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GOVERNOR OF  
HAWAII



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STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of  
SUZANNE D. CASE  
Chairperson

Before the House Committee on  
FINANCE

Wednesday, February 28, 2018  
12:00 PM  
State Capitol, Conference Room 308

In consideration of  
HOUSE BILL 1988, HOUSE DRAFT 1  
RELATING TO SMALL BOAT HARBORS

House Bill 1988, House Draft 1 proposes to direct the Department of Land and Natural Resources (Department) to lease fast lands and submerged lands at the Ala Wai boat harbor for office space, parking, commercial use, hotel use, training facilities, vessel use, and deep seawater air-conditioning plants. **The Department supports this measure with the following amendments.**

The Department's Division of Boating and Ocean Recreation (Division) is currently in the process of implementing a Request for Proposals for the development of the Ala Wai small boat harbor. During the community outreach phase for this project, concerns were raised that the Division was planning to authorize the building of a high rise hotel/apartment building on the property. At no time was a high rise building contemplated for the property. In fact, the Division stated that the successful Developer would be required to comply with all zoning requirements, including height restrictions.

The amendment to Section 200-2.5, Hawai'i Revised Statutes, limits the height of any structure or building to fifteen feet. The Department notes that prior to the enactment of Act 197, session laws of 2011, the zoning for the facility was twenty-five feet.

Vehicle parking in the facility is at a premium and any new development is expected to need additional parking. In order to create additional parking, the Developer will most likely need to go vertical. Limiting the height of any structure or building to fifteen feet will either result in the loss of parking or restrict potential development within the facility.

Also, the Ala Wai small boat harbor lies within the exposure area, as stated in the *Hawaii Sea Level Rise Vulnerability and Adaptation Report*. The Report, mandated by statute, advises that

“(t)he State should consider developing design standards as best management practices for building in the SLR-XA with 3.2 feet of sea level rise.” SRL-XA is the exposure area, the footprints of three hazards—passive flooding, annual high wave flooding and coastal erosion. A height limit of fifteen feet will not accommodate such flooding since the Report models a possible scenario of 5 feet and mentions the potential for a rise of 6 feet, as well as associated flood risk, and even submersion of lands. Any development that occurs in the Ala Wai small boat harbor must address potential chronic flooding in the “inevitable near and medium-term rise of sea level” which is expected to occur within the next 30-70 years. This is essentially the lease period for any development at the harbor. A Developer may need to mitigate and adapt to this change in sea levels, through buttressing and raising of structures. A fifteen-foot height restriction will severely limit the potential of this harbor.

For these reasons, the Department recommends that the height limit for any structure be set at forty-five feet to accommodate potential sea level rise as well as any development issues that may need to be addressed. House Draft 1 amends the measure to set the height limits for buildings with office space and vessel haul-out facilities at forty-five feet, and the Department recommends that the height limit for all other structures be set at forty-five feet as well. The Department also recommends clarifying that the leasing of submerged lands includes all submerged lands within the confines of the Ala Wai small boat harbor.

The Department's recommended changes are below, highlighted in gray.

SECTION 1. (a) Pursuant to section 200-2.5, Hawaii Revised Statutes, the department of land and natural resources is directed to lease all fast lands and all submerged lands at the Ala Wai boat harbor using the request for proposals process for the public-private development, management, and operation of areas of Ala Wai boat harbor.

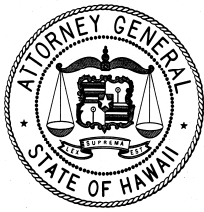
(b) The permissible uses under the lease shall include:

- (1) Office space for use by the division of boating and ocean recreation of the department of land and natural resources; provided that any structure or building containing an office space shall not exceed forty-five feet in height;
- (2) Vehicular parking, including parking stalls for use by the division of boating and ocean recreation of the department of land and natural resources and for public metered parking;
- (3) Commercial uses, including restaurants, retail stores, marine-supplies stores, and sundry stores, to be made

available to the public; provided that any structure or building containing a commercial use shall not exceed ~~[fifteen]~~ forty-five feet in height;

- (4) Hotel, residential, and timeshare uses; provided that any structure or building containing a hotel, residential, or timeshare use shall not exceed ~~[fifteen]~~ forty-five feet in height;
- (5) Training facilities for ocean recreation and support facilities for ocean recreation;
- (6) Vessel haul-out, storage, and repair facilities; provided that any structure or building containing a vessel haul-out, storage, or repair facility shall not exceed forty-five feet in height; and
- (7) Deep seawater air-conditioning plants; provided that any structure or building containing a deep seawater air-conditioning plant shall not exceed ~~[fifteen]~~ forty-five feet in height.

