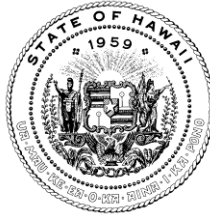


DAVID Y. IGE  
GOVERNOR OF  
HAWAII



SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA  
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.  
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

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

Testimony of  
SUZANNE D. CASE  
Chairperson

Before the Senate Committee on  
WATER AND LAND

Monday, March 19, 2018  
2:55 PM  
State Capitol, Conference Room 224

In consideration of  
**HOUSE BILL 2380, HOUSE DRAFT 1, PROPOSED SENATE DRAFT 1  
RELATING TO DISPOSITION WITHIN STATE BOATING FACILITIES**

House Bill 2380, House Draft 1, Proposed Senate Draft 1 proposes to: (1) clarify that the Board of Land and Natural Resources (Board) may lease all fast lands and submerged lands within any existing state boating facility pursuant to a request for proposals without regard to Section 200-2.6, Hawai'i Revised Statutes (HRS), with the prior authorization of the Legislature by concurrent resolution; (2) require the Board to make a finding regarding certain sea level rise factors and allows legislative authorization for extraordinary circumstances; and (3) repeal fast lands and submerged lands lease requirements specific to the Ala Wai small boat harbor. **The Department of Land and Natural Resources (Department) strongly opposes this proposed draft and recommends the following amendments.**

Section 200-2.5(a), HRS, currently authorizes the Board to lease "fast lands and submerged lands within an existing state boating facility" by public auction, a request for proposals, or by direct negotiation pursuant to Section 171-59, HRS, and Chapter 190D, HRS, for private development, management, and operation, provided that any lease of fast lands or submerged lands pursuant to a request for proposals shall be subject to Section 200-2.6, HRS, regardless of which state boating facility the fast or submerged lands are attached to. Section 200-2.6, HRS, only addresses leases of the Ala Wai Boat Harbor. Thus, the reference to Section 200-2.6, HRS, within Section 200-2.5(a) is ambiguous and confusing, seemingly restricting the department to leasing lands only at the Ala Wai small boat harbor.

As originally written, this measure proposed to remove the language at issue in Section 200-2.6, HRS, which would clarify the Department's ability to lease both fast lands and submerged lands in any state boating facility. However, the department has significant concerns about the language of House Bill 2380, House Draft 1, Proposed Senate Draft 1 that would require the Department to obtain authorization from the Legislature by concurrent resolution for the leasing

of fast lands. Placing a restriction on the Department's ability to lease fast lands at small boat harbors would severely hinder efforts that are an integral part of revenue generation for the boating special fund.

The Department notes that the original purpose and intent of this measure was only to remove Section 200-2.6, HRS, to clarify that leasing of fast lands and submerged lands is not restricted only to the Ala Wai small boat harbor. Additionally, the current statutory language of Section 200-2.5, HRS, which was amended by Act 197, Session Laws of Hawaii 2011, does not include a requirement to obtain approval by concurrent resolution for leasing of both fast lands and submerged lands. If the Legislature wishes to have oversight over leases through approval by concurrent resolution, the Department believes that only leases of submerged lands should be subject to authorization from the Legislature by concurrent resolution.

The Department operates and manages twenty-one harbors, which includes approximately eighteen leases and thirty-eight revocable permits applicable to fast lands. The Department is actively working to convert the majority of the revocable permits into long term fast land leases that would encourage development and upgrades to the facilities because the lessee would have the capability to amortize their investment. Developing and upgrading these properties will generate revenues that would be used for continued improvement and maintenance of the facilities as well as the improvement and maintenance of other state small boating facilities.

Requiring the Department to obtain a concurrent resolution from the Legislature each time it proposes to issue a lease for fast lands alone will have a detrimental effect on the program due to the inherent delay in obtaining approval by concurrent resolution from the Legislature. Many of these leases will expire when the Legislature is not in session. This will result in properties remaining vacant and disruptions to the revenue stream from lease rents that are used to support facilities incapable of generating sufficient revenue to support operations.

The Department needs the flexibility to be able to enter into lease agreements in a timely manner to ensure the properties remain occupied and continue to generate revenue. The Department's recommended amendments to this measure would provide it with the necessary flexibility to perform upgrades and improvements to state boating facilities and to generate revenue that will be used to support the boating program.

The Department's recommended amendments are as follows (highlighted in grey):

SECTION 1. Section 200-2.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Notwithstanding any law to the contrary, the board [~~, with the prior authorization of the legislature by concurrent resolution,~~] may lease fast lands and submerged lands within an existing state boating facility by public auction, a request for proposals, or by direct negotiation pursuant to section 171-59 and chapter 190D, for private development, management, and

operation; provided that ~~[any lease of fast lands or submerged lands pursuant to a request for proposals shall be subject to section 200-2.6, regardless to which state boating facility the fast or submerged lands are attached.]~~ no lease shall be approved by the board unless the board has first found that:

- (1) The lessee has considered the risk of sea level rise on the area of the land to be leased; and
- (2) The effect of sea level rise on the area of the land to be leased will be minimal during the term of the lease;

provided further that the board may ~~[request authorization from the legislature of, and the legislature may]~~ authorize~~[,]~~ a lease that does not satisfy the criteria under paragraphs (1) and (2) where ~~[the board demonstrates]~~ the existence of extraordinary circumstances ~~[necessitating]~~ necessitate the lease.

