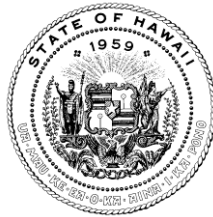


DAVID Y. IGE
GOVERNOR OF HAWAII



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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
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 18, 2019
1:15 P.M.
State Capitol, Conference Room 229

In consideration of
HOUSE BILL 1032, HOUSE DRAFT 2
RELATING TO STATE BOATING FACILITIES

LATE

House Bill 1032, House Draft 2 proposes to allow the Board of Land and Natural Resources (Board) to lease any existing state boating facility in its entirety, as well as fast and submerged lands within any existing state boating facility, by public auction, request for proposals, or direct negotiation for private development, management, and operation, with the prior authorization from the Legislature by concurrent resolution; and to repeal fast and submerged land lease requirements specific to the Ala Wai Small Boat Harbor. **The Department of Land and Natural Resources (Department) respectfully opposes SECTION 1 of this measure and recommends adopting the Senate position in Senate Bill 1258, Senate Draft 1.**

SECTION 1, as currently drafted, would require the Department to obtain authorization from the Legislature by concurrent resolution to lease both fast and submerged lands. Pursuant to the current language of Section 200-2.5(a), Hawaii Revised Statutes (HRS), the Department already has authority to lease fast lands at all small boat harbors without a concurrent resolution. If the Legislature wishes to have oversight over leases, the Department believes that only leasing of submerged lands should be subject to authorization by concurrent resolution.

Placing a restriction on the Department's ability to lease fast lands at small boat harbors would severely hinder revenue generation for the boating special fund. There would be an inherent delay in obtaining authorization for leases because the Legislature's regular session is generally from January to May of each year. Leases that expire in the interim could not be reissued, and the Department will lose revenue. Because of these concerns, the Department's opposition is limited to SECTION 1 of this measure. The Department therefore recommends that this measure be amended to adopt the Senate position in Senate Bill 1258, Senate Draft 1.

Currently, Section 200-2.5(a), HRS, 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 to which state boating facility the fast or submerged lands are attached. In turn however, Section 200-2.6, HRS, only addresses leases of the Ala Wai small boat harbor. The reference to Section 200-2.6, HRS, within Section 200-2.5(a), HRS, is therefore ambiguous and confusing.

The Department operates and manages sixteen harbors. Some harbors, including the Ala Wai small boat harbor, contain certain areas that are underused with significant revenue generating potential. Additional revenue derived from these underused areas would enable the Department not only to address repairs and maintenance more quickly but also use any surplus towards repairs and maintenance at other state small boat harbors and boating facilities. Many state boating facilities are in dire need of long overdue repair and maintenance. This measure would provide the Department with more flexibility and options to upgrade and improve state boating facilities in a timely manner, to the benefit of boaters and the public.

Additionally, in response to questions and comments received, the Department recommends an amendment to this measure to provide that the rent amount for any lease issued under Section 171-59(a), HRS, be set at no less than fair market value. Being able to assess fair market value for any leased property would allow the Department to maximize its revenue, which in turn would help to reduce the amount of state funds needed for supporting small boat harbor operations. The Department recommends a new section be inserted into this measure, to read as follows:

SECTION . Section 171-59, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A lease of public land may be disposed of through negotiation upon a finding by the board of land and natural resources that the public interest demands it. Where the public land is being sought under this section by a sugar or pineapple company, and the company is the owner or operator of a mill or cannery, then, for the purposes of this section, the economic unit shall be that acreage of public land which when taken together with the lands already owned or controlled or available

to the company, when cultivated is found by the board to be necessary for the company's optimum mill or cannery operation.

