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GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
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Testimony of
SUZANNE D. CASE
Chairperson

Before the House Committee on
JUDICIARY

Wednesday, February 13, 2019
2:01 PM
State Capitol, Conference Room 325

In consideration of
HOUSE BILL 552, HOUSE DRAFT 1
RELATING TO CHAPTER 200, HAWAII REVISED STATUTES

House Bill 552, House Draft 1 proposes to convert certain violations within Chapter 200, Hawaii Revised Statutes (HRS), from criminal violations to civil violations; to increase penalties for certain violations in Chapter 200, HRS; and to clarify that imposition of penalties for certain violations in Chapter 200, HRS, does not preclude imposition of administrative fines. **The Department of Land and Natural Resources (Department) supports this measure and recommends a clarifying amendment.**

This measure would provide the Department with clearer authority to cite under its Civil Resource Violations System (CRVS) fine schedule. Division of Conservation and Resources Enforcement officers would issue a CRVS citation with a civil penalty, which could be appealed through the Board of Land and Natural Resources (Board), rather than the courts. Other divisions have noticed that when people are cited under CRVS, they are more likely to pay the penalty than challenge it because of the lower fines and lack of possible prison time.

The CRVS fine schedule will need to be finalized and approved by the Board. To address civil violations, DOCARE would need to create (1) a civil citation form and (2) a policy for using the citation forms 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 notes that language in this measure regarding penalties for operating a vessel under the influence of an intoxicant appears to be vague. Therefore, the Department recommends amending SECTION 3 for clarification, highlighted in gray below:

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
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

SECTION 3. Section 200-25, Hawaii Revised Statutes, is amended and to read as follows:

"**§200-25 Fines and penalties.** (a) Any person [~~violating this part, or~~] who violates any rule adopted by the department pursuant to this part, shall be [~~finned not less than \$50 and not more than \$1,000 or sentenced to a term of imprisonment of not more than thirty days, or both, for each violation;~~] subject to an administrative fine of:

(1) \$ _____ for a first violation;

(2) \$ _____ for a second violation; and

(3) \$ _____ for a third and any subsequent violation;

provided that [~~in~~] any person who violates any rule adopted by the department relating to reckless or unauthorized operation of a vessel, unauthorized vessel mooring, animal abandonment, or creation of animal colonies within state small boat harbors and boating facilities, or the regulation of commercial boating and ocean recreation activities, shall be guilty of a misdemeanor; provided further that nothing in this section shall prevent the department from imposing criminal penalties otherwise provided by law upon any person who violates any rules adopted by the department relating to operating a vessel under the influence of an intoxicant.

(b) In addition to, or as a condition to the suspension of, the fines and other penalties, the environmental court may deprive the offender of the privilege of operating any vessel, including [~~but not limited to~~] any thrill craft or vessel engaged in parasailing or water sledding, in the waters of the State for a period of not more than thirty days."

Thank you for the opportunity to comment on this measure.



Hawaiian Humane Society
People for animals. Animals for people.

2700 Waiialae Avenue Honolulu, Hawaii 96826
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Date: Feb. 12, 2019

To: Chair Rep. Chris Lee
Vice Chair Rep. Joy San Buenaventura
and Members of the Judiciary Committee

Submitted By: Stephanie Kendrick, Public Policy Advocate
Hawaiian Humane Society, 808-356-2217

RE: Testimony in opposition to HB 552:
Relating to Chapter 200, Hawaii Revised Statutes
Wednesday, Feb. 13, 2019, 2:01 p.m., Capitol room 325

Aloha Chair Lee, Vice Chair San Buenaventura and Committee Members,

On behalf of the Hawaiian Humane Society, thank you for considering our opposition to House Bill 552, which decreases, increases, or clarifies certain penalties for violations of boating and ocean recreation rules adopted pursuant to chapter 200, HRS.

The rule package that this bill would codify was a setback to animal welfare and I urge you to resist endorsing it by passing this measure. Among other things, the changes to HAR 13-232 allow the Division of Boating and Ocean Recreation to destroy any “predatory” animal on the loose at its harbors without regard to ownership and “by any means deemed necessary.”

The bill attaches a misdemeanor penalty to anyone responsible for the “creation of animal colonies within state small boat harbors.” The only people creating colonies are those who abandon animals and animal abandonment is already a crime under HRS711-1109.7. That provision is at best redundant, but at worst it is an attack on people who are trying to help the cats at harbors by making sure they are spayed/neutered, fed and treated for illness or injury.

The rules passed by the Board of Land and Natural Resources regarding animals at the small boat harbors lack compassion and were overwhelmingly opposed at public hearings around the state. I urge you to defer HB 522. If you choose to advance this measure, please remove the phrase “or creation of animal colonies within state small boat harbors” from HRS200-25 (a).

