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GOVERNOR OF
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SUZANNE D. CASE
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LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
CONSUMER PROTECTION & COMMERCE**

**Tuesday, February 13, 2018
2:00 PM**

State Capitol, Conference Room 329

**In consideration of
HOUSE BILL 2381 HD1
RELATING TO RULES GOVERNING COMMERCIAL ACTIVITY FOR OCEAN
RECREATION AND COASTAL AREAS**

House Bill 2381 House Draft 1 proposes to amend the definition of "commercial activity" in Section 200-4(a), Hawai'i Revised Statutes (HRS). **The Department of Land and Natural Resources (Department) strongly supports this Administration measure with the following amendments.**

The Department believes that the current definition for "commercial activity" in Section 200-4(a), HRS, is too broad and vague for the purposes of identifying commercial activity and regulating it. Under the current definition of "commercial activity," enforcement officers are required to observe the exchange of money in order for "commercial activity" to have taken place.

Some examples where enforcement efforts have been hindered by the current definition are the illegal commercial operations at Hanalei on Kaua'i; Kailua, Waikīkī, and the North Shore on O'ahu; Keauhou Bay and Pohoiki on Hawai'i; and Kā'anapali on Maui. In most of these examples, the exchange of money does not occur on state property, and the Department therefore has no ability to enforce the illegal commercial activity. Because of the Department's inability to curtail illegal commercial activity, operators are able to engage in illegal commercial operations in state ocean waters without having obtained a commercial use permit from the Department.

The Department's recommended changes are below, and the proposed definition is based off of the City and County of Honolulu's definition of "commercial activity." The Department worked with stakeholders to revise the original proposed definition and believes that the definition proposed below will provide a more detailed definition of "commercial activity" that will give the public better clarity regarding which activities are considered "commercial."

SECTION 1. Section 200-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The chairperson may adopt rules necessary:

- (1) To regulate the manner in which all vessels may enter the ocean waters and navigable streams of the State and moor, anchor, or dock at small boat harbors, launching ramps, and other boating facilities owned or controlled by the State;
- (2) To regulate the embarking and disembarking of passengers at small boat harbors, launching ramps, other boating facilities, and public beaches;
- (3) For the safety of small boat harbors, launching ramps, and other boating facilities, and the vessels anchored or moored therein;
- (4) For the conduct of the public using small boat harbors, launching ramps, and other boating facilities owned or controlled by the State;
- (5) To regulate and control recreational and commercial use of small boat harbors, launching ramps, and other boating facilities owned or controlled by the State and the ocean waters and navigable streams of the State;
- (6) To prevent the discharge or throwing into small boat harbors, launching ramps, other boating facilities, ocean waters, and navigable streams, of rubbish, refuse, garbage, or other substances likely to affect the quality of the water or that contribute to making the small boat harbors, launching ramps, other boating facilities, ocean waters, and streams unsightly, unhealthful, or unclean, or that are liable to fill up, shoal, or shallow the waters in, near, or affecting small boat harbors, launching ramps, and

other boating facilities and the ocean waters and navigable streams of the State, and likewise to prevent the escape of fuel or other oils or substances into the waters in, near, or affecting small boat harbors, launching ramps, or other boating facilities and the ocean waters and navigable streams of the State from any source point, including but not limited to any vessel or from pipes or storage tanks upon land, including:

- (A) Requirements for permits and fees for:
 - (i) The mooring, docking, or anchoring of recreational and commercial vessels or the launching of recreational or commercial vessels at small boat harbors, launching ramps, and other boating facilities; or
 - (ii) Other uses of these facilities;
- (B) Requirements for permits and fees for use of a vessel as a principal place of habitation while moored at a state small boat harbor;
- (C) Requirements governing:
 - (i) The transfer of any state commercial, mooring, launching, or any other type of use or other permit, directly or indirectly, including but not limited to the imposition or assessment of a business transfer fee upon transfer of ownership of vessels operating commercially from, within or in any way related to the state small boat harbors; and
 - (ii) The use of state small boat harbors, launching ramps, or other boating facilities belonging to or controlled by the State, including but not limited to the

establishment of minimum amounts of annual gross receipts required to renew a commercial use permit, and conditions under which a state commercial, mooring, launching, or any other type of use or other permit may be terminated, canceled, or forfeited; and

