

lowen2-Lanaly

From: GlennShiroma@hawaiiantel.net
Sent: Monday, February 03, 2014 10:53 AM
To: waltestimony
Subject: Testimony Before House WAL for Wednesday, Feb. 5, 2014 (HB2327)
Attachments: Lease_050110.pdf; Lease_050111.pdf; Mooring Permit.pdf

Aloha Rep. Cindy Evans, Chair & Rep. Nicole Lowen, Vice Chair and & House WAL Members.

Testimony in Strong Support for HB2327, RELATING TO USE PERMITS FOR SMALL BOAT HARBOR FACILITIES.

Clarifies that no use permit for a state small boat harbor facility may be transferred unless specifically provided by law.

Please examine the following attached files:

Mooring Permit which Nancy Murphy, DoBOR Hawaii District Manager executed an mooring permit but without dating the agreement.

Lease 050110 which an exclusive lease agreement between one-half owner "Rupert Buntin" and Awahnee Oceanic failed to date the agreement.

Lease 050111 which an exclusive lease agreement between one-half owner "Rupert Buntin" and Awahnee Oceanic.

To make matters worst, DoBOR Hawaii District Manager gave the Vessel El Lobo fka Vessel Linda to "Buntins" during a demolition contract by Lobo Del Mar from Wailoa Small Boat Harbor in Hilo.

Thank you for this opportunity to testify in Strong Support of HB2327

Glenn Shiroma

VESSEL LEASE

THIS VESSEL LEASE made on May 1, 2010, by and between Rupert Buntin, whose mailing address is _____, hereinafter referred to as "LESSOR", and Awahee Oceanics, Inc. A Hawaii Corporation, whose mailing address is 75-1027 Heary St., Kailua-Kona, HI 96740, hereinafter referred to as the "LESSEE";

WITNESSETH

WHEREAS, LESSOR is registered owner of the whole of that certain 2007, 42 foot Vessel known as the "El Lobo", bearing Hawaii Registration Number HA 3212-H, hereinafter referred to as the the "Vessel"; and


WHEREAS, LESSEE wishes to lease the Vessel from LESSOR upon the terms and conditions of this Vessel Lease.

LESSOR AND LESSEE agree to follows:

1. **LEASE OF VESSEL.** LESSOR hereby leases and LESSEE hereby takes from LESSOR, for the consideration stated below and on the terms, conditions and covenants contained herein the Vessel, together with her engines, machinery, anchors, chains, tackle, apparel, electronics, furniture, fittings, and equipment (the "Vessel").

2. **PLACE OF DELIVERY.** LESSOR shall deliver and make the Vessel available to LESSEE at Honokohau Small Boat Harbor, Kailua-Kona, Island of Hawaii, and upon termination of this Vessel Lease the LESSEE shall redeliver the Vessel to LESSOR at Honokohau Small Boat Harbor, Kailua-Kona, Island of Hawaii.

3. **INSPECTION.** LESSEE may inspect the vessel before delivery. Acceptance or use of the vessel by LESSEE will be deemed to be an acknowledgment that the Vessel is fit for LESSEE's purposes.

4. **LEASE TERM.**  The term of this Lease shall be for a term of one year(a), and shall commence on May 1, 2010, or as soon thereafter as this Lease is approved by the Department of Land and Natural Resources, Division of Boating and Ocean Recreation ("DLNR-DOBOR"), unless sooner terminated by written notice of either party.

5. **TERMINATION.** (a) By LESSOR. Notwithstanding the provisions of the preceding paragraph, LESSOR may cancel the Lease and retake the Vessel in the event of (i) the failure of LESSEE to correct or cure a breach of any term, condition or covenant of the Lease within ten (10) days after being notified of such breach in writing; (ii) the cancellation or non-renewal of LESSEE's mooring permit at Honokohau Harbor Island of Hawaii; or (iii) a lawful order of a duly authorized official of the State of Hawaii, the United States of America or the County of Hawaii directing LESSEE to cease and desist operation of the Vessel.

(b) By LESSEE. LESSEE may cancel this Lease and shall be relieved of further

obligation hereunder by delivering forty-eight (48) hours written notice to LESSOR upon (i) the total or constructive loss of the Vessel; (ii) a final determination of the United States Coast Guard or recognized marine surveyor that the Vessel is unseaworthy; (iii) the seizure of the Vessel through attachment or other judicial process; or (iv) the seizure of the Vessel by the United States Coast Guard or an agency of the State of Hawaii.

(c) By Either Party. Either party may terminate this Lease for any reason whatsoever by delivering to the other party written notice of termination at least one hundred eighty (180) days in advance of the effective date of the termination.

On expiration or earlier termination of this Lease, LESSEE shall surrender possession of the "Vessel" to LESSOR's designated representative.

