

# SB 1170

## SB1170

**Measure Title:** RELATING TO ENFORCEMENT OF VIOLATIONS BY THE DEPARTMENT OF LAND AND NATURAL RESOURCES.

**Report Title:** Cultural and Natural Resources; Enforcement and Penalties

**Description:** Provides 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.

**Companion:** [HB939](#)

**Package:** Gov

**Current Referral:** WTL/PSM/JDL, WAM

**Introducer(s):** KIM (Introduced by request of another party)

<u>Sort by Date</u>		<b>Status Text</b>
1/24/2013	S	Introduced.
1/24/2013	S	Passed First Reading.
1/24/2013	S	Referred to WTL/PSM/JDL, WAM.
2/1/2013	S	The committee(s) on WTL/PSM/JDL has scheduled a public hearing on 02-05-13 1:35PM in conference room 225.

**S** = Senate | **H** = House | **D** = Data Systems | **\$** = Appropriation measure | **ConAm** = Constitutional Amendment  
Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

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

**Before the Senate Committees on  
WATER AND LAND  
and  
PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS  
and  
JUDICIARY AND LABOR**

**Tuesday, February 5, 2013  
1:35 PM  
State Capitol, Conference Room 225**

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

Senate Bill 1170 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.

**WILLIAM J. AILA, JR.**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**ESTHER KIA'AINA**  
FIRST DEPUTY

**WILLIAM M. TAM**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

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.



**SB1170**  
**RELATING TO ENFORCEMENT OF VIOLATIONS**  
**BY THE DEPARTMENT OF LAND AND NATURAL RESOURCES**

Senate Committee on Water and Land  
Senate Committee on Public Safety, Intergovernmental and Military Affairs  
Senate Committee on Judiciary and Labor

February 5, 2013

1:35 p.m.

Room 225

The Office of Hawaiian Affairs (OHA) **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.<sup>1</sup> 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, OHA urges the Committees to **PASS** SB1170. Mahalo for the opportunity to testify on this measure.

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<sup>1</sup> See HB2590 (Reg. Sess. 2012); SB2852 (Reg. Sess. 2012); Fish and Coral Think Tank, The Authorizing the Board to Use Transformative, Fair, and Consistent Enforcement (ABOUT FACE) Act, <http://factt.weebly.com/about-face-act.html> (last accessed Jan. 30, 2013).



# Indigenous Consultants, LLC

Mililani B. Trask, Principal

P.O.Box 6377 ❖ Hilo, HI 96720

[Mililani.trask@gmail.com](mailto:Mililani.trask@gmail.com)



February 4, 2013

Date: Tuesday, February 5, 2013

Time: 1:35 pm

Place: Conference Room 225

Committees: WTL/PSM/JDL



**IDG** | INNOVATIONS  
DEVELOPMENT  
GROUP

Re: SB 1170 – Relating to Enforcement of Violations by the Department of Land and Natural Resources (DLNR)

Aloha Legislators,

The Indigenous Consultants (IC) is a Hawaii based, indigenous LLC owned and operated by Native Hawaiians. It was created to assist indigenous peoples in developing their renewable energy resources in ways that are: Culturally appropriate, environmentally green and sustainable, socially responsible and economically equitable and affordable. For several years the IC has worked with Innovations Development Group in New Zealand and indigenous Maori developing geothermal resources, which are trust assets of Maori Land Trusts. In addition, the IC has acted as a consultant to other indigenous people in Hawaii and Asia who are addressing development of their trust renewable energy resources in ways that; directly benefit their people, bring in revenues, create small business opportunities and ensure fair & affordable rates to consumers, including themselves and their communities.

The Innovations Development Group (IDG) is a Hawaii based renewable energy Development Corporation owned by Native Hawaiians. It was created to facilitate the development of renewable energy resources of native people, and in summer 2011 presented its development model to legislators of the Energy & Land Committees.

The Innovations Development Group and Indigenous Consultants support this measure.