- (D) Any other rule necessary to implement this chapter pertaining to small boat harbors, launching ramps, and other boating facilities belonging to or controlled by the State;
- (7) To continue the ocean recreational and coastal areas programs and govern the ocean waters and navigable streams of the State, and beaches encumbered with easements in favor of the public to protect and foster public peace and tranquility and to promote public safety, health, and welfare in or on the ocean waters and navigable streams of the State, and on beaches encumbered with easements in favor of the public, including:
- (A) Regulating the anchoring and mooring of vessels, houseboats, and other contrivances outside of any harbor or boating facility, including:
 - (i) The designation of offshore mooring areas;
 - (ii) The licensing and registration of vessels, houseboats, and other contrivances; and the issuance of permits for offshore anchoring and mooring of vessels, houseboats, and other contrivances; and
 - (iii) The living aboard on vessels, houseboats, or other contrivances while they are anchored or moored within ocean waters or navigable streams of the State.

The rules shall provide for consideration of environmental impacts on the State's aquatic resources in the issuance of any permits for offshore mooring;

- (B) Safety measures, requirements, and practices in or on the ocean waters and navigable streams of the State;
 - (C) The licensing and registration of persons or organizations engaged in commercial activities in or on the ocean waters and navigable streams of the State;
 - (D) The licensing and registration of equipment utilized for commercial activities in or on the ocean waters and navigable streams of the State;
 - (E) For beaches encumbered with easements in favor of the public, the prohibition or denial of the following uses and activities:
 - (i) Commercial activities;
 - (ii) The storage, parking, and display of any personal property;
 - (iii) The placement of structures or obstructions;
 - (iv) The beaching, landing, mooring, or anchoring of any vessels; and
 - (v) Other uses or activities that may interfere with the public use and enjoyment of these beaches; and
 - (F) Any other matter relating to the safety, health, and welfare of the general public;
- (8) To regulate the examination, guidance, and control of harbor agents and their assistants; and
 - (9) To regulate commercial activities in state waters including operations originating from private marinas;

provided that no new or additional permits shall be required for those commercial activities regulated by any other chapter.

For the purposes of this ~~[paragraph]~~ section:

"Commercial activity" means to engage in any action or attempt to engage in any action ~~[for compensation in any form. The action or actions may include providing or attempting to provide guide services, charters, tours, and transportation to and from the location or locations for which such services are provided.]~~ designed for profit, including, but not limited to, exchange or buying and selling of commodities; providing services relating to or connected with trade, traffic, or commerce in general; any activity performed by a commercial operator, its employees, or its agents in connection with providing services; and soliciting business, including, but not limited to, display or distribution of notices, business cards, or advertisements for commercial purposes. Notwithstanding the foregoing, only the following shall not constitute "commercial activity": (1) any land-based sales of watersports equipment or merchandise related to watersports and ocean recreation activities; and (2) any land-based advertisements or sales of vouchers or tickets for activities conducted in the waters of the State.

~~["Compensation" means money, barter, trade, credit, and other instruments of value, goods, and other forms of payment.]"~~

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

Thank you for the opportunity to comment on this measure.

HB-2381-HD-1

Submitted on: 2/12/2018 9:35:33 AM

Testimony for CPC on 2/13/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Zachary LaPrade	Boss Frog's Dive & Surf	Oppose	Yes

Comments:

This definition is a significant increase in DLNR authority and expands DLNR's jurisdiction to inland activities. The definition, as written in the bill, is too expansive. Also, DLNR has indicated it intends to use the revised definition to "permit" paddleboard and surfboard rentals. Stake holders in this line of business are unaware of this intent and DLNR has not reached out the paddleboard and surfboard rental community to find a suitable compromise.

We support that DLNR needs to have the tools to regulate is statutory mandate. However, we must respectfully oppose this bill as written.

