

LINDA LINGLE
GOVERNOR OF HAWAII



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

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HONOLULU, HAWAII 96809

**Testimony of
LAURA H. THIELEN
Chairperson**

**Before the House Committee on
FINANCE**

**Tuesday, March 3, 2009
5:00 PM
State Capitol, Conference Room 308**

**In consideration of
HOUSE BILL 586, HOUSE DRAFT 1
RELATING TO THE KANEOHE BAY REGIONAL COUNCIL**

House Bill 586, House Draft 1 proposes to repeal Chapter 200D, Hawaii Revised Statutes, as it pertains to the Kaneohe Bay Regional Council (Council). The Department of Land and Natural Resources (Department) support the intent of this measure, but prefers the original version with the effective date of June 30, 2011.

The Department appreciates the passion that the Council has for protecting the resources under its care. The Department notes that the Council been instrumental in developing the Kaneohe Bay Master Plan as well as addressing other controversial issues. The current economic conditions however, make it essential that the Department focus on its core mission of protecting and preserving the State's natural resources and diminish its role with the Council.

The Department, through the Divisions of Aquatic Resources and Boating and Ocean Recreation, is capable of addressing any concerns relating to Kaneohe Bay as they pertain to vessel activity and marine ecosystems. Should any issues arise, the public may contact the Department and the appropriate division will be assigned to investigate and take appropriate action that may include enforcement and/or administrative rule amendments. The public may also raise issues through the Kaneohe Bay Neighborhood Board as Department staff attends these meetings. The Department would further note that the Kaneohe Bay Master Plan (Plan) has been established and the draft administrative rules that will implement the Plan are currently being finalized by the Department of the Attorney General and will go to public hearing in the near future.

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL V. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
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



Legislative Testimony
HB 586, HD 1 RELATING TO THE KĀNE'OHE BAY REGIONAL COUNCIL
House Committee on Finance

March 3, 2009

5:00 p.m.

Room: 308

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB 586, HD 1, which would repeal Chapter 200D, Hawaii Revised Statutes and sunset the Kāne'ohe Bay Regional Council effective January 1, 2020.

While OHA opposed this bill initially, we now believe that the HD 1 provides an adequate amount of time for the Kāne'ohe Bay Regional Council (Council) to facilitate the implementation of the Kāne'ohe Bay Master Plan as it relates to ocean use activities. It will also allow the Council to continue to advise and make recommendations to the State and County on matters regarding the use of Kāne'ohe Bay and serving as a public advocate for Kāne'ohe Bay.

OHA notes that if passed, HB 586, HD 1 would require the Department of Land and Natural Resources to exercise all plans, programs and other policies adopted by the Council prior to the effective date of this Act.

Therefore, OHA urges the Committee to PASS HB 586, HD 1. Thank you for the opportunity to testify.



KO'OLAUPOKO HAWAIIAN CIVIC CLUB

March 3, 2009

TO: REP. MARCUS B. OSHIRO, CHAIR
And Members
House Committee on Finance

FROM: MAHEALANI CYPHER, President
Ko'olaupoko Hawaiian Civic Club

SUBJECT: H.B. 586, H.D.1, Suggesting Amendments to H.B. 586, H.D. 1,
RELATING TO THE KANE'OHE BAY REGIONAL COUNCIL

Aloha from the Ko'olaupoko Hawaiian Civic Club, which represents its members from the nine ahupua'a around Kane'ohē Bay.

We wish to respectfully object to the passage of House Bill 586, House Draft 1, which would call for the dismantling of the Kane'ohē Bay Regional Council, in its present form, and offer some recommended amendments to address concerns raised regarding the effectiveness of this entity.

Our members fought for the creation of this council many years ago, in the hope that this council would help protect the resources of Kane'ohē Bay for generations to come.

Among the significant accomplishments of the Kane'ohē Bay Regional Council has been the development of the Kane'ohē Bay master plan, a document which remains important in guiding government and community decision-making regarding permitted activities in our bay.