6. **LEASE RENTAL.** LESSEE shall pay to LESSOR in advance monthly rental for the use of the Vessel in the sum of \$500.00.

7. **EXCLUSIVE USE.** LESSOR hereby grants to LESSEE the exclusive right and authority to use and operate the Vessel for mooring and charter operations purposes only. Except upon a default in performance of any obligation or undertaking hereunder, LESSEE shall be entitled to the possession and use of the Vessel to the exclusion of LESSOR.

8. **LIMITATIONS ON VESSEL OPERATION.** LESSEE shall at all times operate the Vessel in accordance within the requirements of the laws of the State of Hawaii and the United States, including the applicable regulations of any agency thereof, the terms of the insurance policy, and the requirements of the Vessel's operational manuals and such other reasonable and appropriate instructions as may be received from LESSOR or the manufacturer of the Vessel or her engines. LESSEE shall not operate the Vessel for any purposes or activities not covered by the Vessel's insurance coverage. LESSEE shall not sublet or otherwise permit the Vessel to be operated by other persons or entities without the express written consent of LESSOR, which consent may be withheld for any reason.

9. **NAVIGATION LIMITS.** LESSEE agrees to restrict the use of the Vessel to the following waters, unless LESSOR consents to additional limits: within twenty-five (25) miles of the shoreline of the Island of Hawaii, State of Hawaii or such other lesser limits which may be imposed by the insurer. LESSEE may not use the Vessel "Interisland" without LESSOR'S consent.

10. **MAINTENANCE.** LESSEE shall make any repairs or replace any part, gear, or equipment necessary to maintain the Vessel in a reasonable state of repair. The LESSEE shall employ competent workmen to undertake such maintenance, improvements and additions, in accordance with plans approved by LESSOR, the LESSEE shall furnish evidence, satisfactory to the LESSOR that the LESSEE is financially able to pay for such work.

11. **RIGHT OF INSPECTION.** LESSOR'S authorized agents shall have the right at any reasonable time, to inspect or survey vessel at LESSOR'S expense, to ascertain its condition and to satisfy LESSOR that the Vessel is being properly

maintained in accordance with this Lease. LESSOR shall permit LESSOR to inspect the Vessel's log and records, and shall furnish LESSOR with full information regarding accidents or damage to the Vessel. Such inspections shall not interfere with LESSOR'S use of the Vessel.

12. **ALTERATION OF VESSEL.** LESSOR shall make no alterations to the Vessel, including the Vessel's rigging, running gear or machinery, without the prior written consent of LESSOR.

13. **LIABILITY FOR LOSS.** In the event the Vessel shall suffer sufficient total or constructive total loss, LESSOR shall receive the total insurance proceeds. If the Vessel suffers less than total or constructive total loss, LESSOR, at its own cost and expense, have LESSOR make and repair restoration costs, including dry docking, if required.

14. **INSURANCE.** LESSOR or its expense, shall keep the vessel insured for the term of this Lease and any reasonable or extended term, with hull insurance of not less than the value currently in effect, with a maximum deductible of \$5,000, and liability insurance against all liability. The hull and standard marine coverage with extended or conditional additional coverage against such other risks, and in such amount as will equal or exceed the amounts required to be in effect by the DLR/DICOR. Without limitation, the coverage shall include property damage and public liability for injury or death to persons, including crew and guest, in any one accident in an amount of at least \$300,000.00, and protection and indemnity insurance. This subsection shall in no way limit LESSOR'S obligation hereunder to obtain greater amounts or kinds of coverage. LESSOR shall deliver to LESSOR the policies or evidence of insurance with a standard long form endorsement attached thereto, showing limits, if any, and payable to LESSOR in a form satisfactory to LESSOR, together with receipts for the premiums there under.

LESSOR shall be an additional insured but not a loss payee under the insurance policy as to the hull insurance and the liability insurance and the DLR/DICOR shall be named as an additional insured as to the liability insurance that LESSOR shall keep in effect as specified above.

15. **COMPLIANCE WITH LAWS.** LESSOR - shall comply with and conform to all laws, ordinances, and regulations relating to the construction, possession, use or maintenance of the Vessel, and cause LESSOR to comply and indemnify LESSOR against actual or assumed violations, and pay all costs and expenses of any and every character, including attorney's fees, occasioned by or arising out of the use of the Vessel, and pay promptly when due all taxes and other public or private charges against or upon the Vessel or its equipment. Without limitation, LESSOR is responsible to keep the Vessel at all times free of any illegal drugs. LESSOR shall post appropriate notices on the Vessel prohibiting any illegal drugs and warning that anyone violating such prohibition will be prosecuted.

