



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

April 1, 2013
State Capitol, Room 325
10:30 a.m.

**S.B. 1207, H.D. 1
RELATING TO TRANSPORTATION**

House Committee on Water and Land

The Department of Transportation (DOT) strongly **supports** this administration bill to amend Chapter 266, Hawaii Revised Statutes, to provide an exemption from the permit and site plan approvals requirements relating to submerged lands within the conservation district. The bill proposes to exempt submerged lands within the State's commercial harbors system from the provisions of Chapter 183C, Hawaii Revised Statutes, relating to permits and site plans approvals. This exemption will enable the Harbors Division to more efficiently implement needed projects to meet the growing needs of the maritime industry.

Sufficient oversight already exists for submerged lands within the State's commercial harbors system for the preservation of the ecosystem, flora and fauna as the DOT will continue to be subject to the requirements of Chapter 343, Hawaii Revised Statutes, as well as the permit requirements by the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, and oversight by the State Department of Health for federal programs such as the Clean Water Act. We believe this proposal eliminates the delay for obtaining permit and site plan approvals that through other review processes are in place to address environmental concerns and the public interest. This proposal will allow the DOT Harbors Division to more timely and efficiently implement harbor projects.

To allow for further clarity on the Department's intent based on comments from other testifiers, we suggest the following amendment:

"...Notwithstanding any law to the contrary, all work involving submerged lands used for existing state commercial harbors purposes shall be exempt from any permitting and site plan approval requirements established for lands in a conservation district."

We urge the Committee to incorporate the foregoing amendment and restore the bill's effective date to upon its approval. Thank you for the opportunity to provide testimony.





SB1207 HD1
RELATING TO TRANSPORTATION
House Committee on Water and Land

April 1, 2013

10:30 a.m.

Room 325

The Office of Hawaiian Affairs (OHA) **OPPOSES** SB1207 HD1, which would remove an important layer of review and planning to mitigate or prevent significant avoidable impacts to marine resources within or adjacent to our commercial harbors.

Although OHA recognizes the importance of maintaining and rehabilitating the State's commercial harbors in a timely manner, the guidelines contained in Chapter 183C are crucial for protecting Hawai'i's conservation lands, including state submerged lands that are part of the "ceded" lands corpus to which Native Hawaiians have never relinquished their claims. Such guidelines include site plans and other substantive requirements that may mitigate or avoid unnecessary impacts to state submerged lands and the resources they contain, by a state agency that has the specific necessary expertise and constitutional responsibilities to conserve Hawai'i's natural resources, and protect our cultural practices.¹

OHA notes that this bill does not appear to repeal other relevant review and regulatory mechanisms, including chapter 343, Hawai'i Revised Statutes, Clean Water Act provisions administered by the Department of Health, as well as section 10 of the federal Rivers and Harbors Act. However, these mechanisms standing alone do not allow for an agency with specific expertise on natural resources to ensure that significant impacts to our marine resources are considered and mitigated to the extent possible. Nor do these measures ensure substantive regulatory consideration of impacts to cultural rights and practices that are otherwise protected under the Hawai'i State Constitution.²

For example, environmental impact statements under Chapter 343 do not require any mitigation measures, nor the adoption of alternatives that may be less harmful to our natural or cultural resources. Both the State Department of Health and the United States Army Corps of Engineers (USACE) further lack the necessary expertise to evaluate and specifically mitigate impacts to these local resources. Thus, given that USACE regulations do require the mitigation of impacts to ecological functions or socioeconomic services from dredge-and-fill activities, the consultation and review by a state agency with specific natural resource expertise may in fact facilitate USACE permitting under section 10 of the Rivers and Harbors Act, and would not inhibit this process in any way. Moreover, USACE

¹ HAW. CONST. ART. XI SEC. 1.; HAW. CONST. ART. XII SEC. 7.

² Id.

and the federal Clean Water Act regulations administered by the Department of Health are not subject to the state constitutional requirements that recognize and affirmatively protect Native Hawaiian rights, including ocean-related traditional and customary gathering practices.

Therefore, OHA urges the Committee to **HOLD** SB1207 HD1. Mahalo for the opportunity to testify on this important matter.

lowen1-Kyli

From: mailinglist@capitol.hawaii.gov
Sent: Friday, March 29, 2013 11:34 PM
To: waltestimony
Cc: Glenn@hawaiiantel.net
Subject: Submitted testimony for SB1207 on Apr 1, 2013 10:30AM

SB1207

Submitted on: 3/29/2013

Testimony for WAL on Apr 1, 2013 10:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Glenn Shiroma	Individual	Oppose	No

Comments: I strongly OPPOSE SB1207 due to DOT Harbors abuse of due process with Hilo Harbor, Pier 4 expansion.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

HOUSE COMMITTEE on WATER and LAND
April 1, 2013 Public Hearing
House Conference Room 325
10:30 AM

Senate Bill 1207, HD1
Relating to Transportation

Comments in STRONG OPPOSITION by M.S. Matson

“Exemption from conservation district permitting and site plan approval requirements. Notwithstanding any law to the contrary, all work involving submerged lands used for state commercial harbor purposes shall be exempt from any permitting and site plan approval requirements established for lands in a conservation district.”

