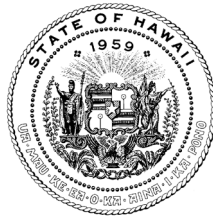


DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Testimony of
SUZANNE D. CASE
Chairperson

Before the Senate Committee on
WATER AND LAND

Friday, February 4, 2022
1:15 PM

State Capitol, Via Videoconference, Conference Room 229

In consideration of
SENATE BILL 3377
RELATING TO COMMERCIAL ACTIVITIES ON BEACHES

Senate Bill 3377 prohibits any person from presetting commercial beach equipment on beaches encumbered with easements in favor of the public. **The Department of Land and Natural Resources (Department) supports this measure and provides comments.**

The Department has worked to address the presetting of beach umbrellas and chairs on Waikiki Beach. The Department's Division of Conservation and Resources Enforcement officers have issued citations to the commercial operators but unfortunately the court dismissed the citations due to the fact that the concessionaire stated the customers had prior reservations and they were merely setting up the equipment in advance of them arriving.

The Department has received numerous complaints about presetting of equipment on Waikiki Beach and have spent substantial time advising the operators that presetting is not allowed; however, the issues have continued to persist due to the lack of a clear definition of presetting. This bill will help the Department address the complaints and provide clarification on the definition.

The Department suggests amending the definition of "preset" to remove the reference to reservations and change it to state that the customer needs to be present in order for the equipment to be placed on the beach. This will show clearly that the customer needs to be on the beach at the time the equipment is being placed. Also, the Department recommends adding language to indicate that this measure only pertains to public beaches and not private lands that might be mistaken for public beaches. There are coastal lands that have sandy "beach" areas

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BOARD OF LAND AND NATURAL RESOURCES
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ROBERT K. MASUDA
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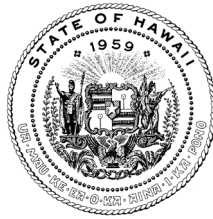
M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

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which are located mauka of the shoreline and privately owned. An example of this would be accreted lands.

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
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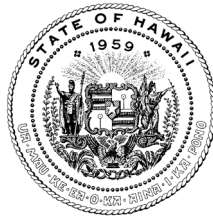
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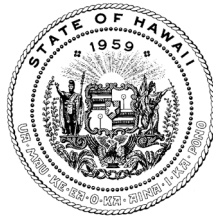
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Thank you for the opportunity to testify on this measure.



Hawai'i Convention Center
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kelepa'i fax 808 973 2253
kahua pa'a web hawaiiitourismauthority.org

David Y. Ige
Governor

John De Fries
President and Chief Executive Officer

Statement of
JOHN DE FRIES

Hawai'i Tourism Authority
before the
COMMITTEE ON WATER AND LAND

February 4, 2022
1:15 p.m.
State Capitol
via videoconference

In consideration of
SENATE BILL NO. 3377
RELATING TO COMMERCIAL ACTIVITIES ON BEACHES

Aloha Chair Inouye, Vice Chair Keith-Agaran, and members of the Committee on Water and Land,

We appreciate the opportunity to provide testimony in **support** of SB3377, which prohibits any person from presetting commercial beach equipment on beaches encumbered with easements in favor of the public.

The Destination Management Action Plans, also known as DMAPs, were developed through significant and meaningful collaboration and direction of Hawai'i's communities. Contained within the six community-driven DMAPs are hundreds of actions and sub-actions identified by kama'āina that have become our commitment to our kama'āina. These actions and sub-actions speak to the need to strike a balance between the visitor industry and our residents.

This measure, which would address the presetting of commercial beach equipment, is one that addresses the balance between our residents' ability to freely utilize our beaches and the visitor industry's desire to provide amenities to their guests. Our beaches are a shared resource and, as such, should be shared in a way that affords residents the opportunity to utilize these resources without having to compete against preset and unutilized beach amenities.

We appreciate the opportunity to offer these comments in **support** of SB3377. Mahalo.