16. **TITLE.** The Vessel shall remain the personal property of and the title thereto shall remain in LESSOR exclusively. LESSOR shall keep the Vessel free from any and all liens and claims, and shall do or permit no act or thing whereby LESSOR'S title or rights may be

encumbered or impaired. Upon expiration to termination hereof, the Vessel shall be returned unencumbered to LESSOR by LESSEE'S as LESSEE'S sole expense and in the same condition as when received by LESSEE, reasonable wear and tear from proper use thereof alone accepted.

17. **NON-WAIVER.** LESSOR'S failure at any time to require strict performance by LESSEE of any of the provisions hereof shall not waiver or diminish LESSOR'S rights thereafter to demand strict compliance therewith or with any other provision. Waiver of any default shall not waive any other default. LESSOR'S rights hereunder are cumulative and not alternative.

18. **INDEMNITY.** LESSEE shall indemnify, defend, and hold LESSOR harmless against all claims, actions, proceedings, damages, and liabilities of any nature whatsoever arising from or connected with LESSEE'S possession and/or use of the Vessel, including without limitation, loss of life, bodily injury, personal injury, civil injury, attorneys' fees, and property damages.

19. **LIENS.** LESSEE shall not have any right, power or authority to create, incur, or permit to be imposed upon the Vessel any liens whatsoever. LESSEE shall carry on the Vessel a properly certified copy of this Agreement with the ship's papers and to exhibit the same to any person having business with the Vessel that might give rise to any lien thereon. LESSEE agrees to notify any person furnishing repairs, towage, or other necessities to the Vessel that LESSEE does not have any right to create, incur, or permit to be imposed upon the Vessel any liens whatsoever. Such notice, as far as may be practicable, shall be in writing.

20. **NO WARRANTY MODIFICATION.** LESSEE takes the Vessel in an "AS IS" condition. The LESSOR makes no warranty that the Vessel will satisfy the requirements of any law or rule; LESSEE assumes all liabilities arising there from at its sole risk and expense. No modification hereof shall be binding unless in writing signed by LESSOR. LESSEE shall be entitled to avail itself of any Vessel's component parts, and all causes of action in connection with the Vessel, which LESSOR may have against any such sellers or suppliers.

21. **AUTHORITY.** LESSOR represents and warrants to LESSEE that each individual executing this Lease on behalf of LESSOR is duly authorized to execute and deliver this Lease on behalf of LESSOR. LESSEE represents and warrants to LESSOR that each individual executing this Lease on behalf of LESSEE is duly authorized to execute and deliver this Lease in behalf of the LESSEE.

22. **DEFAULT.** In the events of LESSEE'S default hereunder or on LESSEE becoming insolvent, or if a petition is filed by or against LESSEE under the Bankruptcy Act or any amendment thereto (including a petition for reorganization or an extension, or if LESSEE, without LESSOR'S prior consent, which consent may be withheld for any reason), attempts to remove or sell or transfer or encumber or sublet or part with the possession of the Vessel, LESSOR and/or their agents may without notice or inability or legal process enter into any port, harbor, or dock where the Vessel may be, and repossess the Vessel, and using all force necessary or permitted by applicable law to do so; LESSEE hereby expressly waives all further rights to possession of the Vessel and all claims for injury suffered through or loss caused by

repossession. Upon such default LESSEE and LESSOR shall immediately so notify the DLNR-DBOR of the State of Hawaii. Should LESSOR to interpret this Lease or to recover any monies due and to become due hereunder institute any legal proceeding and/or for possession of this Vessel institute any legal proceeding, LESSEE shall pay a reasonable sum as attorneys' fees. LESSOR is entitled to all remedies at law or in equity.

23. **ASSIGNMENT.** Neither this Lease nor LESSEE'S rights hereunder shall be assignable by LESSEE except with LESSOR'S prior written consent, which consent may be withheld for any reason. If LESSOR assigns this Lease, the conditions hereof shall bind any such successor or assignee.

24. **MISCELLANEOUS.** If any part hereof is contrary to, prohibited by or deemed invalid under applicable laws or regulations of any jurisdiction, such provision shall be inapplicable and deemed omitted but shall not invalidate the remaining provisions hereof.

26. **COUNTERPARTS AND FAX COPIES.** The parties agree that this instrument may be signed and acknowledged in counterparts, each of which shall be considered an original, and the counterparts shall together constitute one and the same instrument, binding all of the parties to the instrument, notwithstanding that all of the parties are not signatory to the original or the same counterparts. The transmission of a signed copy of this instrument by one party to another shall be deemed to be the same as the delivery of an original counterpart of this instrument.

27. **NOTICES.** All notices contemplated or required by this Vessel Lease shall be in writing and shall be deemed given only when personally delivered to, or when mailed by certified or registered United States first-class mail, postage prepaid, return receipt requested, and addressed to LESSOR or LESSEE, as the case may be, at the address set forth for each at the beginning of this Lease, or when transmitted by email at email addresses provided between the parties.

