



Testimony to the Twenty-Fourth State Legislature, 2008 Session
House Committee on Energy & Environmental Protection
The Honorable Hermina M. Morita, Chair
The Honorable Mele Carroll, Vice Chair

Tuesday, January 24, 2008, 8:30 a.m.
State Capitol, Conference Room 312

by

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Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 1973, Relating to an Environmental Court.

Purpose: Establishes environmental courts as divisions within the circuit court to handle complaints, administrative appeals, and certain other judicial proceedings of an environmental nature.

Judiciary's Position:

The Judiciary opposes House Bill No 1973.

House Bill No. 1973 would establish within each circuit an environmental court with dedicated staff and separate processes and employees upon the false premise that "environmental disputes are currently dealt with in a variety of courts promoting inadvertent inconsistent application of the wide variety of environmental laws." The Judiciary is unable to point to any statistical information about the handling of such cases because it does not maintain such data. However, all agency appeals to circuit court, including agency appeals covering environmental issues are now regularly assigned to one designated judge in the First Judicial Circuit and are rotated among civil judges in the Second, Third and Fifth Judicial Circuits, and are handled in due course. House Bill No. 1973 attempts to remedy the erroneous perception that environmental cases are "dealt with in a variety of courts" by requiring the chief justice to designate circuit judges in each circuit to hear environmental cases. To the extent that such cases are filed, the circuit judges now hear them and will continue to do so, with or without this bill.



House Bill No. 1973, Relating to an Environmental Court
House Committee on Energy & Environmental Protection
January 24, 2008
Page 2

Presently, there is no demonstrated need to single out environmental cases from among the many other types of cases for special treatment. It is uncertain whether the current number of filings related to environmental matters justify the creation of an Environmental Court in Hawaii, or the re-assignment of existing divisions as an Environmental Court. Because the Judiciary does not currently maintain an “environmental” case category, statistical information reflecting the number of cases involving environmental matters is not available. A study should be undertaken to determine the actual number of environmental-related cases filed over a period of years, and whether or not the number of cases is increasing. In other jurisdictions, Environmental Courts have been established after increases in environmental violations, housing/safety code violations, and/or an increase of abandoned residences or littered property lots. In the City and County of Honolulu, minor environmental violations (i.e., littering, unsightly property lots, abandoned vehicles, etc.) are resolved by respective City and County agencies or through enforcement of specific ordinances. Major environmental violations, such as mass grading permit or runoff violations, have been the subject of filings within the Circuit Courts; however, they do not appear to be of serious periodic concern. While creation of an Environmental Court may deter potential environmental violators, it appears that current ordinances also minimize such violations.

House Bill No. 1973 requires appointment of “a chief administrative and executive officer” with the “title of director of the environmental court.” The bill assigns various administrative duties, including budget preparation, to the environmental court director. These duties are already performed by the administrative officers of each circuit and the Office of the Administrative Director. Therefore, a “director of the environmental court” is not needed. House Bill No. 1973 establishes another layer of unnecessary bureaucracy and creates another supervisor without regard to the Judiciary’s other needs for positions, as set out in our budget request. Budget preparations are and should remain centralized within the Office of the Administrative Director. Dedicating staff by statute will create inflexible staffing issues at a time when the Judiciary needs to be more creative and more flexible about employment categories, not less so.

Thank you for the opportunity to comment on this measure.

Testimony of The Nature Conservancy of Hawai'i
Regarding H.B. 1973 Relating to an Environmental Court
House Committee on Energy and Environmental Protection
Thursday, January 24, 2008, 8:30AM, Room 312

The Nature Conservancy of Hawai'i submits the following comments regarding H.B. 1973 Relating to an Environmental Court.

There is widespread agreement amongst a variety of stakeholders that Hawaii's fragile environment is in need of improved enforcement and prosecution of violations of our State natural resource laws. Specifically identified is the need for:

- Natural resource laws that are complete, clear and enforceable;
- Enhanced personnel and resources for enforcement;
- Consistent and fair enforcement;
- Community awareness and engagement to enhance compliance;
- Adequate investigation, prosecution and penalties for violations;
- Appropriate opportunity for administrative enforcement; and
- Improved understanding and management of cases in the court system.

