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Kahoolawe Island Reserve Commission  
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**TESTIMONY OF THE CHAIRPERSON  
OF THE BOARD OF LAND AND NATURAL RESOURCES**

**On House Bill 3178, Senate Draft 1 - RELATING TO CIVIL PENALTIES  
FOR VIOLATIONS ON PUBLIC LANDS**

**BEFORE THE SENATE COMMITTEE ON  
JUDICIARY AND LABOR**

**April 1, 2008**

House Bill 3178, Senate Draft 1 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) supports this measure as it 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.

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.