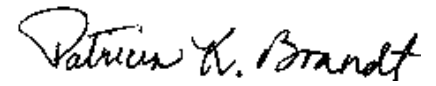
IDG & IC support this measure because it allows the DLNR to address resource violations in a more effective & flexible manner. It allows impoverished violators to Perform culturally related community service in lieu of paying a fine, and it prevents violators from benefitting from the use of a permit while being in violation of permit Requirements. Finally, it will prevent violators from registering motor vehicles until they come into compliance with their permit requirements. This ‘inconvenience’ is a good incentive for violators to address & remedy the problem.

Regards,

A handwritten signature in black ink, appearing to read "Mililani B. Trask". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mililani B. Trask – Indigenous Consultants LLC

Sincerely,

A handwritten signature in black ink, appearing to read "Patricia K. Brandt". The signature is cursive and elegant, with a prominent initial "P".

Patricia K. Brandt  
CEO IDG Hawaii

Testimony of The Nature Conservancy of Hawai'i  
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

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*The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of the lands and waters upon which life in these islands depends. The Conservancy has helped to protect nearly 200,000 acres of natural lands in Hawai'i. Today, we actively manage more than 32,000 acres in 10 nature preserves on Maui, Hawai'i, Moloka'i, Lāna'i, and Kaua'i. We also work closely with government agencies, private parties and communities on cooperative land and marine management projects.*

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The Nature Conservancy supports S.B. 1170.

There is widespread agreement amongst a variety of stakeholders that Hawaii's fragile environment is in need of improved compliance, enforcement and prosecution of violations of our State natural resource laws. A 2006 State Auditor's report concludes that DLNR Division of Conservation and Resources Enforcement (DOCARE) officers are spread too thin and lack the equipment they need to do their jobs. In a better economy, the Legislature had been able to provide some relief with financial support and an increase in the number of trained officers and equipment. .

Against this backdrop, a number of communities across the state have been organizing themselves to become more directly involved in the care and management of their natural resources, particularly in coastal and near shore areas. Some communities have partnered with DOCARE to raise awareness of natural resource laws and to improve compliance with those laws.

With increased community involvement in marine resource management and enforcement, it will help DLNR, DOCARE, and community-based managers to have additionally flexibility in applying effective civil penalties to justly punish current infractions, effectively deter future violations, and foster greater compliance in the future. S.B. 1170 offers two enforcement strategies with community service and license suspension that can be employed when criminal or financial penalties are ineffective, particularly in an overburdened state court system.

Thank you for this opportunity to offer our support for this measure.

BOARD OF TRUSTEES

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TO: Senator Malama Solomon, Chair  
Senate Committee on Committee on Water & Land and

Senator Will Espero, Chair  
Senate Committee on Public Safety, Intergovernmental & Military Affairs

Senator Clayton Hee, Chair  
Senate Committee on Judiciary & Labor

FROM: Sara L. Collins, Ph.D., Legislative Chair  
Society for Hawaiian Archaeology  
sara.l.collins.sha@gmail.com

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

SUBJECT: Comments on SB 1170, Relating to Enforcement of Violations by the Department of Land and Natural Resources

I am Dr. Sara Collins, Chair of the Legislative Committee of the Society for Hawaiian Archaeology (SHA). We have over 150 members that include professional archaeologists and advocates of historic preservation in general. The subject bill proposes to establish an alternative method of civil enforcement that may be used by the Board of Land and Natural Resources (BLNR) when processing natural and cultural resource violation cases. We support the intent of this bill, which appears to add flexibility to the enforcement process while making follow-through more likely in violations cases that come before the BLNR. We have some comments though on aspects of the bill that, to us, may need further clarification.

As we understand it, SB 1170 would amend Chapter 171-6, Hawaii Revised Statutes (HRS) as follows.

