

STAND. COM. REP. NO.

2569

Honolulu, Hawaii

MAR 2 - 2006

RE: S.B. No. 2941  
S.D. 1

Honorable Robert Bunda  
President of the Senate  
Twenty-Third State Legislature  
Regular Session of 2006  
State of Hawaii

Sir:

Your Committee on Judiciary and Hawaiian Affairs, to which was referred S.B. No. 2941 entitled:

"A BILL FOR AN ACT RELATING TO BRUSH FIRES,"

begs leave to report as follows:

The purpose of this measure is to create a class C felony criminal property damage offense for setting brush fires and to permit the court to assess a defendant for the cost of fighting such a fire. This measure also subjects a parent or guardian of a minor to liability for the cost of damage caused by a fire set by a minor.

Your Committee received testimony in support of this measure from the Department of Land and Natural Resources (DLNR), the Police Department of the City and County of Honolulu, and the Nature Conservancy. Comments in opposition to this measure were received from the Office of the Public Defender.

Your Committee finds that the DLNR has spent well over \$300,000 to suppress wildfires which has included overtime, heavy equipment and helicopter rentals, repair and maintenance of fire equipment, and replacement of personal protective gear. However, monetary damages pale in comparison to the loss of value of the watershed, and the destruction of native species and natural habitats resulting from these wildfires.

Your Committee further finds that the Honolulu Police Department reported a total of 562 brush fires in District 8,

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spanning from Ewa Beach to the Waianae Coast, last year. The Honolulu Police Department further noted that on one day alone last year, fires raged from Iroquois Point all the way to Makaha.

Your Committee further finds that the creation of liability for damages for parents of minor defendants will be a strong incentive for parents and legal guardians to take a more proactive approach in regulating the actions of their children.

Your Committee notes a concern that a person who recklessly sets a fire on the person's own land that spreads to the land of another and causes damage of 10,000 square feet or more would be subject to a class C felony. In light of the impact this provision may have in rural settings, your Committee may be amenable to subjecting a reckless person to a misdemeanor rather than a class C felony. Nevertheless, the Committee, at this juncture, decided to maintain the class C felony for criminal property damage caused by fire whether set intentionally, knowingly, or recklessly.

Your Committee has amended this measure by:

- (1) Addressing the concern raised by the Office of the Public Defender that some degree of property damage should be shown before felony liability may be imposed by requiring a fire to result in physical damage to 10,000 or more square feet of property before liability accrues;
- (2) Including the amendments proposed by the DLNR to include federal fire fighting agencies in the exceptions to the new offense and including the Department of Health and county fire departments as entities that can authorize prescribed or controlled burns;
- (3) Incorporating the proposal from the Nature Conservancy that a community service component be included in the bill for anyone convicted of this new offense;
- (4) Ensuring that the parents or legal guardians of a minor assume monetary liability only for that portion of damage caused by the minor;
- (5) Adding a new section stating that conviction under this new offense does not preclude a separate criminal or



civil action by the State or a third party against the defendant; and

- (6) Including a reference covering minors adjudicated under this new offense as recommended by the Department of the Attorney General to encompass juveniles processed through family court.

As affirmed by the record of votes of the members of your Committee on Judiciary and Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2941, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2941, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary and  
Hawaiian Affairs,



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COLLEEN HANABUSA, Chair



