

DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
WATER & LAND**

**Friday, February 5, 2016
8:30 AM
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 1525
RELATING TO PUBLIC ORDER**

House Bill 1525 proposes to make camping or sleeping on public property a petty misdemeanor. The bill also provides a definition for camping and notes exceptions and provides for the notification of offenders before they are cited for a violation. **The Department of Land and Natural Resources (Department) appreciates the intent of this bill but believes it is overly broad and offers the following comment.** If this measure is enacted, the Department believes that sunbathing on a beach or in a park could be considered a petty misdemeanor as well as picnicking on a blanket.

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
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



HB1525
RELATING TO PUBLIC ORDER
House Committee on Water & Land

February 5, 2016

8:30 a.m.

Conference Room 325

The Office of Hawaiian Affairs (OHA) Committee on Beneficiary Advocacy and Empowerment will recommend to the Board of Trustees a position of **OPPOSE** for HB1525, which seeks to create a new criminal offense of “unlawful occupation of state property.” **This bill may effectively criminalize the meaningful use of all public lands, and place a substantial burden on the exercise of constitutionally-recognized Native Hawaiian traditional and customary practices throughout the state.**

Subject to a number of narrow exceptions (for example, for children, if they are lying in a baby carriage or stroller), this measure bans sitting or lying on “state property,” as well as possessing a backpack, blanket, or other “camping paraphernalia” while on state property. State property as defined in the measure includes all state lands, i.e. beaches, ocean waters and submerged lands, forested areas, state parks, state roadways, trails, state buildings, and landmarks. These lands, which are held in trust “for the benefit of the people,”¹ are arguably the most important resources held by our state- resources that provide a broad range of cultural, environmental, economic, and social benefits that have shaped the daily experiences of all Hawai’i residents and visitors. Most of these areas are undeveloped, and are therefore also critical to the exercise of traditional and customary practices and subsistence gathering practices.

OHA notes that the prohibitions in this bill – including sitting on the ground, or possessing a blanket or backpack – effectively criminalize the meaningful or safe use of our public lands and resources by the general public. Native Hawaiians exercising subsistence or traditional and customary practices such as fishing, hunting, gathering plants, or accessing sites of significance, would be subject to arrest or citation for merely resting on the ground, or carrying a backpack. While practitioners cited under this measure would likely have a defense in court, the burden of having to establish their constitutionally-protected rights in a court of law may have a chilling effect on the exercise of traditional and customary practices generally. Moreover, practitioners who do wish to comply with the statutory provisions created by this bill may have to risk traversing undeveloped lands without basic hiking equipment, including tarps for rain protection or backpacks to carry first aid and other supplies.

¹ HAW. CONST. ART. XI, § 1

While OHA understands the need to balance competing uses of state lands and enact regulations to protect the public's health and safety on state property, OHA urges the Committee to carefully consider the full potential ramifications of this proposal to broadly restrict and effectively criminalize the meaningful use of the majority of our public lands.

Accordingly, OHA urges the Committee to **HOLD** HB1525. Mahalo nui for the opportunity to testify on this measure.

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 04, 2016 11:55 AM
To: waltestimony
Cc: seeneyr@yahoo.com
Subject: Submitted testimony for HB1525 on Feb 5, 2016 08:30AM

HB1525

Submitted on: 2/4/2016

Testimony for WAL on Feb 5, 2016 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Russell Seeney	Individual	Support	No

Comments: The illegal usage of State parks has become a major safety hazard and an expensive issue. As a general park user the parks are no longer safe. Having to avoid certain areas because people or families are camping and blocking park usage that I am paying for as a taxpayer. In some cases if I go there I get the feeling that there could be confrontations. It seems like many of these people have built permanent homeless camps making it very hard to use these areas. Thank you for addressing this issue.

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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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 03, 2016 1:02 AM
To: waltestimony
Cc: kealii8@hotmail.com
Subject: *Submitted testimony for HB1525 on Feb 5, 2016 08:30AM*

HB1525

Submitted on: 2/3/2016

Testimony for WAL on Feb 5, 2016 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Kealii Makekau	Individual	Oppose	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 04, 2016 9:58 AM
To: waltestimony
Cc: shyla.moon@ymail.com
Subject: Submitted testimony for HB1525 on Feb 5, 2016 08:30AM

HB1525

Submitted on: 2/4/2016

Testimony for WAL on Feb 5, 2016 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Shyla Moon	Individual	Oppose	No

Comments: State Property is for the public to share. This law should have amendments that excuse any public protests.

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Testimony by:
FORD N. FUCHIGAMI
DIRECTOR

Deputy Directors
JADE T. BUTAY
ROSS M. HIGASHI
EDWIN H. SNIFFEN
DARRELL T. YOUNG

IN REPLY REFER TO:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 5, 2016
8:30 AM
State Capitol, Room 325

H.B. 1525
RELATING TO PUBLIC ORDER

House Committee on Water and Land

The Department of Transportation (DOT) **supports** H.B. 1525 that establishes a criminal offense for sitting or lying on state property or for possessing camping equipment on state property for the purpose of camping on the property.

The bill will make it unlawful for any person(s) to occupy state property if the person intentionally or knowingly:

(a) sits or lies on state property, or on a tarpaulin, towel, sheet, blanket, sleeping bag, bedding, planter, chair, bench, or any other object or material placed upon state property; or

(b) For the purpose of camping on state property, possesses or controls any backpack, tent, blanket, tarpaulin, or other obvious camping paraphernalia in or on the property unless the person is engaging in an authorized activity on state property pursuant to a permit issued by the appropriate authority.

This new law will allow the Department's three divisions (Airports, Harbors, and Highways) to improve the provision of a safe and accessible transportation system, and better protect the health and safety of all users.

Thank you for the opportunity to provide testimony.



From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 04, 2016 4:44 PM
To: waltestimony
Cc: talaupapa@yahoo.com
Subject: Submitted testimony for HB1525 on Feb 5, 2016 08:30AM

HB1525

Submitted on: 2/4/2016
 Testimony for WAL on Feb 5, 2016 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Jim Lee	Individual	Support	No

Comments: Good Morning Chair Yamane and Vice-Chair Cullen and Members of the Committee on Water and Land. I live in an area that has State lands where the homeless reside since the time when the City and County of Honolulu enacted a city ordinance prohibiting sitting or lying on city property. This bill is another effective tool to help government deal with this problem. I have observed many times homeless individuals using space right up to the borders of city jurisdiction but not crossing over. From this observation, I can make an educated guess that these individuals know exactly what they are doing. While many today may oppose this bill because it expands the areas that make it unlawful for the homeless to situate themselves. Those opposing have not, I repeat, have not, found an effective means to assist them. Perhaps going the the criminal court system may require certain individuals to get a mental health assessment something that they would not do on their own and from that point forward actually get help instead of avoiding help. Again, I am in support of HB 1525. Thank you for allowing me to testify on this important issue.

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From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 05, 2016 12:58 AM
To: waltestimony
Cc: poqqoppoqqop@gmail.com
Subject: Submitted testimony for HB1525 on Feb 5, 2016 08:30AM



HB1525

Submitted on: 2/5/2016

Testimony for WAL on Feb 5, 2016 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Paul Marshall	Individual	Oppose	No

Comments: Please oppose this measure. Thank you, Paul Marshall Princeville

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Sent: Friday, February 05, 2016 12:05 AM
To: waltestimony
Cc: Oceanpixy@gmail.com
Subject: Submitted testimony for HB1525 on Feb 5, 2016 08:30AM



HB1525

Submitted on: 2/5/2016

Testimony for WAL on Feb 5, 2016 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Alice Switzer	Individual	Oppose	No

Comments: When a citizen of our community is experiencing hardship of housing situation I am opposed to making this a crime in any way... Currently in the state of Hawaii it is increasingly challenging to find affordable housing. People must be able to sleep & take care of themselves in a way that gives them dignity in the middle of hardships.. It is important for them to access to public showers & environments so they can work & find new housing during this transition in their life... It is important that the laws we create give dignity & enable our citizens to participate with life in a way that doesn't make them second class citizens for finding themselves in the very real challenge of our current housing situation here in Hawaii. To criminalize this demographic brings disparity into our community rather than the hope of better things can be achieved... thank you for your attention to this matter. It affects a larger group of people - tax paying citizens than I am comfortable admitting.