While the creation of an environmental court system within the Judiciary may be an appropriate solution to some of these issues, we suggest the Committee consider a stepwise approach beginning with a complete analysis of the issues and the variety of potential solutions. We have attached a draft measure that would create a study group of relevant experts and stakeholders to review this matter in detail and make recommendations to the Legislature.

Attachment

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PROPOSED SUBSTITUTE 1/24/08

Report Title

Hawaii Natural Resources Law Enforcement Study Group

Description:

Establishes a study group to assess the current system of enforcing Hawaii's natural resources laws and to make recommendations to the Legislature.

HOUSE OF REPRESENTATIVES
TWENTY-FIFTH LEGISLATURE, 2008
STATE OF HAWAII

H.B. NO. 1973
A BILL FOR AN ACT

RELATING TO NATURAL RESOURCES LAW ENFORCEMENT

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

SECTION 1: The legislature finds that the natural resources laws in the State of Hawaii are essential to protecting our fragile ecosystems, to ensuring compatible uses of the state's unique and invaluable resources, and to promoting the public's role in preserving our environment.

The legislature also finds that the maintenance and improvement of Hawaii's environment requires constant vigilance and strong stewardship to ensure its health, environmental integrity, lasting beauty, cleanliness, and uniqueness, all of which enhance the cultural, economic, environmental, social, personal, and physical well-being of Hawaii's people.

The legislature also finds that there is widespread agreement among a diversity of stakeholders and agencies in the marine and terrestrial sectors in Hawaii that:

- our current natural resources laws may be incomplete, out-of-date, or inconsistent;
- the laws are not always adequately and fairly enforced;
- the efficacy of the laws could be improved by a systematic review and revision of statutes and regulations to make compliance and enforcement easier;
- promoting informed and willing compliance by users with common sense and well-publicized laws is essential to an effective enforcement system;

- reports of violations may not be adequately investigated and prepared for prosecution;
- state and local resources for prosecution of such violations may not be sufficient or appropriately specialized;
- resources for enforcement may not be fairly distributed across the state;
- a system for administrative enforcement of these laws is beginning to develop at DLNR and should be assessed and encouraged; and
- when such violations are prosecuted in court, the courts may not treat these cases with consistency and seriousness appropriate to their gravity of their short- and long-term impact on Hawaii's environment.

The purpose of this Act is to promote and protect Hawaii's natural environment through improvements to our system of enforcing the state's natural resources protection laws, by establishing a study group to examine the current system of enforcing Hawaii's natural resources laws, and to make recommendations to the Legislature in at least three areas:

1. enhancing community and user compliance with the laws;
2. increasing state and local agency capacity to monitor and investigate reported violations; and,
3. promoting more effective prosecution of administrative, civil, and criminal violations of these laws.

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

**"CHAPTER
STUDY GROUP ON HAWAII NATURAL RESOURCES LAW ENFORCEMENT**

§ -1 Study Group; establishment. The Legislature hereby establishes a fifteen-member Study Group, to be called the "Hawaii Natural Resources Law Enforcement Study Group," to assess the current system of enforcing Hawaii's natural resources laws and to make recommendations to the Legislature in at least three areas: 1) enhancing community and user compliance with the laws; 2) increasing state and local agency capacity to monitor and investigate reported violations; and, 3) promoting more effective prosecution of administrative, civil, and criminal violations of these laws.

