

H.B. NO. 1123

A BILL FOR AN ACT

RELATING TO DEPARTMENT OF LAND AND NATURAL RESOURCES VIOLATIONS.

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

1 SECTION 1. Section 183-5, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:

3 "(c) In addition[+]

4 ~~(1)~~ A] a fine of an amount up to \$10,000 or three times
5 the market value at the time and place of the
6 violation, as determined by the department, for each
7 tree, including koa, whichever is greater, per
8 violation of section 183-17 may be levied for each
9 destroyed or harvested [koa] tree, including koa, or
10 portion thereof, larger than six inches in diameter at
11 ground level [; and

12 ~~(2)~~ A fine of up to \$2,000 per violation of section 183-17
13 may be levied for each destroyed or harvested tree or
14 plant, other than koa, or portion thereof, larger than
15 six inches in diameter at ground level.], in addition
16 to any administrative fines and costs associated with
17 restoration or replacement of habitat and damages to

1 public land or natural resources, or any combination
2 thereof."

3 SECTION 2. Section 183-18, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "~~§183-18 Criminal penalties. [Any person who violates~~
6 ~~section 183-17, upon conviction thereof, is guilty of a~~
7 ~~misdemeanor and shall be fined not more than \$2,000 or~~
8 ~~imprisoned not more than one year, or both. In addition to any~~
9 ~~other penalty imposed under this section, a fine of up to \$2,000~~
10 ~~shall be levied for each tree illegally destroyed or harvested~~
11 ~~under section 183-17.] (a) Unless otherwise specified, any~~
12 person who violates a provision of this part or a rule adopted
13 pursuant to this part shall be guilty of a petty misdemeanor. A
14 person convicted of violating a provision of this part or a rule
15 adopted pursuant to this part shall be sentenced, without the
16 possibility of probation or suspension of sentence, as follows:

- 17 (1) A mandatory fine of not less than \$100, or
18 imprisonment of not more than thirty days, or both,
19 for a first offense, or any offense not preceded
20 within a five-year period by a conviction for a prior
21 offense;

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1 (2) A mandatory fine of not less than \$500, or by
2 imprisonment of not more than thirty days, or both,
3 for an offense that occurs within five years of a
4 conviction for a prior offense; and

5 (3) A mandatory fine of \$1,000, or imprisonment of not
6 more than thirty days, or both, for an offense that
7 occurs within five years of two or more convictions
8 for prior offenses.

9 For purposes of this subsection, "offense" means a violation of
10 any provision of this part or any rules adopted pursuant
11 thereto.

12 (b) A person who is convicted for violating section 183-17
13 is guilty of a misdemeanor and shall be fined not more than
14 \$2,000 or imprisoned not more than one year, or both."

15 SECTION 3. Section 183-4, Hawaii Revised Statutes, is
16 repealed.

17 ~~["§183-4 General penalty. Any person violating any of the~~
18 ~~provisions of chapters 183 to 185, for which violation a penalty~~
19 ~~is not otherwise provided, or violating any rule or regulation~~
20 ~~of the department of land and natural resources, and any master~~
21 ~~of any vessel which brings into the State any article which the~~
22 ~~department shall at any time prohibit from being imported into~~

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1 ~~the State, and the master of any vessel from which is landed any~~
2 ~~article required in chapters 183 to 185 to be inspected, before~~
3 ~~the master has received a permit to land the articles from the~~
4 ~~department or its officer or inspector, as in such chapters~~
5 ~~provided, shall be fined not more than \$500."]~~

6 SECTION 4. This Act does not affect rights and duties that
7 matured, penalties that were incurred, and proceedings that were
8 begun before its effective date.

9 SECTION 5. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY:  _____
BY REQUEST

JAN 23 2017

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Report Title:

Destruction or Harvesting of Trees including Koa on State Lands;
Forest Reserves Violations; Penalties

Description:

Amends fines for destroying or harvesting trees including koa on state forest reserves lands to an amount up to \$10,000 or three times the market value at the time and place of the violation for each tree including koa, whichever is greater, in addition to any administrative fines and costs associated with restoration or replacement of the habitat and damages to public land or natural resources, or any combination thereof. Clarifies that any person violating any provision of part II (Forest Reserves) of chapter 183, Hawaii Revised Statutes (HRS), or any rule adopted pursuant thereto, other than section 183-17, HRS, shall be guilty of a petty misdemeanor. Repeals the general penalty provision of chapter 183, HRS.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO DEPARTMENT OF LAND AND NATURAL RESOURCES VIOLATIONS.

PURPOSE: To amend fines for destroying or harvesting trees including koa on state forest reserves lands to an amount up to \$10,000 or three times the market value at the time and place of the violation, as determined by the Department, for each tree including koa, whichever is greater, and in addition to any administrative fines and costs associated with restoration or replacement of the habitat and damages to public land or natural resources, or combination thereof; and to clarify that any person violating any provision of part II (Forest Reserves) of chapter 183, Hawaii Revised Statutes (HRS), or any rule adopted pursuant thereto, other than section 183-17, HRS, shall be guilty of a petty misdemeanor; and to repeal the general penalty provision of chapter 183, HRS.

MEANS: Amend sections 183-5(c) and 183-18, and repeal section 183-4, HRS.

JUSTIFICATION: Section 183-5(c), HRS, authorizes an administrative fine up to \$10,000 per koa tree and \$2,000 for all other tree or plant destroyed or harvested on state lands. The current market value of koa and other forest products, such as Hawaiian sandalwood, far exceeds the dollar amount of the current established fines. Amending fines for destroying or harvesting trees including koa on state lands up to \$10,000 or three times the market value at the time and place of the violation for each tree including koa in addition to any administrative fines and costs associated with restoration or replacement of the habitat and damages to public lands or natural resources, or any

combination thereof, would help: (1) deter illegal harvesting and destruction of natural resources within forest reserves; and (2) make these penalties consistent with those established by other states.

Currently, section 183-18, HRS, only applies criminal penalties for timber trespass offenses. The Department has determined that there are other types of offenses such as removing, injuring, or killing plant or animal life, or introducing plant or animal life except as approved by the Board of Land and Natural Resources, as examples that warrant the imposition of a stricter penalty. Establishing statutory authority for a criminal penalty to apply to any violation of part II of chapter 183, HRS, or any rules adopted pursuant thereto would strengthen the Department's enforcement capabilities and allow for greater protection of the State's natural resources within its forest reserves.

Presently, section 183-4, HRS, authorizes general (civil) penalties for violations of the provisions of chapters 183 to 185, HRS. The Department notes that civil penalties are already provided in sections 183-5 and 184-5.5, HRS. The Department further notes that while chapter 185, HRS, pertaining to land fire protection, does not include a civil penalty section, the chapter does provide for criminal penalties under section 185-7, HRS. The Department feels that violations of chapter 185, HRS, because of the risk of serious harm to people and the environment, should carry only criminal penalties. Given the above, section 183-4, HRS, has been proposed for repeal.

Impact on the public: This bill will allow the Department to more consistently and effectively address certain conservation and resource violations for the protection, preservation, and enhancement of public resources.

Impact on the department and other agencies:

This bill proposes to amend fines for destroying or harvesting trees on state lands to ensure an effective mechanism for pursuing enforcement actions and providing a strong deterrent for unauthorized and illegal use of public resources and establish a criminal penalty for certain conservation and resource violations.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: LNR 172.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.