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GOVERNOR OF HAWAII



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

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**Testimony of  
LAURA H. THIELEN  
Chairperson**

**Before the Senate Committees on  
WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS  
and  
HIGHER EDUCATION**

**Friday, February 6, 2009  
4:00PM**

**State Capitol, Conference Room 229**

**In consideration of  
SENATE BILL 1311  
RELATING TO AQUATIC RESOURCES**

Senate Bill 1311 would amend section 187A-12, Hawaii Revised Statutes (HRS) to allow the University of Hawaii (University) to use Department of Land and Natural Resources (Department) staff in addition to land, buildings, apparatus, and appliances of the Department related to a biological laboratory and for research and investigations. Additionally, the Department would exempt from any permitting, those University and affiliated personnel from any functions and duties associated with the Hawaii Marine Laboratory Refuge as identified in section 188-36, HRS. The Department opposes this bill.

Under the proposed change to section 187A-12, HRS, the University could utilize Department staff, or land, buildings, appliances or apparatus owned by the Department for research as long as it did not interfere with ongoing work of the facility or Department personnel. This presents a difficulty for the Department because it does not have a surplus of personnel. This amendment is unnecessary as the University and the Department have long enjoyed a mutual cooperative relationship that is based on trust and respect for each entity's mission. The Department sees no reason for this to change, and opposes this amendment as it might unduly restrict its own mission. This is especially crucial when the State is currently in the process of trying to find savings to reduce its budget and is experiencing freezing or terminating positions.

The proposed change to section 188-36, HRS to exempt the University personnel from any permitting requirements is viewed as unnecessary as well. A permit allows a privilege conveyed to individuals to perform activity or to take a regulated species not normally available to the general public. This carries a responsibility to uphold very high standards and should be weighed in terms of overall benefit to society, the resources, and the environment. This responsibility is the Department's and should not be conveyed to another entity. To suggest that

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HISTORIC PRESERVATION  
KAIHOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

any one entity should be exempt conveys a sense of disproportionate equality of the law's application. This should not occur.

The Department would point out that a couple of the invasive algae species currently overtaking coral reefs in Kaneohe Bay are the result of inadvertent release of these species from research conducted by the University.

In summary, the Department wishes to continue to work collaboratively with the University but should not be required to share its already limited manpower, and must maintain its fiduciary oversight for the welfare of Hawaii's natural resources.



# UNIVERSITY OF HAWAII SYSTEM

## Legislative Testimony

*LATE*

Testimony Presented Before  
The Senate  
Committee on Water, Land, Agriculture, and Hawaiian Affairs  
and Committee on Higher Education  
On  
Friday, February 6, 2009  
By  
Virginia S. Hinshaw, Chancellor  
And  
Dr. Brian Taylor, Dean  
School of Ocean & Earth Science & Technology  
University of Hawai'i at Mānoa

### **SB 1311 Relating to Aquatic Resources**

Aloha Chairpersons Hee and Tokuda, Vice Chair Sakamoto, and Members of the Committees. I thank you for the opportunity to testify regarding the Hawai'i marine laboratory refuge.

My name is Jo-Ann Leong and I am the Director of the Hawai'i Institute of Marine Biology. I am testifying in support of Senate Bill SB1311 that exempts the University of Hawai'i from any permitting or application requirements when carrying out any function or duty relating to the Hawai'i marine laboratory refuge. The bill calls for amendments to Statutes 187A-12 and 188-36.

#### **Background:**

Moku o Lo'e, more widely known as Coconut Island, is located in southern Kāne'ōhe Bay on the island of O'ahu and is home to the world-renowned research facilities of the Hawai'i Institute of Marine Biology (HIMB), a research institute within the School of Ocean & Earth Science & Technology, University of Hawai'i at Mānoa. The island itself provides a unique living laboratory surrounded by 64 acres of coral reef designated by the State of Hawai'i as a Hawai'i marine laboratory refuge. Approximately 28 acres in size, Moku o Lo'e is also designated as a Conservation District, requiring unique security and grounds maintenance efforts far greater than most organized units on the main campus of University of Hawai'i. HIMB is supported solely by state funds and competitively obtained extramural grant dollars. We support our security personnel and a groundskeeper and janitorial/maintenance personnel on return of indirect costs from grant dollars.

Permit processes related to the reef have become increasingly prohibitive and have begun to adversely impact our ability to conduct important work in the service of the State and the University, particularly when the work is time-sensitive. As an example, HIMB faculty submitted a project to remove the large coral heads that had grown to block our boat channel and use these live corals to restore a nearby reef area that had been dredged during World War II. The sandy bottom on the dredged area had never recovered its coral cover and HIMB sought to mitigate damage from decades ago as part of our ongoing stewardship efforts in Kaneohe Bay.

It took 13 months to get all the permits to carry out this project. We obtained permits from the Army Corp of Engineers and the Division of Aquatic Resources (DAR). We had to gain approval from Fish & Wildlife Service (FWS), Coastal Zone Management, National Marine Fisheries Service (NMFS) and input from the Kaneohe Bay Regional Council, the Harbormaster at Heeia Kea, and the Hawaii Visitors Bureau, to name a few. Despite its obvious value, the original project was denied several times and a management program that met the needs of NMFS, FWS, and DAR biologists had to be developed. We were finally able to move forward with the project after 13 months and three years later after the coral relocation, I am happy to report that all coral survived, fish have returned to that new reef area and we have helped to re-establish a patch reef in Kaneohe Bay. But, the time and effort and persistence that were required for this process were costly and not something we have the resources to do again.

### **Support of the Bill**

The amendment to Statute 187A-12 allows the University of Hawai'i to use staff in addition to "the land, buildings, apparatus, and appliances of the department for the purposes of a biological laboratory and for research and investigation in connection herewith..." The University of Hawai'i is concerned with the management of the Hawaii marine laboratory refuge. Preservation of the reef and its living resources are critically important to the investigations that are on-going at the Hawai'i Institute of Marine Biology, and many of these projects are done at the request of DLNR, and we employ 24-hour security personnel to ensure that poachers do not take these resources. Our security personnel do not have the authority to patrol the refuge and stop anyone from taking live coral, fish, or other invertebrates from the Hawai'i marine laboratory refuge. Nevertheless, we must do this because it has been difficult for the Department of Land and Natural Resources to discharge this responsibility. Our projected cost to maintain security at the site and guard the refuge is \$161,066 annually.

The amendment to Statute 188-36 exempts the University of Hawai'i from any law that requires a permit or application to carry out the functions and duties of the Hawai'i marine laboratory refuge. Since the functions and duties of the Hawai'i marine laboratory refuge requires support from the Hawai'i Institute of Marine Biology, we suggest that the activities of the Institute are included in the exemption. Thus, the last paragraph should have at the end of the section, "and the Hawai'i Institute of Marine Biology." We would like clarification of the meaning of "functions and duties" to include not only research and educational activities, but facility development, repair and maintenance, and land maintenance projects and actions." Thus, the language would read "functions and duties, including facility development, repair and maintenance, and land maintenance projects and actions."

We ask the committee to consider these amendments that clarify the intent of the bill. Thank you for your attention and kind consideration of these proposed amendments. I reiterate my support for the bill.