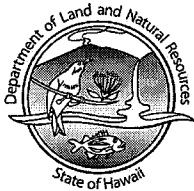


**SB 68**

LINDA LINGLE  
GOVERNOR OF HAWAII



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

**LAURA H. THIELEN**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**RUSSELL Y. TSUJI**  
FIRST DEPUTY

**KEN C. KAWAHARA**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
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 Committee on**  
**WAYS AND MEANS**

**Friday, February 27, 2009**  
**9:00 AM**  
**State Capitol, Conference Room 211**

**In consideration of**  
**SENATE BILL 68, SENATE DRAFT 1**  
**RELATING TO COMMERCIAL ACTIVITIES ON OCEAN WATERS**

Senate Bill 68, Senate Draft 1 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 feels that this bill is not necessary as the Department can already regulate the commercial activity taking place in state waters that originate from private marinas. The Department however opposes having to regulate commercial activities taking place within a private marina.

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 redundant because the Department currently has the ability to regulate commercial activities on state waters and is in the process of amending Chapter 13, Hawaii Administrative Rules, to address the increasing commercial use occurring in the ocean waters and navigable streams of the State.

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.

The Department feels that it will not be able to withstand a legal challenge should it attempt to impose regulations upon a private facility. Having the ability to regulate commercial activities on state waters is sufficient to address the increasing commercial demand for commercial vessel activities and regulations to address these activities can be imposed through Hawaii Administrative Rules.

Senator Donna Mercado Kim, Chair, Committee on Ways and Means

Friday, February 27, 2009  
9:00 a.m., Conference Room 211

Testimony in **Support** of SB 68 SD1

Aloha Chair Kim 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 68 SD1 extending and reinforcing the regulatory authority of the Department of Land and Natural Resources (DLNR) to any commercial use of state waters and marine resources, including those operations that originate from private marinas, and that is currently not already governed under any other chapter of the Hawaii Revised Statutes.

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.

Residents and fishermen along the Wai`anae Coast have been waiting since Act 6 (SS 2005) was passed to have an Environmental Baseline Study done and reported on the Leeward Coast from Kalaeloa Point to Kaena Point. This report was to have been sent back to the Legislature 20 days prior to the start of the 2007 Legislative Session. We are still awaiting the results of that study which is now being reviewed by the Governor's office.

The results of this study was to have helped with the discussion as to whether or not to implement an ORMA along the Leeward Coast or to implement some other manner of controlling the commercial and other activities along the coast.

In the meantime, DLNR should still manage the ocean resources from commercial activities and this bill reinforces that responsibility and authority.

I respectfully request that you **support** the passage of this bill.

## kim2 - Arline

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**From:** Noa Napoleon [freeoceanaxs@yahoo.com]  
**Sent:** Wednesday, February 25, 2009 7:37 PM  
**To:** WAM Testimony  
**Subject:** SB 68

From: **Noa Napoleon**  
Date: Feb 25, 2009  
(808) 258-4518

FEB 27, 2009  
Time: 9 am  
Rm 211

Testimony in **support** of SB 68

Relating to:  
Commercial Activities on Ocean Waters

Dear Senators

As you know SB 949 and HB 1766 are parts of the same legislation crafted by DLNR and the Governor. The Ala Wai harbor community believes there is a better way to address harbor upgrades however. SB 68 extending additional regulatory function to DLNR is the sensible direction for DOBOR in addition to it being a money generating alternative to Governors renaissance proposal.

Concerning the portion of the plan that deals with submerged lands and certain parcels on DLNR lands. Apparently DLNR administrators need authorization from the legislature to lease out portions of the states small boat harbor's currently restricted to commercial vessels. Lifting the commercial restriction and insulating DLNR administrators from public scrutiny could have grave consequence on the unique situation with recreational harbors.

The fact is there are clear alternatives to the plan the Governor and DLNR officials have offered. SB 1315 sending DOCARE to Department of Public Safety, I believe, compliments SB 68 because it offers a way to free up additional cash for harbor maintenance while allowing small harbor's to remain recreational or commercial free harbors. This alternative solution also prevents the sort of work overload that the Renaissance mandate would likely create for the Boating division which is understaffed as it is. In addition, the ceded lands moratorium may just make this effort moot if it is determined that submerged Lands are also considered ceded lands protected by the moratorium.

