

Testimony for HB2590 on 2/7/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Tuesday, February 07, 2012 10:42 AM

To: JUDtestimony

Cc: tinaowens@hawaii.rr.com

LATE TESTIMONY

Testimony for JUD 2/7/2012 2:00:00 PM HB2590

Conference room: 325
Testifier position: Support
Testifier will be present: No
Submitted by: Christine Owens
Organization: LOST FISH Coalition
E-mail: tinaowens@hawaii.rr.com
Submitted on: 2/7/2012

Comments:

It is long past due for DOCARE to be able to enlist a fine hefty enough to make it worth while to comply with fishing laws. As it stands, a recent case of poaching in a no-collecting area resulted in a \$500 fine, an amount easily made up in one day of poaching. It's time this state got serious with defending its natural resources with meaningful management and tough penalties for violations. Please pass this bill.

LATE TESTIMONY

February 7, 2012

To: Committee on Judiciary
Rep. Gilbert S.C. Keith-Agaran, Chair/ Rep. Karl Rhoades, Vice Chair

By: Joanne Sheng, Consultant, Fish and Coral Think Tank (FACTT); Law student at the William S. Richardson School of Law

Re: HB 2590: RELATING TO AQUATIC RESOURCE VIOLATIONS

Dear Chairs and Committee Members,

I am a third-year law student at the William S. Richardson School of Law. Over the past two years, I have had the unique opportunity to intern at two divisions within DLNR: the Division of Aquatic Resources (DAR) and the Division of Conservation and Resource Enforcement (DOCARE). My two internships at DLNR primarily consisted of researching pitfalls in the enforcement chain for aquatic resources laws. This research culminated in a thesis paper which (1) outlines the reasons why Hawaii's current natural resource enforcement system is ineffective and (2) identifies practical steps towards drastically improving the system.

Of the many "solutions" identified, the most important step that can be taken towards improving the enforcement of nearshore aquatic resources is developing and utilizing an effective civil enforcement system within DLNR. HB 2590 is an essential first step in developing a functional civil enforcement system.

The current system relies almost exclusively on criminal enforcement. The criminal justice system does not address resource violations consistently or with the appropriate level of concern. Currently, the DLNR's exclusive reliance on the criminal justice system and the county prosecutors means that the relatively few aquatic resource cases are lumped in with hundreds of daily, more commonly encountered and easily understood violations, i.e. assaults, driving violations, drug possession, etc. As a result, penalties are inconsistent and often inappropriate, frustrating both managers and community stakeholders. Civil administrative enforcement before the BLNR will ensure that resource violations are dealt with consistently and with appropriate seriousness, without resorting to the criminal justice system.

This bill will greatly enhance the state's capacity to enforce its aquatic resources laws.

Resource managers, scientists, conservationists, fishers, and policy experts all agree that the state's enforcement capacity presents a significant barrier to more effective management efforts. By resolving legitimate concerns with the civil administrative enforcement process, the ABOUT FACE Act will pave the way for the Department of Land and Natural Resources ("DLNR") to effectively apply non-criminal monetary penalties through civil enforcement – a more efficient, effective, and appropriate process to address aquatic resources violations.

Transformative penalties provide an effective alternative to criminal liability. In many cases, former poachers have become some of the most outspoken and effective stewards of the natural environment, if given the chance to understand their potential value in the rehabilitation of resources impacted by human activity. The ABOUT FACE Act provides the BLNR the ability to

apply natural-resources community service in lieu of criminal penalties, providing a unique opportunity to transform former poachers into stewards of our aquatic resources.

This bill will save the state money. Division of Conservation & Resources Enforcement (“DOCARE”) officers dedicate their careers to protecting our natural resources, through compliance and enforcement actions in the field. However, officers are often frustrated with the minimal fines that result from aquatic resource cases that may take hours or even days of their time to properly investigate and document; cases that also consume considerable resources in the county prosecutors’ offices, the state public defender’s office, and the criminal court system. The meaningful civil fines provided for in administrative enforcement by the BLNR will not only provide a much more effective deterrence to resource violations, but may further mitigate the costs of resources enforcement currently lost in the criminal justice process.

