

LATE TESTIMONY

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

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

**Before the Senate Committee on
JUDICIARY AND LABOR**

**Tuesday, February 22, 2011
10:15 AM
State Capitol, Conference Room 016**

**In consideration of
SENATE BILL 1481
RELATING TO PUBLIC ACCESS**

Senate Bill 1481 would amend the offense of obstruction for access to public property and creates a private right of action for persons to enforce the prohibition of obstruction. The Department of Land and Natural Resources (Department) recognizes and supports authorized public access to areas that are managed for various recreational activities and that provide traditional and cultural pursuits, and the need to further public access opportunities.

However, the Department has concerns with a change in the law that may create the potential for a dramatic increase in frivolous or misguided civil actions related to unmaintained features that may not qualify legally as a "public transit corridor" and that due to their condition may create public safety issues. The measure also provides for recovery of litigation costs and attorney's fees for the party filing a legal action if successful, but does not provide any similar relief for a landowner if they successfully protect against a frivolous or misguided civil action.

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

GUY H. KAULUKUKUI
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AQUATIC RESOURCES
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From: noa napoleon [noa.1960@hotmail.com]
Sent: Monday, February 21, 2011 6:11 PM
To: JDLTestimony
Subject: new testimony for SB 1481

THE SENATE
THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2011

COMMITTEE ON JUDICIARY AND LABOR
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

LATE TESTIMONY

NOTICE OF HEARING

DATE: Tuesday, February 22, 2011
TIME: 10:15 a.m.
PLACE: Conference Room 016
State Capitol
415 South Beretania Street

"Relating to Public Access"

“PUBLIC BEACHES IN LIMBO”

I support the intent of this measure but would just add that the bulk of the “Public Recreational Areas” are largely shore-word of the actual corridors where storage of commercial equipment in those open areas pose a similar conflict to recreational users as unwanted vegetation or walls even if they don’t actually block access to the shoreline. The problem I have with this legislation is two fold. First there is a presumption of rights where for example Kayak and surf schools have been using access corridors to store their rental equipment, and DLNR claims it cannot enforce this. This almost always means a stalemate in terms of both complaints and enforcement since DLNR sees beaches in limbo where they like to say the rules are "grey." Second, I’m not sure that pitting the public directly against the state’s ORMA holders in “creating a private right of action for a person to enforce prohibition” is the right way to mitigate commercials obstructions. A private right of action can be daunting since the commercial people are almost always made to think they have commercial rights (standing) against individuals who object to and or who raise concerns about their operation. They are insulated by DLNR because when or if complaints of this nature do make to past the corrupt District court Judges (who are instructed by state officials to thwart public complaints on commercial encroachment issues) DLNR and the State of Hawaii would be found negligent both with regard to Rules and enforcement.

Please consider making "public review" of the rules along with "Senate oversight" part of the "Private Right of Action." Such a process could facilitate a public debate quorum with DLNR staff on the details of a particular case, where rules are made available to the non-commercial users who wish to get clarification from DLNR on specific complaints. It is my experience that DLNR Rules are extremely confusing especially when DLNR agents are unwilling to enforce rules they consider grey areas or "not their jurisdiction" etc. Beaches in limbo suffer from the same problem's that "ROADS IN LIMBO" do. County and State rules need to be arranged together and enforced by a single independent agent. To this end I propose the creation of DLNR division called "ORMA Officer of Licensing and Permits. This office would not represent a single division but rather it would be empowered to move freely between both City and County and State Land and Boating divisions. This would force DLNR and county divisions to work together to co-ordinate enforcement on illegal obstructions as well as unlicensed commercial activity.