H.B. NO. 3177

A BILL FOR AN ACT

RELATING TO PENALTIES FOR VIOLATIONS WITHIN THE CONSERVATION DISTRICT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 183C-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any person violating this chapter or any rule adopted in accordance with this chapter shall be fined not more than [~~$2,000~~] $10,000 per violation in addition to administrative costs [~~and~~], costs associated with land or habitat restoration, [~~or both, if required,~~] and damages to [~~state~~] public land[~~.~~] or natural resources, or any combination thereof. After written or verbal notification from the department, wilful violation of this [~~section~~] chapter or any rule adopted in accordance with this chapter may incur an additional fine of up to [~~$2,000~~] $10,000 per day per violation for each day in which the violation persists. The board may set, charge, and collect the fine based on the value of the natural resource that is damaged, the market value of the natural resource damaged, and any other factor it deems appropriate, such as the loss of the natural resource to its natural habitat and environment and the cost of

restoration or replacement. The remedies provided for in this paragraph are cumulative and in addition to any other remedies allowed by law."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

INTRODUCED BY: Calvin K.Y. Say

BY REQUEST

JAN 22 2008

H.B. NO. 3177

Report Title:
Conservation District Penalties

Description:
Increases the maximum penalty for violations within the Conservation District and authorizes the Board of Land and Natural Resources to assess fines based on damages to natural resources within the Conservation District.

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JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO PENALTIES FOR VIOLATIONS WITHIN THE CONSERVATION DISTRICT.

PURPOSE: To increase the maximum fine for violations within the Conservation District; and to authorize the Board of Land and Natural Resources to assess fines based on damages to natural resources within the Conservation District.

MEANS: Amend section 183C-7(b), Hawaii Revised Statutes (HRS).

JUSTIFICATION: The Conservation District contains important lands and natural resources essential to preservation of the State's fragile ecosystems and the sustainability of its water supply.

The Department has recently experienced a rash of violations involving the unauthorized use of conservation-zoned lands throughout the State. This is likely the result of several misperceptions and socio-economic conditions: (1) that it is cheaper to deal with the consequences of the enforcement process than to deal with the permit process; (2) improvement in the Department's enforcement or regulatory divisions have led to the identification and prosecution of more cases; (3) it appears that many large parcels of conservation-zoned land have recently been purchased by individuals or corporations who either do not care about conservation restrictions or who fail to educate themselves about these restrictions; and (4) as urban and agriculture lands approach build out, there is increased pressure to develop conservation-zoned lands.

Section 183C-7(b), HRS, allows for a maximum penalty of $2,000 for a single violation. While this may deter some from committing minor Conservation District violations, it is not a sufficient penalty to deter major unauthorized actions such as the construction of major structures and facilities, single-family residences, and the taking and destruction of native trees or plants or other natural resources in the Conservation District without first obtaining permits. In fiscal year 2006-2007 for example, the Department initiated over 90 enforcement cases and collected approximately $50,000 in penalties.

Of particular concern to the Department are actions such as grading in the Conservation District. Under the existing statute, the Department can assess up to $2,000 for a grading violation, whether 10,000 square feet or 10 acres were graded. The Department has processed a number of cases over the past two years in which the inability to treat these cases differently became an issue.

Lastly, for damage to natural resources, the bill provides the Board of Land and Natural Resources with some leeway in determining an appropriate fine by considering the market value of the natural resource damaged or taken, and such factors as the loss of the natural resource to its natural habitat and environment.

Impact on the public: Would bring attention to the seriousness of desecrating important and precious lands and natural resources.

Impact on the department and other agencies: None.

GENERAL FUND: None.

OTHER FUNDS: None.

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PPBS PROGRAM DESIGNATION: LNR 101.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: Upon approval.