HB-2381-HD-1

Submitted on: 2/12/2018 9:37:02 AM

Testimony for CPC on 2/13/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Chris Kasper	Hawaiian Style Beach Activities	Oppose	No

Comments:

This definition is a significant increase in DLNR authority and expands DLNR's jurisdiction to inland activities. The definition, as written in the bill, is too expansive. Also, DLNR has indicated it intends to use the revised definition to "permit" paddleboard and surfboard rentals. Stake holders in this line of business are unaware of this intent and DLNR has not reached out the paddleboard and surfboard rental community to find a suitable compromise.

We support that DLNR needs to have the tools to regulate is statutory mandate. However, we must respectfully oppose this bill as written.

HB-2381-HD-1

Submitted on: 2/12/2018 10:38:49 PM

Testimony for CPC on 2/13/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
alex bianco	maui sup rentals	Oppose	No

Comments:

Douglas Meller
2615 Aaliamanu Place
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Testimony Supporting HB 2381, HD 1, Relating to Rules Governing Commercial Activity for Ocean Recreation and Coastal Areas

Submitted to House Committee on Consumer Protection & Commerce
2 PM, February 13, 2018 Hearing in Conference Room 329

I strongly support HB 2381, HD 1. Since 2013, in large part because of the current statutory definition of “commercial activity”, the Department of Land and Natural Resources (DLNR) has stopped imposing civil fines and filing lawsuits to discourage the “pre-setting” and storage of unrented commercial beach chairs and umbrellas on Waikiki Beach. Rent for commercial equipment illegally stored on Waikiki Beach is collected by vendors operating from private hotel property.

I request that you amend this bill so that Chapter 200, Hawaii Revised Statutes, applies to all public beaches (including the state-owned beach makai of the Reef and Waikiki Shore Hotels) and not just to the public easement over the privately-owned beach makai of the Moana Surfrider, Outrigger, and Royal Hawaiian Resorts. More specifically, I request that this bill amend §200-1, Hawaii Revised Statutes, so that the definition of "Beaches encumbered with easements in favor of the public" is revised to read:

"Beaches encumbered with easements in favor of the public" means public lands makai of the shoreline and also means privately owned lands which lie along the shores of the State which are now, or may hereafter be, encumbered by easements granted in favor of the public for bathing, swimming, or other similar or related purposes and for foot passage.

I took the following pictures in early summer 2017 to document the conspicuous illegal “pre-setting” and storage of unrented commercial beach chairs and umbrellas on Waikiki Beach.









HB-2381-HD-1

Submitted on: 2/12/2018 12:46:26 PM

Testimony for CPC on 2/13/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Teresa Parsons	Individual	Support	No

Comments:

It is imperative to keep commercial activities out of the beach parks. The beaches are already crowded with residents and tourists. The last thing needed is people hawking goods, taking up parking spaces and creating litter (from the packaging of their goods).

Please help to protect our precious resources

Mahalo



Ocean Tourism Coalition

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Testimony to: House Committee on Consumer Protection and Commerce

Representative Roy M. Takumi, Chair

Presented by: Tim Lyons, CAE

Executive Director

Subject: HB 2381, HD 1- Relating to Rules Governing Commercial Activity for Ocean
Recreation and Coastal Areas

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Chair Takumi and Members of the Committee:

I am Tim Lyons, Executive Director of the Ocean Tourism Coalition and we must oppose this bill.

While we are in concert with DLNR attempt to gather all the income they can we think that this attempt at defining commercial activity is entirely too broad and could easily be applied to someone purchasing a kayak at Costco.

For the Committee's information, commercial boaters pay not only the four (4) or four and one half (4 ½%) per cent on their gross income like all other businesses but they also pay an additional 3% on their gross income to the boating special fund.....a total of a 7 (or 7 ½%) gross income tax right off the top of all their income. This is considerably more than most businesses.

We appreciate DLNR's attempt to reach out to tax cash transactions and we concur but this language, as offered, goes way too far. We cannot agree with the bill. Thank you.