~~[In all other cases, public land to be sold under this section shall be an economic unit as provided in section 171-33(3).~~

~~After a determination is made to negotiate the disposition of a lease, the board shall:~~

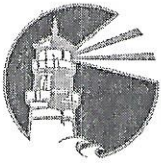
- ~~(1) Give public notice as in public auction, in accordance with the procedure set forth in section 171-16(a), of its intention to lease public land through negotiation setting forth the minimum conditions thereunder, the use for which the public land will be leased. Any person interested in securing the lease shall file an application with the board not later than forty-five days after the first publication of the notice;~~
- ~~(2) Establish reasonable criteria for the selection of the lessee; provided that where the intended use of the land is agriculture, the department of agriculture shall establish the criteria;~~
- ~~(3) Determine the applicants who meet the criteria for selection set by the board or the department of agriculture, as the case may be, and notify all applicants of its determination. Any applicant may examine the basis of the determination, which shall be in writing, to ascertain whether or not the conditions~~

~~and criteria established by the board or the department of agriculture were followed; provided that if any applicant does not notify the board of the applicant's objections, and the grounds therefor, in writing, within twenty days of the receipt of the notice, the applicant shall be barred from proceeding to seek legal remedy for any alleged failure of the board to follow the conditions and criteria.~~

~~If only one applicant meets the criteria for selection of the lessee, the board may, after notice as provided in (3), above, dispose of the lease by negotiation.~~

~~If two or more applicants meet the criteria for the selection of the lessee, the board shall select the lessee who submits the highest offer contained in a sealed bid deposited with the board.] The rent amount for any lease issued pursuant to this section shall be at no less than fair market value determined pursuant to Section 171-17."~~

Thank you for the opportunity to comment on this measure.



COMMITTEE ON WATER AND LAND

Senator Kaiulani Kahele, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

NOTICE OF HEARING

DATE: Monday, March 18, 2019
TIME: 1:15 P.M.
PLACE: Conference Room 229

LATE

**TESTIMONY OF THE OCEAN TOURISM COALITION IN OPPOSITION OF HB1032HD2
RELATING TO STATE BOATING FACILITIES**

Aloha Chair Kahele, Vice Chair Keith-Agaran, and Members of WTL Committee:

My name is James E. Coon, President of the Ocean Tourism Coalition (OTC),
**speaking in Strong Opposition to HB 1032HD1 Relating to State 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. All of them
operate from State Boating Facilities managed by DLNR/DOBOR.

OTC is against the privatization of State Boating Facilities at this time. DOBOR
already has the authority to lease parts of harbors to private interests with BLNR
and Legislative oversight (if submerged lands are involved). This is far different
from privatizing an entire State Boating Facility.

Keep all our State Boating Facilities under State Control and do not allow private
interests to control our State Harbors.

Please do not pass HB 1032 HD2.

Sincerely.

James E. Coon, President OTC



Testimony for
Committee on Water and Land

Monday, March 18, 2019, 1:15 p.m. Room 229

Senator Kaialiʻi Kahele, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

HB 1032 HD2 Relating to State Boating Facilities

Dear Chair Kahele and Members of the Committee:

This testimony is in **STRONG SUPPORT** of HB 1032 HD2 which allows the Board of Land & Natural Resources to lease any existing state boating facility in its entirety, both fast and submerged lands. They would do this by public auction, request for proposals, or direct negotiation for private development, management and operation. Prior authorization of the Legislature would be required for a lease to be issued. The Small Boat Harbors in the State of Hawaiʻi have been in need of ongoing maintenance, maximization of revenue opportunities, and community engagement for their continuance that this bill would provide.

I am Lynn McCrory, Senior Vice President of Government Affairs for Pulama Lanai. Pulama Lanai is the entity that was set up by Larry Ellison to work with the community and government as we move the island of Lanai toward sustainability. I was a member of the Board of Land & Natural Resources for 8 years and have seen the changes that have occurred within the Division of Boating and Ocean Recreation over the last 20 years, resulting from reduced funding for programs and maintenance.

Manele Small Boat Harbor on Lānaʻi is an example of a small boat harbor that would benefit from leasing by an outside entity. It is small, it has strong community support, has surrounding land that could be added to provide more opportunities for the boating community. It needs management as we have not had a harbor agent that can fulfill the responsibilities needed for the harbor and the community.

