



SB1170 SD2

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

House Committee on Judiciary

January 23, 2014

2:00 p.m.

Room 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB1170 SD2, 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 non-criminal, administrative enforcement authorities, such as those used to enforce conservation district violations by the Office of Conservation and Coastal Lands.¹ However, while the BLNR currently already has the authority to administratively impose civil sanctions for most natural and cultural

¹See 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://fact.weebly.com/about-face-act.html> (last accessed Jan. 19, 2014).

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 non-criminal 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 car registration 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 Committee to **PASS** SB1170 SD2. Mahalo for the opportunity to testify on this measure.

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 House Committee on
JUDICIARY**

**Thursday, January 23, 2014
2:00 PM
State Capitol, Conference Room 325**

**In consideration of
SENATE BILL 1170, SENATE DRAFT 2
RELATING TO ENFORCEMENT OF VIOLATIONS
BY THE DEPARTMENT OF LAND AND NATURAL RESOURCES**

Senate Bill 1170, Senate Draft 2 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, with exception to its effective date of July 1, 2050. The Department respectfully asks that the Committee restore the “upon approval” effective date.**

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:

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

- 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.

Testimony of The Nature Conservancy of Hawai'i
Supporting S.B. 1170 SD2 Relating to Enforcement of Violations by the DLNR
House Committee on Judiciary
Thursday, January 23, 2014, 2:00PM, Room 325

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 35,000 acres in 11 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.

The Nature Conservancy supports S.B. 1170 SD2.

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.

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TESTIMONY
SB1170 SD2

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

House Committee on Judiciary

January 23, 2014

2:00 p.m.

Capitol Conference Room 325

RE: Testimony in SUPPORT of SB1170 SD2

To the Honorable Chair Rhoads, Vice Chair Har, and Members of the House Committee on Judiciary,

Mahalo nui for the opportunity to **SUPPORT** SB1170 SD2, which will allow the Department of Land and Natural Resources (DLNR) to explore relatively fair, efficient, and potentially transformative non-criminal alternative approaches to natural resources enforcement.

As a DLNR Marine Law Fellow for three years and as a lifelong fisher, I have observed first-hand how the nearly exclusive use of our criminal justice system to enforce natural resources violations has significantly impaired our state's ability to ensure compliance with environmental regulations. The esoteric and unfamiliar nature of these types of violations, when mixed in with a substantial majority of more recognizable crimes in the criminal court docket, create disproportionate and costly burdens for prosecutors, public defenders, judges, and court staff. Stringent rules of evidence and high burdens of proof, coupled with the potential for criminal misdemeanor liability, further hamper the ability of criminal courts to impose penalties that would be most effective at deterring noncompliant behavior, ensuring the restoration of natural resources, or promoting the rehabilitation of defendants.

This bill removes barriers to the broader use of the BLNR's administrative enforcement authority, which otherwise allows the resource agency to implement civil penalties that are proportionate and relatively appropriate to the type and severity of a natural or cultural resources violation. In addition to the lowered burdens of proof, lowered and non-criminal liability, and focused attention on natural resource cases as part of the BLNR's specific kuleana, this bill will allow the use of cultural- and natural-resources related community service as a means of transforming poacher's perspectives on the value of compliance with resources laws. The back-end registration stopper is reserved only for those who have been specifically found by the BLNR to have failed to comply with civil penalty orders, and provides a cheaper and more efficient means to ensure that alleged violators take any judgment of noncompliance seriously, as not something to simply walk away from.

Overall, this bill will lower the costs to the state as well as to defendants in the enforcement of resources violations, while better protecting our limited natural and cultural resources by allowing the exploration of enforcement approaches that provide greater levels of fairness and effectiveness.

Therefore, I respectfully urge the Committees to **PASS** SB1170 SD2. Thank you for the opportunity to testify in support of this measure.

Sincerely,

Wayne Tanaka

**HOUSE OF REPRESENTATIVES
THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2014**

COMMITTEE ON JUDICIARY

Rep. Karl Rhoads, Chair

Rep. Sharon E. Har, Vice Chair

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NOTICE OF HEARING

DATE: Thursday, January 23, 2014

TIME: 2:00 p.m.

PLACE: Conference Room 325

State Capitol

415 South Beretania Street

SB 1170 SD2 RELATING TO ENFORCEMENT OF VIOLATIONS BY THE DEPARTMENT OF LAND AND NATURAL RESOURCES.

TESTIMONY IN STRONG OPPOSITION.

Honorable Chair Rhoads, Vice Chair Har and Members of the Judiciary Committee::

While it is important to enforce Department of Land and Natural Resources rules, the infraction does not rise to the level of requiring director's of finance of the respective county to deny any application for vehicle registration upon receipt of notification from the Board of Land and Natural Resources and incongruous with a DLNR violation. This prevents an individual who satisfies all other requirements from legally registering his or her vehicle in their respective county necessary to provide the legal use of their vehicle to satisfy typical daily life activities including getting to and from the their jobs. I suspect that given the current level of unregistered vehicles, drivers without current driver's licenses, and/or uninsured motorists that such an action would probably not improve collection of fines, but may rather force an individual to exercise civil disobedience in order to survive, especially on our neighbor islands where public transportation is limited.