As used in this section, the term "state boating facility" means a state small boat harbor, launching ramp, offshore mooring, pier, wharf, landing, or any other area under the jurisdiction of the department pursuant to this chapter."

Thank you for the opportunity to comment on this measure.



COMMITTEE ON WATER AND LAND

Kenekoa/Senator Karl Rhoads, Luna Ho'omalu/Chair  
Kenekoa/Senator Mike Gabbard, Hope Luna Ho'omalu/Vice Chair

No Ka 'Aha Ho'olohe  
NOTICE OF HEARING

**LATE**

Lā / DATE: Pō'akahī, Malaki 19, 2018 / Monday, March 19, 2018  
Hōla / TIME: 2:55 p.m.  
Wahī / PLACE: Lumī 'Aha Kūkā 224 / Conference Room 224

**TESTIMONY OF THE OCEAN TOURISM COALITION SPEAKING IN OPPOSITION TO HB2380SD1**

Dear Senator Rhoads, Chair; Senator Gabbard, Vice Chair, Members of WTL:

My name is James E. Coon, President of the Ocean Tourism Coalition (OTC), speaking in Opposition to SB2380,SD1 Relating to Disposition Within Boating Facilities.

The OTC represents over 300 small ocean tourism businesses state wide. Most of these are family businesses which are locally owned and operated. Many of them have been in business for several decades and are an important and valued part of their respective communities. Most of these businesses operate from State Boating Facilities. While we support the original intent of this bill there are some serious flaws which will cause real harm to our Small Boat Harbors management and have been clearly articulated by DLNR Chair Case, and I quote:

"The language of House Bill 2380, House Draft 1 would require the Department to obtain authorization from the Legislature by concurrent resolution for the leasing of both fast lands and submerged lands. The Department already has the authority to lease fast lands at all small boat harbors pursuant to the current language of Section 200-2.5(a), HRS, and believes that only leasing of submerged lands should be subject to authorization from the Legislature by concurrent resolution. The Department therefore recommends House Bill 2380, House Draft 1 be amended to clarify this intent. **Placing a restriction on the Department's ability to lease fast lands at small boat harbors would severely hinder efforts that are an integral part of revenue generation for the boating special fund.** The Department's recommended amendments to SECTION 1 of House Bill 2380, House Draft 1 is as follows:

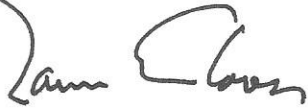
SECTION 1. Section 200-2.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows: "(a) Notwithstanding any law to the contrary, the board [, **with the prior authorization of the legislature by concurrent resolution,**] may lease fast lands and submerged lands within an existing state boating facility by public auction, a request for proposals, or by direct negotiation pursuant to section 171-59 and chapter 190D, for private development, management, and operation; provided that any

lease of [fast lands or] submerged lands [pursuant to a request for proposals shall be subject to section 200-2.6, regardless to which state boating facility the fast or submerged lands are attached.]

shall require prior authorization from the legislature by concurrent resolution. As used in this section, the term "state boating facility" means a state small boat harbor, launching ramp, [offshore mooring,] pier, wharf, landing, or any other area under the jurisdiction of the department pursuant to this chapter."

Please incorporate the language submitted by DLNR Chair Case in her previous testimony on HB 2380 so you will pass a bill that will help our harbors be maintained and improved.

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Coon". The signature is written in a cursive style with a large initial "J" and "C".

James E. Coon, President

Ocean Tourism Coalition

**HB-2380-HD-1**

Submitted on: 3/16/2018 11:44:35 AM

Testimony for WTL on 3/19/2018 2:55:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
charles thomas carroll	Individual	Oppose	No

Comments:

I would like to submit testimny in opposition to this bill for the following reasons;

It seems to me as though discussing the details of a lease with prospective lessors through "direct negotiations" could violate the States Sunshine laws. It appears that the public should have access to discussions and be allowed public testimony.

The Senate draft attaches requirements that sea level risks be considered prior to any lease agreement but then states that the legislature can disregard these requirements if "extraordinary" circumstances exist "necessitating" the lease. Both these terms seem very subjective and would seem to leave themselves open to interpretation and legal challenge.

Thank you for considering my thoughts.

Charles Carroll

**HB-2380-HD-1**

Submitted on: 3/18/2018 3:01:22 PM

Testimony for WTL on 3/19/2018 2:55:00 PM

**LATE**

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

Comments:

Chairs and Committee Members;

Thank you for amending the bill to meet the Hawaii Constitution. The public does not have time to be aware of allowable leasing of all harbors with the sudden change.

Sea level rise should always be considered by the lessee and state when granting term. A necessity otherwise sounds as desperate as rise itself.

In deleting specific name to Ala Wai Harbor, see same property named in the note at bottom of HRS 171-53.

In appreciation, Nancy