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GOVERNOR OF HAWAII



LATE

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BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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DEPUTY DIRECTOR - WATER

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LAND
STATE PARKS

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the Senate Committee on
WAYS AND MEANS**

**Friday, February 22, 2013
9:00 PM
State Capitol, Conference Room 211**

**In consideration of
SENATE BILL 1170, SENATE DRAFT 1
RELATING TO ENFORCEMENT OF VIOLATIONS
BY THE DEPARTMENT OF LAND AND NATURAL RESOURCES**

Senate Bill 1170, Senate Draft 1 proposes to provide alternative civil enforcement options that may be utilized by the Board of Land and Natural Resources in the processing of natural and cultural resource violation cases. **The Department of Land and Natural Resources (Department) strongly supports this measure.**

Currently, under Section 171-6, Hawaii Revised Statutes, the Board of Land and Natural Resources (Land Board) may levy administrative fines and order encroachment removal and damage restoration for violations of natural and cultural resource laws and regulations. However, in many cases, the use of these means may not be feasible or optimal.

This proposed legislation will provide flexibility to both the Department and the parties of resource law violations in the Department's civil enforcement actions. It will 1) authorize the Land Board to impose consensual community service in lieu of a fine, 2) empower the Land Board to hold up a license or permit until all previous violations are properly addressed even if the license or permit is not directly related to the violation in question, and 3) provide a process to compel compliance by holding up a party's vehicle registration. Some of these procedures or their similar forms have been formally or informally used by the Department, other state agencies or even in other jurisdictions and proved to be effective.

The Department offers the following further explanations of this measure:

- First, the community services in remedial or non-remedial actions responding to resource violations will be imposed only with the prior consent of all the parties involved and will not incur any potential liabilities to the State.
- Second, the Department sees that, in many resource violation cases, it is unfair to continue to allow a party to reap economic benefits from the holding of a license or permit issued by the Department while delinquent in complying with a law or regulation administered by the Department. Oftentimes, the violation is so interrelated to the license or permit, even if not directly related, that a withholding of the license or permit is not only a justifiable but also a responsible action that should be taken by the Department.
- Third, a partially similar bill was introduced in last year's legislative session for the withholding of a party's driver's license to ensure resource law compliance. The Department now instead believes that the withholding of vehicle registration is an equally-effective but less drastic and more accommodating method that should be adopted. The Department understands that this proposed statute, if enacted, will not be mandatory in nature and will require further negotiation and coordination with motor vehicle registration authorities of the various counties.

This proposed legislation will encourage the parties to voluntarily come to compliance and to proactively address the violations in every way possible and available to them. It will also promote the Department's efficiency by saving the time and cost otherwise needed in involuntary enforcement actions. Further, it will promote the participation of various community-based non-profit organizations in partnering with the Department on resource protection and management projects.

These procedures will be particularly effective in cases involving relatively minor resource law violations and thus allow the Department to process such cases through its administrative processing system rather than the judicial system which is more costly to the Department, county prosecutors and the parties involved in violations.

If this measure is enacted, the Department intends to adopt appropriate rules to provide further clarification and applicability of these procedures before their implementation.

This measure will not incur additional financial burdens to or require funding sources from the State and may generate additional revenues and savings for the Department through enhanced compliance and decrease in contested cases and enforcement needs.



February 21, 2013

Testimony of Malama Maunalua

Supporting S.B. 1170 Relating to Enforcement of Violations by the DLNR

Senate Committee on Water and Land

Senate Committee on Public Safety, Intergovernmental and Military Affairs

Senate Committee on Judiciary and Labor

Tuesday, February 5, 2013, 1:35PM, Room 225

Malama Maunalua is a private non-profit conservation organization dedicated to the conservation and restoration of Maunalua Bay on Oahu's Southeast side. Malama Maunalua focuses on three major threats to Maunalua Bay: land-based sediment and pollution, alien invasive algae, and overharvesting fish. The Maunalua Bay region encompasses a 28 square mile area, including 10 watersheds, 7+ miles of shoreline and 6 square miles of reefs and ocean habitat. Approximately 60,000 people reside in the region.

Malama Maunalua SUPPORTS SB1170, which would remove barriers to more efficient, fair and potentially transformative enforcement of natural and cultural resource laws through non-criminal, administrative adjudication by the Board of Land and Natural Resources (BLNR).

Over the last decade, it has become clear that numerous issues are inhibiting the effective enforcement of natural and cultural resource laws and regulations under the jurisdiction of the Department of Land and Natural Resources (DLNR). While funding and overall capacity are clear and obvious challenges to enforcement, it appears that the current, nearly exclusive reliance on the criminal court system has also presented significant barriers to the effective enforcement of our natural and cultural resource laws. Such barriers include:

1. The reluctance of district court judges and prosecutors to impose criminal liability commensurate with criminal property damage, drug possession, or third degree assault for natural resource violations;
2. The substantive and procedural burdens of proof required to establish a criminal violation, including the "beyond a reasonable doubt" criminal burden of proof and the relatively stringent Hawai'i Rules of Evidence;
3. A lack of substantive institutional knowledge within the criminal district court system of specific natural resource laws, their jurisdictional bases, and how they are or should be interpreted or applied; and
4. The disproportionate cost of enforcing rare and esoteric natural and cultural resource cases in an overburdened criminal court docket, consisting almost entirely of more familiar and readily established crimes.



One suggested approach to obviating the above barriers has been the expanded use of the BLNR's noncriminal, administrative enforcement authorities, such as those used to enforce conservation district violations by the Office of Conservation and Coastal Lands.

However, while the BLNR currently already has the authority to administratively impose civil sanctions for most natural and cultural resource violations, the BLNR's capacity to do so is limited by concerns regarding the ability of violators to pay substantial civil fines, and by the department's capacity to recover outstanding fines or other penalties should an alleged violator default.

This bill will address the concerns preventing the BLNR from exploring expanded noncriminal enforcement of natural and cultural resource violations. By providing the BLNR with the option of imposing natural- or cultural-resources related community service in lieu of civil fines, this bill will allow the BLNR to meaningfully sanction individuals who may not be able to pay the monetary penalties that the BLNR is currently authorized to impose. Imposing community service-type penalties, particularly as they relate to natural or cultural resources, has the added potential benefit of transforming or rehabilitating alleged violators' perspective regarding the importance of our resource laws, as has been demonstrated in other jurisdictions and by local anecdotal reports. In addition, such penalties may more directly benefit or restore the resources impacted by a violator's actions. Providing the BLNR with authority to place a drivers' license stopper for recalcitrant or noncompliant violators will also allow the BLNR to more efficiently ensure compliance with imposed penalties, without resorting to civil litigation or more costly processes.

Therefore, Malama Maunalua urges the Committees to PASS SB1170.

Mahalo for the opportunity to testify on this measure.

Sincerely,

A handwritten signature in black ink that reads 'Rae DeCoito'.

Rae DeCoito
Executive Director
Malama Maunalua