



SB457 SD2
RELATING TO HAPUNA BEACH PARK

House Committee on Water and Land
House Committee on Ocean, Marine Resources, & Hawaiian Affairs

March 15, 2013

8:30 a.m.

Room 325

The Office of Hawaiian Affairs (OHA) provides the following comments on SB457 SD 2, which requires the Department of Land and Natural Resources (DLNR) to enter into negotiations with the County of Hawai'i for the lease of Hapuna beach park.

OHA applauds the amendments to this bill that address OHA's concerns that fee simple transfer to the county could diminish the ceded land corpus and cause the state to abdicate its fiduciary obligations to Native Hawaiians. Most of Hapuna beach park is former government or crown land that was ceded by the Republic of Hawai'i to the United States in 1898, "without the consent of or compensation to the Native Hawaiian people of Hawaii or their sovereign government[.]" P.L. 103-150 (1993).

OHA further appreciates the language in Section 1 that the Legislature intends revenues from Hapuna beach park to be deemed part of the pro rata portion of public land trust revenues transmitted to OHA. Because the bulk of Hapuna beach park falls within the public land trust established by Admission Act section 5(f), we request that this intent be specifically addressed in Section 4 "Conditions of lease."

Accordingly, we ask that the following provision be added to Section 4, paragraph (4):

The gross revenues derived by the county shall be subject to Act 178, session laws of Hawaii 2006, or any other law providing for the office of Hawaiian affairs' pro rata portion of the public land trust, pursuant to article XII, section 6, of Hawaii's constitution.

Mahalo for the opportunity to testify on this important measure.

William P. Kenoi
Mayor



Walter K.M. Lau
Managing Director

Randall M. Kurohara
Deputy Managing Director

County of Hawai'i Office of the Mayor

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March 15, 2013

The Honorable Cindy Evans, Chair
and Members of the House Committee on Water and Land
Hawai'i State Capitol
415 South Beretania Street, Room 325
Honolulu, Hawai'i 96813

The Honorable Faye P. Hanohano, Chair
and Members of the House Committee on
Ocean, Marine Resources and Hawaiian Affairs
Hawai'i State Capitol
415 South Beretania Street, Room 325
Honolulu, Hawai'i 96813

RE: Senate Bill 457 SD2, RELATING TO HAPUNA BEACH PARK

Aloha, Chair Evans, Chair Hanohano and Committee Members:

Thank you for this opportunity to express our strong support for Senate Bill 457 SD2, which instructs the state Department of Land and Natural Resources to negotiate a long-term, nominal rent agreement with the County of Hawai'i to lease Hapuna State Recreation Area to the county.

We believe this proposal will increase government efficiency and save taxpayer dollars while allowing more of our residents and visitors to fully enjoy this unique park facility. With the proper public investment this park can offer extraordinary recreational experiences, and the county is ready and able to assume this responsibility.

The County of Hawai'i has discussed proposals to transfer control of this park to the county with the DLNR in the past, and we remain willing to work with the state to take over the operation, maintenance, and improvement of the Hapuna State Recreation Area without the transfer of any state personnel or equipment.

The Honorable Cindy Evans, Chair
The Honorable Faye P. Hanohano, Chair
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Park maintenance and operations are core county services, and the county maintains other parks in South Kohala near Hapuna including Spencer Beach Park and the county parks at Waikoloa. The county plans to use economies of scale to minimize its maintenance and personnel costs. Meanwhile, leasing this facility to the county will allow the DLNR to use its limited resources on other parks and state facilities. This is a solution that benefits everyone, but the most important beneficiaries are the children and families that will visit and enjoy this public treasure in the years ahead.

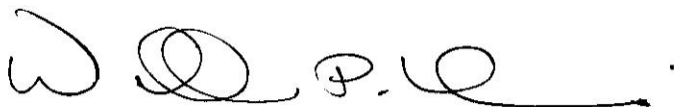
Most state parks are primarily passive with minimal services and facilities, which is in keeping with the State Park Program mission. The Nov. 9, 1998 amendment to the Department of Land and Natural Resources' State Parks Mission Statement identified Hapuna Beach SRA as "County Compatible" because it is an active park unlike most state park facilities. Hapuna has more in common with the active county-maintained parks than it does with most state parks, and in fact the state relies on county lifeguards to service Hapuna because the state cannot provide lifeguard service.

I believe this proposal and Senate Bill 456 instructing the state to lease Mauna Kea State Recreation Area to the county will achieve greater government efficiency and taxpayer savings, and will also result in greater utilization of these areas by larger numbers of people. This is a smart way to realign our respective responsibilities while enhancing the outdoor experience of people who visit these two important public recreational facilities.

We believe these proposals represent a win-win scenario for the State of Hawai'i, County of Hawai'i, our residents and our visitors. Mauna Kea and Hapuna State Recreation Areas have the potential to be public treasures, places that can be accessed and enjoyed by far more people than visit those sites today. With the proper public investment, these places can offer unparalleled recreational experiences.

Thank you for your consideration.

Aloha,

A handwritten signature in black ink, appearing to read 'W. P. Kenoi', with a long horizontal flourish extending to the right.