Thank you for the opportunity to comment on this measure.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-NINTH LEGISLATURE, 2018**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 1988, H.D. 1, RELATING TO SMALL BOAT HARBORS.

**BEFORE THE:**

HOUSE COMMITTEE ON FINANCE

**DATE:** Wednesday, February 28, 2018      **TIME:** 12:00 p.m.

**LOCATION:** State Capitol, Room 308

**TESTIFIER(S):** Russell A. Suzuki, Acting Attorney General, or  
Colin J. Lau, Deputy Attorney General

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Chair Luke and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill while noting the following legal concerns. Specifically, this bill may be subject to challenge as a special law concerning lands owned or under the control of the State and its political subdivisions in violation of article XI, section 5, of the Hawai'i Constitution.

This bill directs the Department of Land and Natural Resources (DLNR) to lease fast lands and submerged lands at the Ala Wai boat harbor using a request for proposals process for public-private development, management, and operation, pursuant to section 200-2.5, Hawaii Revised Statutes. The bill further directs that such leases have only certain enumerated permissible uses with structures that have a height limitation of fifteen feet or forty-five feet.

There is a potential that the bill could be subject to challenge as an exercise of legislative power over government lands by special law because it designates a specific, identifiable property to be disposed of by lease to a private entity other than a political subdivision of the State. Article XI, section 5, of the Hawai'i Constitution provides: "The legislative power over the lands owned by or under the control of the State and its political subdivisions shall be exercised only by general laws, except in respect to transfers to or for the use of the State, or a political subdivision, or any department or agency thereof." A general law must apply uniformly. *Sierra Club v. Dep't of Transp.*, 120 Hawai'i 181, 214, 202 P.3d 1226, 1259 (2009). We recommend

that subsection (a), found on page 1, line 3 to line 5, be amended to provide for disposition by lease for all state small boat harbors, or such other general criteria that do not identify a named small boat harbor property (e.g., all small boat harbors located on the south shore of a given island).

We also make the following comment that the bill should reference subsection (c) contained in section 8 of Act 197, Session Laws of Hawaii 2011, such that the bill proposes to amend the permissible uses indicated in that provision.

We respectfully ask the Committee to revise this bill accordingly.

Thank you for the opportunity to testify.

**HB-1988-HD-1**

Submitted on: 2/26/2018 3:52:07 PM

Testimony for FIN on 2/28/2018 12:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
kathryn fitzsimmons	Individual	Oppose	Yes

Comments:

As a long-time and permanent resident of the Ala Wai Boat Harbor neighborhood, I AM STRONGLY OPPOSED TO ANY DEVELOPMENT IN EXCESS OF FIFTEEN FEET AT THE HARBOR. Any high rise development would conflict with existing state statutes regarding our small boat harbors. The harbor should support maritime activities for the people of Hawaii, not industrial plants such as a sea water a/c facility (which is completely unnecessary and would benefit only a few select entities) and certainly not high rise hotels/condos.

Senator Saiki was incorrectly advised by committee that the Ilikai Association of Owners approved the Amended HB 1988...it does not, as it DOES NOT APPROVE BUILDINGS HIGHER THAN 15 FEET. The bill was amended from 15 feet to 45 feet and the memo to Senator Saiki incorrectly infers that the Ilikai Assn of Owners approved the amendment...IT DOES NOT.

## FIN-Jo

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**From:** Joy Rossum <jarossum@hotmail.com>  
**Sent:** Sunday, February 25, 2018 5:00 AM  
**To:** FINTestimony  
**Subject:** HB 1988HD1

As an owner of two units in the Ilikai, I am OPPOSED to hotel, condo or water plant in the Ala Waitlist Harbor!!!! Traffic is a nightmare now, not to mention spoiling the beauty of the whole area and views from miles away.!! GrEED HAS DONE ENOUGH DAMAGE!!!!

Sylvia Luke, Chair

Ty J.K. Cullen, Vice Chair

Finance Committee Members, Hawaii State Capitol

Testimony by: Nancy Mueting

Contact address: Ilikai Hotel condominium unit

or email: nancymueting@hotmail.com

Hearing: February 28, 2018; 12noon; rm. 308

HB1988 HD1-Ala Wai Harbor Leasing



Support



Oppose

Dear Chairs and committee members,

I oppose private use of the harbor namely hotel, residential, and seawater air-conditioning plants I support leasing for businesses providing facility services, and supplies. Please consider reducing the 45' maximum building height. The city has a protected view plane at bridge and elsewhere will break character of horizon.