In recent years, we have been less than satisfied at the Council's relative inaction regarding protection of cultural and natural resources in the bay. However, we still feel strongly that this council is essential toward ensuring community and governmental support for effective management of Kane'ohē Bay.

Without the existence of this community-based council, there would be diminished care and inadequate monitoring of this important community resource. We bring to your attention the recent announcement by the state administration that they do not intend to allow enforcement officers to work on weekends and holidays

- the periods when Kane`ohe Bay is most threatened by illegal, unsafe and inappropriate activity. We also strongly object to that announced policy by the administration and urge your committee's kokua to take corrective actions in that regard.

Our recommendations for amending this bill are as follows:

1. Eliminate the language in the bill regarding to repeal of Chapter 200D, HRS.
2. – Amend Chapter 200D-3, Section 12, Hawaii Revised Statutes, to delete the phrase, “until 1999”. This would restore the requirement for an annual public hearing on the status of implementation of the Kane`ohe Bay Master Plan.

This council and the Department of Land and Natural Resources, along with other governmental representatives on this panel, need to review the original purpose of the Kane`ohe Bay Regional Council to acknowledge and accept their commitment to managing and balancing the resources, uses and activities within the bay. In our view, certain members of the council have lost that vision and instead seem to be advocating only for their own special interests, to the detriment of longterm management and protection of Kane`ohe Bay.

The council has faltered in its responsibility to see that implementation of the master plan is continually monitored and advocated.

The Hawai`i Institute for Marine Biology and the Department of Land and Natural Resources, in particular, need to be more accountable to ensure that the master plan is implemented and that all needs are balanced, with the goal of preserving natural and cultural resources.

We offer our support for this bill if the suggested changes are made. We do not support sunseting the Kane`ohe Bay Regional Council.

Mahalo for this opportunity to offer our mana`o.

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Original plus 1 copy

HOUSE OF REPRESENTATIVE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009

COMMITTEE ON FINANCE

Rep. Marcus R. Oshiro, Chair

Rep. Marilyn B. Lee, Vice Chair

**HB 586 HD 1, (HSCR 165) Relating to the Kaneohe Bay Regional Council
March 3, 2009, Conference Room 308, State Capitol**

Testimony of Fred Madlener

Committee Chair and Members:

I know something about the Kaneohe Bay Council because for years I attended its meetings and served on behalf of my Neighborhood Board on its Long Range Planning Committee for Kaneohe Bay. If this Council has produced worthy plans, programs and policies, that this Bill says you wish to keep in effect, why not keep the Council and give it the authority that will encourage it to continue its good work? There is plenty to do.

Kaneohe Bay has some awful problems:

- It is overrun by an invasive algae-like seaweed that escaped from the University of Hawaii's Coconut Island Marine Research Station. This is drastic and alarming and fatal for the living reefs in the Bay that rank as some of the country's finest coral reefs.
- It is being fished out; especially missing are the overfished species that eat the invasive algae.
- Its very large fishpond has been abandoned as has the rest of the Bay.

You would be better off having two Bay Councils rather than none. If you lapse the Council, you say goodbye to citizen efforts to salvage everyone's public trust resources. Now it will be in the hands of only government again, and we all know how that went.

Hawaii's Thousand Friends' Testimony

HB 1766, HD 1

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where surges cleared away the dock boxes and stored gear in the vicinity of my slip. The pylons that hold the docks are driven into mud and are undersized and wobbly: the one at my slip was hit only twice by the pile driver to get it set on its depth. There are no fire hydrants or adequate water piping so that when I had a small fire on board we could not put it out because there was zero water pressure. We don't even have adequate parking for slip holders and there will be very little parking for visitors who come and go from the commercial vessels.

The harbor is what its name implies: it is the Ala Wai Small Boat Harbor; it is NOT a commercial harbor. This harbor is designed to give Hawaii's citizens access to the sea, and it does that pretty well. It is the only small boat harbor that produces surplus income every year, about 1.2 million dollars. We have never been able to discover what DLNR does with the money our fees generate. But we do know it is not traditionally spent on our harbor. The State Auditor has noticed this problem too. Whenever Boating Division gathered some funds to do routine maintenance it was used elsewhere by DLNR. We never had the adult supervision necessary to keep track of our money. As a result, the maintenance did not get done. Now we are to privatize the harbor because it is run down.