28. **ATTORNEYS FEES AND COSTS:** In the event legal action is brought to enforce or interpret this Lease, the prevailing party shall be entitled to cost of suit and reasonable attorney's fees.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the day and year first above written.

LESSOR: Rupert Buntin
RUPERT BUNTIN
Date: 6-18-2010

LESSEE: AWAHINEE OCEANICS, INC.
By: [Signature]
Its: Pho Sidney
Date: 6-30-2010

VESSEL LEASE

THIS VESSEL LEASE made on May 1, 2011, by and between Rupert Buntin, whose mailing address is _____, hereinafter referred to as "LESSOR", and Awahnee Oceanics, Inc. A Hawaii Corporation, whose mailing address is 75-1027 Henry St., Kailua-Kona, HI 96740, hereinafter referred to as the "LESSEE";

WITNESSETH

WHEREAS, LESSOR is registered owner of the whole of that certain 2007, 42 foot Vessel known as the "El Lobo", bearing Hawaii Registration Number HA 4918CF, hereinafter referred to as the "Vessel"; and

WHEREAS, LESSEE wishes to lease the Vessel from LESSOR upon the terms and conditions of this Vessel Lease.

LESSOR AND LESSEE agree to follows:

1. **LEASE OF VESSEL.** LESSOR hereby leases and LESSEE hereby takes from LESSOR, for the consideration stated below and on the terms, conditions and covenants contained herein the Vessel, together with her engines, machinery, anchors, chains, tackle, apparel, electronics, furniture, fittings, and equipment (the "Vessel").
2. **PLACE OF DELIVERY.** LESSOR shall deliver and make the Vessel available to LESSEE at Honokohau Small Boat Harbor, Kailua-Kona, Island of Hawaii, and upon termination of this Vessel Lease the LESSEE shall redeliver the Vessel to LESSOR at Honokohau Small Boat Harbor, Kailua-Kona, Island of Hawaii.
3. **INSPECTION.** LESSEE may inspect the vessel before delivery. Acceptance or use of the vessel by LESSEE will be deemed to be an acknowledgment that the Vessel is fit for LESSEE'S purposes.
4. **LEASE TERM.** The term of this Lease shall be for a term of one year(s), and shall commence on May 1, 2011, or as soon thereafter as this Lease is approved by the Department of Land and Natural Resources, Division of Boating and Ocean Recreation ("DLNR-DOBOR"), unless sooner terminated by written notice of either party.
5. **TERMINATION.** (a) By LESSOR. Notwithstanding the provisions of the preceding paragraph, LESSOR may cancel the Lease and retake the Vessel in the event of (i) the failure of LESSEE to correct or cure a breach of any term, condition or covenant of the Lease within ten (10) days after being notified of such breach in writing; (ii) the cancellation or non-

2011 MAY -8 AM 11: 09

DLNR-BOBOR-HIK

renewal of LESSEE'S mooring permit at Honokohau Harbor Island of Hawaii; or (iii) a lawful order of a duly authorized official of the State of Hawaii, the United States of America or the County of Hawaii directing LESSEE to cease and desist operation of the Vessel.

(b) By LESSEE. LESSEE may cancel this Lease and shall be relieved of further

obligation hereunder by delivering forty-eight (48) hours written notice to LESSOR upon (i) the total or constructive loss of the Vessel; (ii) a final determination of the United States Coast Guard or recognized marine surveyor that the Vessel is unseaworthy; (iii) the seizure of the Vessel through attachment or other judicial process; or (iv) the seizure of the Vessel by the United States Coast Guard or an agency of the State of Hawaii.

(c) By Either Party. Either party may terminate this Lease for any reason whatsoever by delivering to the other party written notice of termination at least one hundred eighty (180) days in advance of the effective date of the termination.

On expiration or earlier termination of this Lease, LESSEE shall surrender possession of the "Vessel" to LESSOR'S designated representative.

6. **LEASE RENTAL.** LESSEE shall pay to LESSOR in advance monthly rental for the use of the Vessel in the sum of \$500.00.

7. **EXCLUSIVE USE.** LESSOR hereby grants to LESSEE the exclusive right and authority to use and operate the Vessel for mooring and charter operations purposes only. Except upon a default in performance of any obligation or undertaking hereunder, LESSEE shall be entitled to the possession and use of the Vessel to the exclusion of LESSOR.

