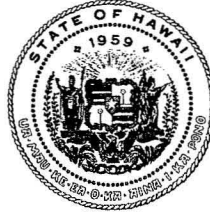
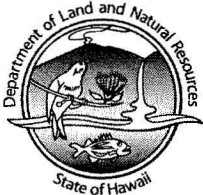


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GOVERNOR OF HAWAII



**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
JUDICIARY**

February 14, 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

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\$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.



HB 3178 RELATING TO VIOLATIONS ON PUBLIC LANDS
House Committee on Judiciary

February 14, 2008
Room: 325

2:40 p.m.

The Office of Hawaiian Affairs (OHA) **SUPPORTS** H.B. 3178, which would increase the maximum penalties for violations that occur on public lands. If this bill is enacted, violators would face a fine of up to \$2,500 for a first violation or for a violation occurring five years after a previous violation, and an additional \$500 for each day in which the violation persists. The bill also establishes a \$5,000 fine for a second violation within five years of a previous violation and a \$10,000 fine for a third violation within five years of a previous violation. For the second and third violation fines, the bill also creates additional fines for each day the violations persist. The bill also clarifies penalties for illegal encroachments on public lands.

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 on public lands. We believe that giving this chapter more teeth will help preserve and protect the state's precious natural resources located within public lands.

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OHA also appreciates that this bill contains language that ensures individuals exercising their statutorily and constitutionally protected Native Hawaiian traditional gathering rights on public lands will not be sanctioned pursuant to Section §171-6 of Hawaii Revised Statutes.

OHA urges the Committee to PASS H.B. 3178. Thank you for the opportunity to testify.

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JUDtestimony

From: Noa Napoleon [REDACTED]
Sent: Wednesday, February 13, 2008 10:53 AM
To: JUDtestimony
Cc: Rep. Thomas Waters
Subject: Testimony on HB 3178 @ JUDICIARY

Noa Napoleon
[REDACTED]

Hon. HI 96826

Date: 2/ 14/ 08

Testimony in support of HB 3178

Dear Representative Waters; members of JUDICIARY,

Thank you very much for the opportunity to support HB 3178. The bill we are discussing today is desperately needed, and long overdue in my view. HB 3178 seem to be part of a over-all effort by legislators to close loop holes in the law that are being exploited by roving (commercial) surf and kite schools. The problems associated with roving surf schools is statewide, but I would ask you to consider the Waikiki situation very carefully for the following reasons. My concern with this and other bills like it is that if they do not speak specifically to the grandfather system in Waikiki, such bills will have the effect of creating permanent loop holes instead of closing them. DLNR official have long been in the habit of misstating the law when complaints are called to their attention, especially with regards to Waikiki. This has the effect of thwarting any and all legal action, even basic complaints brought to their attention tend to go nowhere. Such misstatements usually go like this; "The state cannot enforce the commercial prohibition laws in Waikiki because to do so would "unfairly target the hotels, who are not the only ones breaking the law." In other words, if the state allows the hotels in Waikiki to operate commercially on a public beach without permits, then it must also exempt all other similar illegal activity!!! "Waikiki is open to all on first come first serve basis," we must "share and share alike." Such statements are common place within DLNR, thus, without specific wording that addresses Waikiki shoreline hotels (and the grandfather system), this bill would simply create more (gridlock) confusion, making it even more difficult for the public to know what the law is at any given time. Moreover enforcement efforts at DLNR will continue to see all of the citations they issue on unauthorized commercial activity thrown out of court for LACK OF RULES!! By requiring a plan to be implemented, before permits are issued, local communities will have a chance to voice their concerns. This is not too much to ask of DLNR officials, in fact it is their job to protect Hawaii's natural resource laws!!! The problem of loop holes was discussed in some detail in the CSV Consultant study, which focussed on user conflicts and capacity issues in Waikiki, Kailua, and Kaanapali. This study can be reviewed at the DOBOR web site. To read official statements made by DLNR Chair(s) regarding Waikiki, see attachments. Thank you for your time.

Noa Napoleon
02/ 8 /08

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2/14/2008