While the Renaissance proposal finds cash for "harbor upgrades" it still falls way short of correct longstanding management defects such as the sort cited in the several Marion Higa audits regarding DOBOR and DOCARE. The public is asking for our harbors to be maintained in a way that protects their character, that means keeping the harbors recreational, no long term commercial leases, no staffing issues, no privatization, no excuses etc.

Why this legislation and what about the redundancy argument?

1.) The public has a vested interest and right to ask DLNR to promulgate uniform rules that resolve, reaffirm, and or strengthen the public interest in the Waters running Mauka to Makai.

2.) Rule making is warranted in this case because the process is designed to resolve questions of jurisdiction and rules especially where there are safety concerns and or where the state would be liable for injury / lawsuits. The current rules (which DLNR officials admit need revamping) do not regulate commercialism in areas now in question. This bill offers a way to fix two problems

The reason we need the Ocean Waters bill is to better define DLNR responsibility, and to guide the division in a process that limits commercialism in areas in favor of the public. This bill raises the issue of caps and commits to regulating water commercialism in general.

I suggest that SB 68 if amended would in addition to its already stated intent, also intend to....

1.) **close all loopholes**

2.) **add and clarify additional responsibility as well as generate funds for the state.**

3.) **finalize the rule's now under review in the AG's office.**

In terms of the Redundancy argument, I agree with opponents that bills requiring commercial permitting over an area "already regulated" would be redundant.

In this case we are asking (requiring) DLNR to regulate areas they have said they are unsure about. Its not redundant to attempt to cap or limit commercialism where DLNR has admitted there is increasing user conflict and where vagueness in the rules are contributing to the problem. What is redundant, and perhaps illegal, is the rule write currently under review by the AG regarding the whole problem of indiscriminately issued ORMA decals and Blue Cards. We are being told for example that DLNR is rewriting ORMA Rules to specify enforcement and or permitting requirements in areas previously overlooked by boating officials. These include but are not limited to so-called roving industries, the use of private water ways, and the issue of permitting charter Catamarans at the Ala Wai Harbor. Regulating this activity would involve the prudent use of ORMA decals so that by simply limiting the amount of decals DOBOR issues for a given area that would go a long way to resolving rules and or questions about jurisdiction. So why haven't DOBOR officials explained to legislators how they are using this rule write process to achieve these objectives since they feel SB 68 is so redundant? Are they really looking to regulate Ocean Waters or are they conceding the fight based on faulty assumptions about not needing to regulate certain kinds of companies, sort of like how DOT refused to require EIS for the Super ferry based on an assumption about EIS requirement. By stalling the rule write process (2 years in the hopper) the Governor is moving the ground beneath our feet, this while using the financial crisis to push the Renaissance proposal which proposes to privatize the bulk of Hawaii's small boat harbors. This seems more like a government taking which uses a drummed up public crisis to fundamentally challenge the public stake in recreational harbors. Why is DLNR sitting on the Rules since Jan 2007, and what if anything do these rules say about regulating public water ways? Do the new rules address this issue at all or is there a plan to bypass DLNRs governing charter in terms of what they are already mandated by law to enforce, and impose on the public their version of what should be? This to me is a form of fast tracking when they cite, erroneously, usually, the so called plight of the public harbors along with the failing economy as an excuse to move an agenda toward its desired end.

In other words the now two year in the making DOBOR rule write supposedly under review by the AG should have already set out solutions to enforcement in these previously unspecified areas, in addition to addressing staffing shortages which have long been issues there. Since the DLNR commercial cartels see SB 68 as redundant, they (DLNR), should be explaining to legislators what those so-called new rules would do to solve questioned raised about so-called private water ways, surf and kite schools, and other types of commercial activities that misuse public lands etc. The Governors plan looks more like a self serving reorganization plan

that does nothing to address poor harbor management, nor does it propose any alternative to the old approach other than to say we need to privatize, we need money for upgrades etc.