The addition of the approval by the Legislature would ensure that what is planned for the harbor would be laid out for both Legislative approval and community input. We believe that this will provide the necessary oversight for the public. And as we all know, if it isn't working the public will let everyone know.

We humbly ask that you support HB 1032 HD2. Mahalo!

Me ke aloha pumehana
With warm aloha,

Lynn P. McCrory
Senior Vice President of Government Affairs

COMMITTEE ON WATER and LAND
HEARING

Monday, March 18, 2019
Senate Conference Room 229
1:15 PM

**HOUSE BILL 1032, HD2
RELATING TO STATE BOATING FACILITIES**

Aloha Chair Kahele, Vice Chair Keith-Agaran and Committee Members:

In part, HB 1032 seeks to repeal HRS Section 200-2.6. Section 200-2.6 is specific to Ala Wai Recreational Small Boat Harbor fast lands and submerged lands lease requirements, including those of the defunct Honeybee project. Notably, the Attorney General's testimony related to last year's HB 1988 pointed out that the State's governing legislation must be general in application and not selectively specific to any one entity or location, which House Bill 1032 attempts to achieve.

Section 200-2.6 also includes a footnote relating to Act 197, 2011, Section 8 "*leasing requirements*" specific to Ala Wai Harbor. Act 197, Section 8, lists multiple permissible uses for the Ala Wai Recreational Small Boat Harbor, including #5 "Hotel, residential, and timeshare uses;" and #10, industrial plants, plural. These uses are contrary to the §200-2.5 provision, which states: "any use that will complement or support the ocean-recreation or maritime activities of state boating facilities." These uses are also inconsistent with the City's Zoning Ordinance for the Waikiki Special District.

It must additionally be recognized that the operative Section 200-2.5, which properly applies generally to all of Hawai'i's recreational small boat harbors, also has the same footnote referencing Act 197, 2011, Section 8, which would remain if not also repealed together with Section 200-2.6. This oversight must be corrected in accordance with the Attorney General's advisory.

Only then will HB 1032 purpose to "repeal fast lands and submerged lands lease requirements specific to Ala Wai Boat Harbor" be achieved.

Testimony provided by Michelle S. Matson

LATE

HB-1032-HD-2

Submitted on: 3/18/2019 9:17:46 AM

Testimony for WTL on 3/18/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Scott Allen	Individual	Oppose	No

Comments:

This testimony is in opposition to HB 1032, as well as the companion bill SB 1258. If passed, these bills would allow the state to privatize the boating facilities that I, along with those in my harbor community, call home. A home that offers many an alternative to affordable housing while living on a fixed income. A home that can still be considered an asset.

Between Ala Wai and Keehi, I have been a resident of Hawaii's State Boat Harbors for going on a decade. Anyone you ask who has been part of the boating community, including myself, will tell you change is needed in how the Harbors are managed. What I cannot agree to, however, is the process by which DOBOR makes decisions regarding harbor management.

Rather than discussing issues and possible solutions with harbor residents, decisions have been made behind closed doors with little effort to engage a key stakeholder group: the harbor community. Not only has little effort been made to include our community in planning and decision making processes, it appears attempts have been made to limit public discourse on what might be unpopular proposals.

DOBOR's administration has been accused of doing the bare minimum to publicize public hearings, only recently developing an email list to notify interested parties of public hearings. This seems consistent with my personal experiences. At a recent public hearing, held on March 2nd, the boating community was asked to give testimony regarding only one of many of the bills in the legislature this session. There was no attempt made by DOBOR to answer any questions from our community at this hearing, and everyone left feeling like our words fell on deaf ears.

When we became aware of the many bills which add up to doubling our mooring fees (which is the housing for many), broadening the definition of "state boating facility" to allow DOBOR to use the special boating fund to cover more facilities than presently allowed, and ultimately privatize the harbors, we began trying to unite as a community. However, any signs we put up to try organizing boatowners at Ala Wai and Keehi were taken down by harbor staff members and

we were told we could not record hearings to allow those who could not attend to view them.