Mahalo for your consideration and please let me know if I can be of assistance.

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Testimony on HB 552 HD 1, Relating to Chapter 200, Hawaii Revised Statutes

Submitted to House Committee on Judiciary
2:01 PM, February 13, 2019 Hearing in Conference Room 325

I support HB 552 HD 1 which adjusts and clarifies penalties for violation of DLNR beach and ocean recreation rules. Unfortunately, HB 552 HD 1 will not provide the resources or willpower which also are necessary for better enforcement of DLNR rules.

To illustrate the problem, I suggest that you ask the DLNR to explain:

- why hasn't the DLNR administratively imposed civil fines on the hotel beach concessions which illegally store unrented commercial beach chairs and umbrellas on Waikiki Beach?
- How would HB 552 HD 1 affect DLNR enforcement of a state contract and rules which prohibit storage of unrented commercial equipment on Waikiki Beach?

RELEVANT PROVISIONS OF A 1965 STATE CONTRACT AND STATE RULES

The SurfRider-Royal Hawaiian Sector Beach Agreement is a 1965 contract between the State and the owners of Waikiki beachfront property from the eastern end of the Moana SurfRider through the western end of the Royal Hawaiian. The Agreement includes exhibits which designate a "Line A" and a "Line B" over the beach. The Agreement provides that the beach mauka of "Line A" is privately owned and not subject to a public easement; the beach between "Line A" and "Line B" is privately owned and subject to a public easement; and any beach makai of "Line B" is publicly owned.

The 1965 Beach Agreement authorizes the Moana SurfRider, Outrigger, and Royal Hawaiian Resorts to install fences and post signs to exclude the public from the "private beach" mauka of "Line A". However, Item 9 of the Agreement and §13-255-6(c), Hawaii Administrative Rules, unambiguously prohibit storage of unrented commercial equipment on the public easement makai of "Line A".

Item 9 of the 1965 SurfRider-Royal Hawaiian Sector Beach Agreement explicitly requires that

The State will not conduct or permit any commercial activity of any kind on the public beach in the SurfRider-Royal Hawaiian Sector of Waikiki Beach, including ... the

area ... subject to public easement.... The Owners [of the beach subject to public easement and abutting property] will not conduct or permit any commercial activity of any kind on the area ... subject to public easement....

When the DOT was responsible for small boat harbors, the DOT adopted rules to prohibit storage of unrented commercial equipment on the part of Waikiki Beach subject to a public easement under the 1965 Beach Agreement. When responsibility for small boat harbors was transferred to the DLNR, the DLNR adopted the following rules.

HAWAII ADMINISTRATIVE RULES TITLE 13 SUBTITLE 11 PART III CHAPTER 255 WAIKIKI BEACH

§13-255-5 Definitions. As used in this part, unless the context clearly indicates otherwise:

“Waikiki Beach” means any and all lands . . . from the . . . Elks Club . . . to . . . Fort DeRussy . . . over which the State of Hawaii . . . acquires an easement for the use of the public as a bathing beach and for passing over and along by foot. . . .

§13-255-6 Waikiki Beach uses and activities; restrictions. . . .

(c) Storage, parking, and display prohibited. No person shall store, park, moor, place, or display any thing or personal property on or at Waikiki Beach for the purpose of engaging in, conducting, transacting, or soliciting business of any kind; provided that an outrigger canoe or sailing catamaran registered by the department pursuant to Hawaii ocean waters and shores rules may be placed, moored, or anchored below the mean high water mark. . . .

§13-255-7 Penalties. Any person who is guilty of violating these rules shall be fined . . . as provided in section 200-14, Hawaii Revised Statutes.

§13-255-8 Powers of arrest. Any law enforcement officer or any duly authorized employee, agent, or representative of the department who observes any violation by any person of these rules may forthwith arrest the person without a warrant.

§13-255-9 Taking legal custody of property. As incident to a lawful arrest, the arresting authority may take legal custody of any personal property which is the subject of or related to any violation of these rules. The property may be released only upon approval by the court which has jurisdiction of the case.

§13-255-10 Attorney general. The attorney general may bring appropriate proceedings to enjoin the continuance of any act or omission in violation of these rules.

The following photographs were taken at 8:45 am on Friday January 18, 2019 to document that the Royal Hawaiian and Outrigger Hotel beach concessions are still conspicuously illegally storing unrented commercial beach chairs and umbrellas on a public easement over Waikiki Beach where commercial activity has been explicitly prohibited for more than 50 years by both a state contract and state rules.









