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GOVERNOR OF HAWAII



**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
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**Testimony of**  
**SUZANNE D. CASE**  
**Chairperson**

**Before the House Committee on**  
**WATER, LAND AND HAWAIIAN AFFAIRS**

**Wednesday, February 6, 2019**  
**9:30 AM**  
**State Capitol, Conference Room 325**

**In consideration of**  
**HOUSE BILL 552**  
**RELATING TO CHAPTER 200, HAWAII REVISED STATUTES**

House Bill 552 proposes to convert certain violations within Chapter 200, Hawaii Revised Statutes (HRS,) from criminal violations to civil violations; to increase penalties for certain violations in Chapter 200, HRS; and to clarify penalties for certain violations in Chapter 20, HRS. **The Department of Land and Natural Resources (Department) supports this measure.**

House Bill 552 would provide the Department with clearer authority to cite under its Civil Resource Violations System (CRVS) fine schedule. The Department's Division of Conservation and Resources Enforcement (DOCARE) officers would issue a CRVS citation with a civil penalty, which could be appealed through the Board of Land and Natural Resources (Board), rather than the courts. Other Department divisions have noticed that when people are cited under CRVS, they are more likely to pay the penalty than challenge it because of the lower fines and lack of possible prison time.

The CRVS fine schedule will need to be finalized and approved by the Board. To address civil violations, DOCARE would need to create (1) a civil citation form and (2) a policy for using the citation forms in the field. At the departmental level, the Department would need to (1) create a policy that clearly states the timeframe for civil penalty payments and (2) retain a debt collection agency to pursue violators who fail to pay fines.

Thank you for the opportunity to testify on this measure.

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

**ROBERT K. MASUDA**  
FIRST DEPUTY

**M. KALEO MANUEL**  
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

**HB-552**

Submitted on: 2/5/2019 9:03:46 AM

Testimony for WLH on 2/6/2019 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Antoinette M Davis	Activities & Attractions Association of Hawaii	Support	No

Comments:

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## **Testimony on HB 552, Relating to Chapter 200, Hawaii Revised Statutes**

Submitted to House Committee on Water and Land  
9:30 AM, February 6, 2019 Hearing in Conference Room 325

I support HB 552 which adjusts and clarifies penalties for violation of DLNR beach and ocean recreation rules. Unfortunately, HB 552 will not provide the resources or willpower which also are necessary for better enforcement of DLNR rules.

To illustrate the problem, I suggest that this committee ask the DLNR to explain:

- why hasn't the DLNR administratively imposed civil fines on the hotel beach concessions which illegally store unrented commercial beach chairs and umbrellas on Waikiki Beach?
- How would HB 552 affect DLNR enforcement of a state contract and rules which prohibit storage of unrented commercial equipment on Waikiki Beach?

### **RELEVANT PROVISIONS OF A 1965 STATE CONTRACT AND STATE RULES**

The SurfRider-Royal Hawaiian Sector Beach Agreement is a 1965 contract between the State and the owners of Waikiki beachfront property from the eastern end of the Moana SurfRider through the western end of the Royal Hawaiian. The Agreement includes exhibits which designate a "Line A" and a "Line B" over the beach. The Agreement provides that the beach mauka of "Line A" is privately owned and not subject to a public easement; the beach between "Line A" and "Line B" is privately owned and subject to a public easement; and any beach makai of "Line B" is publicly owned.

The 1965 Beach Agreement authorizes the Moana SurfRider, Outrigger, and Royal Hawaiian Resorts to install fences and post signs to exclude the public from the "private beach" mauka of "Line A". However, Item 9 of the Agreement and §13-255-6(c), Hawaii Administrative Rules, unambiguously prohibit storage of unrented commercial equipment on the public easement makai of "Line A".

Item 9 of the 1965 SurfRider-Royal Hawaiian Sector Beach Agreement explicitly requires that

***The State will not conduct or permit any commercial activity of any kind on the public beach in the SurfRider-Royal Hawaiian Sector of Waikiki Beach, including ... the***

***area ... subject to public easement.... The Owners [of the beach subject to public easement and abutting property] will not conduct or permit any commercial activity of any kind on the area ... subject to public easement....***

When the DOT was responsible for small boat harbors, the DOT adopted rules to prohibit storage of unrented commercial equipment on the part of Waikiki Beach subject to a public easement under the 1965 Beach Agreement. When responsibility for small boat harbors was transferred to the DLNR, the DLNR adopted the following rules.

*HAWAII ADMINISTRATIVE RULES TITLE 13 SUBTITLE 11 PART III CHAPTER 255 WAIKIKI BEACH*

*§13-255-5 Definitions. As used in this part, unless the context clearly indicates otherwise:*

*“Waikiki Beach” means any and all lands . . . from the . . . Elks Club . . . to . . . Fort DeRussy . . . over which the State of Hawaii . . . acquires an easement for the use of the public as a bathing beach and for passing over and along by foot. . . .*

*§13-255-6 Waikiki Beach uses and activities; restrictions. . . .*

*(c) Storage, parking, and display prohibited. No person shall store, park, moor, place, or display any thing or personal property on or at Waikiki Beach for the purpose of engaging in, conducting, transacting, or soliciting business of any kind; provided that an outrigger canoe or sailing catamaran registered by the department pursuant to Hawaii ocean waters and shores rules may be placed, moored, or anchored below the mean high water mark. . . .*

***§13-255-7 Penalties. Any person who is guilty of violating these rules shall be fined . . . as provided in section 200-14, Hawaii Revised Statutes.***

*§13-255-8 Powers of arrest. Any law enforcement officer or any duly authorized employee, agent, or representative of the department who observes any violation by any person of these rules may forthwith arrest the person without a warrant.*

*§13-255-9 Taking legal custody of property. As incident to a lawful arrest, the arresting authority may take legal custody of any personal property which is the subject of or related to any violation of these rules. The property may be released only upon approval by the court which has jurisdiction of the case.*

*§13-255-10 Attorney general. The attorney general may bring appropriate proceedings to enjoin the continuance of any act or omission in violation of these rules.*

**The following photographs were taken at 8:45 am on Friday January 18, 2019 to document that the Royal Hawaiian and Outrigger Hotel beach concessions are still conspicuously illegally storing unrented commercial beach chairs and umbrellas on a public easement over Waikiki Beach where commercial activity has been explicitly prohibited for more than 50 years by both a state contract and state rules.**













