

ACT 153

H.B. NO. 117

A Bill for an Act Relating to Special Management Areas.

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

SECTION 1. The legislature finds that the cost of purchasing and importing construction materials, along with the cost of labor, has risen at a rate that has increased the overall cost of projects that, in the past, may have been viewed as insubstantial or minor. Furthermore, the increase in the number of these minor projects and the shortage of personnel that the various county planning departments are experiencing, have significantly slowed the review and processing of minor projects within the special management areas of the counties.

The purpose of this Act is to expedite and facilitate work on projects that have been or may be stalled due to delays relating to special management area permitting requirements.

SECTION 2. 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 state general fund, unless otherwise specified in this chapter;
- (6) Establish additional restrictions, requirements, or conditions, not inconsistent with those prescribed in this chapter, relating to the use of particular land being disposed of, the terms of sale, lease, license,

- or permit, and the qualifications of any person to draw, bid, or negotiate for public land;
- (7) Reduce or waive the lease rental at the beginning of the lease on any lease of public land to be used for any agricultural or pastoral use, or for resort, commercial, industrial, or other business use where the land being leased requires substantial improvements to be placed thereon; provided that such reduction or waiver shall not exceed two years for land to be used for any agricultural or pastoral use, or exceed one year for land to be used for resort, commercial, industrial, or other business use;
- (8) Delegate to the chairperson or employees of the department of land and natural resources, subject to the board's control and responsibility, such powers and duties as may be lawful or proper for the performance of the functions vested in the board;
- (9) ~~[Utilize]~~ Use arbitration under chapter 658A to settle any controversy arising out of any existing or future lease;
- (10) Set, charge, and collect reasonable fees in an amount sufficient to defray the cost of performing or otherwise providing for the inspection of activities permitted upon the issuance of a land license involving a commercial purpose;
- (11) Appoint masters or hearing officers to conduct public hearings as provided by law and under such conditions as the board by rules shall establish;
- (12) Bring such actions as may be necessary to remove or remedy encroachments upon public lands. Any person causing an encroachment upon public land shall:
 - (A) Be fined not more than \$1,000 a day for the first offense;
 - (B) Be fined not less than \$1,000 nor more than \$4,000 per day upon the second offense and 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 considered delinquent payments and shall be subject to interest and service charges as provided in paragraph (13);
- (15) Set, charge, and collect reasonable fines for violation of this chapter or any rule adopted thereunder. Any person engaging in any prohibited use of public lands or conducting any prohibited activity on public lands, or violating any of the other provisions of this chapter or any rule adopted thereunder, for which violation a penalty is not otherwise provided, shall be:

- (A) Fined not more than \$5,000 per violation for a first violation or a violation beyond five years of the last violation~~[-]~~; provided that, after written or verbal notification from the department, an additional \$1,000 per day per violation may be assessed for each day in which the violation persists;
- (B) Fined not more than \$10,000 per violation for a second violation within five years of the last violation~~[-]~~; provided that, after written or verbal notification from the department, an additional \$2,000 per day per violation may be assessed for each day in which the violation persists;
- (C) Fined not more than \$20,000 per violation for a third or subsequent violation within five years of the last violation~~[-]~~; provided that, after written or verbal notification from the department, an additional \$4,000 per day per violation may be assessed for each day in which the violation persists; and
- (D) Liable for administrative costs and expenses incurred by the department and for payment for damages, including but not limited to natural resource damages.

In addition to the fines, administrative costs, and damages provided for hereinabove, for damage to or theft of natural resources, the board may also set, charge, and collect a fine that, in its discretion, is appropriate considering the value of the natural resource that is damaged or the subject of the theft. In arriving at an appropriate fine, the board may consider the market value of the natural resource damaged or taken and any other factor it deems appropriate, such as the loss of the natural resource to its natural habitat and environment and the cost of restoration or replacement. The remedies provided for in this paragraph are cumulative and in addition to any other remedies allowed by law.