SB-3377

Submitted on: 2/2/2022 7:45:07 AM

Testimony for WTL on 2/4/2022 1:15:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
John Bickel	Individual	Support	No

Comments:

I live in Waikiki and find it unethical that companies kapu a large chunk of the beach by putting up their umbrellas and then rent them essentially renting the public space for their private profit. This bill I hope would end this misuse of public space.

Douglas Meller
2615 Aaliamanu Place
Honolulu, Hawaii 96813
douglasmeller@gmail.com

Testimony Supporting SB 3377, Relating to Commercial Activities on Beaches

Submitted to Senate Committee on Water and Land
1:15 pm, February 4, 2022 State Capitol Room 229 and Videoconference Hearing

REQUESTED AMENDMENTS OF SB 3377

I request that you amend SB 3377 to:

- apply to all beaches managed by the DLNR. (SB 3377 applies to a public easement over the part of Waikiki Beach between the Royal Hawaiian groin and Kuhio Beach Park but does not apply to any other beach under the DLNR’s jurisdiction.)
- apply both prior to and after completion of rental contracts. (SB 3377 prohibits “... the setting up of beach equipment or watercraft by a commercial vendor without a reservation by a customer for immediate use...” but does not require removal of commercial beach equipment or watercraft from beaches after completion of rental contracts.)
- authorize minor exemptions under DLNR rules. (SB 3377 would not allow exemptions for storage of commercial outrigger canoes. This would make it infeasible for beach boys to offer canoe rides to tourists on Waikiki Beach.)
- authorize the DLNR to administratively impose civil fines of "not less than \$50 and not more than \$1,000 for each instance of violation". (Unless SB 3377 authorizes administrative civil fines, enforcement would require criminal prosecution under §200-14(a), Hawaii Revised Statutes. However, criminal prosecution has not worked. According to March 28, 2016, DLNR testimony opposing SCR 53 during the 2016 session,

If money isn’t changing hands, then it is difficult to argue in court that “business” (Hawaii Administrative Rules 13-255-5) is taking place on Waikiki Beach. Both of the Department’s Division of Boating and Ocean Recreation and the Division of Conservation and Resource Enforcement have had difficulty enforcing against pre-setting in court.

LEGISLATION IS NEEDED TO FACILITATE AND ENCOURAGE ENFORCEMENT

Legislation is needed to facilitate and encourage DLNR enforcement of a 1965 State beach widening agreement and State DLNR rules which prohibit commercial activity on a public easement over Waikiki Beach between the Royal Hawaiian groin and Kuhio Beach Park. Item 9 of the 1965 SurfRider-Royal Hawaiian Sector 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....

Although abutting private property owners promised not to allow commercial use of the public easement:

- Kiosks on abutting hotel property are used to intermittently rent hundreds of commercial beach chairs and umbrellas placed/stored every morning on the public beach easement.
- Every night the commercial beach chairs and umbrellas are removed from the public beach easement and stored on abutting hotel property.

The following 8:20 am January 17, 2022 picture shows the scale of routine, daily commercial activity on the public easement makai of the Royal Hawaiian.



Legislation also is needed to facilitate and encourage DLNR enforcement against unauthorized commercial activity on publicly owned beaches under DLNR jurisdiction. In many parts of the

State, hotels (or their concessions) located next to State-owned beaches routinely place/store unrented commercial equipment on a public beach without DLNR authorization. Kiosks on hotel property are used to intermittently rent commercial beach chairs and umbrellas placed/stored every morning on public beaches. Every night the commercial beach equipment is removed from public beaches and stored on abutting hotel property.

The following 11 am October 16, 2021 picture illustrates the scale of routine, daily commercial activity by the Hale Koa beach concession on the public beach makai of Fort DeRussy. The DLNR has not authorized this commercial activity. Like most beaches in Hawaii, this beach is owned by the State and is not a public easement over private property.



VOLUNTARY SELF-REGULATION BY SCOFFLAWS DOES NOT WORK

SR 27, SD 1 (2016) requested the DLNR to “submit a report on its progress regarding the resolution of conflicts under the 1965 SurfRider Royal Hawaiian Sector Beach Agreement, including any proposed legislation, to the Legislature no later than twenty days prior to the convening of the Regular Session of 2017 and Regular Session of 2018...” In December 2016, the DLNR submitted a report to the Legislature titled “Progress on the Resolution of Conflicts Under the 1965 SurfRider-Royal Hawaiian Sector Beach Agreement”. This DLNR report alleged

that Waikiki hotels and their beach concessions had agreed to self-regulate commercial activity on the public easement makai of the hotels. However, unregulated commercial activity resumed within a few months and the DLNR did not report this to the Legislature.

