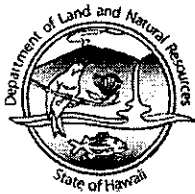


NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
WILLIAM J. AILA, JR.  
Chairperson**

**Before the House Committee on  
FINANCE**

**Wednesday, April 13, 2011  
10:00 AM  
State Capitol, Conference Room 308**

**In consideration of  
HOUSE CONCURRENT RESOLUTION 264/HOUSE RESOLUTION 226 -  
REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO  
CONDUCT A STUDY OF PRIVATE BOATING FACILITIES STATEWIDE AND  
DETERMINE THE FEASIBILITY OF GENERATING ADDITIONAL REVENUES  
FROM COMMERCIAL OPERATIONS OCCURRING AT OR FROM THESE  
FACILITIES**

House Concurrent Resolution 264/House Resolution 226 requests the Department of Land and Natural Resources (Department) to conduct a study of private boating facilities statewide and determine the feasibility of generating additional revenues from commercial operations occurring at or from these facilities. The Department supports these resolutions while offering the following comments.

The Ninth Circuit Court of Appeals has ruled that the State can only charge commercial vessel operators for services provided by the State. Commercial vessel operators pay fees for the use of private facilities to the facility owner. The Department may charge fees for the use of state waters if it can justify the expense, for example, enforcement services, permitting, and cost of managing the natural resource to name a few.

The Department agrees that all commercial vessel operators using state waters, whether operating from a private or government facility, should help compensate for their use and preservation of the natural resources.

WILLIAM J. AILA, JR.  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI  
FIRST DEPUTY

WILLIAM M. TAM  
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

THE RESORT GROUP

**TO THE HOUSE COMMITTEE ON FINANCE**

**TWENTY SIXTH LEGISLATURE  
Regular Session of 2011**

**Testimony of Abbey S. Mayer, Vice President, Government Relations  
THE RESORT GROUP**

**In OPPOSITION to HCR 264/HR 226 – Requesting the Department of Land and Natural Resources to Conduct a Study of Private Boating Facilities Statewide and Determine the Feasibility of Generating Additional Revenues from Commercial Operations Occurring at or from these Facilities**

Wednesday, April 13, 2011, 10:00 AM -- Room 308

Aloha Chair Oshiro, Vice-Chair Lee, and Members of the Committee,

The Honolulu-based The Resort Group (TRG) acquires, master develops, repositions and markets domestic and international mixed use and master-planned resort communities. Led by Jeffrey R. Stone, TRG's resort development projects are carefully designed to balance resident, visitor and employee needs with community interests, local cultural values and adjacent land use requirements. Current projects include Ko Olina Resort & Marina and Makaha Valley Country Club on O'ahu, Princeville at Hanalei (Kaua'i), Lands of Kapua (Big Island), the Newport Beach Hotel in California and Cape Eleuthera, Bahamas.

**HCR 264/HR 226:**

HCR 264/HR 226 instructs the Department of Land & Natural Resources (DLNR), Division of Boating & Ocean Recreation (DoBOR) to study the feasibility of assessing fees for commercial operations that commence from private boating facilities and marinas, that are similar to the fees assessed on commercial operations that commence from public boating facilities.

**TRG and Ko Olina Resort believe that the notion of creating a special tax on commercial operators originating from private marinas has no basis.** Whereas, in the case of commercial operations originating from public marinas, businesses profit from the use of publicly funded, staffed

and maintained facilities, an additional fee has a firm and real basis. In cases where commercial operations originate from private facilities, there is no basis for assessing additional fees.

Private marinas and facilities must be funded, maintained and staffed through privately earned dollars, and the assessment of a tax on commercial operators would not benefit the provision of these services and facilities. Actually, it would be an additional cost to commercial operators, with the potential for driving the commercial operators' expenses up to a level that is no longer sustainable.

**It is unclear as to whether the intent of this measure is to increase tax fees to the State during this time of budgetary difficulties, to further subsidize public marina facilities without increasing fees to public marina users, or to increase State control over private marinas.** Regardless of the intent, this measure is unnecessary and would not significantly further any of these goals.

As far as increasing tax fees, the class of commercial entities operating out of private marinas is so small it could not possibly bring a significant increase in state tax revenues. If the additional revenues are intended to subsidize public marina facilities, a more appropriate measure would be to increase fees to public marina users. Lastly, commercial activities are already regulated by both the State and Counties, and ocean and coastal resources receive multiple layers of jurisdictional control by federal, state and county agencies. Additional control over commercial users of private marinas is unnecessary and redundant.

At this time the State is increasingly considering the privatization of public marinas, in order to make them profitable and in order to fund improvements to public facilities through private dollars that cannot be funded publicly. Both Hawaii Community Development Authority (HCDA) and DLNR are currently considering the privatization of marina facilities. This measure is directly contrary to this trend.

For decades, the State has opted not to raise fees at public marinas to a level commensurate with those charged at private marinas. This policy decision has been instituted because of huge public opposition to increased fees, but the result has been chronically underfunded facilities which in many cases are now in dire need for repair. TRG believes private marinas in Hawaii show that proper funding result in safe, efficient and user-friendly facilities.

**TRG adamantly believes private marinas ought to be permitted to operate with fees driven by market forces. If the State is seeking measures that would increase the quality of public marinas or seeking the protection of common natural resources, then those issues should be examined more holistically and thoroughly than what is proposed by this extremely narrowly focused measure.**

TRG thanks the Committee for the opportunity to provide comments.