8. **LIMITATIONS ON VESSEL OPERATION.** LESSEE shall at all times operate the Vessel in accordance within the requirements of the laws of the State of Hawaii and the United States, including the applicable regulations of any agency thereof, the terms of the insurance policy, and the requirements of the Vessel's operational manuals and such other reasonable and appropriate instructions as may be received from LESSOR or the manufacturer of the Vessel or her engines. LESSEE shall not operate the Vessel for any purposes or activities not covered by the Vessel's insurance coverage. LESSEE shall not sublet or otherwise permit the Vessel to be operated by other persons or entities without the express written consent of LESSOR, which consent may be withheld for any reason.

9. **NAVIGATION LIMITS.** LESSEE agrees to restrict the use of the Vessel to the following waters, unless LESSOR consents to additional limits: within twenty-five (25) miles of the shoreline of the Island of Hawaii, State of Hawaii or such other lesser limits which may be imposed by the insurer. LESSEE may not use the Vessel "Inter Island" without LESSOR'S consent.

10. **MAINTENANCE.** LESSEE shall, make any repairs or replace any part, gear, or equipment necessary to maintain the Vessel in a reasonable state of repair. The LESSEE shall employ competent workmen to undertake such maintenance, improvements and additions, in accordance with plans approved by LESSOR, the LESSEE shall furnish evidence, satisfactory to the LESSOR that the LESSEE is financially able to pay for such work.

11. **RIGHT OF INSPECTION.** LESSOR'S authorized agents shall have the right at any reasonable time, to inspect or survey vessel at LESSOR'S expense, to ascertain its condition and to satisfy LESSOR that the Vessel is being properly maintained in accordance with this Lease. LESSEE shall permit LESSOR to inspect the Vessel's logs and records, and shall furnish LESSOR with full information regarding accidents or damage to the Vessel. Such inspections shall not interfere with LESSEE'S use of the Vessel.

12. **ALTERATION OF VESSEL.** LESSEE shall make no alterations to the Vessel, including the Vessel's rigging, running gear or machinery, without the prior written consent of LESSOR.

13. **LIABILITY FOR LOSS.** In the event the Vessel shall suffer sufficient total or constructive total loss, LESSOR shall receive the total insurance proceeds. If the Vessel suffers less than total or constructive total loss, LESSOR, at its own cost and expense, have LESSEE restore and repair restoration costs, including dry docking, if required.

14. **INSURANCE.** LESSOR at it's expense, shall keep the vessel insured for the term of this Lease and any renewals or extensions thereof, with hull insurance of not less than the amount currently in effect, with a maximum deductible \$5,000, and liability insurance against all liability, fire, theft and standard marine coverage with extended or combined additional coverage against such other risks and in such amount as will equal or exceed the amounts required to be in effect by the DLNR-DBOR. Without limitation, the coverage shall include property damage and public liability for injury or death to persons, including crew and guest, in any one accident in an amount of at least \$300,000.00, and protection and indemnity insurance. This minimum shall in no way limit LESSOR'S discretion hereunder to obtain greater amounts or kinds of coverage. LESSOR shall deliver to LESSEE the policies or evidence of insurance with a standard long form endorsement attached thereto, showing losses, if any, and payable to LESSOR in a form satisfactory to LESSEE, together with receipts for the premiums there under.

LESSEE shall be an additional insured but not a loss payee under the insurance policy as to the hull insurance and the liability insurance and the DLNR-DBOR shall be named as an additional insured as to the liability insurance that LESSOR shall keep in effect as specified above.

15. **COMPLIANCE WITH LAWS.** LESSEE – shall comply with and conform to all laws, ordinances, and regulations relating to the ownership, possession, use or maintenance of the Vessel, and save LESSOR harmless and indemnify LESSOR against actual or asserted violations, and pay all costs and expenses of any and every character, including attorneys' fees, occasioned by or arising out of the use of the Vessel, and pay promptly when due all taxes and other public or private charges against or upon the Vessel or its equipment. Without limitation, LESSEE is responsible to keep the Vessel at all times free of any illegal drugs. LESSEE shall post appropriate notice on the Vessel prohibiting any illegal drugs and warning that anyone violating such prohibition will be prosecuted.

16. **TITLE.** The Vessel shall remain the personal property of and the title thereto shall remain in LESSOR exclusively. LESSEE shall keep the Vessel free from any and all liens and claims, and shall do or permit no act or thing whereby LESSOR'S title or rights may be encumbered or impaired. Upon expiration to termination hereof, the Vessel shall be returned unencumbered to LESSOR by LESSEE'S as LESSEE'S sole expense and in the same condition as when received by LESSEE, reasonable wear and tear from proper use thereof alone accepted.

17. **NON-WAIVER.** LESSOR'S failure at any time to require strict performance by LESSEE of any of the provisions hereof shall not waive or diminish LESSOR'S rights thereafter to demand strict compliance therewith or with any other provision. Waiver of any default shall not waive any other default. LESSOR'S rights hereunder are cumulative and not alternative.

