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GOVERNOR OF HAWAII



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

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ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**Testimony of
LAURA H. THIELEN
Chairperson**

**Before the Senate Committee on
WATER, LAND, & OCEAN RESOURCES**

**Monday, March 16, 2009
9:00 a.m.**

State Capitol, Conference Room 325

**In consideration of
SENATE BILL 580, SENATE DRAFT 2
RELATING TO FORFEITURE**

Senate Bill 580, Senate Draft 2 proposes to clarify that forfeiture laws apply to violations of conservation and resources statutes and rules and to protected caves, historic preservation and the Kaho'olawe Island Reserve. The Department of Land and Natural Resources (Department) has been in discussion with the Department of the Attorney General (AGs) and the City and County Honolulu Department of the Prosecuting Attorney to come up with a congenial solution to handling forfeiture. As such, the Department asks that this measure be kept alive so that it may be used to insert statutory language if deemed necessary.

The Department notes that the Hawaii Supreme Court recently overturned our longstanding authority to utilize forfeiture as a method to ensure compliance with our natural, cultural and historic resources protection laws. The recommended amendments to existing forfeiture laws as identified in this bill will ensure that the forfeiture provision can once again be levied against chronic or egregious natural, cultural and/or historic resource related offenders.

Over time, the Department's Division of Conservation and Resources Enforcement, working closely with county prosecutors and the AGs, has judiciously used forfeiture to deter those considering violating state laws and to gain compliance from those actively violating the Department's statutes and administrative rules. As an example, a dive boat was seized as evidence after the owner of the boat and his friends were caught using clorox to catch over five hundred pounds of reef fish in an otherwise pristine area; a 4x4 pick up truck was seized as evidence and later forfeited after the owner was caught using the vehicle to spot and shoot game mammals at night in a restricted area; a large pickup truck was recovered as evidence after the owner was caught cutting and removing a number of ohia logs cut from trees located in a known Natural Area Reserve, in another case, a vehicle used to transport marijuana and other items

associated with an illegal marijuana cultivation scheme on state land was forfeited to enhance our efforts to increase compliance with our laws protecting natural and cultural resources.

The Department understands that the Department of the Prosecuting Attorney of the City and County of Honolulu opposes passage of this measure for reasons identified in their testimony. The Department would like to clarify our current status on the issue of forfeiture with the following information. Based on the decision of the Hawaii Supreme Court, the Department intends to continue to work closely with the AGs to amend various departmental administrative rules to ensure that our rules meet legal requirements identified in the recent Supreme Court Decision. In addition, the Department intends to work closely with the AGs and each of the four county prosecutors to continue to actively pursue forfeiture as a civil remedy to ensure compliance with our natural, cultural and historic resources protection laws. The Department believes that remedies can be identified and inserted into this bill that would strengthen rather than diminish our ability to use forfeiture as a law enforcement tool to ensure voluntary compliance of our resources protection laws.

VIA WEB: <http://www.capitol.hawaii.gov/emailtestimony>

To: Rep. Ken Ito, Chair
Rep. Sharon E. Har, Vice Chair
Committee on Water, Land and Ocean Resources

From: Kiersten Faulkner
Executive Director, Historic Hawai'i Foundation

Committee Date: Wednesday, February 4, 2009
2:45 pm
Conference Room 229

Subject: **Support of SB580 SD2, Relating to Forfeiture**

On behalf of Historic Hawai'i Foundation (HHF), I am writing to support SB580 SD2, which clarifies that forfeiture laws apply to violations of conservation and resource statutes and rules and to protection of caves, historic preservation, and the Kaho'olawe Island Reserve.

HHF supports efforts to preserve and protect the historic and cultural resources of the Hawaiian islands. All tools and mechanisms that allow for enforcement of historic preservation laws should be available to the State as it implements preservation statutes and rules.

Since 1974, Historic Hawai'i Foundation has been a statewide leader for historic preservation. HHF works to preserve Hawai'i's unique architectural and cultural heritage and believes that historic preservation is an important element in the present and future quality of life, economic viability and environmental sustainability of the state.