

DAVID Y. IGE  
GOVERNOR OF HAWAII



**LATE**

**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

**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  
WAYS AND MEANS**

**Thursday, February 21, 2019  
10:00 AM  
State Capitol, Conference Room 211**

**In consideration of  
SENATE BILL 1526, SENATE DRAFT 1  
RELATING TO CONSERVATION ENFORCEMENT**

Senate Bill 1526, Senate Draft 1 proposes to appropriate funds for one DOCARE DLNRTip app administrator position and software upgrades and app enhancements to improve the DLNRTip application. **The Department of Land and Natural Resources (Department) supports this measure, provided that its passage does not replace or adversely impact the priorities identified in the Executive Budget request.**

This request would make an appropriation of funds to upgrade the DOCARE DLNRTip app and establish an app administrator position resulting in enhanced collection and distribution of information for in progress and changing incidents requiring a law enforcement response. The Department believes this will benefit by creating positive interaction with the public and increase opportunities for information gathering.

Thank you for the opportunity to comment on this measure.

**LATE**

**SB-1526-SD-1**

Submitted on: 2/20/2019 1:10:04 AM

Testimony for WAM on 2/21/2019 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melodie Aduja	Testifying for O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:

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

## **Testimony on SB 1526, SD 1, Relating to Conservation Enforcement**

10 am Thursday, February 21, 2019 Hearing in Conference Room 211

Thank you for the opportunity to present my concerns about conservation enforcement. SB 1526, SD 1 proposes appropriations to improve public reporting of violations. Unfortunately, better reporting of violations does not provide the resources or willpower necessary for better enforcement.

**I request that you amend the bill with a proviso which requires the DLNR to submit a report to the next Legislature concerning DLNR enforcement of a state contract and rules which explicitly 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.**













