

DAVID Y. IGE
GOVERNOR OF HAWAII



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

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

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

**Thursday, February 26, 2015
9:00 AM
State Capitol, Conference Room 211**

**In consideration of
SENATE BILL 1127, SENATE DRAFT 1
RELATING TO ENFORCEMENT ACTIONS
BY THE BOARD OF LAND AND NATURAL RESOURCES**

Senate Bill 1127, Senate Draft 1 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 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 current Senate Draft requires the Board to exhaust all administrative processes first and render a final decision and order before denying a permit or license and before referring a case to the county vehicle registration authority. It also required the Board to adopt administrative rules to provide proper guidance for the referral process. The Department supports this amendment.

The Department offers the following further explanations of this measure:

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

- 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.

Testimony of The Nature Conservancy of Hawai'i
Supporting S.B. 1127 SD1 Relating to Enforcement Actions by the
Board of Land and Natural Resources
Senate Committee on Ways & Means
Thursday, February 26, 2015, 9:00AM, Room 211

For more than 35 years, The Nature Conservancy of Hawai'i has been working closely with government agencies, local businesses, private landowners, non-profit partners, and interested communities across the state to preserve the lands and waters upon which all life in these islands depends. The Conservancy is a private non-profit conservation organization that 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, and support 19 coastal communities seeking to co-manage marine resources in partnership with the State of Hawai'i.

The Nature Conservancy supports S.B. 1127 SD1.

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.

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SB1127

Submitted on: 2/24/2015

Testimony for WAM on Feb 26, 2015 09:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Erik Vuong	Individual	Support	No

Comments: i support this bill.

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SB1127

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Hilbert Manlapao	Individual	Support	No

Comments:

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