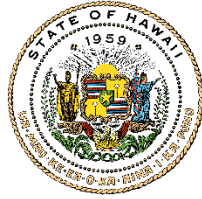


JOSH GREEN, M.D.  
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE  
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
KA 'OIHANA KUMUWAIWAI 'ĀINA

P.O. BOX 621  
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ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Testimony of  
DAWN N. S. CHANG  
Chairperson

Before the Senate Committees on  
JUDICIARY  
and  
WAYS AND MEANS

Friday, March 3, 2023  
10:00 A.M.  
State Capitol, Conference Room 211

In consideration of  
SENATE BILL 67, SENATE DRAFT 1  
RELATING TO COMMERCIAL ACTIVITIES ON BEACHES

Senate Bill 67, Senate Draft 1 proposes to prohibit any person from presetting commercial beach equipment on beaches under the jurisdiction of the Department of Land and Natural Resources (Department) unless the customer is physically present; allows the Department to authorize exemptions through rule; and sets penalties for violations. **The Department supports this measure.**

The Department has worked to address the presetting of beach umbrellas and chairs on beaches. The Department's Division of Conservation and Resources Enforcement officers have issued citations to offenders, but courts have dismissed citations due to concessionaires stating that they were setting up umbrella for customers with prior reservations.

The Department has received numerous complaints about equipment presetting on state beaches and has spent substantial time advising commercial operators what actions are considered violations. However, issues have continued to persist due to the lack of a clear definition of presetting. This measure will help the Department address the complaints and provide clarification on the definition.

Mahalo for the opportunity to testify in support of this measure.



Ke'ena Kuleana Ho'okipa O Hawai'i  
Hawai'i Convention Center  
1801 Kalākaua Avenue, Honolulu, Hawai'i 96815  
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**kahua pa'a** web [hawaii tourismauthority.org](http://hawaii tourismauthority.org)

**Josh Green, M.D.**  
*Governor*

**John De Fries**  
*President and Chief Executive Officer*

Statement of  
**JOHN DE FRIES**  
Hawai'i Tourism Authority  
before the  
**COMMITTEES ON JUDICIARY and WAYS AND MEANS**

March 3, 2023  
10:00 a.m.  
State Capitol Conference Room 211 & Videoconference

In consideration of  
**SENATE BILL NO. 67 SD1**  
**RELATING TO COMMERCIAL ACTIVITIES ON BEACHES**

---

Aloha Chairs Rhoads and Dela Cruz, Vice Chairs Gabbard and Keith-Agaran, and members of the Committees on Judiciary and Ways and Means,

We appreciate the opportunity to provide these comments on SB67 SD1, which prohibits any commercial vendor from presetting commercial beach equipment on any public beach under the jurisdiction of the Department of Land and Natural Resources.

The Hawai'i Tourism Authority's Destination Management Action Plans, also known as DMAPs, were developed in collaboration with Hawai'i's communities. Contained within the six plans are hundreds of actions and sub-actions identified by kama'āina, many of which speak to the need to strike a balance between the visitor industry and our residents.

SB67 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 that 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.

In supporting the intent of this measure, we would also like to recognize those businesses in the visitor industry who comply with existing regulations in the spirit of preserving public access to our beaches.

We appreciate the opportunity to offer these comments on SB67 SD1. Mahalo.

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

**TESTIMONY SUPPORTING SB 67 SD1 RELATING TO COMMERCIAL ACTIVITIES ON BEACHES**

Submitted to Senate Committee on Judiciary  
Senate Committee on Ways and Means  
10 am Friday, March 3, 2023, State Capitol Room 211 & Videoconference Hearing

**SUGGESTED AMENDMENT OF SB 67 SD1**

Parts of Waikiki Beach are privately owned. The DLNR has jurisdiction for a public easement over a publicly-constructed privately-owned part of Waikiki Beach between the Royal Hawaiian groin and the City’s Kuhio Beach Park. To ensure that SB 67 applies to the public easement over Waikiki Beach under DLNR jurisdiction, I suggest amending §200- (c) to read as follows:

*(c) This section shall apply to beaches under the jurisdiction of the department including private beaches in which the state has an easement or other property interest. This section shall not apply to private beaches in which the state has no property interest.*

**SB 67 SD1 IS NEEDED TO FACILITATE AND ENCOURAGE ENFORCEMENT**

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

- Every morning commercial beach chairs and umbrellas are moved from abutting hotel property and placed on the public beach easement.
- Most of the commercial equipment stored on the public beach easement can be rented from kiosks on hotel property. Some of the commercial equipment stored on the public

beach easement may be reserved for hotel guests who have paid a “resort fee” for use of various hotel amenities.

- 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 placement of commercial beach chairs and umbrellas on the public easement makai of the Royal Hawaiian.



SB 67 SD1 authorizes administrative civil fines because criminal prosecution under §200-14(a), Hawaii Revised Statutes 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.*



And according to March 15, 2022, DLNR testimony supporting SB 3377, SD1,

*The Department’s Division of Conservation and Resources Enforcement officers have issued [criminal] 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.*

Legislation also is needed to facilitate and encourage 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 commercial equipment on the beach without DLNR authorization. Most of the commercial equipment stored on public beaches can be rented from kiosks on hotel property.

The following 11 am October 16, 2021 picture illustrates the scale of routine, daily commercial activity by the Hale Koa Hotel beach concession on the public beach makai of Fort DeRussy. The DLNR has not authorized this commercial activity. Like most beaches in Hawaii, Ft. DeRussy Beach is State-owned “public lands” 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, following two years of consultation and negotiation with Waikiki hotels and their concessions, 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.

In spring 2021 the DLNR substantially widened the beach makai of the Royal Hawaiian, Outrigger Waikiki, and Moana Surfrider hotels. I took the following pictures between 8 and 8:30 am on 7/21/21 to document that self-regulation of commercial activity does not work.

































### **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....*

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

- 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

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. . . .*

*§13-255-8 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.*

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

**SB-67-SD-1**

Submitted on: 3/1/2023 3:58:43 PM

Testimony for JDC on 3/3/2023 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Brandy Morris	Individual	Support	Written Testimony Only

Comments:

In support of SB67. Thank yo.

**SB-67-SD-1**

Submitted on: 3/2/2023 3:23:28 PM

Testimony for JDC on 3/3/2023 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Tyler Ralston	Individual	Support	Written Testimony Only

Comments:

Dear Chairs Rhoads and Dela Cruz, and Vice Chairs Gabbard and Keith-Agaran, and Committee Members,

I strongly support SB67 and ask that you please support this bill. For a variety of reasons, it is in appropriate and unwelcomed for commercial businesses to preset chairs, tables, umbrellas, and equipment on Hawai'i's beaches.

Please vote to support SB67.

Sincerely,

Tyler Ralston