Driver’s licensing revocation will give teeth to resources enforcement, without resorting to civil litigation or the criminal process. A major obstacle to administrative civil enforcement has been the lack of effective remedies for violators who ignore levied fines, as the only current remedy is the initiation of costly civil litigation. The ABOUT FACE Act will grant DLNR the ability to revoke a poacher’s driver’s license if they refuse to cooperate with levied fines or natural resources-related community service, providing a relatively efficient yet strong incentive for violators to take these fines seriously.

This bill will provide a huge step forward in fostering community-based fisheries management. Without a more effective law enforcement process to assure compliance by all stakeholders, community-based fisheries management efforts face considerable difficulties in fostering constructive engagement by users of our nearshore aquatic resources. By providing a more consistent and effective process to address resource violations and foster greater compliance with the law, this bill may greatly encourage the formation of community-based management strategies, as individuals will be much more likely to participate in management efforts when assured that others will comply.

This bill may provide a model for an environmental court. Many other jurisdictions have established a variety of “environmental courts,” or tribunals specifically tasked with adjudicating environmental cases. The success of these institutions has prompted numerous attempts to establish an environmental court in Hawai‘i; however, the magnitude and uncertainties of these previous proposals have effectively deterred their adoption. Giving the BLNR the tools it needs to explore administrative enforcement in the aquatic resources context may be a first, much more modest step towards exploring how an environmental tribunal may greatly enhance Hawai‘i’s capacity to defend and protect our natural and cultural resources.

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mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Tuesday, February 07, 2012 11:16 AM

To: JUDtestimony

Cc: rgaffney@pacificboatsales.com

LATE TESTIMONY

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Conference room: 325
Testifier position: Support
Testifier will be present: No
Submitted by: Rick Gaffney
Organization: Individual
E-mail: rgaffney@pacificboatsales.com
Submitted on: 2/7/2012

Comments:

Enhanced fines are essential to deterring natural resource violations. This bill should be passed out of Committee and sent to the full House for consideration.

Mahalo,
Rick Gaffney

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mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Tuesday, February 07, 2012 11:57 AM

To: JUDtestimony

Cc: jphoover@gmail.com

LATE TESTIMONY

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Conference room: 325
Testifier position: Support
Testifier will be present: No
Submitted by: John P Hoover
Organization: Individual
E-mail: jphoover@gmail.com
Submitted on: 2/7/2012

Comments:

I am the author of several guides to Hawaiian fish and marine life. As such, I have been diving and observing marine life in Hawaii for over 30 years. During this time I have noticed a definite decline in the abundance of some species and I therefore support this bill. Thank you.

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mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Tuesday, February 07, 2012 12:33 PM

To: JUDtestimony

Cc: velorakane@hawaiiintel.net

LATE TESTIMONY

Testimony for JUD 2/7/2012 2:00:00 PM HB2590

Conference room: 325

Testifier position: Support

Testifier will be present: No

Submitted by: V. Kane

Organization: Individual

E-mail: velorakane@hawaiiintel.net

Submitted on: 2/7/2012

Comments:

Please make the fine for violators substantial. Poachers make too much money by poaching to bother with a nominal fine of 500 dollars. Make the legislation count for something.

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Sent: Tuesday, February 07, 2012 12:42 PM

To: JUDtestimony

Cc: farmfreshhawaii@gmail.com

Testimony for JUD 2/7/2012 2:00:00 PM HB2590

Conference room: 325

Testifier position: Support

Testifier will be present: No

Submitted by: Juanita Kawamoto Brown

Organization: Individual

E-mail: farmfreshhawaii@gmail.com

Submitted on: 2/7/2012

Comments:

Please pass this much needed legislation!