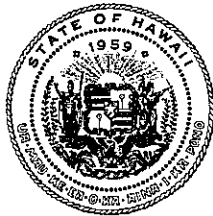


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GOVERNOR OF HAWAII



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**TESTIMONY OF THE CHAIRPERSON
OF THE BOARD OF LAND AND NATURAL RESOURCES**

on House Bill 3177, House Draft 1, Senate Draft 1 - Relating To Penalties For Violations
Within The Conservation District

BEFORE THE SENATE COMMITTEE ON
JUDICIARY AND LABOR

April 3, 2008

House Bill 3177, House Draft 1, Senate Draft 1 is an Administration bill, which proposes to increase the maximum fine for violations within the Conservation District and to authorize the Board of Land and Natural Resources (Board) to assess fines based on damages to natural resources within the Conservation District. While the Department of Land and Natural Resources (Department) appreciates the intent of the Senate Draft 1 to raise the proposed maximum administrative fine per violation to \$20,000, the Department nonetheless prefers the original version of this Administrative bill; (1) With the proposed maximum administrative fine per violation set at \$10,000, and (2) With the effective date as upon approval.

The State has a public trust obligation and must remain vigilant in its duty to protect Hawaii's natural resources for the benefit of all of its residents and future generations. The Department finds that in recent years, there has been an increase in the intentional violation of and blatant disregard for state natural resource laws and rules. Consequently, the State has been under considerable strain in fulfilling that obligation, due to ineffective enforcement tools, limited financial resources, and a shortage of enforcement personnel.

Examples of such behavior include unauthorized commercial activities on public beaches; operation of all-terrain vehicles on unencumbered or other restricted public lands; damage to archeological, historical or geologic features; destruction, defacing or removal of native trees or plants or other natural resources on public lands; damage to stony coral and live rock; the unauthorized grubbing and grading of conservation-zoned lands; construction of unauthorized single family residences or similar major structures within the Conservation District; and the construction of unauthorized seawalls.

In order to bring more severity to this issue, the Department is proposing three pieces of enforcement-legislation, House Bill 3176 (Relating To Administrative Penalties For Damage To Stony Coral And Live Rock), House Bill 3178 (Relating To Civil Penalties For Violations On Public Lands), and this measure House Bill 3177, to deter unlawful behavior by imposing harsher penalties on parties that damage natural resource important to the people of Hawaii.

The Conservation District contains important lands and natural resources essential to preservation of the State's fragile ecosystems and the sustainability of its water supply. The Department has recently experienced a rash of violations involving the unauthorized use of conservation-zoned lands throughout the State. This is likely the result of several misperceptions and socio-economic conditions: (1) That it is cheaper to deal with the consequences of the enforcement process than to deal with the permit process; (2) It appears that many large parcels of conservation-zoned land have recently been purchased by individuals or corporations who either do not care about conservation restrictions or who fail to educate themselves about these restrictions; and (3) As urban and agriculture lands approach build out, there is increased pressure to develop conservation-zoned lands.

Section 183C-7(b), Hawaii Revised Statutes, allows for a maximum penalty of \$2,000 for a single violation. While this may deter some from committing minor Conservation District violations, it is not a sufficient penalty to deter major unauthorized actions such as the construction of major structures and facilities, single-family residences, and the taking and destruction of native trees or plants or other natural resources in the Conservation District without first obtaining permits. In Fiscal Year 2007 for example, the Department initiated over 90 enforcement cases and collected approximately \$60,000 in penalties.

Of particular concern to the Department are actions such as grading in the Conservation District. Under the existing statute, the Department can assess up to \$2,000 for a grading violation, whether 10,000 square feet or 10 acres were graded. The Department has processed a number of cases over the past two years in which the inability to treat these cases differently became an issue.

For damage to natural resources, the bill provides the Board with some leeway in determining an appropriate fine by considering the market value of the natural resource damaged or taken, and such factors as the loss of the natural resource to its natural habitat and environment.

Lastly, the Department recommends amending this measure to add the following language to recognize traditional and customary rights:

Nothing contained in this section shall be construed to prohibit any person from exercising native Hawaiian gathering rights or traditional cultural practices as authorized by law or as permitted by the department pursuant to article XII, section 7 of the Hawaii State Constitution.



