

MAR 03 2016

SENATE RESOLUTION

URGING IMMEDIATE ENFORCEMENT OF THE PROHIBITION ON COMMERCIAL
ACTIVITY UNDER THE 1965 SURFRIDER-ROYAL HAWAIIAN SECTOR
BEACH AGREEMENT, AN EXPLANATION OF IMPLICATIONS OF A
CERTAIN PRE-SETTING PROPOSAL, AND PREPARATION OF AN
ENVIRONMENTAL ASSESSMENT.

1 WHEREAS, there would be little or no beach east of Fort
2 DeRussy if public funds had not been spent to construct groins
3 and place sand on Waikiki Beach; and
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5 WHEREAS, the old Royal Hawaiian Groin, makai of the western
6 end of the Royal Hawaiian resort, has captured and retains the
7 existing beach makai of the Royal Hawaiian, Outrigger, and Moana
8 Surfrider resorts; and
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10 WHEREAS, the SurfRider-Royal Hawaiian Sector Beach
11 Agreement is a 1965 contract between the State and shoreline
12 property owners that limits the options for replacement of the
13 Royal Hawaiian Groin, establishes private ownership subject to
14 public easement over most of the beach created by the groin, and
15 prohibits commercial activities over most of the beach created
16 by the groin; and
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18 WHEREAS, Item 9 of the 1965 SurfRider-Royal Hawaiian Sector
19 Beach Agreement explicitly prohibits the State from conducting
20 or permitting any commercial activity of any kind on the public
21 beach in the SurfRider-Royal Hawaiian Sector of Waikiki Beach,
22 including the public easement, and prohibits the owners of the
23 private beach from conducting or permitting any commercial
24 activity of any kind within the area of the public easement; and
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26 WHEREAS, businesses that operate from Royal Hawaiian,
27 Outrigger, and Moana Surfrider resort property have been pre-
28 setting and storing commercial beach chairs and umbrellas, at
29 times when this equipment is not rented, on the private beach
30 subject to public easement makai of the three resorts; and
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32 WHEREAS, under section 200-14, Hawaii Revised Statutes, and
33 chapter 255 of title 13, Hawaii Administrative Rules, the



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1 Department of Land and Natural Resources has the authority to
2 impose daily administrative fines on persons who pre-set on the
3 private beach subject to public easement in violation of rules
4 adopted by the Department of Land and Natural Resources; and
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6 WHEREAS, the Department of Land and Natural Resources could
7 request the Attorney General to seek other remedies in court
8 against the owners of the private beach subject to public
9 easement; and
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11 WHEREAS, the Department of Land and Natural Resources
12 organized an ad hoc working group to discuss commercial activity
13 on the beach makai of the Royal Hawaiian, Outrigger, and Moana
14 Surfrider resorts, and the working group included staff from the
15 Department of Land and Natural Resources; Department of the
16 Attorney General; hotel managers and vendors in the areas of the
17 SurfRider-Royal Hawaiian Sector, Outrigger Reef, and Hale Koa
18 hotels, and their vendors; Bob Finley of the Waikiki
19 Neighborhood Board; and Rick Egged, Executive Director of the
20 Waikiki Improvement Association; and
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22 WHEREAS, the Department of Land and Natural Resources'
23 report to the Legislature dated October 2015 on User Conflicts
24 on Public Recreational Lands states that the Executive Director
25 of the Waikiki Improvement Association agreed to lead the hotel
26 group in submitting a pre-setting proposal to the Department of
27 Land and Natural Resources; and
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29 WHEREAS, the Department of Land and Natural Resources'
30 working group has never included any person who has complained
31 about commercial activity on the private beach subject to public
32 easement; and
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34 WHEREAS, the hotels that own the private beach subject to
35 public easement may have a financial incentive to negotiate a
36 supplemental agreement that weakens the prohibition on
37 commercial activity under the 1965 SurfRider-Royal Hawaiian
38 Sector Beach Agreement; and
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40 WHEREAS, no person who complained about commercial activity
41 on the private beach subject to public easement has been



1 consulted concerning the provisions of the proposed supplemental
2 agreement; and
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4 WHEREAS, the Department of Land and Natural Resources has
5 never explained why a supplemental agreement is necessary for
6 enforcement of the prohibition on commercial activity under the
7 1965 SurfRider-Royal Hawaiian Sector Beach Agreement; and
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9 WHEREAS, the Department of Land and Natural Resources has
10 not set any deadline to enforce the prohibition on commercial
11 activity under the 1965 SurfRider-Royal Hawaiian Sector Beach
12 Agreement; and
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14 WHEREAS, in January 2016, the Department of Land and
15 Natural Resources published a draft environmental assessment
16 that proposes public expenditures to improve or replace the
17 Royal Hawaiian Groin; and
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19 WHEREAS, because the Department of Land and Natural
20 Resources hoped to avoid public discussion of the prohibition on
21 commercial activity under the 1965 SurfRider-Royal Hawaiian
22 Sector Beach Agreement, the Draft Environmental Assessment for
23 Royal Hawaiian Groin Improvement Project excluded all mention of
24 the Agreement; and
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26 WHEREAS, the Department of Land and Natural Resources
27 clearly needs legislative guidance and oversight concerning
28 enforcement of the prohibition on commercial activity under the
29 1965 SurfRider-Royal Hawaiian Sector Beach Agreement; now,
30 therefore,
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32 BE IT RESOLVED by the Senate of the Twenty-eighth
33 Legislature of the State of Hawaii, Regular Session of 2016,
34 that this body urges the Department of Land and Natural
35 Resources to immediately enforce the prohibition on commercial
36 activity under the 1965 SurfRider-Royal Hawaiian Sector Beach
37 Agreement; and
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39 BE IT FURTHER RESOLVED that this body urges the Attorney
40 General to encourage and provide any assistance necessary for
41 the Department of Land and Natural Resources to enforce the



1 prohibition on commercial activity under the 1965 SurfRider-
2 Royal Hawaiian Sector Beach Agreement; and.

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4 BE IT FURTHER RESOLVED that this body requests the Attorney
5 General to provide a memorandum, for public disclosure, to
6 explain the legal implications, possible benefits, and possible
7 drawbacks of the hotel group's pre-setting proposal mentioned in
8 the Department of Land and Natural Resources' October 2015
9 report to the Legislature on User Conflicts on Public
10 Recreational Lands; and

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12 BE IT FURTHER RESOLVED that this body requests the
13 Department of Land and Natural Resources to prepare an
14 environmental assessment under chapter 343, Hawaii Revised
15 Statutes, before the Board of Land and Natural Resources
16 considers any specific proposal for a new agreement that
17 supplements or supersedes the 1965 SurfRider-Royal Hawaiian
18 Sector Beach Agreement; and

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20 BE IT FURTHER RESOLVED that this body requests the
21 Department of Land and Natural Resources and the Attorney
22 General to jointly report to the Legislature, no later than
23 twenty days prior to the convening of the Regular Session of
24 2017, concerning the status and effectiveness of state actions
25 to enforce the prohibition on commercial activity under the 1965
26 SurfRider-Royal Hawaiian Sector Beach Agreement; and

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28 BE IT FURTHER RESOLVED that certified copies of this
29 Resolution be transmitted to the Chairperson of the Board of
30 Land and Natural Resources and the Attorney General.

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33 OFFERED BY: 