And we propose to do this "all other rules and laws notwithstanding." When I see those words attached to something I care about it makes my blood run cold: Government is about to do something awful. Then we see that the fees are to be set by a state approved appraiser. These people do comparables. But this harbor is not a commercial harbor; it is a state recreational one that serves surfers, canoe paddlers, recreational boaters, and tourists out for a stroll. It is NOT commercial real estate. As an alternative, page 12, line 16 of HB 1766, HD 1 is more concrete: "mooring fees [are] to be determined by the developer." And the developer will have the right to develop "residential uses" (page 13, line 7). Nor will there be checks and balances because "...concurrent resolution for the lease of submerged lands shall not be required" (page 14, line 9). DLNR's dream come true: they can lease lands that may not even belong to them.

We at Hawaii's Thousand Friends have always tried to steer the State away from giving over our public lands. The Public Trust lands are the citizenry's great asset. We do not want them used as casually as this. Please don't send HB 1766, HD 1 forward. It has everything wrong with it.

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Hawaii's Thousand Friends Testimony
HB 1766 HD1

In today's testimony we incorporate a legal brief, as follows:

We question whether the State of Hawaii will be able to establish clear title to the Keehi Lagoon lands. Most or all of the area included within the project area was designated as a Naval Defensive Sea Area by Executive Order prior to World War II, a designation which remains in effect, 32 CFR § 761.3(a)(i) (2008), notwithstanding the fact that restrictions on access have been temporarily suspended. 32 CFR § 761.4(d)(2) (2008). As the U.S. Court of Appeals for the Ninth Circuit held in a recent decision entitled *Kingman Reef Atoll Investments v. United States*, 541 F.3d 1189 (9th Cir. 2008), the Quiet Title Act, 28 U.S.C. § 2409a, imposes strict time limits on the assertion of claims challenging the title of the United States to lands within designated Naval Defensive Sea Areas. As the time for the assertion of such claims has long passed, see *State of Hawaii v. United States*, 676 F. Supp. 1024 (D. Haw. 1988), *aff'd*, 866 F.2d 313 (9th Cir. 1989), the State of Hawaii may be unable to proceed with the proposed development project until Congress or the U.S. Department of Defense waive the claims of the United States to these lands or otherwise authorize the development to proceed. We presume that both Congress and the Department of Defense, in considering any request for such a waiver, would take into account the interests of the U.S. Department of the Interior set forth in correspondence regarding environmental mitigation measures undertaken in connection with the construction of the Reef Runway.

Please note that the issue raised here is completely unrelated to the matters at issue in *State of Hawaii v. Office of Hawaiian Affairs*, now pending before the United States Supreme Court.

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 03, 2009 12:30 PM
To: FINTestimony
Cc: bsager@hawaii.rr.com
Subject: Testimony for HB586 on 3/3/2009 5:00:00 PM

Testimony for FIN 3/3/2009 5:00:00 PM HB586

Conference room: 308
Testifier position: oppose
Testifier will be present: No
Submitted by: William H Sager
Organization: Individual
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Submitted on: 3/3/2009

Comments:

I am Bill Sager: Kaneohe Resident, Member of the Kaneohe Neighborhood Board and member of the Kaneohe Bay Regional Council (KBRC).

I oppose HB586 which would sunset KNRC.

I believe KBRC serves an important purpose. It gives people information about the Bay and it allows people to express their opinions when there are issues they are concerned with. For instance, we always have standing room only crowds and fishing issues are discussed and use of Ahu o Laka, the Sandbar in Kaneohe Bay, always brings out a large contingent of eaters.

I recommend HB586 be deferred and a resolution requesting a study of the viability of KBRC be submitted.

No action should be taken to sunset the KBRC without a thorough review.