An effective democracy requires deliberation among an aware and active citizenry. Without this, government cannot know they are making decisions which are best for the public interest they are elected to protect. Asymmetrical information like what we see with DOBOR creates a power imbalance where the interests of a few can overpower the interests of many.

The Strategic Action Plan (2019) developed for DOBOR's "ambitious course" (p.2) and seeks to "communicate DOBOR's strategic priorities to decision-makers, staff, and partners effectively, so they can gain a clear understanding of these priorities and can assist with implementation efforts" (p.10). But what about communicating to the harbor community so we can understand? The road map has RFPs being issued in 2019 for private harbor management and projects the implementation of a public-private partnership in 2020 (p.20). All without notice of those who live in the harbor. What does this mean for us? Will we be able to keep our homes? Will we be priced out of them? None of us know and no one will give us answers.

I urge you to stop this bill until DOBOR engages the harbor community in a way where we understand what to expect for our future and have time to prepare for it. The first partnership DOBOR should be seeking is one with the harbor community.

LATE

Opposed to HB1032

Aloha Chairman and committee members,

I'm a small boat (20') owner and a long-time permit holder for a slip in a State (publicly) owned harbor. I'm opposed to several aspects of these sweeping changes. My first objection is the idea that a public recreational facility is now proposing charging fees based on private sector market value. This concept is wrong and seems like a justification to take away public benefits and force small boat owner out. Lets use State parks as a comparison. Is it the State's intention to appraise the private land value of the State parks and then determine the "highest and best use" of that land ie: resort or residential development, and use this information to set camping permit fees for local families? Wait, I forgot to add in all operational, infrastructure, and capital improvement costs on to the camping permits. This example seems ludicrous, but this is exactly what is being "proposed" to local fisherman and harbor users. Public facilities like schools and parks are public benefits, not private for-profit businesses.

In addition to the market based pricing that I object to, DBOR no longer charge by the size of the boat but by the largest boat that will fit in a slip. Say you have a 17' fishing boat and you have occupied a slip for years that could potentially hold a 30' boat because all the slips are this size. The proposal not only doubles your per foot cost but adds 13 more feet that you have to pay for, tripling the slip fee. If this proposal is approved the State will be forcing out local fisherman and boaters, replacing them with only people who can afford large boats at the yacht club pricing.

My next objection is to the proposed privatization of all public harbors. I understand managing State recreational facilities is difficult. The labor cost of union workers and the state procurement system make it difficult. But privatizing is not the answer. The same can be said for public schools or any other benefit the State provides its citizens. Mooring fees have never and will never cover the cost of neglected infrastructure. The Privatization Plan reads like it was created by the Trump organization.

Here are a few out-takes from the Privatization plan:

optimized to maximize returns

does not result in a windfall in funding for DLNR or DOBOR. maximum potential

transform its recreational harbors into world-class marinas.

Harbor will enjoy streamlined management while offering world-class facilities through partnership with Howard Hughes Corporation.

earning potential remains untapped

the harbor itself underperforms in revenue

operate at their maximum potential

(DBOR) recognizes that private companies offer crucial advantages over State government. Private firms can find the most cost-effective and efficient way to manage a harbor as a business.

(rich) boaters can look forward to state-of-the art infrastructure and services.

Provide world-class boating facilities and services.

capitalizing on the potential of these assets presents a significant opportunity to increase revenue for core operations.

DOBOR will also identify revenue-generating services to be contracted out and outline tasks associated with contracting these services to private companies.

our harbors must meet or exceed expectations, offer world-class amenities, activities and resources.

In short I object to the whole for-profit model. In the end, if this is approved local fisherman and small boat owners will be forced out of these “world-class marinas” so rich people can enjoy the “world-class amenities” at our public harbors. Rich people, the 1%ers, can go to private yacht clubs. Please keep public harbors for the rest of us.

Respectfully submitted,

Brett Pruitt