- Amends §171-6(15) to apply to both natural and cultural resources, including §§6D (Cave Law) and 6E (Historic Preservation) as well as Title 12 (Public Lands).
- Adds §171-6(20), which describes the option of performing community service instead of or in addition to any fines imposed by the BLNR in adjudicating a violations case. The community service work must be performed under the supervision of a governmental agency, a benevolent or charitable organization, or a community service group deemed appropriate by the board until satisfactory compliance is certified by the board or its designated agent.
- Adds §171-6(21), which calls for the suspension or revocation of a license or permit issued under the authority of the board or department, or the denial of any application for the issuance of such a license or permit, if the board finds that the licensee, permittee, or applicant is in violation of any of the provisions of title 12 or chapter 6D or 6E, or any rule adopted thereunder until satisfactory compliance is certified by the board or its designated agent
- Adds §171-6(22), which directs the appropriate county authorities of motor vehicles to deny any application for the registration of a motor vehicle if the board finds that the applicant failed to discharge a condition imposed by the board pursuant to any of the provisions of title 12 or chapter §§6D or 6E, or any rule adopted thereunder until satisfactory compliance is certified by the board or its agent.

We support the intent of these proposed amendments because they could strengthen the ability of the Department of Land and Natural Resources to protect historic and cultural resources and to do so more effectively. Hawai'i's historic preservation laws are among the strongest in the nation but agencies and individuals have long struggled to enforce these laws or to have them enforced. The full the potential of these strong laws has yet to be realized. Lack of enforcement is one of the most prominent issues raised any time our members or communities are asked what needs to be done to protect archaeological sites and other types of historic properties. The approaches proposed in this amendment are worth a try.

We also believe that the community service option could also help groups and agencies that are currently caring for historic sites. Regarding community service, we would recommend that anyone electing to engage in this form of restitution should be assigned to work with an established entity that is currently in an approved and ongoing program of caretaking at a historic site. In all cases, any service work on a historic site should only commence when there is an appropriate and approved plan, and such work is done under the supervision of appropriate agencies such as the Division of State Parks or State Historic Preservation Division.

One reservation we have about these amendments is their possible effect on permits issued to archaeologists by the Department of Land and Natural Resources to conduct archaeological activities in the State of Hawai'i (Hawaii Administrative Rule 13-282). We presume that the licenses and permits referred to in proposed amendment §171-6(21) include this permit. We are still in the process of examining the possible consequences of SB 1170 on this particular permit and may have additional comments to make should this bill progress further. We also note that §6E has existing civil and administrative (§§6E-11 through 6E-11.6), and criminal (§§6E-71 through 6E-74) penalty sections. It is possible that these statutes may also need to be amended in order to incorporate the new sections proposed for §171-6.

Thank you for the opportunity to provide comments on SB 1170. Should you have any questions, please feel free to contact me at the above email address.

THE TWENTY-SEVENTH LEGISLATURE  
REGULAR SESSION OF 2013

COMMITTEE ON WATER AND LAND

Senator Malama Solomon, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair

COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS

Senator Will Espero, Chair  
Senator Rosalyn H. Baker, Vice Chair

COMMITTEE ON JUDICIARY AND LABOR

Senator Clayton Hee, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair

NOTICE OF HEARING

DATE: Tuesday, February 5, 2013  
TIME: 1:35 p.m.  
PLACE: Conference Room 225  
State Capitol  
415 South Beretania Street

Honorable Chairs, Vice Chairs and Committee Members:

I write in **OPPOSITION** to this bill as there are sufficient remedies available to the department to adjudicate resource violations. The inability for one to pay his or her fine is not a reason to write legislation to punish the individual. This action is contrary to common sense. Think about it. If the individual is unable to pay, taking him or her away from her job, losing their license (drivers or special use such as a CML) further cripples the individual who is already unable to pay the fine.

I have advised the department and division in 2012, that additional outreach and communication with license applicants and holders is needed. I believe that there is need for a process for an individual to review the statutory and administrative requirements of the license or permit and satisfactorily pass an examination assuring understanding and knowledge of the rules and or statutes associated with the license. With many new entrants and influx of immigrants entering our communities, such an extraordinary effort is needed as many come from places where such stewardship requirements are non-existent.

Please do not focus on the "stick" before we first determine whether or not we have properly educated and informed individuals of their responsibilities associated with the securing of a license or permit. Thank you for your consideration.

Respectfully Submitted,

Roy N. Morioka  
Honolulu, HI 96821