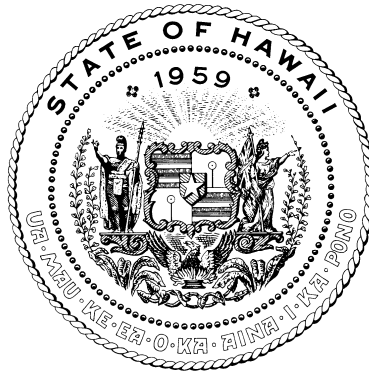


REPORT TO THE TWENTY-FIFTH LEGISLATURE

REGULAR SESSION OF 2009

REVENUES GENERATED FROM GENERAL ADMINISTRATIVE PENALTIES IMPOSED
UNDER CHAPTER 183, HAWAII REVISED STATUTES



Prepared by

THE STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE

In response to Section 183-5, Hawaii Revised Statutes

Honolulu, Hawaii

November 2008

REVENUES GENERATED FROM GENERAL ADMINISTRATIVE PENALTIES IMPOSED UNDER CHAPTER 183, HAWAII REVISED STATUTES

PURPOSE

This report complies with Section 183-5, Hawaii Revised Statutes (HRS), and covers specific topics relating to the protection of the State Forest Reserve System. Act 174, Session Laws of Hawaii (SLH) 2006, in part amended Chapter 183, HRS, by adding a new section titled “General Administrative Penalties.” The new section provided language and guidelines that grants the Department of Land and Natural Resources (Department) the authority to impose administrative penalties in the form of fines, fees, costs or attorney’s fees and costs for violations of Chapter 183, HRS. The new section also specified that the Department prepare an annual report to the Legislature outlining revenues generated by the Department relating to such administrative penalties. This annual report covers the period from October 1, 2007 to September 30, 2008.

BACKGROUND

The new general administrative penalties criteria for Chapter 183, HRS, became effective in June 2006 by way of Act 174, SLH 2006. The Act authorizes the Department to impose administrative penalties in the form of fines, fees, costs or attorney’s fees and costs for violations of Chapter 183, HRS. The Department sought this particular change to statutes due to a notable increase in the occurrence and severity of violations – particularly the theft or unpermitted harvest of highly valuable koa timber resources from the State Forest Reserve System.

Prior to Act 174, SLH 2006, the Department felt that existing language within Chapter 183, HRS, created a situation whereby certain violations, particularly large-scale theft of timber or other resources, could not be effectively enforced because the value of the resources taken far exceeded the cost and deterrent (fine amount) that could be enforced. The Department was equally frustrated with the inability to have the violators prosecuted on a timely basis due to the backlog of cases before the courts.

With Act 174, SLH 2006, in place, the Department believes an effective framework was established that will speed up enforcement or prosecution of violations of Chapter 183, HRS, and associated rules by: 1) Downgrading potential penalties from misdemeanors to petty misdemeanors, and thereby allowing prosecution through a judicial court hearing rather than via jury trials, and; 2) Increasing administrative fine amounts – particularly for timber trespass - including the removal of any timber within the State Forest Reserve System, and establishing specific administrative penalty levels for repeat offenders or violations of varying severity.

ACTIONS

For the reporting period of October 1, 2007 to September 30, 2008, no known violations of Chapter 183, HRS, and affiliated rules occurred, that were or are currently being pursued via administrative or court action by the Department. However, one known alleged violation of this statute and rules relating to unauthorized koa harvesting in the State Forest Reserve System is currently being processed for administrative action to the Board of Land and Natural Resources.

The alleged incident appears to have occurred prior to Act 174, SLH 2006. As such it appears that this specific administrative action cannot incorporate the provisions of Section 183-5, HRS, due to a timing technicality, whereas the incident provides a concrete example of the type of situation which the Department hopes to employ the new general administrative penalties if needed in the future.

PROGRAM CONSTRAINTS

None.

CONCLUSIONS

The updated statute (Section 183-5, HRS) has been in effect since June 6, 2006. The updated penalty framework for violations of Chapter 183, HRS was not employed during the reporting period. The Department believes that the new law is very important for the protection of public resources within the State Forest Reserve System. The Department also believes that the general administrative penalties criteria provides a strong deterrent for unauthorized or illegal use of public resources, and an effective mechanism for pursuing enforcement actions for violations should they occur in the future.