The rules governing DLNR enforcement of conservation violations have recently been fundamentally changed by a Land Board approval. It is feared that with this the Chairperson as well as division administrators will be even more insulated against complaints from the public. I worry that DLNR is writing enforcement rules separately in order to deliberately offset the effect of laws (charters) specified in the HRS regarding DLNR's civil duties. I invite Legislators to scrutinize the recent rule changes that DOBOR submitted to DLNR to see what I'm attempting to explain about a dual process. If anything all the Renaissance proposal does is further shelter two renegade state divisions from public scrutiny. The renaissance proposal moreover is a huge admission that DOBOR has failed to properly manage state harbors. We need an investigation into how DLNR allowed things to get so out of hand. Large amounts of cash are being squandered and management issues are never addressed. In this scenario DLNR gets out of jail and the public is pushed further out of the process. Our only recourse is a new legislative mandate that forces compliance from DLNR, otherwise all we get is more incompetence and confusion about which rules apply at any given time. Any investigation into the whole private water ways issue should Begin with how DLNR sold the once public pier to the Hilton for one dollar. What are its impacts on the public since the so-called private water way at the Hilton has been used illegally by other commercial vessels claiming to be affiliated with the Hilton? Complaints about unruly commercial companies and safety issues at this location are either ignored outright or treated with contempt by DLNR officials.

Noa Napoleon

**kim2 - Arline**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 25, 2009 2:25 PM  
**To:** WAM Testimony  
**Cc:** carl.imparato@juno.com  
**Subject:** Testimony for SB68 on 2/27/2009 9:00:00 AM

Testimony for WAM 2/27/2009 9:00:00 AM SB68

Conference room: 211  
Testifier position: support  
Testifier will be present: No  
Submitted by: Carl Imparato  
Organization: Individual  
Address: P.O. Box 1102 Hanalei, HI  
Phone: 808-826-1856  
E-mail: [carl.imparato@juno.com](mailto:carl.imparato@juno.com)  
Submitted on: 2/25/2009

Comments:  
Aloha kakou,

While I support this bill's objective of regulating the commercial use of state waters and marine resources, I am very concerned that the current wording of the bill could actually result in reduced regulatory oversight.

In particular, I ask that you reconsider the proposed wording of Section 200-3 (5). The currently-proposed wording would eliminate the regulation of the commercial use of "boating facilities," replacing it with regulation of "operations that use private marinas." That language would therefore, remove regulation of all boating facilities that do not happen to be defined as private marinas.

I ask that you please amend the bill so that Section 200-3 (5) would read as follows: "Regulating the commercial use of boating facilities and state waters and marine resources, including those operations that use private marinas;". With this change, the existing regulation of boating facilities would continue. I therefore strongly urge your support of this change to the language of the bill.

Thank you,

Carl Imparato  
Hanalei, HI

**From:** carl [mjellings@hawaii.rr.com]  
**Sent:** Wednesday, February 25, 2009 9:34 PM  
**To:** WAM Testimony  
**Subject:** SB68

THE TWENTY-FIFTH LEGISLATURE

REGULAR SESSION OF 2009

SB68

COMMITTEE ON WAYS AND MEANS

Senator Donna Mercado Kim, Chair  
Senator Shan S. Tsutsui, Vice Chair

NOTICE OF DECISION MAKING

DATE: Friday February 27, 2009  
TIME: 9:00 a.m.  
PLACE: Conference Room 211

State Capitol

415 South Beretania Street

*In Strong Support*

*Do not be confused We are simply asking for any and all commercial recreational activities operating in State Waters be permitted by the State,*

*Waianae's abundant nearshore waters contributes to an important diverse economy and deserves your support, there are undoubtedly ongoing direct impacts to Our fisheries Both Opelu and Akule , the number of high speed vessels in operation at this time are questionable, for the most part We have been persistent and have maintained our livelihood, this does not come without daily financial risks and timely sacrifices as it has become more and more costly to produce a feasible catch amongst these growing Impacts, Impacts include leaving prior to sunrise to KAPU a fishing area that We intend to fish as bought and paid for Tours depart at 7:00am ,, ,this has to be done before a school can be confirmed or the settlement of the intended school could very well be threatened , this extra move has cost us in the thousands as many times the school does not show or the school turns out unfeasible. We have done more than Our part to work with existing pressure"s Please pass SB68*

*Mahalo for allowing me to testify*



*Carl P Jellings SR.*