Legislative Testimony
**HB 3177, HD 1, S.D. 1, RELATING TO PENALTIES FOR VIOLATIONS
WITHIN THE CONSERVATION DISTRICT**
Senate Committee on Judiciary and Labor

April 3, 2008
Room: 016

10:15 a.m.

The Office of Hawaiian Affairs (OHA) **SUPPORTS, with amendments,** H.B. 3177, H.D. 1, S.D. 1, which would increase the maximum penalties for violations that occur within the conservation district. If this bill is enacted, violators would face a fine of up to \$20,000 per infraction, an increase from the current \$2,000 maximum fine. In addition, people who continue to commit violations in the conservation district after receiving a notice would face an additional fine of up to \$20,000 per day per violation, up from the current maximum \$2,000 fine. The bill also gives the state Land Board flexibility to mete out fines based on the value of the natural resources that have been damaged as a result of the violation.

OHA has substantive obligations to protect the cultural and natural resources of Hawai'i for its beneficiaries, the people of this land. The Hawaii Revised Statutes mandate that OHA "[s]erve as the principal public agency in the State of Hawaii responsible for the performance, development, and coordination of programs and activities relating to native Hawaiians and Hawaiians; . . . and [t]o assess the policies and practices of other agencies impacting on native Hawaiians and Hawaiians, and conducting advocacy efforts for native Hawaiians and Hawaiians." (HRS § 10-3)

OHA believes that the current penalties are not severe enough to deter people from violating state laws and rules regulating activities in the conservation district. We believe that giving this chapter more teeth will help preserve and protect the district that houses the state's most precious natural resources.

We appreciate the previous Senate Committee's amendments to the previous draft: increasing the fines by another \$10,000 and making the effective date July 1, 2008.

OHA urges the Committee to PASS H.B. 3177, H.D. 1, S.D. 1. Mahalo for the opportunity to testify.

Testimony of The Nature Conservancy of Hawai'i
Supporting H.B. 3177 SD 1 Relating to Penalties for Violations
within the Conservation District
Senate Committee on Judiciary and Labor
Thursday, April 3, 2008, 10:15AM, Room 016

The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of Hawaii's native plants, animals, and ecosystems. The Conservancy has helped to protect nearly 200,000 acres of natural lands for native species in Hawai'i. Today, we actively manage more than 32,000 acres in 11 nature preserves on O'ahu, Maui, Hawai'i, Moloka'i, Lāna'i, and Kaua'i. We also work closely with government agencies, private parties and communities on cooperative land and marine management projects.

The Nature Conservancy of Hawaii supports H.B. 3177 SD 1 Relating to Penalties for Violations within the Conservation District.

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.

H.B. 3177 SD 1 addresses several of these needs by assessing penalties that suit the violation, providing sufficient opportunity for effective administrative enforcement, and establishing a penalty levels that serve as a strong deterrent to such violations.

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SENATE COMMITTEE ON JUDICIARY AND LABOR

April 3, 2008, 10:15 A.M.

(Testimony is 1 page long)

TESTIMONY IN SUPPORT OF HB 3177 HD1 SD1

Chair Taniguchi and members of the Committee:

The Sierra Club, Hawai'i Chapter, with 5500 dues paying members statewide, supports HB 3177 HD1 SD1, increasing the maximum penalty that can be assessed for violations in the state conservation district and providing the Department of Land and Natural Resources (DLNR) flexibility in setting the penalties. We support the amendments made to this measure in the prior Senate committee and ask that this measure be forwarded unamended.

The Sierra Club strongly supports efforts to increase penalties against those who violate laws intended to protect our fragile environment. These penalties serve both as a deterrent and as a means to provide resources to repair resource damage done by the violator. Penalties for violations in Hawaii's most environmentally-sensitive lands—the conservation district—should not simply be part of 'the cost of doing business.' Strong, meaningful penalties are necessary to punish offenders and send a signal to potential offenders of the consequences of their actions. Increased pressure on conservation lands and habitat raises the need for strong deterrents to illegal activities on these lands.

House Bill 3177 HD1 SD1 not only increases the maximum penalty allowed to \$20,000 per violation, it wisely provides the DLNR flexibility in setting the penalty based on the scale of the damage, the market value of the resources lost, or other factors.

Thank you for the opportunity to testify.