18. **INDEMNITY.** LESSEE shall indemnify, defend, and hold LESSOR harmless against all claims, actions, proceedings, damages, and liabilities of any nature whatsoever arising from or connected with LESSEE'S possession and/or use of the Vessel, including without limitation, loss of life, bodily injury, personal injury, civil injury, attorneys' fees, and property damages.

19. **LIENS.** LESSEE shall not have any right, power or authority to create, incur, or permit to be imposed upon the Vessel any liens whatsoever. LESSEE shall carry on the Vessel a properly certified copy of this Agreement with the ship's papers and to exhibit the same to any person having business with the Vessel that might give rise to any lien thereon. LESSEE agrees to notify any person furnishing repairs, towage, or other necessities to the Vessel that LESSEE does not have any right to create, incur, or permit to be imposed upon the Vessel any liens whatsoever. Such notice, as far as may be practicable, shall be in writing.

20. **NO WARRANTY MODIFICATION.** LESSEE takes the Vessel in an "AS IS" condition. The LESSOR makes no warranty that the Vessel will satisfy the requirements of any law or rule; LESSEE assumes all liabilities arising there from at its sole risk and expense. No

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING & OCEAN RECREATION

LNR 3-137
(Rev. 3/97)

Type of Agreement:

MOORING PERMIT

No. H 6239

Initial _____
New _____
Revision _____
Other R.I.

Account No. 0843R004888 807

Date _____ 20 _____

This permit is for a berth in the Honokohau Small Boat Harbor at Berth No. B-1 for boat with

Registered/Document No. HA 4918 CP Name of Boat El Lobo Length (overall) 42' Length on Deck _____
Exp 10/11

I agree to the following terms, conditions, and charges:

- I agree to abide by all rules promulgated by the Department of Land and Natural Resources and conditions of this permit. Rules are available for purchase at District and Harbor offices.
- The Boat will be moored at the location designated by the official representative of the Department of Land and Natural Resources and tied up in a manner approved by the representative.
- The PERMITTEE will pay the STATE fees and charges in advance or before the first day of each month for the use of the berth and any additional facilities or services assigned or provided to the PERMITTEE by the STATE, in such sums as are prescribed by the HAWAII ADMINISTRATIVE RULES, SMALL BOAT HARBORS, DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAII, in effect on the date of issuance of this permit, and in the future as prescribed by any amendments thereto. The fees in effect are as follows:

(1) Mooring	\$ <u>163.38</u>	(4) Security Deposit	\$ _____
(2) Electricity	\$ _____	(5) Other	\$ _____
(3) Gear Locker	\$ _____	(6) Monthly Payment	\$ <u>163.38</u>

- A mooring permit may be cancelled by a boat owner upon 30 days written notification as prescribed in Section 13-231-9, and charges will be made in accordance with Section 13-234-2(d) of the Small Boat Harbors Rules. The Security Deposit will be applied to any outstanding balance. The remaining will be returned via mail within a reasonable time.
- This mooring privilege may be terminated by the Department of Land and Natural Resources by written order of the said representative and the boat will be moved from the mooring at any time on order of the said representative should necessity arise. Failure to do so may result in the impoundment of the vessel.
- This Mooring Permit and related use permits will AUTOMATICALLY EXPIRE if the vessel is absent from its assigned berth, mooring, and/or assigned offshore anchorage area for more than fourteen (14) days unless the holder of the permit applies for and receives permission from the Department to retain the use of the assigned berth and related permits upon the vessel's return (Sec. 13-231-11 of the Small Boat Harbors Rules).
- The Department of Land and Natural Resources, its members, officers, agents and employees shall not be liable to me or to any other person for damages to the boat or any other property or for injury to any person arising out of or incident to the mooring of said boat. And I hereby covenant and agree that I will indemnify and save harmless said Department, its members, officers, agents and employees from any and all manner of actions, liability, and claims arising out of or incident to said mooring, including acts incurred while attempting to save the vessel from sinking or preventing a pollution incident from occurring.
- This mooring permit shall not exceed one (1) year from 03/01/11 and the mooring privilege under this permit terminates on 02/29/12.
(Date) (Date)

A new mooring permit may be obtained within ninety (90) days prior to the termination date listed above only if all fees and charges due, per Hawaii Administrative Rules, have been paid and upon completion of a satisfactory vessel inspection. Failure to obtain a new mooring permit prior to the termination date listed above shall result in the vessel owner being charged the rate for vessels moored without a permit, and may result in the vessel being required to vacate the harbor, offshore mooring area, and/or ramp facility.

- The department retains the right to not issue a new permit after the termination date of this permit.

Vessel Insp. by: D. Cintas Exp. 02/05/13

[Signature]
Permittee Signature

Awahnee Oceanics, Inc.

