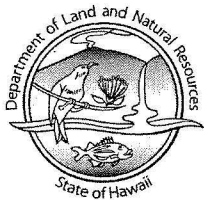


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**STATE OF HAWAII
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**TESTIMONY OF THE CHAIRPERSON
OF THE BOARD OF LAND AND NATURAL RESOURCES**

**On HOUSE BILL 3178 - RELATING TO CIVIL PENALTIES FOR VIOLATIONS
ON PUBLIC LANDS**

**BEFORE THE HOUSE COMMITTEE ON
FINANCE**

February 21, 2008

House Bill 3178 is an Administration bill which proposes to increase civil penalty fine amounts for violations on public lands and to clarify penalties for encroachment on public lands. The Department of Land and Natural Resources (Department) strongly supports this measure.

The State has a public trust obligation to protect Hawaii's natural resources for the benefit of all of its residents and future generations. There has been an increase in the intentional violation of and blatant disregard for state natural resources laws. Consequently, the Department has been under considerable strain in fulfilling that obligation, due to ineffective enforcement tools, limited 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 3177 (RELATING TO PENALTIES FOR VIOLATIONS WITHIN THE CONSERVATION DISTRICT), and this measure, House Bill 3178 (RELATING TO CIVIL PENALTIES FOR VIOLATIONS ON PUBLIC LANDS), to deter unlawful behavior by increasing penalties for violations of the State's natural resources laws and rules.

The current maximum \$500 fine for violations on public lands has proven to be an ineffective deterrent to unauthorized activity on public lands and damage, destruction or theft of the State's natural resources. Unauthorized commercial ventures such as surf instruction schools, diving and snorkeling tours, and other ocean recreation related operations can conservatively generate

\$50,000 per month in revenues. Theft and sale of koa trees and other valuable natural resources can produce tens if not hundreds of thousands of dollars in illicit profits for unscrupulous violators. Given such lucrative incentives, violators brazenly disregard the State's natural resource laws since the risk of incurring a maximum fine of \$500, even if compounded with the cumulative daily fines when appropriate, is inconsequential.

The existing statutory remedy for encroachment on public lands requires the violator to restore public land, if altered, to its original condition and assume the costs thereof, but does not require the payment of administrative costs and damages incurred by the Department. Other infractions of Chapter 171, Hawaii Revised Statutes, or any rules adopted thereunder for which violation a penalty is not otherwise provided, require the violator to pay for administrative costs and damages incurred by the Department. This bill corrects that inconsistency by requiring the violator who encroaches on public land to be liable for administrative costs incurred by the Department and for payment of damages.

The bill also provides the Board of Land and Natural Resources with some leeway in determining an appropriate fine for theft and damage to natural resources 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.

This bill provides the Department with more effective tools to enforce violations of our natural resources laws and maximize the impact of the State's limited resources and enforcement personnel. Long term impacts of the bill include the enhancement of public access to public areas such as beaches by the removal of unauthorized operations crowding such areas, and the promotion of public safety by the reduction in unregulated and unsafe activities occurring in public areas.

From: Noa Napoleon (freeoceanaxs@yahoo.com)
To: noaslight@yahoo.com
Date: Thursday, February 21, 2008 9:55:17 AM
Subject: testimony on HB 3178

House Committee on Finance

Re: HB 3178 Relating to Civil Penalties on Public Lands.

Date: 2/ 22/ 08

LATE

Testimony submitted by: Noa Napoleon

Aloha committee members and thank you for the opportunity to testify today. HB 3178 is part of a package of bills attempting to correct a state wide problem that in my view is rooted in the Waikiki grandfather clause. After careful observation of the issue and extensive study on the history of Waikiki beach, I have come to believe that the effort hear to "increase civil penalties for unauthorized commercial activity" on public lands, will have little or no effect on the outcomes at Honolulu District Court in terms of getting results on citations issued on unauthorized commercial activity. In most cases it is DLNR that has failed to properly publish rules, and the rules that are enforceable under the HRS, and HAR's, tend to be ignored by DLNR administrative staff, not because they are short staffed but because they are attempting to apply the Waikiki grandfather system across the board. Public confusion over County and State jurisdictions, not to mention contradictions within DLNR itself regarding the "rules of the road," are directly responsible for the public outcry on the problem of abuse of public beaches! I've included with my testimony examples of what I refer to as abuse of administrative discretion at DLNR, both in the area of permitting (or contracting), and in the area of enforcement of commercial violations. Many other examples could be cited but for now I'll just point out that for the most part the hotels not DLNR are the ones regulating the commercial activity on Waikiki beach (see hotel RFP). DLNR officials are telling reporters and enforcement officers that no hotel is conducting commercial activity on Waikiki beach, while at the same time trying to say that the beach is "open for all to enjoy on a first come first serve basis." In other words DLNR won't require permits to be issued on the hotels because of an Admin. opinion that says the beach must remain "open to all" (see Peter Young's Letter). Despite such contentions I continue to point out that Waikiki beach must be subject to a comprehensive management plan no different than would be required of any other development project. That in fact, the 1928 Waikiki Agreement, already prohibits "commercialism of any kind" on Waikiki beach. I've also

included testimony I wrote on the matter of requiring DLNR to issue "conservation district use permits" to commercial vendors wanting to use public lands (see testimony on HB 2332). DLNR Chair Thielen rejected this bill "but supported" its intent etc. Does your committee want to be part of a process that grandfathers multiple vendors into a closed management program called the Waikiki grandfather clause, in direct contradiction of state procurement and environmental law? If the answer is no then you will want to make sure that Waikiki is addressed in this bill. Attached are photos showing massive commercialism on Waikiki beach. Mahalo!

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