I believe that there are sufficient remedies and procedures currently available to the State to collect delinquent fines. To introduce another layer of administrative oversight during these tough fiscal times and already stretched government agencies and workers requires serious review and consideration.

Also, with the minimal physical enforcement resources of the DLNR, limited hours of operations, and manpower deficiencies, a person without a DLNR issued license or permit may continue to pursue the illegal activity, resulting in driving his or her activity underground, and critical resource usage data would be lost.

Finally, regardless of whether the individual is not an employee of the State, to impose an individual to community service under the direction of a non-governmental agency presents potentially liability issues and concerns to the chosen agency and the State is another reason for serious review by your committee.

Respectfully Submitted,
Roy N. Morioka
Honolulu, HI 96821

SB1170

Submitted on: 1/23/2014

Testimony for JUD on Jan 23, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Teresa L. Nakama	Individual	Oppose	No

Comments: HOUSE OF REPRESENTATIVES THE TWENTY-SEVENTH LEGISLATURE REGULAR SESSION OF 2014 COMMITTEE ON JUDICIARY Rep. Karl Rhoads, Chair Rep. Sharon E. Har, Vice Chair Rep. Della Au Belatti Rep. Mark M. Nakashima Rep. Tom Brower Rep. Clift Tsuji Rep. Richard Creagan Rep. Jessica Wooley Rep. Ken Ito Rep. Bob McDermott Rep. Derek S.K. Kawakami Rep. Cynthia Thielen Rep. Chris Lee NOTICE OF HEARING DATE: Thursday, January 23, 2014 TIME: 2:00 p.m. PLACE: Conference Room 325 State Capitol 415 South Beretania Street SB 1170 SD2 RELATING TO ENFORCEMENT OF VIOLATIONS BY THE DEPARTMENT OF LAND AND NATURAL RESOURCES. TESTIMONY IN STRONG OPPOSITION. No infraction is significant enough to rise to the level of requiring director's of finance of the respective county to deny any application for vehicle registration upon receipt of notification from the Board of Land and Natural Resources and incongruous with a DLNR violation. . The current level of unregistered vehicles, drivers without current driver's licenses, and/or uninsured motorists that such an action will not improve collection of fines, but may rather force an individual to exercise civil disobedience in order to survive, especially on our neighbor islands where public transportation is limited. DLNR and the State have sufficient remedies and procedures available to collect delinquent fines and to add another layer to the administrative oversight during these tough fiscal times and already stretched government agencies and workers is an added strained that creates a domino effect to all government departments, which includes increases in our taxes to pay such an effort. We the undersign strongly oppose this bill SB1170 SD2 Teresa L. Nakama Mark Lee UmiAliloa S. Ching-Nakam Nathan Ching Nicola Ching Lydia Mahi Dannette Guerpo

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SB1170

Submitted on: 1/23/2014

Testimony for JUD on Jan 23, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Dean Sensui	Individual	Oppose	No

Comments: I oppose bill SB1170 SD2. This bill, if passed, can create more problems than it hopes to solve. While denying someone a car in Honolulu might be an annoying inconvenience, in other parts of Oahu and most areas of the state, it imposes undue hardship due to the lack of public transportation. The phrase, "deny any application for registration" means denying the registered owner of continuing to operate that vehicle. This could mean denying the entire family of legally operating it. This would most likely mean the vehicle would be operated illegally and expose the other innocent drivers to further penalties. It has the potential to turn a productive member of society into a social dependent, unable to get to work or meet the usual requirements of daily modern life. The costs to that family, and the rest of us, escalate beyond reason. A better penalty would be to require the violator to perform some sort of service that benefits the community, preferably the fishing community. That way the offender not only pays back society for what was done, but hopefully learns something important about the reasoning behind our fisheries management. Thank you for your consideration Dean Sensui Executive Producer Hawaii Goes Fishing

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SB1170

Submitted on: 1/23/2014

Testimony for JUD on Jan 23, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Dustin	Individual	Oppose	No

Comments: TESTIMONY IN STRONG OPPOSITION. No infraction is significant enough to rise to the level of requiring director's of finance of the respective county to deny any application for vehicle registration upon receipt of notification from the Board of Land and Natural Resources and incongruous with a DLNR violation. . The current level of unregistered vehicles, drivers without current driver's licenses, and/or uninsured motorists that such an action will not improve collection of fines, but may rather force an individual to exercise civil disobedience in order to survive, especially on our neighbor islands where public transportation is limited. DLNR and the State have sufficient remedies and procedures available to collect delinquent fines and to add another layer to the administrative oversight during these tough fiscal times and already stretched government agencies and workers is an added strained that creates a domino effect to all government departments, which includes increases in our taxes to pay such an effort. I strongly oppose this bill SB1170 SD2

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