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HB 984 RELATING TO OCEAN LEASING

House Committee on Agriculture
House Committee on Economic Development and Business Concerns
House Committee on Ocean Recreation and Marine Resources

Joint Public Hearing - February 17, 1999
8:30 a.m., Room 325, State Capitol

by

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Charles Helsley, Sea Grant
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HB 984 amends Chapters 171 and 190D, HRS, to specify that legislative concurrence is not required for leases issued under Chapter 190D and to make substantive changes to terms and conditions of lease procedures provided under Chapter 190D.

Our statement on this measure does not constitute an institutional position of the University of Hawaii.

Required approvals of the Executive and the Legislative branches of government prior to lease of submerged lands as provided in Section 171-53 reflects the recognition by the Legislature of the fact that these are Public Trust resources. Thus, their care and management are entrusted to the government to ensure that the public interest in them is not subdivided and apportioned to one or more persons or groups of people without full governmental deliberation and concurrence.

We have serious concerns regarding the proposed extinguishing of the requirement for legislative concurrence for mariculture leases. Challenges to any exclusive use of a public trust resource are inevitable, and the best defense against them is the concurrence, not only of the

Executive, but of the Legislative branch as well. The process for obtaining concurrent resolutions for submerged land leases is well established and has been variously implemented. A lease application need not be fully executed at the time that legislative concurrence is sought, and once conveyed, such concurrence conveys the imprimatur of the representative body politic, which then renders the approved lease more difficult to contest. Thus, it is entirely to the applicant's benefit to complete the procedures as provided under Chapter 171-53 in its present form.

With regard to proposed amendments to Chapter 190D, this law has been on the books for over 10 years and remains unused due to the formidable difficulties that are incurred by a person or group trying to implement it. In deleting all references to submerged lands and the Conservation District Use Permit (CDUP), the measure attempts to replace the existing CDUP with a new permitting process. However, it fails to remedy the confusing procedures for leasing marine waters, partly because the substituted procedures are almost as confusing as those they are replacing. In addition, language on page 7, lines 9-10 creates a conflict in law, in that through reference to Chapter 183C, the very CDUP process that the measure is attempting to supplant is invoked. What is needed is a complete revision of Chapter 190D to make the procedures and criteria more clear. In addition, if the criteria for decision-making on leasing could contain language that prohibits leasing that violates public trust and trust to Native Hawaiians and sets up a hierarchy of uses, then we probably could forego the provision for legislative concurrence.

Ultimately, we strongly support the intent of promoting a viable system of ocean leasing. Such a system will enable an industry to develop here that we now, to all intents and purposes, forbid. If we cannot provide a means of allowing this form of usage of marine resources for the growing of indigenous fish in a cage at sea, then Hawaii will have turned away another \$100,000,000 per year business opportunity.