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

- (16) Issue revenue bonds, subject to the approval of the legislature. All revenue bonds shall be issued pursuant to part III of chapter 39, except as provided in this chapter. All revenue bonds shall be issued in the name of the department and not in the name of the State. The final maturity date of the revenue bonds may be any date not exceeding thirty years from the date of issuance;
- (17) Pledge or assign all or any part of the receipts and revenues of the department. The revenue bonds shall be payable from and secured solely by the revenue derived by the department from the industrial park or parks for which the bonds are issued;
- (18) Reimburse the state general fund for debt service on general obligation bonds or reimbursable general obligation bonds issued by the State for purposes of this chapter; ~~[and]~~
- (19) Notwithstanding part II of chapter 205A to the contrary, plan, design, construct, operate, and maintain any lands or facilities under the jurisdiction of the division of boating and ocean recreation of the department without the need to obtain a special management area minor permit or special management area use permit; and
- ~~[(19)]~~ (20) Do any and all things necessary to carry out its purposes and exercise the powers granted in this chapter."

SECTION 3. Section 205A-22, Hawaii Revised Statutes, is amended by amending the definitions of "development", "special management area minor permit", and "special management area use permit" to read as follows:

"Development" means any of the uses, activities, or operations on land or in or under water within a special management area that are included below:

- (1) Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;
- (2) Grading, removing, dredging, mining, or extraction of any materials;
- (3) Change in the density or intensity of use of land, including but not limited to the division or subdivision of land;
- (4) Change in the intensity of use of water, ecology related thereto, or of access thereto; and
- (5) Construction, reconstruction, demolition, or alteration of the size of any structure.

"Development" does not include the following:

- (1) Construction or reconstruction of a single-family residence that is less than seven thousand five hundred square feet of floor area and is not part of a larger development;
- (2) Repair or maintenance of roads and highways within existing rights-of-way;
- (3) Routine maintenance dredging of existing streams, channels, and drainage ways;
- (4) Repair and maintenance of underground utility lines, including but not limited to water, sewer, power, and telephone and minor appurtenant structures such as pad mounted transformers and sewer pump stations;
- (5) Zoning variances, except for height, density, parking, and shoreline setback;
- (6) Repair, maintenance, or interior alterations to existing structures;
- (7) Demolition or removal of structures, except those structures located on any historic site as designated in national or state registers;
- (8) Use of any land for the purpose of cultivating, planting, growing, and harvesting plants, crops, trees, and other agricultural, horticultural, or forestry products or animal husbandry, or aquaculture or mariculture of plants or animals, or other agricultural purposes;
- (9) Transfer of title to land;
- (10) Creation or termination of easements, covenants, or other rights in structures or land;
- (11) Final subdivision approval;
- ~~[(11)]~~ (12) Subdivision of land into lots greater than twenty acres in size;
- ~~[(12)]~~ (13) Subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed; provided that any land which is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels;
- ~~[(13)]~~ (14) Installation of underground utility lines and appurtenant aboveground fixtures less than four feet in height along existing corridors;
- ~~[(14)]~~ (15) Structural and nonstructural improvements to existing single-family residences, where otherwise permissible;
- ~~[(15)]~~ (16) Nonstructural improvements to existing commercial structures; and

~~[(16)]~~ (17) Construction, installation, maintenance, repair, and replacement of civil defense warning or signal devices and sirens; provided that whenever the authority finds that any excluded use, activity, or operation may have a cumulative impact, or a significant environmental or ecological effect on a special management area, that use, activity, or operation shall be defined as “development” for the purpose of this part.

“Special management area minor permit” means an action by the authority authorizing development the valuation of which is not in excess of ~~[\$125,000]~~ \$500,000 and which has no substantial adverse environmental or ecological effect, taking into account potential cumulative effects.

“Special management area use permit” means an action by the authority authorizing development the valuation of which exceeds ~~[\$125,000]~~ \$500,000 or which may have a substantial adverse environmental or ecological effect, taking into account potential cumulative effects.”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

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

SECTION 6. This Act shall take effect on July 1, 2011.

(Approved June 23, 2011.)