The HNRLE Study Group shall be jointly appointed by the President of the Senate and the Speaker of the House and shall consist of the following members:

- (1) One member of the State House of Representatives;
- (2) One member of the State Senate;
- (3) The Director of the State Department of Land and Natural Resources (DLNR) or the Director's designee;
- (4) A staff member of DLNR's Division of Conservation and Resources Enforcement (DOCARE);
- (5) The Attorney General or his designee;
- (6) The State of Hawaii Judiciary, Chief Justice of the Hawaii Supreme Court, or his designee;
- (7) The Prosecuting Attorneys for two of the four counties, or their designees;
- (8) Two individuals from Hawaii environmental organizations, representing marine and terrestrial conservation interests;
- (9) Two individuals from Hawaii recreational and commercial user groups, representing marine and terrestrial hunting, fishing, eco-tourism, or harvesting interests;
- (10) Two individuals representing Native Hawaiian cultural interests, with marine and terrestrial conservation experience; and
- (11) A representative of the Environmental Law Program, William S. Richardson School of Law, University of Hawaii.

The Director of DLNR and the Attorney General shall co-convene and serve as the Co-Chairs of the Study Group, with Vice-Chairs and committees to be designated as appropriate by the Study Group.

Each representative on the Study Group shall designate one alternate member who can attend and participate fully in meetings in the representative's absence, and who may attend any meeting as an observer.

To ensure full participation and public access to meetings, the Study Group shall utilize internet and other affordable communication technology to maximize participation among the participants from all counties and rural areas.

The administrative resources and coordination for the Study Group shall be provided by the Director of DLNR, as specified in Section 3.

The meetings of the full Study Group shall be subject to H.R.S. chapter 92, but the meetings of the Study Group's subcommittees shall be exempt from chapter 92.

The Study Group shall utilize the expertise of various staff of each state and local agency involved in the Study Group, as well as expertise from environmental organizations, and user groups through informal advisory panels or other means, as appropriate.

§ -2 Scope of study; recommendations. The Study Group shall:

(1) Assess the current system of enforcement and prosecution of Hawaii's marine and terrestrial natural resources laws, including

(a) reviewing enforcement actions over the past 10 years and reporting on efficacy of those actions;

(b) reviewing prosecutions over the past 10 years and reporting on efficacy of those actions

(c) compiling a report on the efficacy of current state laws and administrative rules, as well as proposed changes necessary for more effective compliance, enforcement, and prosecution of those laws and rules;

(d) assessing the efficacy of compliance and enforcement in other state's and making recommendations based on that assessment;

(e) examining the obstacles to better enforcement and prosecution, including difficulties with the laws themselves, compliance incentives, reporting systems, investigation challenges, public access to information, prosecutorial knowledge, resources, and incentives, and judicial approaches to handling violation cases.

(2) Conduct outreach in all counties to obtain information from a diversity of sectors, from enforcement agencies to user groups, on the current enforcement system and possible improvements;

(3) Coordinate research, data collection, and analysis, as required for the study, including an examination of natural resources law enforcement systems in other states and countries with similar environmental issues, and the coordination of state and federal enforcement in Hawaii; and

(4) Hold public meetings and otherwise solicit public participation for the purpose of completing a comprehensive study and providing recommendations to the Legislature.

§ -3 Funding. The Study Group may use the funds designated by the Legislature for the following purpose: (1) reimbursement of expenses, including travel expenses, necessary for the performance of the members duties; (2) hiring a part-time staff person at DLNR to support the Study Group; (3) funding experts and researchers to conduct the assessment of the current natural resources law enforcement system, including the services of independent and university-affiliated researchers, which may be provided through the Environmental Law Program at the William S. Richardson School of Law, University of Hawaii; and (4) expenses related to meetings in all counties to gather community input on the assessment and recommendation processes.

SECTION 3: The Study Group shall submit a report on its recommendations, including any implementing legislation, to the legislature no later than twenty days before the convening of the regular session of 2011.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2008-2009, fiscal year 2009-2010, and fiscal year 2010-2011 for the review of the current natural resources enforcement system and research to support the other tasks for the Study Group. The sums appropriated shall be expended by DLNR for the purposes of this Act.

SECTION 5. The Study Group shall cease to operate after the adjournment sine die of the 2011 regular session of the legislature.

SECTION 6: This Act shall take effect on July 1, 2008.