Thank you for your consideration.



**HB-1988-HD-1**

Submitted on: 2/26/2018 9:41:33 PM

Testimony for FIN on 2/28/2018 12:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
charles thomas carroll	Individual	Oppose	No

Comments:

I would like to respectfully submit my testimony in opposition to HB 1988 HD 1.

First, it is my understanding that the State Attorney General has issued an opinion that HB 1988, which applies only to the Ala Wai boat harbor, conflicts with the Hawaii Constitution that states that laws must be applied uniformly. Therefore it seems to me that the legal standing of this bill is weak and almost certain to be challenged.

Second, I believe that the boat harbor should be used for purposes that support public recreational and maritime harbor activity. I believe that offices (unless related to operation of the harbor), time share, hotels, and air conditioning plants are alien and inappropriate uses that support private rather than direct public usage.

Instead, I believe that the State should restore the boating services that were previously removed and then consider "redeveloping" the largest site in the harbor (site A) in a manner that would generate new revenue for the State as well as provide new benefits to Hawaii's citizens and visitors. In my business travels across the mainland I have seen many marinas that have done precisely that by adding retail amenities into a nicely landscaped, "village-themed" park-like setting that surrounds their boat moorage. Perhaps a nice restaurant, sandwich shop, pizza parlor, ice cream shop, coffee shop and gift shops could be considered.

In my opinion the Ala Wai boat harbor is significantly under-appreciated and has significant potential. Considering its unique character due to the boats moored there, and its proximity to the ocean, if it were redeveloped properly I think it could become a focal point of Waikiki and provide new benefit to the people of Hawaii and new revenue for our State.

I think that hotel, time share, residential, and air conditioning plants are not the proper focus for our Ala Wai boat harbor. I believe that we can do better than this.

Thank you for considering my thoughts.

Charles Carroll



House Committee on Finance Hearing  
Wednesday, February 28, 2018  
12:00 PM  
Conference Room 308

## **House Bill 1988 – Relating to Small Boat Harbors**

Testimony Stating Concerns and Opposition  
Submitted by Michelle S. Matson

Chair Luke and Committee Members:

Hawaii Revised Statutes, §200-2.5, stipulates that any uses of Hawai'i small boat harbors, including Ala Wai Small Boat Harbor fast lands and submerged lands, shall be consistent with uses that **“complement or support the ocean-recreation or maritime activities.”**

Further, Ala Wai Small Boat Harbor is a protected Public Precinct with an established 25-foot building height limit within the Waikiki Special District. Yet House Bill 1988 incongruously seeks to override this protective height limit requirement by increasing it 80% to an untenable 45 feet within two key Ala Wai Small Boat Harbor areas urgently needed for restored and improved public maritime uses and functions.

In furtherance of such efforts by some to alter the established intended character, purpose, and functions of Honolulu's vital small boat harbor dedicated to ocean recreation and maritime activities, Bill 1988 chisels out alien and incompatible uses for higher-density cumulative redevelopment of Harbor fast lands - specifically for private “hotel, residential, and timeshare” uses as well as private industrial “seawater air-conditioning plants,” each of which would consume vast portions of Ala Wai Harbor fast lands vitally needed for restored and improved Ala Wai Small Boat Harbor purposes and public harbor operations.

Clearly the public interest is being transparently short-changed and circumvented by House Bill 1988. These transgressions must be cured. The remedies are as follows:

**Delete (4) “Hotel, residential, and timeshare uses”;**

**Delete (7) “Deep seawater air-conditioning plants”;**

**Delete the proposed “45-foot” height limit increase and ensure adherence to the regulatory 25-foot height limit requirement in compliance with the Waikiki Special District zoning regulations for the Ala Wai Harbor Public Precinct - such compliance as assured by the DOBOR Administrator at the January 12, 2018 BLNR informational briefing;**

**Ensure a comprehensive community-based Master Plan for the Ala Wai Small Boat Harbor and Shoreline Recreation Area.**

**HB-1988-HD-1**

Submitted on: 2/27/2018 10:51:02 AM

Testimony for FIN on 2/28/2018 12:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
weihong	Individual	Oppose	No

Comments:

Thank you for letting me voice my opinion about HB 1988 HD 1.

I do not believe that office space (except for the harbormaster), hotel, residential, time share or AC plants are proper uses for our Ala Wai boat harbor.

