

TESTIMONY
SB68

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
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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

Testimony of
LAURA H. THIELEN
Chairperson

Before the Senate Committees on
WATER, LAND, AGRICULTURE AND HAWAIIAN AFFAIRS
and
ECONOMIC DEVELOPMENT AND TECHNOLOGY

Wednesday, February 18, 2009
2:45 PM
State Capitol, Conference Room 229

In consideration of
SENATE BILL 68
RELATING TO COMMERCIAL ACTIVITIES ON OCEAN WATERS

Senate Bill 68 proposes to allow the Department of Land and Natural Resources (Department) the ability to regulate commercial enterprises that operate out of private marinas and utilize state waters or marine resources. The Department does not support this measure.

The Department currently issues commercial use permits for the State small boat harbors, launch ramps, and related facilities as well as requiring all equipment used for commercial purposes on State waters to be registered with the Department. Requiring the Department to regulate commercial activities originating on private or public property will be very burdensome and difficult to enforce.

The Department has established ten Ocean Recreation Management Areas (ORMA) around the State for the purpose of reducing user conflicts both recreationally and commercially. This allows the Department to regulate various activities on a case-by-case basis and allows the Department the ability to amend ORMA's by administrative rules.

Section 200-4 (5), Hawaii Revised Statutes, states, "To regulate and control recreational and commercial use of small boat harbors, launching ramps, and other boating facilities owned or controlled by the State and the ocean waters and navigable streams of the State;" The statute already authorizes the Department to regulate commercial activities taking place in State waters making additional revisions to the existing statute unnecessary.

COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS

Senator Clayton Hee, Chair
Senator Jill N. Tokuda, Vice Chair

COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY

Senator Carol Fukunaga, Chair
Senator Rosalyn H. Baker, Vice Chair

February 15, 2009

RE: **SB68** scheduled to be heard by WTL on Monday, 2/18/09 at 2:45 pm
in conference room 229.

My name is Brian F. Funai and I am testifying in support of SB68.

With increased development of our coastal communities and promotion of a long range projected increase in ocean related activities proposed by our Department of Land and Natural Resources, I am concerned that this will become a burden on our ocean resources. I would like to see that the Department be given the authority to regulate all commercial activities in a fair and equal manner for better protection of our ocean environment.

As a fisherman, I have seen the negative effects on the resource that other land based and shoreline activities have had in many areas, including Kaneohe Bay and Hawaii Kai (Maunalua Bay). It is very clear that the increased ocean traffic and activity expected with new developments on the Leeward coastline will simply mean further negative impacts on our near shore marine environment. I hope that we all can see this coming and are able to do something about it before it is too late.

Thank you for your time and allowing me to testify.

Brian F. Funai
Kaneohe, HI 96744

THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009

COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS

Senator Clayton Hee, Chair
Senator Jill N. Tokuda, Vice Chair

COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY

Senator Carol Fukunaga, Chair
Senator Rosalyn H. Baker, Vice Chair

NOTICE OF HEARING

DATE: Wednesday, February 18, 2009
TIME: 2:45 p.m.
PLACE: Conference Room 229
State Capitol
415 South Beretania Street

STRONG SUPPORT OF S.B. 68 RELATING TO COMMERCIAL ACTIVITIES ON OCEAN WATERS.

Chairs Hee and Fukunaga, Vice-chairs Tokuda and Baker, and Honorable Members of the Committee on Water, Land, Agriculture, and Hawaiian Affairs and, Committee on Economic Development and Technology I am Roy Morioka, a retiree and resident of Waialae-iki, Oahu and thank you for allowing me this opportunity to voice my **strong support of S.B. 68** as it provides the department of land and natural resources (DLNR) the ability to regulate commercial enterprises that operate out of private marinas and utilize state waters or marine resources. This bill is similar to S.B. 2196 SD2, HD1 of the 24th Legislature and tabled bill S.B.90 of this legislative session.

As stated in my earlier testimony on those past bills, my particular concern arises from ocean-based commercial activities originating from the KoOlina Marina, the soon to be opened Haseko Hoakalei Marina with its proposed 1,400 slips, six launching ramps, and associated marina facilities, plus the new Disney Resort at KoOlina that will surely create a tremendous increase in such activities along Oahu's southwest coastline. If such activities continue to remain unregulated, the increase in near shore activities by boat based and ocean related commercial activities will cause severe adverse and irreparable degradation of the coastal ecosystem affecting our precious marine resources including the valuable near shore pelagic fisheries species such as the opelu and akule.

I have observed and experienced the impacts of such activities on Maunalua Bay, Oahu. There are no longer large schooling aggregations of akule and the opelu schools and the fish species that inhabit the reef have changed dramatically in these waters due to the tremendous land-based developments over the ridges along the bay since the late 1950's, the hardening of streams and rivers, the loss of Kuapa Pond and its estuarine habitat to the Hawaii-Kai development, the increased para-sailing, dive-tour, jet-skiing and other commercial ocean recreational activities in the bay. Already I have heard that the unregulated dolphin and whale watching cruises that traverse the southwest coastline at high speeds from KoOlina are disrupting the schooling aggregations of akule thus adversely impacting their behavior, habitat and ecosystem. This experience and concern is further confirmed by a Hawaii Pacific University course that introduces students to the unintended adverse impacts to the coral reef ecosystem caused by non-extractive recreational activities in Kaneohe Bay.

Your passage of this legislation will provide the DLNR the legal authority it needs to effectively and equitably manage all commercial activities in state waters or use its marine resources (NOTE: commercial fishermen are already regulated by the DLNR) to better protect the near shore marine ecosystem through comprehensive regulation from both public and private marinas. I thank you again for this opportunity to testify in strong support and humbly seek your support and passage of this measure.

Respectfully Submitted,
Roy N. Morioka

SB 68 amended testimony

Noa Napoleon [freeoceanaxs@yahoo.com]

Sent: Monday, February 16, 2009 9:20 PM

To: WTLTestimony

Cc: Sen. Jill Tokuda; Sen. Carol Fukunaga

Noa Napoleon
1750 Kalakaua Ave #103
Hon, HI 96815

Testimony in Support of SB 68

Re: Commercial Activities on Ocean Waters

Hearing Date: Feb 18, 2009
Time: 2:45 pm
Room 229

Senate Committees

Senate Committee's on Water, Land, Agriculture, and Hawaiian affairs/ Economic Development and taxation.

Aloha Chair's Hee, Fukunaga, committee members,

As you know the DLNR proposed Recreational Renaissance Project (SB 949 and HB 1766), deals primarily with Harbor leases and upgrades while avoiding having to address the longstanding need for better over all management, which is a underlying issue as far as I'm concerned. What's needed and whats always been lacking, is more efficient resource protection, not infusions of cash sad to say. I have become especially concerned with the portions of this bill that deal with regulation of commercial activities on our public beaches, and do strongly support any effort to ensure that commercial obstructions such as the storage of commercial rental equipment on Waikiki beach and other beaches, are carefully scrutinized and properly regulated, which is why would prefer to see this bill pass in the place of what just might be badly timed harbor ungrade project. No matter what happens the Boating division is going to need to prepared to hire new staff, in addition to having to set out rules and make them make sence to everyone, DLNR in particular. Most if not all of Hawaii's public beaches are being inundated with roving commercial businesses that are not adequately regulated by the state.

Furthermore I doubt that the Boating Administrators have the professional wherewithal to manage all that the new harbor upgrades will demand in terms of the mandate that the Renaissance legislation should bring. I have reason to believe that the promises DLNR has made to the public about protecting public beaches, are shallow promises at best. Loop holes in the rules are the result of years of neglect and what are called ... "past practices" theories on who and what gets regulated while not necessarily why. The result of this confusion is increasing tension between commercial users and those of the general public. I would just suggest that this bill SB 68 be amended slightly to add that DOBOR (division of Boating and Ocean Recreation) create an additional position within its division called "ORMA Officer of Licensing and Permitting." By creating this position within DOBOR it would free boating officials to focus on boating and harbor issues without distraction, in addition to allowing for more direct control of beach related commercialism. I am not against commercialism of this nature but do believe that a better regulatory system would ensure that the division does its part to protect against harmful social and environmental effects that commercialism potentially could cause. Finally, in light of the Ceded lands debate, I do feel lawmakers should be aware of the difficulties in devising a permitting system that does not jeopardize or negate in any way the ceded land issue. All DLNR Commercial lease must be short term and must not be construed as negations or justifications for any state claims on submerged lands. DOBOR staff has submitted a rule write process currently under review by the Attorney General which could go against the Sprite of the legislation I've seen moving through the legislature again this year. Legislators should therefore request to review this rule write before they pass SB 68, that way you might tailor this legislation to correct and or solve any problems the Renaissance package proposes to achieve at a lesser cost to taxpayers, as well as doing it in such a way that preserves the character of small boat harbors. Mahalo,

Noa Napoleon



February 17, 2009

Aloha Chairperson,

My name is Russell "RD" Doane; I am the Marina Manager for Ko Olina Resort & Marina. I represent nine commercial operations operating out of Ko Olina Marina and an additional 300 private boat owners. We do not feel that this bill is necessary as we already have policies in force through our license agreements that require each commercial operation and private owners to adhere to.

This bill would put a greater additional strain on our commercial operators in an already tough economy. We should concentrate on ways to help our small business owners stay afloat. We at Ko Olina Marina have not increased the amount of commercial operations since 2005.

We respectfully oppose to, SB68 and hope that this committee votes against any further advancement of this bill.

Mahalo,

Russell "RD" Doane
Marina Manager
Ko Olina Resort & Marina
92-100 Waipahe Pl.
Kapolei, HI 96707
679-1050

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 17, 2009 11:34 AM
To: WTLTestimony
Cc: ailaw001@hawaii.rr.com
Subject: Testimony for SB68 on 2/18/2009 2:45:00 PM
Attachments: Sb 68.doc

Testimony for WTL/EDT 2/18/2009 2:45:00 PM SB68

Conference room: 229
Testifier position: support
Testifier will be present: No
Submitted by: William J. Aila Jr. & Melva Aila
Organization: Individual
Address: 86-630 Lualualei Homestead Road Waianae, Hawaii
Phone: 696-9921
E-mail: ailaw001@hawaii.rr.com
Submitted on: 2/17/2009

Comments:
mahalo for hearing sb 68.

Sen. Carol Fukunaga, Chair, Committee on Economic Development and Technology

Sen. Clayton Hee, Chair, Committee on Water, Land, Agriculture, and Hawaiian Affairs

February 18, 2009, 2:45 p.m., Conference Room 229.

Testimony in strong support of SB 68.

Aloha Chairs, Sen. Hee and Sen. Fukunaga, and members of both committees.

I am an employee of DLNR but the testimony that follows is that of my own based upon my many years of observations of the changes in the usages patterns by ocean users in the near shore waters of the State.

SB 68 closely resembles a similar bill that was passed by this legislature last session and unfortunately vetoed by the Governor. Unfortunately, the Governor misunderstood the bill to pertain to the Wai'anae Coast, and believed that recommendations arising from the Wai'anae Ecological Baseline study would solve the problems. It will not. This bill, SB 68 will because it makes it very clear that DLNR has been given the authority to manage all commercial activities occurring in State Waters

Commercial operators from Private Marinas are not required to have a commercial permit to use State Waters for personal gain. Commercial operators who ingress and egress from State facilities, must have commercial permit to operate in State Waters and in that permit has conditions by which the State can manage our resources. This inconsistency has limited DLNR's ability to manage user conflicts and resource conflicts in the State's Waters.

The Marina in Ewa Beach, that is being developed by Haseko will increase the amount of commercial activity offshore of the Wai'anae Coast and is sure to spark additional user conflicts and resource conflicts. In time other Private Marinas will be developed on the neighbor islands

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Page two

It is important to clarify in existing Statutes that DLNR has a responsibility, as well as, the jurisdiction to implement permit requirements and thus management conditions on commercial vessels entering State Waters from private harbor facilities. SB 68 makes it clear that commercial activities occurring within the private harbor facilities are not impacted.

DLNR should not object to SB 68 on the basis that it does not want to accept the additional responsibility of managing more commercial permits, rather it should embrace the responsibility that it has been given by statute to manage our Public Trust resources.

DLNR has stated that it is in the process of adopting Administrative Rules to accomplish better management. This bill could be amended to sunset upon the approval of those Administrative Rules, if it would make it more palatable to DLNR.

This bill provides clarity to the existing Statute and in addition makes, all commercial users of State Waters accountable to the Public Trust through equitable management by DLNR. Please pass SB 68, it will assist DLNR with management.

Mahalo for the opportunity to testify in support of SB 68.

William J. Aila Jr.
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808.330.0376.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 17, 2009 12:13 PM
To: WTLTestimony
Cc: gillpaulc@yahoo.com
Subject: Testimony for SB68 on 2/18/2009 2:45:00 PM

Testimony for WTL/EDT 2/18/2009 2:45:00 PM SB68

Conference room: 229
Testifier position: oppose
Testifier will be present: Yes
Submitted by: Paul Gill
Organization: Individual
Address:
Phone:
E-mail: gillpaulc@yahoo.com
Submitted on: 2/17/2009

Comments:

SB68 is not necessary to regulate commercial activities that operate from Ko'olina Harbor, because the existing HRS 200-4 already has provisions for "The licensing and registration of persons or organizations engaged in commercial activities in or on the ocean waters and navigable streams of the State"
HRS.200-4 (7) (C)

The DLNR already has the authority to licence and register commercial operators that use State waters.

TESTIMONY
SB68
(END)