SB 1207 proposes to exempt the Department of Transportation, Harbors Division (DOT Harbors) from established permit and site plan approval requirements under HRS 183C for any submerged lands used for any and all work related to state commercial harbor purposes within the Hawai'i State Conservation District.

This is an open-ended and highly questionable measure.

SB 1207 does not limit the proposed exemption to existing commercial harbors, but extends the exemption to “all work involving submerged lands used for state commercial harbor purposes”. Thus, any and all surrounding submerged lands used for commercial harbor purposes would be entitled to this exemption, including harbor approaches and channels; submerged lands adjacent to historic and cultural sites and parks, such as Honokohau; surfing, canoe paddling and other ocean recreation areas; and submerged public trust lands used for gathering and other cultural practices.

Notable testimony in opposition to this measure has been duly recorded from the Office of Hawaiian Affairs, Marine Resource Council, Sierra Club, and an *akamai* senior state planner in his individual capacity. Even Chamber of Commerce of Hawaii and Building Industry Association of Hawaii testimonies express relevant concerns. Yet the only improvement to this measure has been a defective effective approval date.

DOT Harbors should not be exempt from the Conservation District Use Application (CDUA) process for new harbors or any harbor expansion within the Conservation District. If the intent of this measure is to exempt the interior of existing commercial harbors from the CDUA process, and not a new commercial harbor or expansion of any existing commercial harbor, then the language in the bill should clarify this. But it does not; and has not despite the significant advisory testimony received.

While DOT Harbors would continue to be subject to the respective segmented provisions of HRS 343; U.S. Army Corps of Engineers permit requirements; and oversight by the U.S. Environmental Protection Agency and State Department of Health for Clean Water Act compliance -- none possess on their own merit the regulatory range to ensure comprehensive evaluation, mitigation and avoidance of adverse impacts; determination of less harmful alternative; and fulfillment of State cultural protection requirements as collectively covered for local marine resources by the CDUA.

Hawaii's harbors and near shore waters support rare species of corals, and shelter endangered sea turtles, fish, and other marine life, and mitigation of potential adverse impacts to these protected species is accomplished through proper CDUA permitting and site plan evaluations in accordance with State and County protections. It therefore remains unclear why the CDUA process has been targeted for exemption.

The Senate Transportation and Water & Land Committees found and quoted from the DOT Harbors SB 1207 justification sheet a) that with elimination of this one permit among many others, DOT Harbors might "plan more efficiently to implement projects in a timely manner," b) cited the "just in time" cargo system and noted that "significant impacts to facility operations and delivery of goods could occur if harbor facilities are not maintained or rehabilitated in a timely manner due to unnecessary permit delays."

While there may also be a question of why DOT Harbors may not have been more diligent in seeking required CDUA permits in a more timely manner, delays are indeed costly when proper review, permitting and oversight are absent and unforeseen conditions or accidents occur that force projects to be stopped, relocated or extended in time. Therefore, it is prudent from the outset to fully understand, disclose and ultimately avoid potential adverse impacts with the long-established CDUA permitting process.

All submerged shoreline lands in the State are classified Conservation, and any use of these lands requires an approved CDUA permit from the Department of Land and Natural Resources (DLNR), the State agency with the mandate and necessary experience to protect Hawaii's coastal resources. The CDUA serves to establish acceptable land use for the subject application and is an important State level of review, necessary public comment, and permitting procedure intended to avoid significant impacts to submerged lands and marine resources within or adjacent to Hawaii's commercial harbors and coastal areas.

There appears to be no pressing public health or safety need associated with this proposed exemption, and absent immediate public need to justify this proposed State permitting exemption for major projects other government agencies may be eager to seek similar exemptions -- thus placing the significant and protective CDUA permitting, approval and oversight process at risk for not only State commercial harbors, but as an open-ended precedent for all other shoreline and submerged lands as well. For example, if adopted this measure and the weak rationale behind it could further serve as a precedent for DOT Highways and DOT Airports to seek exemptions from the CDUA process for their respective projects in the vicinity of sensitive coastal areas and marine resources.

Again, this is just one of many required permits for harbor and receiving waters and submerged lands adjacent to the protected shoreline. Clearly, the Senate has not taken into consideration the impacts of this measure on all other uses within and around commercial harbors and their vicinities protected by CDUA process. It is therefore hoped that the House Committee on Water and Land will.

Please Kill this Bill

**Testimony of
Kimberly K. Tiger Mills
General Public**

**In consideration of
SENATE BILL 1207
RELATING TO TRANSPORTATION**

I stand by my previous testimony in **opposition of Senate Bill 1207**. For newly designated areas or harbor expansion within the Conservation District, DOT Harbors **should not be exempt** from the CDUA process.

1. Regarding the Conservation District, there currently exists a system in place to efficiently dispose of projects within existing established areas such as Commercial Harbors.
2. Harbor improvements are exempt from County SMA requirements therefore the Conservation District Use Application process may be the only local opportunity in which traditional, cultural and customary uses may be vetted.
3. The Department of the Army (DOA), a federal agency, would be the only reviewing agency for improvements under this Bill. The DOA is under no obligation to uphold the Hawaii State Constitution.

Submerged, unencumbered public trust lands are utilized for fishing, gathering, canoe paddling, ocean recreation and other activities. Many of these activities take place adjacent to existing Commercial Harbors. There needs to be oversight for sustainable use of the natural resources. Thank you.