Printed Name of Permittee

Name Address _____

Phone: Home _____

Work _____

City _____

State _____

Zip _____

APPROVED:
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION

[Signature]
by _____
[Signature]



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
WATER & LAND**

**Wednesday, February 5, 2014
9:15 A.M.
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 2327
RELATING TO USE PERMITS FOR SMALL BOAT HARBORS**

House Bill 2327 proposes to clarify that no use permit for a state small boat harbor facility may be transferred unless specifically provided by law. **The Department of Land and Natural Resources strongly supports this Administration measure.**

Section 200-10(d), Hawaii Revised Statutes, allows the transfer of all use permits issued to a corporation for the use of a small boat harbor facility as long as the corporation or other business entity holds a valid commercial use permit. It is silent on the transfer of a regular mooring permit that is issued to a corporation or other business entity and whether the permit may be transferred upon change in ownership of the corporation or other business entity.

This bill proposes to clarify that use permits issued to a corporation or other business entity for a state small boat facility may only be transferred if the corporation or other business entity holds a valid commercial use permit. It also clarifies that if a corporation is owned by another corporation, any change in ownership of either corporation triggers a transfer fee. This will ensure that the issuance of use permits for small boat harbors and related facilities are done fairly and prevents people from being exempt from paying a transfer fee by forming multiple corporations.

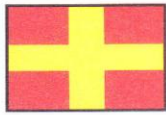
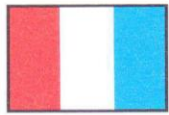
WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
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

TRILOGY



COMMITTEE ON WATER & LAND

Rep. Cindy Evans, Chair

Rep. Nicole E. Lowen, Vice Chair

Wednesday, February 05, 2014

9:15 am

Conference Room 325

Testimony of James E. Coon in Opposition:

HB 2327 RELATING TO USE PERMITS FOR SMALL BOAT HARBOR FACILITIES

Chair Evans, Vice Chair Lowen and Members of the Water & Land Committee:

My name is Jim Coon and I speak as the CEO of our family business celebrating 41 years in continuous operations on Maui and Lanai. I speak in opposition to this legislation as written and foresee a multitude of problems if it is passed.

The text of HB 2327 is as follows:

“(b) No use permit may be transferred unless specifically provided by law. For purposes of this section, the term “transfer” includes any change in control, by whatever means, of any entity that owns or controls, directly or indirectly, a use permit.”

The HB 2327 text is very confusing and ambiguous because it is too broad and could be interpreted to encompass a variety of circumstances where there is arguably a “change in control”:

- Change in the company leadership, composition of the board of directors or LLC managing member.
- Incapacity or incompetence of majority owner necessitating having a family member or manager operate the day to day business.
- Death, divorce, or marriage.
- Change in administration of Employee Stock Ownership Plans

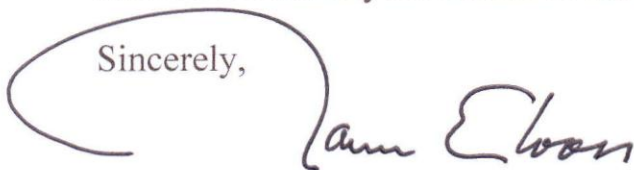
- Any stock transfer or interest between husband and wife, reciprocal beneficiaries, or parent and child which only nominal consideration is paid.
- Banking agreements, including loan guarantees giving the bank control in certain circumstances.
- Change in stock ownership of corporate parent several times removed.
- Certain Hotel contracts which require the Hotel to have control on operations that are exclusive for their guests.

For each of these examples, what metrics will be used to determine if there is a change of control? Is control considered 51%? Do “silent partners” or holders of a majority share of stock have control even if they take no part in the business? What if there is a disagreement in interpretations; for example, what happens if DOBOR’s interpretation of control differs from an IRS or State tax department interpretation?

This bill would add uncertainty and complications to our small businesses. It would make bank financing more difficult to obtain. It would increase our legal fees to ensure correct compliance of the law. It will cost more for DOBOR to administer. It would create an unnecessary reporting burden on small businesses. It would put DOBOR/DLNR auditors in our homes and offices as we are making decisions putting the burden of proof of who was in control of each small business.

We are just coming out of several years of hard times for most of the small business in Hawaii. This is a time to create more certainty and foster a stable business environment, to send a message that Government wants to help you survive not make your life more difficult. We hope HB 2327 goes no further

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Coon". The signature is written in a cursive style and is enclosed within a large, hand-drawn oval.