I believe that this area should be used to support marine related activities and ocean recreational usage by Hawaii's citizens and visitors. Wasn't that the intended purpose of this area when it was created?

As a long time resident of the Waikiki area it is my feeling that Waikiki already has too many buildings. It is becoming increasingly difficult to even see the ocean from much of Waikiki. I am concerned that our area is going to lose its appeal, which would translate into a loss of income eventually.

The Ala Wai boat harbor really is the last large open area in Waikiki. It has a wonderful feeling to it because the boats there give it personality and because it is away from the noise and bustle of Ala Moana and Kalakaua.

I definitely think parts of the harbor could be improved, especially the large area that has the Diamond parking lot. The harbor could be a beautiful and popular part of Waikiki if it were landscaped and had food sources available for people who are using the marina or the lagoon next door.

Each Friday I watch as hundreds (thousands?) of people come down to watch the fireworks. They arrive about 7 and leave by 8 because there is nothing else in the harbor for them to do. That would all change if we added food outlets or entertainment.

The harbor has so much potential but more large buildings is not the right approach.

Thank you again.

Weihong Lei

**HB-1988-HD-1**

Submitted on: 2/27/2018 11:22:40 AM

Testimony for FIN on 2/28/2018 12:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Cindy Jacobson	Individual	Oppose	No

Comments:

The Ala Wai Harbor is and always has been for the recreational use of the people of Hawaii. The use of the vacant lands, submerged waterways and any other part of this harbor area for hotels, highrise developments and/or the building of an air conditioning plant is a violation of the public trust and the documents of the Ala Wai Harbor area. I am an owner of two units at the Ilikai, and my parents became owners in 1967. To make such a drastic change in the harbor area in front of our building and the others in the area is a violation of our trust in the government of Hawaii. Simply put you are making yourselves out to be liars, telling the world that you can not be trusted, and investment in Hawaii can not be trusted.

Respectfully submitted,

Cindy Jacobson

Owner, Ilikai 841 & 843

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**HB-1988-HD-1**

Submitted on: 2/27/2018 11:24:33 AM

Testimony for FIN on 2/28/2018 12:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Shahbano Agha	Individual	Oppose	No

Comments:

Dear Sirs:

I object to the uses below:

1. Sea water airconditioning plant.
2. Hotel.
3. Residential.
4. Building Heights over 30 feet.

Thank you for your consideration.

Shahbano Agha

**LATE**

**HB-1988-HD-1**

Submitted on: 2/28/2018 9:34:07 AM

Testimony for FIN on 2/28/2018 12:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Christine A Serafin-Clothier	Individual	Oppose	Yes

Comments:

I stand in opposition to HB1988 specifically because of the arbitrary increase in the allowed height limit from 15 feet to 45 feet for any structure. I look forward to the continued use of the state land surrounding the Ala Wai Small boat harbor that support the boating needs of the boaters using this public harbor.

TESTIMONY BEFORE THE HAWAII HOUSE OF REPRESENTATIVES  
COMMITTEE ON FINANCE CONCERNING HB 1988  
FEBRUARY 28, 2018

**LATE**

I am Stan Thornton, a long-time slip holder in the Ala Wai Small Boat Harbor and a Past Commodore and current Director of Waikiki Yacht Club. I oppose HB 1988 as currently drafted for several important reasons:

- The Ala Wai traditionally has been home to small boats and businesses that support recreational boating, canoe paddlers, surfers, kayakers, beach users, fireworks watchers and other local shoreline recreation users.
- Also important, the Ala Wai is the entrance for visitors arriving at the airport and destined for Waikiki. In its current condition, the Ala Wai is hardly an enticing welcome to the State's principal resort destination. The Ala Wai could and should be a jewel showcase at the entrance to Waikiki, much as many recreational marinas are on the West Coast
- Commercial development in or adjacent to the Ala Wai unrelated to a recreational boat harbor, especially high-density and industrial uses that will create traffic and environmental concerns, will only diminish the image of this important asset to Waikiki.
- Development in the Ala Wai unrelated to recreational boating and ancillary uses will clearly compete with the established public interest purpose and uses of the harbor, its fast lands and submerged lands.

Thank you for this opportunity to speak on behalf of the thousands of local residents and visitors who currently use the Ala Wai as it was and always has been intended. Higher-density private development in the Ala Wai would certainly infringe upon and preclude vital needed uses of this public recreational small boat harbor.

Respectfully submitted, Stan Thornton