section shall be subject to section 199-6.”

SECTION 12. Section 199-5, Hawaii Revised Statutes, is amended to read as follows:

“§199-5 Summons or citation. There shall be a form of summons or citation for use in citing violators of title 12, chapters 6D, 6E, and 6K, and rules adopted thereunder, which do not mandate the physical arrest of the violators. The summons or citation shall be printed in a form commensurate with the form of other summons or citation used in modern methods of arrest and shall be so designed to include all necessary information to make it valid and legal within the laws and rules of the State. The form and content of the summons or citation shall be adopted or prescribed by the district courts.

In every case where a summons or citation is issued, the original of the same shall be given to the violator; provided that the district courts may prescribe the issuance to the violator of a carbon copy of the summons or citation and provide for the disposition of the original and any other copies. Every summons or citation shall be consecutively numbered and each carbon copy shall bear the number of its respective original.”

SECTION 13. Section 199-6, Hawaii Revised Statutes, is amended to read as follows:

“§199-6 Failure to obey a summons. Any person who fails to appear at the place and within the time specified in the summons or citation issued by the officers or their agents or subordinates, upon that person’s arrest for violation of title 12, chapters 6D, 6E, and 6K, and rules adopted thereunder, shall be guilty of a petty misdemeanor and, upon conviction, shall be fined not more than \$500 or be imprisoned not more than thirty days, or both.

If any person fails to comply with a summons or citation issued, or if any person fails or refuses to deposit bail as required and within the time permitted, the

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officers shall cause a complaint to be entered against the person and secure the issuance of a warrant for the person's arrest.

When a complaint is made to any prosecuting officer of the violation of title 12, chapters 6D, 6E, and 6K, and rules adopted thereunder, the officer who issued the summons or citation shall subscribe to it under oath administered by another official or officials of the department of land and natural resources whose names have been submitted to the prosecuting officer and who have been designated by the chairperson of the board of land and natural resources to administer the same."

SECTION 14. Section 199-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any police officer or agent of the department of land and natural resources upon whom the board of land and natural resources has conferred powers of police officers, shall have the authority to conduct searches on probable cause as provided by law and to seize any equipment, article, instrument, aircraft, vehicle, vessel, business records, or natural resource used or taken in violation of the provisions contained in chapters 6D, 6E, and 6K, or title 12, or any rules adopted thereunder. For purposes of this section, "natural resource" includes any archaeological artifacts, minerals, any aquatic life or wildlife or parts thereof, including their eggs, and any land plants or parts thereof, including seeds."

PART III

SECTION 15. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 16. This Act shall take effect upon its approval.

(Approved June 23, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.