

DAVID Y. IGE
GOVERNOR OF HAWAII



CARTY S. CHANG
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

DANIEL S. QUINN
INTERIM FIRST DEPUTY

W. ROY HARDY
ACTING 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

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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
CARTY S. CHANG
Interim Chairperson**

**Before the House Committee on
WATER AND LAND**

**Friday, February 6, 2015
9:00 AM
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 958
RELATING TO ENFORCEMENT ACTIONS
BY THE BOARD OF LAND AND NATURAL RESOURCES**

House Bill 958 proposes to provide alternative civil enforcement options that may be utilized by the Board of Land and Natural Resources (Board) in the processing of natural and cultural resource violation cases. **The Department of Land and Natural Resources (Department) strongly supports this Administration measure.**

Currently, under Section 171-6, Hawaii Revised Statutes, the 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) 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 2) provide a process to compel compliance by holding up a party's vehicle registration.

The Department offers the following further explanations of this measure:

- 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 Board.

- A partially similar bill was introduced in the 2012 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.
- These procedures will be particularly effective in cases involving relatively minor resource law violations and thus allow the Board 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.
- This legislation was proposed to and considered by the 2013 and 2014 legislative sessions, but was not enacted due to a concern of a component that would allow community services in lieu of fines. That component raised the question whether it will trigger the 13th Amendment involuntary servitude prohibition under the United States Constitution. That component has been removed from this current bill.



HB958
**RELATING TO ENFORCEMENT ACTIONS BY THE BOARD OF LAND AND NATURAL
RESOURCES**

House Committee on Water and Land

February 6, 2015

9:00 a.m.

Conference Room 325

The Office of Hawaiian Affairs (OHA) Committee on Beneficiary Advocacy and Empowerment will recommend to the OHA Board of Trustees a position of **SUPPORT** for HB958, which would remove barriers to more efficient and consistent 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.¹ 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 department's capacity to recover outstanding fines or other penalties should an alleged violator default, or otherwise fail to comply with administrative penalty conditions in lieu of administrative fines.

This bill will address concerns preventing the BLNR from exploring expanded noncriminal enforcement of natural and cultural resource violations. Providing the BLNR with authority to place a car registration stopper for recalcitrant or noncompliant violators will allow the BLNR to more efficiently ensure compliance with imposed penalties, without resorting to civil litigation or more costly processes. Such enhanced efficiency will greatly facilitate the expanded use of the BLNR's noncriminal enforcement authorities, by allowing the BLNR to directly adjudicate violations of laws and regulations under their direct purview, within their institutional expertise, and in consideration of all relevant and probative evidence and mitigating factors. Ultimately, OHA believes that the expanded use of such an alternative enforcement process may significantly reduce the long-standing systemic barriers to enforcing the laws that protect Hawai'i's invaluable natural and cultural resources.

Therefore, OHA urges the Committee to **PASS** HB958. Mahalo for the opportunity to testify on this measure.

¹ 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).



Representative Ryan I. Yamane, Chair
Representative Ty J.K. Cullen, Vice Chair
Committee on Water & Land

From: Hawaii Fishermen's Alliance for Conservation and Tradition, Inc. (HFACT)
Date: February 5, 2015
Subject: **OPPOSITION TO HB958**
**RELATING TO ENFORCEMENT ACTIONS BY THE BOARD OF LAND
AND NATURAL RESOURCES.**

Hawaii Fishermen's Alliance for Conservation and Tradition, Inc. (HFACT) is a Hawaii based 501(c)(5) organization that advocates for fishermen throughout the State of Hawaii. HFACT supports science-based management of fisheries to ensure sustainable fishing and a source of food for generations to come.

HFACT opposes HB958 because there are serious unintended consequences that could result from this bill. The bill calls for the director of finance to deny any application for registration when notified by the board of land and natural resources for non-compliance of the provisions of title 12 or chapter 6D or 6E, or any rule adopted thereunder. There is no consideration for the severity of the violation or consideration of the individual's ability to pay a fine or otherwise comply with a condition imposed by the board of land and natural resources, even if the individual fully intends to comply. The punishment may not fit the violation, and the downstream consequence could be the inability to drive to get to work or otherwise be a productive citizen so that he/she can comply over time. The poor or those without means could be unfairly constrained, only to make things economically worse.

It should be noted that on neighbor islands where public transit is limited, this bill would have greater impact and could lead to unemployment, thus making it harder for the individual to comply with fines or punishment. An additional unintended consequence, again on neighbor islands, would be for individuals to be forced to drive without registration simply to keep his/her job.

Alternative methods to enforce compliance could include the imposition of community service related to natural resources, such as clean-up of harbors or other duties that would benefit the department of land and natural resources or one of its divisions.

Again, HFACT opposes HB958 as it can lead to unintended consequences that could disproportionately impact the low-income and neighbor island communities. I thank you for the opportunity to testify.

Sincerely,

Phil Fernandez
President, Hawaii Fishermen's Alliance for Conservation and Tradition, Inc

Testimony of The Nature Conservancy of Hawai'i
Supporting H.B. 958 Relating to Enforcement Actions by the
Board of Land and Natural Resources
House Committee on Water and Land
Friday, February 6, 2015, 9:00AM, 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 H.B. 958.

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. This situation has not substantially improved in the ensuing nine years.

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.

This bill will help DLNR and DOCARE to have additionally flexibility in applying effective civil penalties to justly punish current infractions, effectively deter future violations, and achieve greater compliance in the future. This bill offers thee enforcement strategies including departmental permit or license denials, disallowance of vehicle registration and expanded civil penalties that can be employed when criminal 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

Mark E. Agne Paul D. Alston Alan H. Arizumi Christopher J. Benjamin Anne S. Carter Richard A. Cooke III
Peter H. Ehrman Kenton T. Eldridge Thomas M. Gottlieb James J.C. Haynes III Mark L. Johnson
Dr. Kenneth Y. Kaneshiro Eiichiro Kuwana Duncan MacNaughton Kathy M. Matsui Wayne K. Minami
A. Catherine Ngo James C. Polk Chet A. Richardson Jean E. Rolles Scott C. Rolles Crystal K. Rose
Dustin E. Sellers Dustin M. Shindo Nathan E. Smith Peter K. Tomozawa James Wei Eric K. Yeaman