James “Captain Jim” Coon, CEO



Ocean Tourism Coalition

The Voice for Hawaii's Ocean Tourism Industry
Century Square-1188 Bishop St., Ste. 1003
Honolulu, HI 96813-3304
(808) 537-4308 Phone (808) 533-2739 Fax
timlyons@hawaiiintel.net

February 5, 2014

Testimony To: House Committee on Water & Land
Representative Cindy Evans, Chair

From: Tim Lyons, CAE
Executive Director

Subject: H.B. 2327 - RELATING TO USE PERMITS FOR SMALL BOAT
HARBOR FACILITIES.

Chair Evans and Members of the Committee:

I am Tim Lyons, Executive Director of the Ocean Tourism Coalition and we oppose this bill as written.

This bill could directly affect the viability and financial status of many ocean tourism companies. While it is acknowledged that use permits are generally based on a limited time it has been standard practice for the Department to continue the re-registration of those permits as long as the licensee was not in violation of any law, rule or regulation of the Department. Our particular concern is that the passing on of a business that has been built for many, many years in which thousands and thousands of dollars have been invested could have a financial impact under this bill merely by transferring the

business from father to daughter. It could also be affected by rearranging some of the percentage of shares of ownership in the corporation. The word "control" needs a definition.

As seen from the financial industry side, this kind of temporary permit and prohibition for transfer could easily affect any financial institutions inclination towards the continued viability of the company. After all, without a valid use permit the company can't operate, at least not from that location.

Many of the vessels in the tourism industry can cost hundreds of thousands of dollars and even millions. What bank in their right mind is going to give a loan to a small business who has a limited permit based on the possibility of relinquishing control to new shareholders or new investors in a very limited time?

In short, this bill could be disastrous for the ocean tourism industry and as such, we respectfully request that this bill be shelved.

Thank you.

lowen2-Lanaly

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 04, 2014 3:28 PM
To: waltestimony
Cc: greg@lahainadivers.com
Subject: Submitted testimony for HB2327 on Feb 5, 2014 09:15AM

HB2327

Submitted on: 2/4/2014

Testimony for WAL on Feb 5, 2014 09:15AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Greg Howeth	Lahaina Divers Inc.	Oppose	No

Comments: Aloha Chair Evans, HB 2327 is a bad bill for our small businesses as we are still struggling. We need legislation that helps us, not bills like HB 2327 that restrict our ability to operate. Please don't let HB2327 pass.

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



February 2, 2014

TESTIMONY TO: COMMITTEE ON WATER AND LAND

Rep. Cindy Evans, Chair

Rep. Nicole Lowen, Vice Chair

Wednesday Feb 5, 2014 09:15AM

Conference RM 325

Testimony in Opposition for HB2327
Relating to Use Permits for Small Boat Harbor Facilities

Chair Evans, Vice Chair Lowen and Members of the Water and Land Committee:

I am Melynda Dant, Vice President of our 42 year-old family business here in Kona Hawaii. I speak in opposition to this bill. The wording leaves too much ambiguity for my ocean tourism business to approve.

The state DLNR has a changing of the guards every four years or so. New DOBOR heads, new Chairman of DLNR, and we never know how they will interpret these rules. We need clear rules and laws, so we are protected from unnecessary disruption to our businesses.

This bill in particular is so general, we could have changes due to deaths, and other uncontrollable life circumstances to our stockholders. And why shouldn't a business be able to sell assets such as permits when a stockholder needs to make changes?

The state does not need to prevent ocean tourism businesses from excelling and making changes in their business structure. The state is happy to be in partnership for the 3% harbor fees and GE taxes, so why end a fruitful business due to a change in ownership?

Please stop this bad bill.

Sincerely,
Melynda Dant
Vice President
Fair Wind Cruises



COMMITTEE ON WATER & LAND

Rep. Cindy Evans, Chair

Rep. Nicole E. Lowen, Vice Chair

Wednesday, February 05, 2014

9:15 am

Conference Room 325

Testimony of David Weiss in Opposition:

**HB 2327 RELATING TO USE PERMITS FOR SMALL BOAT HARBOR
FACILITIES**

Chair Evans, Vice Chair Lowen and Members of the Water & Land Committee:

My name David Weiss and I am the Executive Vice President of Kaanapali Kai Charters, Inc. and Kaanapali Sails, Inc. collectively operating as Teralani Sailing in Kaanapali for the last 20 years. I speak in opposition to this legislation as written and foresee a multitude of problems if it is passed.

The text of HB 2327 is as follows:

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- Change in administration of Employee Stock Ownership Plans
- Any stock transfer or interest between husband and wife, reciprocal beneficiaries, or parent and child which only nominal consideration is paid.
- Banking agreements, including loan guarantees giving the bank control in certain circumstances.
- Change in stock ownership of corporate parent several times removed.
- Certain Hotel contracts which require the Hotel to have control on operations that are exclusive for their guests.

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Sincerely,

David Weiss
Executive Vice President
Kaanapali Sails, Inc.
Kaanapali Kai Charters, Inc.