



LATE

SB2866
RELATING TO AQUATIC RESOURCES
Senate Committee on Water and Land
Senate Committee on Judiciary

February 8, 2018

10:15 a.m.

Room 016

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB2866. This measure would authorize the Department of Land & Natural Resources (DLNR) to accept in-lieu fees to more effectively mitigate or compensate for the loss of aquatic resources impacted by both planned and unplanned activities.

In-lieu fee mitigation and similar programs may help to streamline state and federal permitting processes, while generating revenue to support efficient and coordinated resource conservation and protection programs. Well-established on the continental United States, in-lieu fee mitigation seeks to address possible gaps and inefficiencies with traditional “permittee-responsible” mitigation, in which federal or state permittees are tasked with directly mitigating the environmental impacts of projects for which their permits are sought. In-lieu fees instead allow permittees to purchase “credits” or otherwise financially support a broad and flexible range of mitigation activities, utilizing the more specific expertise and/or planning processes of the institution the fees are paid to. In this way, in-lieu fee mitigation may provide for a more efficient, coordinated, and flexible means to mitigate the impacts of development and other activities, while streamlining the permitting process for such development. Similarly, in-lieu fees can also ensure that violations and other unplanned activities that damage certain resources, are more appropriately assessed and dedicated to the restoration of similar resources.

OHA believes that the in-lieu fee mitigation authorized by this bill may allow the DLNR’s Division of Aquatic Resources to engage in new, innovative, and much-needed aquatic habitat rehabilitation programs and initiatives, and ensure the more efficient and effective use of fees and fines resulting from activities that impact our aquatic resources.

Therefore, OHA urges the Committees to **PASS** SB2866. Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
GOVERNOR OF HAWAII



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

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**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committees on
WATER AND LAND
and
JUDICIARY**

**Thursday, February 8, 2018
10:15 AM
State Capitol, Conference Room 016**

**In consideration of
SENATE BILL 2866
RELATING TO AQUATIC RESOURCES**

Senate Bill 2866 proposes to grant the Department of Land and Natural Resources (Department) authority to establish and operate in-lieu fee mitigation, the purpose of which is to restore, create, enhance, or preserve aquatic habitats or resources as compensatory mitigation where a person is required to provide compensatory mitigation prospectively and the use of in-lieu fee mitigation is approved by the agency requiring mitigation, or for past damages to aquatic habitats or resources. **The Department strongly supports this measure and offers the following comments.**

Compensatory mitigation refers to the restoration, creation, enhancement, or preservation of aquatic habitats or resources for the purposes of offsetting unavoidable adverse impacts. Generally, when prospective permittees anticipate damages to natural resources, natural resource agencies require that all reasonable measures are taken to avoid and minimize the impact on the natural resources at the site of the project. When unavoidable damage does occur, resource agencies will require compensatory mitigation to offset the resource losses. Permittees must then either conduct the new compensatory mitigation projects themselves or transfer their obligations to mitigate damage to a third party by paying into a mitigation bank or in-lieu fee. These two third party compensatory mitigation mechanisms can also be used in the context of unauthorized resource damage, such as coral damage from ship groundings, where responsible parties are required to pay to remediate damages. Natural resource agencies prefer mitigation banks and in-lieu fee mitigation to permittee-responsible mitigation because these third party mitigation bank or in-lieu fee sponsors are often public or private entities with more experience, scientific expertise, and vested long-term interest in natural resource conservation.

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

ROBERT K. MASUDA
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

This measure would provide the Department with another innovative mechanism to improve state stewardship of aquatic public trust resources and habitats, increase accountability for aquatic resource damage, and provide higher quality remediation to make damaged resources whole again. In the 2016 Legislative Session, the Department obtained authority to establish and operate mitigation banks for the same purposes. Mitigation banking is a mechanism in which a mitigation bank sponsor selects degraded aquatic habitats, restores aquatic functions, and quantifies these “banked” improvements as “credits” which can then be sold to responsible parties required by state and federal resource agencies to mitigate prospective or actual damage to aquatic resources. In-lieu fee is essentially mitigation banking in reverse: a third party in-lieu fee mitigation sponsor accepts funds from permit applicants or responsible parties required to provide compensation in order to mitigate actual natural resource damage and then develops restoration projects. In-lieu fee mitigation sponsors typically combine the fees collected from many permitted projects or damage settlements with smaller scale impacts and create larger and more ecologically-valuable mitigation projects.

In the future, the Department expects to accept fees in-lieu of mitigation from two sources: 1) unauthorized resource damage settlements, fines, and penalties; and 2) permittees required to mitigate damage by state or federal law. Although in-lieu fee mitigation has been predominantly used to restore wetland and stream habitats in other parts of the United States, there has been an increasing national interest in using in-lieu fee mitigation to improve coral reef, sea grass, and estuarine habitats. The Department intends to be the first state in the nation to establish in-lieu fee mitigation for coral reefs.

The Department notes that Senate Bill 110 Senate Draft 2 House Draft 1, a carryover bill from the 2017 Legislative Session, is identical to this version of the bill and passed through both the House and Senate with very minor changes. The bill currently requires only a conference committee vote on the measure.

The authority to conduct in-lieu fee mitigation is the next step in the process of creating innovative tools mechanisms for aquatic resource conservation to protect the state’s fragile and valuable public trust resources. In conclusion, as mentioned previously, the Department supports this measure as written.

Thank you for the opportunity to comment on this measure.

SB-2866

Submitted on: 2/7/2018 9:54:29 AM

Testimony for WTL on 2/8/2018 10:15:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|----------------------------|---------------------------|---------------------------|
| Melodie Aduja | OCC Legislative Priorities | Support | No |

Comments:

LATE

SB-2866

Submitted on: 2/7/2018 3:37:38 PM
Testimony for WTL on 2/8/2018 10:15:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|------------------------------|------------------------------------|---------------------------|---------------------------|
| Benton Kealii Pang, Ph.D. | Hawaiian Civic Club of Honolulu | Support | No |

Comments:

SB-2866

Submitted on: 2/6/2018 8:49:35 AM

Testimony for WTL on 2/8/2018 10:15:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Randall Nishimura | | Support | No |

Comments:

I am in support of this measure provided there is a special fund set up for this purpose.

SB-2866

Submitted on: 2/6/2018 9:13:59 AM

Testimony for WTL on 2/8/2018 10:15:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| carissa cabrera | | Support | No |

Comments:

Please pass SB2866 to help promote restoration of depleted natural resources. Anthropogenic extraction of rare and important natural resrouces has far outewighed the restoration and promotion of healthy ecosystems. In order to offset the depletion, funds should be allocated to enhance and protect aquatic habitats. This is an investment as a long-term healthy aquatic ecosystem will support tourism, coastal protection in the face of increasing sea level rise, and mitigate the damage that has already been done.

SB-2866

Submitted on: 2/6/2018 8:51:58 PM

Testimony for WTL on 2/8/2018 10:15:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Erica Scott | Cuddle Party | Support | No |

Comments:

LATE

SB-2866

Submitted on: 2/7/2018 12:56:33 PM

Testimony for WTL on 2/8/2018 10:15:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Margaret Maupin | | Support | No |

Comments:

SB-2866

Submitted on: 2/7/2018 2:21:04 PM

Testimony for WTL on 2/8/2018 10:15:00 AM

LATE

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| pat gegen | | Support | No |

Comments:

SB-2866

Submitted on: 2/7/2018 8:41:04 PM

Testimony for WTL on 2/8/2018 10:15:00 AM

LATE

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Izzy | | Support | No |

Comments: