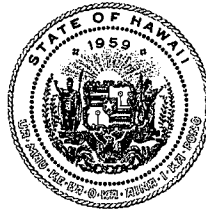


LINDA LINGLE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
LAURA H. THIELEN
Chairperson**

**Before the Senate Committee on
JUDICIARY AND GOVERNMENT OPERATIONS**

Monday, March 2, 2009

10:30 AM

State Capitol, Conference Room 016

In consideration of

**SENATE BILL 1311 SENATE DRAFT 1
RELATING TO AQUATIC RESOURCES**

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

RUSSELL Y. 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

Senate Bill 1311 Senate Draft 1 would amend section 187A-12, Hawaii Revised Statutes (HRS) to allow the University of Hawaii (University) to use Department of Land and Natural Resources (Department) staff in addition to land, buildings, apparatus, and appliances of the Department related to a biological laboratory and for research and investigations. Additionally, the Department would exempt University and affiliated personnel from any permitting for any activities to carry out repair and maintenance of the Hawaii Marine Laboratory Refuge as identified in section 188-36, HRS. The Department expresses concerns and cannot support this measure.

Under the proposed change to section 187A-12, HRS, the University could utilize Department staff, or land, buildings, appliances or apparatus owned by the Department for research as long as it did not interfere with ongoing work of the facility or Department personnel. This presents a difficulty for the Department because it does not have a surplus of personnel. This amendment is unnecessary as the University and the Department have long enjoyed a mutual cooperative relationship that is based on trust and respect for each entity's mission. The Department sees no reason for this to change, and opposes this amendment as it might unduly restrict its own mission. This is especially crucial when the State is currently in the process of trying to find savings to reduce its budget and is experiencing freezing or terminating positions.

The proposed change to section 188-36, HRS, to exempt the University from any permitting requirements is viewed as unnecessary as well. A permit allows a privilege conveyed to individuals to perform activity not normally available to the general public. This carries a responsibility to uphold very high standards and should be weighed in terms of overall benefit to society, the resources, and the environment. This responsibility is the Department's and should not be conveyed to another entity. To suggest that any one entity should be exempt conveys a sense of disproportionate equality in the law's application. This should not occur.

The Department would point out that a couple of the invasive algae species currently overtaking coral reefs in Kaneohe Bay are the result of inadvertent release of these species from research conducted by the University.

In summary, the Department wishes to continue to work collaboratively with the University but should not be required to share its already limited manpower, and must maintain its fiduciary oversight for the welfare of Hawaii's natural resources.

THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009

COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS

Senator Brian T. Taniguchi, Chair
Senator Dwight Y. Takamine, Vice Chair

NOTICE OF DECISION MAKING

DATE: Monday, March 2, 2009
TIME: 10:30 a.m.
PLACE: Conference Room 016
State Capitol
415 South Beretania Street

OPPOSITION TO S.B. 1311 SD1: RELATING TO AQUATIC RESOURCES

Good morning Chair Taniguchi, Vice-Chair Takamine, Honorable Members of the Committee on Judiciary and Government Operations. I am Roy Morioka, a resident of Waiialae-iki, Oahu. I oppose this measure as it exempts the U of H from following practices and procedures required of all other individuals, groups and agencies that are in place to protect the environment and ecosystem of our aquatic resources. To exempt the U of H from applying for such permits and application requirements could result in the destruction or removal of corals or other marine life and introduction of alien species at the Hawaii Marine Laboratory Refuge, violating the current regulations that were created to protect such marine life and prevent introduction of unwanted ones.

The basis for my concerns are that repair and maintenance of harbor entrances and pier facilities may require dredging and require the removal or destruction of coral plus siltation, and hull repair and maintenance of vessels may require scrubbing and scraping after the vessel has travelled outside of Hawaiian waters presenting the possibility of introducing alien species.

Thank you for this opportunity to testify.

Respectfully,
Roy N. Morioka

COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS

Senator Brian T. Taniguchi, Chair
Senator Dwight Y. Takamine, Vice Chair

March 2, 2009

RE: SB1311 SD1 scheduled to be heard by JGO on Monday, 3/2/09 at 10:30 am in conference room 016.

My name is Brian F. Funai and I am testifying in opposition of SB1311 SD1.

I am concerned that if the University of Hawaii were to be left exempt from requirements and procedures asked of all other individuals and organizations for protection of our marine environment, we would be asking for history to repeat itself. I read about the inadvertent introduction of alien species and activities that have gone unchecked, look at the effects on our ocean today and cannot understand why we would want to risk this again. I live on the shores of Kaneohe Bay and regularly see the results of alien algae released into the bay due to "research". Please ensure that the check and balance system that our permitting and application requirements provide remain intact.

Thank you for your time and allowing me to testify.

Brian F. Funai
Kaneohe, HI 96744



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before
The Senate
Committee on Judiciary and Government Operations
on
Monday, March 2, 2009
by
Virginia S. Hinshaw, Chancellor
and
Brian Taylor, Dean
School of Ocean & Earth Science & Technology
University of Hawai'i at Mānoa

SB 1311 SD1 Relating to Aquatic Resources

Aloha Chairperson Taniguchi and Vice Chair Takamine, and Members of the Committee. I thank you for the opportunity to testify regarding the Hawai'i marine laboratory refuge.

My Name is Jo-Ann Leong and I am the Director of the Hawai'i Institute of Marine Biology. I am testifying in support of Senate Bill 1311, SD1 that amends Statutes 187A-12 and 188-36. These changes exempt the University of Hawai'i from permitting and application requirements "to carry out the repair and maintenance of the Hawai'i marine laboratory refuge," and to use "staff of the Department of Land and Natural Resources in connection with ...aquatic resource activities."

Background:

Moku o Lo'e, more widely known as Coconut Island, is located in southern Kāne'ōhe Bay on the island of O'ahu and is home to the Hawai'i Institute of Marine Biology (HIMB), a research institute within the School of Ocean & Earth Science & Technology, University of Hawai'i at Mānoa. The island itself provides a unique living laboratory surrounded by 64 acres of coral reef designated by the state of Hawai'i as a Hawai'i marine laboratory refuge. Approximately 28 acres in size, Moku o Lo'e is also designated as a Conservation District, requiring unique security and grounds maintenance efforts far greater than most organized units on the main campus of the University of Hawai'i. HIMB is supported solely by state funds and competitively obtained extramural grant dollars. We support our security personnel and a groundskeeper and janitorial/maintenance personnel on return of indirect costs from grant dollars.

HIMB scientists, students and staff are concerned with the careful management of Hawai'i's marine laboratory refuge and its living resources are critically important to preservation of Hawai'i's marine resources. We carry, currently, 11 research projects for the Division of Aquatic Resources of the Department of Land and Natural Resources. Thus, the research collaboration between HIMB scientists and DAR is well established. For these studies, HIMB

must obtain permission from the Land Board to carry out research funded by DLNR. HIMB also provides 24 hour security personnel to ensure that poachers do not impact these resources and the studies funded by the state and federal government. HIMB security personnel (projected 2009 costs = \$161,066) does not have the authority to patrol the refuge and stop anyone from taking live coral, fish, and other invertebrates from the refuge. Furthermore, all routine maintenance at HIMB must first be reviewed by the Agency. The replacement of railings and the fixing of bridges at HIMB, the replacement of failing piers, and the repair of steps and roofs are all considered repairs and maintenance that require prior approval by DLNR.

Support of the Bill

The amendment to Statute 187A-12 allows the University of Hawai'i to use staff in addition to "the land, buildings, apparatus, and appliances of the department for the purposes of a biological laboratory and for research and investigation in connection herewith..." There is a clear need for security personnel to prevent poachers from taking illegally the natural resources of the Hawai'i marine laboratory refuge. HIMB may, in the near future, be unable to provide the security personnel to ensure protection of Hawai'i marine laboratory refuge.

The amendment to Statute 188-36 in SB1311 SD1 reads "Notwithstanding any other law to the contrary, the University of Hawai'i shall be exempt from any law that requires a permit or application to carry out repair and maintenance of the Hawai'i marine laboratory refuge." We support this amendment. We believe that the intent of the bill was to provide HIMB with some relief from the costs and time required to obtain approval for repairs required to maintain health and safety at a laboratory that is right next to marine waters.