William P. Kenoi
MAYOR

lowen1-Kyli

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 13, 2013 10:05 AM
To: waltestimony
Cc: occupyhilomedia@yahoo.com
Subject: Submitted testimony for SB457 on Mar 15, 2013 08:30AM

SB457

Submitted on: 3/13/2013

Testimony for WAL/OMH on Mar 15, 2013 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Kerri Marks	Individual	Oppose	No

Comments: I am a resident of Hawaii Island and I oppose this measure. The County of Hawaii has an \$80 million back log of improvements to the parks it currently maintains. Beyond that, these are ceded lands that are meant to be held in trust by the State until land claims with native Hawaiians can be resolved.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Dear Committee Members,

I urge you to put wording into SB457 to clarify that the County may not sell off any leased State land, or grant subleases of more than, say, five years; or allow construction other than for facilities to serve the beach-going public, and then only if they're small and unobtrusive. For example, no more than five spaces, of no more than an average of 100 square feet each, subleased directly from the County by five different vendors, chosen from qualified people by a well-advertised auction or drawing.

The lease to the County should not be for more than fifteen years initially, with a well-advertised public hearing before renewal.

The scariest provision of SB457 SD2 is the reference in Subsection 4(4) to revenues from activities on the land, "or sale, lease, rental, or other disposition of property or services on or flowing from the subject public land"! If this is a lease, how can the authors be suggesting that the County might *sell off* portions of it? This possibility is reinforced by the provision in Subsection 4(3) that the DLNR and BLNR can delegate any of their powers under Chapter 171, and one of those powers, as spelled out in §171-13(1), is to dispose of public land "in fee simple, by lease, lease with option to purchase, license, or permit...". Or by the granting of easements in perpetuity.

If there are any provisions anywhere else in HRS that might rein in this power, they could be changed without Big Island residents even knowing that this was happening, or that it related to their best beach park.

Under this bill, the lease would take effect "upon the approval of the board and appropriate county officer or body." What is the appropriate officer or body? The County Charter specifies that the Director of Finance is to "examine all contracts, orders and other documents by which financial obligations are incurred, and every such document shall be subject to approval by the director of finance..." This lease will involve financial obligations, and I assume that a lease qualifies as a contract. But I'm quite sure that the mayor would claim that the negotiations were his prerogative. (It's also his prerogative to fire the Director of Finance.)

The Leeward Planning Commission is supposed to advise the Mayor and the Planning Director on land use matters, and to hold hearings. Would it be required to hold public hearings on the lease?

To avoid questions as to which officers or bodies should play which roles and when, and to facilitate participation by Big Island residents – the actual users of the park – why not better serve the public interest, or at least shine some light on the deal, by requiring the lease to be approved by our elected body, the County Council? (Does the provision that legislative approval shall not be required refer only to the State Legislature, or does it apply to the County Council as well? If it's the latter, what is the rationale for including it?)

Subsection 4(6)(c) of the bill states that the lease "may be modified by agreement of the board and county". If "the county" is not specifically defined as the County Council, any such changes – possibly odious ones – will likely be made without the public's knowledge or participation.

The first sentence of Subsection 4(6) seems to provide a degree of protection by declaring that the land shall be subject to applicable state and county land use, planning, and building laws. But under this bill, the State takes no responsibility for ensuring that those laws remain unaltered, possibly with an unacceptable exception after the lease is executed. Given the special interest pressure we see these days on all levels of government, we need all the protections we can get. We need the state and the county to try to keep each other honest. And the people need to be empowered to keep them both honest.

The support from Big Island residents for this bill is based on the assumption that its purpose is to better maintain the resource. But I don't believe anyone who isn't envisioning profiting financially from this legislation had any inkling that the integrity of the park could be at stake. I urge you to reject this bill and start over in the next session with one that embodies the expectations of ordinary citizens of the Big Island.

Sincerely,

Kelly Pomeroy
Kawaihae

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

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CHAIRPERSON
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the House Committees on
WATER & LAND
and
OCEAN, MARINE RESOURCES, & HAWAIIAN AFFAIRS**

**Friday, March 15, 2013
8:30 AM
State Capitol, Conference Room 325**

**In consideration of
SENATE BILL 457, SENATE DRAFT 2
RELATING TO HAPUNA BEACH PARK**

Senate Bill 457, Senate Draft 2 proposes that the State of Hawaii (State) lease a portion of Hapuna Beach State Recreation Area to the County of Hawaii (County). **The Department of Land and Natural Resources (Department) understands the intent of this measure is to improve the management of the area and is willing to discuss the issue with the County of Hawaii.**

During the Regular Session in 2010, the Legislature introduced several measures requesting the Department to pursue transferring this recreation area to the County. The Department testified that it would be willing to discuss the issue with the County. Subsequently, the County approached the Department, discussions occurred, and work was done to develop agreements to effectuate such a transfer. In 2011, the Legislature introduced a measure requesting that such a transfer not take place. Accordingly, the Department did not pursue the issue any further.

In the last ten years, the Department has made significant improvements to the park, investing \$3.8 million to remake the Americans with Disabilities Act (ADA) barriers, improve sewer and water systems, repair picnic shelters, the A-frame cabins and restrooms, and is in the process of repairing the parking areas and park roads. In addition, the Department has executed a pilot parking management agreement which will generate approximately \$200,000 annually for the operation and maintenance of this recreation area, including lifeguards at Hapuna Beach.