

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 House Committee on**  
**WATER, LAND AND HAWAIIAN AFFAIRS**  
**and**  
**ENERGY AND ENVIRONMENTAL PROTECTION**

**Wednesday, February 6, 2019**  
**10:30 AM**  
**State Capitol, Conference Room 325**

**In consideration of**  
**HOUSE BILL 1032**  
**RELATING TO STATE BOATING FACILITIES**

House Bill 1032 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; (2) to require the Board to make a finding regarding certain sea level rise factors before awarding any such lease; (3) to clarify that legislative approval is not required to award a lease, except that the Board may request approval from the Legislature in extraordinary circumstances, by concurrent resolution, where the Board has not made any findings regarding sea level rise factors; and (4) to repeal fast and submerged land lease requirements specific to the Ala Wai small boat harbor. **The Department of Land and Natural Resources (Department) strongly supports this Administration measure and recommends an amendment.**

Currently, Section 200-2.5(a), Hawaii Revised Statutes (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. House Bill 1032 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.

In response to questions and comments received, the Department recommends an amendment to HB1032 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 HB1032, to read as follows:

SECTION 1. 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.



Testimony for  
Committee on Water, Land, & Hawaiian Affairs  
and  
Committee on Energy & Environmental Protection

Wednesday, February 06, 2019, 10:30 a.m. Room 325

Representative Ryan I. Yamane, Chair  
Representative Nicole E. Lowen  
Representative Chris Todd, Vice Chair  
Representative Tina Wildberger, Vice Chair

**HB 1032 Relating to State Boating Facilities**

Dear Chairs Yamane and Todd, and Members of the Committees:

This testimony is in STRONG SUPPORT of HB 1032 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. The Small Boat Harbors in the State of Hawai'i 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.

We humbly ask that you support HB 1032. Mahalo!

Me ke aloha pumehana  
With warm aloha,

Lynn P. McCrory  
Senior Vice President of Government Affairs



COMMITTEE ON WATER, LAND, & HAWAIIAN AFFAIRS

Rep. Ryan I. Yamane, Chair

Rep. Chris Todd, Vice Chair

Rep. Sharon E. Har

Rep. Tina Wildberger

Rep. Nicole E. Lowen

Rep. Cynthia Thielen

Rep. David A. Tarnas

COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

Rep. Nicole E. Lowen, Chair

Rep. Tina Wildberger, Vice Chair

Rep. Sharon E. Har

Rep. Ryan I. Yamane

Rep. David A. Tarnas

Rep. Cynthia Thielen

Rep. Chris Todd

NOTICE OF HEARING

DATE: Wednesday, February 6, 2019

TIME: 10:30am

PLACE: Conference Room 325

**TESTIMONY OF THE OCEAN TOURISM COALITION IN STRONG OPPOSITION  
HB1032 RELATING TO STATE BOATING FACILITIES**

Chair Yamane, Chair Lowen, Vice Chair Todd, Vice Chair Wildberger and Members of WLH/EEP Committees:

My name is James E. Coon, President of the Ocean Tourism Coalition (OTC), **speaking in Strong Opposition to HB 1032 Relating to State Boating Facilities.**

The OTC represents over 300 small ocean tourism businesses state wide. All of them operate from State Boating Facilities managed by DLNR/DOBOR. Most of these are family businesses which are locally owned and operated.

OTC is against the privatization of State Boating Facilities. 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.

HB 1032 seeks to remove Legislative oversight--except in rare circumstances--on a most significant process of privatizing some or all of our State Boating Facilities. This is unthinkable and would not be wise from our perspective.

While sea level rise is a real concern, in this instance it is just a red herring to keep the focus away from the potential resource grab that is being contemplated.

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

Please do not pass HB 1032.

Sincerely.

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

James E. Coon, President OTC

**HB-1032**

Submitted on: 2/5/2019 8:58:56 AM

Testimony for WLH on 2/6/2019 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Antoinette M Davis	Activities & Attractions Association of Hawaii	Oppose	No

Comments:



**HB-1032**

Submitted on: 2/2/2019 10:45:40 AM

Testimony for WLH on 2/6/2019 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Regina Gregory	Individual	Comments	No

Comments:

Suggest you lease land to Pu'uhonua o Wai'anae in its current location.

**LATE**

**HB-1032**

Submitted on: 2/5/2019 2:03:56 PM

Testimony for WLH on 2/6/2019 10:30:00 AM

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

Comments:

This is a terrible idea. State boating facilities belong to the citizens of Hawaii. Leasing them to corporate interests or even rich private individuals is bad policy, and contrary to the public trust doctrine. Please kill this bill.

COMMITTEE ON WATER, LAND AND HAWAIIAN AFFAIRS  
COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION  
JOINT HEARING

Wednesday, February 6, 2019  
House Conference Room 325  
10:30 AM



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

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