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SUZANNE D. CASE
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**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
OCEAN, MARINE RESOURCES, & HAWAIIAN AFFAIRS**

**Friday, February 9, 2018
10:00 AM
State Capitol, Conference Room 312**

**In consideration of
HOUSE BILL 2040
RELATING TO BOATING**

House Bill 2040 proposes to make any violation under Chapter 200, Part II, Hawai'i Revised Statutes (HRS), a civil offense rather than a criminal offense. **The Department of Land and Natural Resources (Department) opposes this measure and offers the following comments.**

The Department recognizes that some violations are less severe and do not warrant criminal penalties or a criminal record. However, decriminalizing all penalties in Chapter 200, Part II, HRS, may hinder the enforcement efforts of the Department's Division of Conservation and Resources Enforcement (DOCARE) and may conflict with current HRS provisions.

DOCARE Officers have the ability to seize property as evidence when conducting their investigations, and decriminalizing the violations in Chapter 200, Part II, HRS, may remove DOCARE's seizure authority. This could negatively impact DOCARE Officers' investigative efforts and ability to pursue successful prosecutions of violations.

The fine amounts contained in Section 200-25, HRS, are limited to between \$50 and \$1,000. Should this measure be adopted, the fine amounts in Section 200-25, HRS, will be lower than and in direct conflict with the administrative penalty amounts in Section 200-14.5, HRS. Section 200-14.5, HRS, allows the Board of Land and Natural Resources (Board) to assess administrative fines for any violations of Title 12, Subtitle 8, HRS, or any rule adopted thereunder, in the amounts of \$5,000, \$10,000, and \$15,000 for a first, second, and third violation, respectively.

The Department's Division of Boating and Ocean Recreation (DOBOR) currently prepares civil enforcement actions against persons who commit egregious violations of Hawai'i Administrative Rules using the fine amounts authorized by Section 200-14.5, HRS. DOBOR prefers to pursue

egregious violations through the Board enforcement action process and assesses fines under the authority of Section 200-14.5, HRS, for the deterrent effect of the higher fine amounts. The higher fine amounts in Section 200-14.5, HRS, when compared to the fine amounts in Section 200-25, HRS, also accurately reflect the severity of a person's violation.

The Department notes that DOBOR will need to create a penalty schedule for all regulations that contain a penalty section and were promulgated under the statutory authority of Chapter 200, Part II, HRS. This penalty schedule will need to be finalized and approved by the Board before it goes into effect and becomes enforceable. Additionally, the Department notes that because DOCARE currently only issues criminal citations, DOCARE would need to create (1) a civil citation form and (2) a policy for using the citation book in the field. At the departmental level, the Department would need to (1) create a policy that clearly states the timeframe for civil penalty payments and (2) retain a debt collection agency to pursue violators who fail to pay fines.

The Department strongly recommends that the Committee not move this measure forward. However, should the Committee decide to move forward with this measure, the Department notes the following concerns with language in the measure:

- (1) Section 200-25(a), HRS, (Page 1, lines 3 through 10): The measure makes "Each day of each violation" a separate offense. This would contradict the language in Section 200-14.5(a), HRS, which states "Each day or instance of violation shall constitute a separate offense."
- (2) Section 200-25(b), HRS, (Page 1, lines 11 through 17): Reference to the Environmental Court would become incorrect because the penalty would become a civil violation, and the Environmental Court only presides over criminal violations.
- (3) Section 200-26(b), HRS, Paragraph 1 (Page 2, lines 1 through 7): The District Court would receive authority over the form and content of the civil citation form, which is incorrect because civil violations would be handled solely within the Department, and the Department would therefore be the appropriate entity to have authority over the form and content of the civil citation form.

Thank you for the opportunity to comment on this measure.

HB-2040

Submitted on: 2/2/2018 2:54:23 PM

Testimony for OMH on 2/9/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Frank Farm Jr		Support	No

Comments: