

SB

90

EDT/WTL

LATE

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

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

February 11, 2009, 1:15 p.m., Conference Room 016.

Testimony in strong support of SB 90.

Aloha Chairs, Sen. Fukunaga and Sen. Hee, 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 90 closely resembles a similar bill that was passed by this legislature last session and unfortunately vetoed by the Governor.

Commercial operators from Ko'olina 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. 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. 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 90 makes it clear that commercial activities occurring with in the private harbor facilities are not impacted.

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.

Mahalo for the opportunity to testify in support of SB 90.

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Senator Clayton Hee, Chair, Committee on Water, Land, Agriculture, and Hawaiian Affairs, and
Senator Carol Fukunaga, Chair, Committee on Economic Development and Technology

Wednesday, February 11, 2009
1:15 p.m., Conference Room 016

Testimony in **Support** of SB 90

Aloha Chairs Hee and Fukunaga and members of the committees:

My name is Cynthia K.L. Rezentes and I am a concerned resident of the Wai`anae Coast. I **support** SB 90 extending the authority of the Department of Land and Natural Resources (DLNR) to require any commercial activity initiated out of any marina, whether governmental or private, that is currently not already governed by any other authority, to be managed by permit by the Department.

It is the responsibility of the DLNR to manage all of our natural resources under State control and it is imperative that our ocean resources be managed accordingly.

Along the Leeward Coast of O`ahu there is currently occurring a tremendous pressure on our natural resources by the visitor industry to take advantage of the opportunities to present unique experiences to our visitors. Unfortunately, if allowed to continue uncontrolled by the State, there could be the unfortunate consequences of continued deterioration of our local fishing industry.

As reported by our local fishermen, without some management of the numbers and actions of visitor industry businesses, the affects on the local fishing economy will cause a continuing deterioration and decrease of traditional and historical resources in our near-shore waters.

The current number of commercial businesses attempting to access specific areas of resources along the Leeward Coast, has continued to increase over the years. And, with the advent of the opening of Ocean Pointe Marina with over 700 slips, the numbers of boats wishing to access the Leeward Coast, what has been traditionally referred to as the fishing bread basket of O`ahu, will be at even higher risk from uncontrolled commercial activities.

This could be viewed as tantamount to an abdication of responsibility to management of the ocean resources by the State.

Therefore, I encourage you to support the passage of SB 90, which is intended to provide DLNR with the authority to manage our ocean resources from commercial activities, no matter where that activity is initiated.



COMMUNITY ASSOCIATION

LATE

February 11, 2009

The Senate
Twenty-Fifth Legislature, 2009
State of Hawaii

RE: S.B. No. 90
A Bill For An Act

Report Title: Ocean Resources; Commercial Activities; DLNR

The Hawaii Kai Marina Community Association ("HKMCA") strongly opposes S.B.NO.90 as authored. We are a home owners association of over 3,000 residents who manage, fund, maintain and regulate, all operations within the Hawaii Kai Marina, also formerly known as Kuapa Pond. All present commercial operators home based within the Marina are required to secure any and all DLNR permits and ORMA certificates prior to being allowed to use the Marina for ingress and egress to their respective DLNR permitted areas in State of Hawaii waters. Further, the HKMCA requires insurance compliance that far exceeds State requirements. Our position is that we do not need the State of Hawaii, DLNR, DOBAR and other State agencies, extending management upon this federally declared privately owned Marina

It appears the concerns raised and reasons for the consideration of S.B. NO.90 may be well founded, the language and overall ambiguity of the bill, as currently being considered, certainly are not in the best interest for the members of the HKMCA. Thank you for considering our opposition to S.B.NO.90.

Respectively Submitted,

Steve Carr by Beverly L. Koller - Marina, Mgr.

Hawaii Kai Marina Community Association, by:
Steve Carr, HKMCA President



February 11, 2009

**Senate Committee on Economic Development and Technology
and Committee on Water, Land, Agriculture, and Hawaiian Affairs
Hearing Date: February 11, 2009, at 1:15 PM in CR 016**

**Testimony in Opposition to SB 90
Relating to Commercial Activities on Ocean Waters.
(Adds DLNR regulation of private boating facilities and marinas)**

Honorable Chairs Carol Fukunaga and Clayton Hee, Vice-Chairs Rosalyn Baker and Jill Tokuda and EDT-WTL Members:

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF respectfully **opposes SB 90**, which expands the regulation by the department of land and natural resources (DLNR) over commercially permitted use of government and private boating facilities and commercial activities in private marinas.

SB 90. The purpose of this bill is to authorize the department of land and natural resources to regulate commercial enterprises that operate out of private marinas. However, the bill indicates that it is not the intent of this bill to provide for additional regulation of existing regulated commercial enterprises, but to address currently unregulated activities only.

SB 90 proposes to amend HRS §200-3 by adding additional responsibility to the Board of Land and Natural Resources for:

(5) Regulating the [~~commercial~~] commercially permitted use of both governmental and private boating facilities; provided that no new permit shall be required for, and no new regulation shall apply to, activities permitted or regulated under any other chapter;

SB 90 also amends HRS §200-4, which would allow the chairperson of the Board of Land and Natural Resources to adopt rules necessary, among other rules already statutorily required, to do the following:

(9) To regulate commercial activities in private marinas; provided that no new permit shall be required for those commercial activities in private marinas regulated by any other chapter. For the purpose of this paragraph, "commercial activity" shall have the same meaning as in section 188-40.6."

HRS §188-40.6 defines commercial activity as "to engage in any action or to attempt to engage in any action for compensation in any form. The action or actions may include, but are not limited to, providing, or attempting to provide, guide services, charters, tours, and transportation to and from the location or locations for which such services are provided."

LURF's Position. LURF is writing in opposition to this bill because it not only requires more regulation upon private landowners, but also burdens a heavily tasked Department of Land and Natural Resources with duties that it would have difficulty enforcing, due to budget constraints and resource availability.

Moreover, the language of the bill presents an overbroad and vague regulation over those who operate and own private marinas. This bill increases the reach of DLNR's regulatory power over government and private marinas, taking away power from private landowners. The broad definition of commercial activity would include all type of guided tours, chartered boats, tours and all transportation to and from the location or locations where the service is provided. This bill is overbroad and vague as to what DLNR would be able to regulate.

Although the bill indicates that this is not an attempt to provide for additional regulation of existing regulated commercial enterprises, the effect would be just that, meaning increased regulation upon businesses and private individuals who are trying to make a living or providing unique water-related activities to our visiting tourists. Additionally, local citizens who operate small vessels for fishing operations or boat tours cannot afford more regulations, since business is already in a downturn.

Based on the above, we respectfully request that SB 90 **be held** in the Senate Committees on Economic Development and Technology and Water, Land, Agriculture and Hawaiian Affairs.

Thank you for the opportunity to express our **opposition** to SB 90.