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From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 04, 2016 8:18 PM
To: waltestimony
Cc: akamaimom@gmail.com
Subject: Submitted testimony for HB1525 on Feb 5, 2016 08:30AM

HB1525

Submitted on: 2/4/2016
Testimony for WAL on Feb 5, 2016 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Felicia Cowden	Individual	Oppose	No

Comments: Please OPPOSE HB1525 which criminalizes sitting, lying, camping in public places. Being poor is not a crime. People have no where to go. Public policies from the federal to the local are a part of what has allowed such a profound level of displacement. This legislation will rightfully leave the state vulnerable to lawsuits as the US Department of Justice has found this illegal. From the United States Department of Justice recent 2015 filing in Janet Bell v. City of Boise Idaho case: "When adequate shelter space exists, individuals have a choice about whether or not to sleep in public. However, when adequate shelter space does not exist, there is no meaningful distinction between the status of being homeless and the conduct of sleeping in public. Sleeping is a life-sustaining activity — i.e., it must occur at some time in some place. If a person literally has nowhere else to go, then enforcement of the anti-camping ordinance against that person criminalizes her for being homeless. Such laws, the DOJ argues, violate the Eighth Amendment protections against cruel and unusual punishment, making them unconstitutional. By weighing in on this case, the DOJ's first foray in two decades into this still-unsettled area of law, the federal government is warning cities far beyond Boise and backing up federal goals to treat homelessness more humanely." This is a heartless law and shames Hawaii. Felicia Cowden Kilauea, Kauai

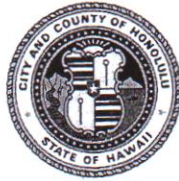
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DEPARTMENT OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU

530 SOUTH KING STREET, ROOM 110 * HONOLULU, HAWAII 96813
PHONE: (808) 768-5193 * FAX: (808) 768-5105 * INTERNET: www.honolulu.gov

KIRK CALDWELL
MAYOR



DONNA Y. L. LEONG
CORPORATION COUNSEL

PAUL S. AOKI
FIRST DEPUTY CORPORATION COUNSEL

February 4, 2016

LATE TESTIMONY

The Honorable Ryan I. Yamane, Chair
and Members of the Committee on Water & Land
House of Representatives
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Yamane and Committee Members:

Subject: House Bill 1525, Relating to Public Order

The Department of the Corporation Counsel of the City and County of Honolulu supports the intent of H.B. 1525.

H.B. 1525 would make it a criminal offense for sitting or lying on state property or for possessing camping equipment on state property for the purpose of camping on the property.

It appears that H.B. 1525 was intended to be patterned after the City's sit-lie law, Ordinance 1435 ("Sit-Lie Law"), which prohibits, subject to exceptions, persons from sitting or lying on public sidewalks in areas zoned for commercial and business activities. The Sit-Lie law furthers the City's goal of keeping our public property open to the general public for the purposes for which they are intended.

Sit-lie laws in jurisdictions that prohibit sitting and lying on public property, broadly defined, have been held unconstitutional. In contrast, other jurisdictions have adopted sit-lie laws that have withstood constitutional scrutiny where the laws were limited in application so as not to criminalize the status of homelessness.

By way of examples, the sit-lie laws that have been upheld include laws that address some conduct, in addition to sitting or lying; that needs to be addressed for a public purpose. An example of this is the City's Sit-Lie Law that

The Honorable Ryan I. Yamane, Chair, and
Members of the Committee on Water & Land
February 4, 2016
Page 2

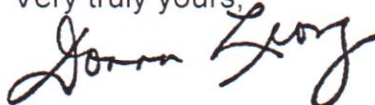
seeks to keep the sidewalks open to facilitate commerce. Others laws have safe harbor provisions that limit the hours of enforcement and the geographic zones of application.

H.B. 1525's application to all state property raises a concern that the law is overbroad and, thus, may not withstand constitutional scrutiny. The Department of the Corporation Counsel would be pleased to work with the State Attorney General in revising H.B. 1525 to achieve the intent of the bill.

For these reasons, we respectfully request your support of the intent of H.B. 1525, to ensure that public property remains open for its intended use.

Thank you for the opportunity to provide our comments on this bill.

Very truly yours,

A handwritten signature in black ink, appearing to read "Donna Leong". The signature is written in a cursive, flowing style.

DONNA Y. L. LEONG
Corporation Counsel