COMPLAINING TO THE BLNR DOES NOT WORK

For you information, and possibly your amusement, the remainder of this testimony consists of my July 28, 2021 email complaint to the BLNR.

from: **Douglas Meller** <douglasmeller@gmail.com>
to: BLNR.testimony@hawaii.gov
cc: "Deborah L. Ward" <dlnr@hawaii.gov>
bcc: Chad Blair <cblair@civilbeat.com>, Sophie Cocke <scocke@staradvertiser.com>, Dolan Eversole <eversole@hawaii.edu>
date: Jul 28, 2021, 11:38 AM
subject: please forward this email to all members of the Board of Land and Natural Resources
mailed- gmail.com
by:

If you oppose unauthorized commercial use of Hawaii's beaches, please ask Suzanne Case to enforce a 1965 State beach widening agreement and State DLNR rules which prohibit placement/storage of unrented commercial beach chairs and umbrellas on a public easement over Waikiki Beach between the Royal Hawaiian groin and Kuhio Beach Park.

It has never been legal to place commercial beach chairs on the Waikiki public beach easement before they are rented. It has never been legal to store commercial beach chairs and umbrellas on the Waikiki public beach easement after completion of a rental contract. Self-regulation by commercial scofflaws does not work. The DLNR has not seriously tried to enforce commercial restrictions over the Waikiki public beach easement since Laura Thielen was the DLNR Director.

In spring 2021 the DLNR substantially widened the beach makai of the Royal Hawaiian, Outrigger Waikiki, and Moana Surfrider hotels. Look what happened next. I took the following pictures between 8 and 8:30 am on 7/21/21.























THE 1965 STATE BEACH WIDENING AGREEMENT

The 1965 SurfRider-Royal Hawaiian Sector Beach Agreement includes exhibits which designate a “Line A” and a “Line B” over the beach between the Royal Hawaiian groin and Kuhio Beach Park. “Line A” is mauka of “Line B”. The 1965 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 for public recreational use; and any beach constructed or accreted makai of “Line B” is publicly owned. All of the previous pictures show the public easement makai of "Line A".

Under the 1965 Agreement, abutting property owners are allowed to install portable fences and signs to exclude the public from private property mauka of “Line A”. As shown in the two following 7/21/21 pictures, the Royal Hawaiian and Moana SurfRider Hotels have installed fences and signs to exclude the public from the beach mauka of “Line A”.





In exchange for allowing hotels to exclude the public from part of Waikiki Beach, Item 9 of the 1965 SurfRider-Royal Hawaiian Sector Agreement explicitly required 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....

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- Every day kiosks on abutting hotel property are used to intermittently rent hundreds of commercial beach chairs and umbrellas placed/stored on the public beach easement.
- Every night the commercial beach chairs and umbrellas are removed from the public beach easement and stored on abutting hotel property.

DLNR RULES TO ENFORCE THE 1965 STATE BEACH WIDENING AGREEMENT

Several DLNR reports to the Legislature acknowledge that the following DLNR rules prohibit placement or storage of unrented commercial beach chairs and umbrellas on the public beach easement makai of the Royal Hawaiian, Outrigger Waikiki, and Moana Surfrider hotels.

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:

“Business” means all activities engaged in or caused to be engaged in by any person or legal entity with the object of making a profit or obtaining an economic benefit either directly or indirectly. . . .

“Waikiki Beach” means any and all lands along the shores of the island of Oahu . . . seaward of line “A” as shown on exhibit “A” and described in exhibit “B”, dated July 13, 1965, and located at the end of this chapter, over which the State of Hawaii now has or hereafter 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. . . .

(b) Business operations, soliciting prohibited. No person shall engage in, conduct, transact, or solicit business of any kind on or at Waikiki Beach.

(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 not more than \$10,000 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.