

**SB-1257-SD-1**

Submitted on: 2/13/2019 2:15:12 PM

Testimony for WAM on 2/15/2019 10:15:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Rick Gaffney	Testifying for Hawaii Fishing & Boating Association	Oppose	No

Comments:

SB1257 has several failings that need to be corrected by the Senate prior to further consideration of this bill by the legislature. They are:

1) this bill defers to some valuations/fees established by the Department of Transportation, Harbors Division, yet the bill purports to represent the interests of the DLNR, Division of Boating and Ocean Recreation (DLNR-BOR). DOT abdicated responsibility for the State Small Boat Harbors many years ago, their valuations/fees should no longer be considered relevant to the harbors managed by the DLNR-BOR;

2) the parameters for the determination of "fair market value," particularly for small boat harbor facilities, are not detailed in the bill, nor in the HRS. That failure to clearly delineate a basis for determining fair market value, leaves value determination to whim. DLNR-BOR berths and moorings are not like land assets and require unique knowledge and expertise to fairly assess;

3) the long list of "deferred maintenance" items used by the DLNR-BOR in their justification for this bill is dishonest as many of the items on the list are not "maintenance" but upgrades, and many of those items have never been discussed with recreational and commercial users of the State's small boat harbors. Some seem to have been made-up in an effort to pad their justification for this bill;

4) We recognize that it is appropriate to maximize revenue generation in small boat harbors and boating facilities before making additional funding requests to the Legislature, but the recreational boaters and the ocean recreation community can only afford to pay so much. Many commercial operators in State small boat harbors already pay 3% of their gross revenues, plus twice the recreational mooring fee to the DLNR-BOR, over and above the GET they pay to the State. Raise the fees too high and you financially jeopardize the many small businesses in an industry that caters to one of the main reasons tourists visit Hawaii. Let's not kill the goose that lays the golden egg with endlessly increasing fees;

5) DLNR-BOR has valuable waterfront property with attractive harbor frontage, across the State, that sits idle even as developers regularly seek to lease and improve it. Why

burden harbor tenants with new fees when development of DLNR-BOR properties, and public/private partnerships with those developers, could generate substantial new revenues and take care of some of the alleged "deferred maintenance" items at the same time?

This bill is flawed, based on false pretenses, and threatens to have a huge negative impact on the State's all-important ocean recreation industry, its recreational and commercial fishermen and many others in the boating community.

Please do not allow this bill to proceed in its current form.

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**  
**WAYS AND MEANS**

**Friday, February 15, 2019**  
**1:15 PM**  
**State Capitol, Conference Room 211**

**In consideration of**  
**SENATE BILL 1257, SENATE DRAFT 1**  
**RELATING TO USE PERMITS FOR SMALL BOAT HARBOR FACILITIES**

Senate Bill 1257, Senate Draft 1 proposes to clarify that mooring and liveaboard fees for state small boat harbors and certain boating facilities be set by appraisal by a state-licensed appraiser at fair market value; and to amend the calculation of the liveaboard fee for persons using their principal habitation vessel for commercial purposes. **The Department of Land and Natural Resources (Department) strongly supports this Administration measure.**

The Department's Division of Boating and Ocean Recreation (DOBOR) is responsible for operating and maintaining 16 small boat harbors; 14 boat launch ramps; 5 piers, wharves, and docks; 3 anchoring and offshore mooring facilities; portions of Kā'anapali Beach; portions of Waikīkī Beach; and a portion of the Waika'ea Canal. DOBOR is also responsible for regulating all ocean recreation activity occurring in and on ocean waters out to three nautical miles from shore.

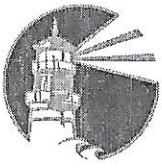
The State currently has a total of 164 liveaboard slips located in the Ala Wai small boat harbor (129 slips) and Ke'ehi Lagoon small boat harbor (35 slips). Liveaboard permittees pay an additional fee to reside on their vessels. This liveaboard fee has not been increased since 1991. The additional fee charged to liveaboard tenants is intended to offset the cost of providing additional services such as increased use of utilities, showers and restrooms, security, and other administrative costs.

To date, DOBOR has identified \$310 million in deferred maintenance at small boat harbors and boating facilities statewide. Being able to assess fair market value at small boat harbors and

boating facilities will allow DOBOR to maximize its revenue generating potential and perform much needed repairs and maintenance on these facilities.

This measure is a much-needed first step in reducing DOBOR's deferred maintenance backlog. The Department recognizes that it is appropriate to maximize revenue generation in small boat harbors and boating facilities before making any additional funding requests to the Legislature, and DOBOR intends to use increased fee revenues to improve sanitation, maintenance, and cleanliness of boat harbor facilities.

Thank you for the opportunity to testify on this measure.



COMMITTEE ON WAYS AND MEANS

Senator Donovan M. Dela Cruz, Chair Senator Gilbert S.C. Keith-Agaran, Vice Chair

NOTICE OF DECISION MAKING DATE: Friday, February 15, 2019 TIME: 10:15 AM

PLACE: Conference Room 211

**TESTIMONY OF THE OCEAN TOURISM COALITION WITH CONDITIONAL SUPPORT  
OF SB1257 SD1 RELATING TO USE PERMITS FOR SMALL BOAT HARBOR  
FACILITIES**

Chair Dela Cruz, Vice Chair Keith-Agaran and Members of WAM Committee:

My name is James E. Coon, President of the Ocean Tourism Coalition (OTC),  
**speaking with conditional support of SB 1257 SD1 Relating to DOBOR Use  
Permits.**

The OTC represents over 300 small ocean tourism businesses state wide. All of them operate from State Boating Facilities managed and permitted by DLNR/DOBOR. These businesses are capital and labor intensive with small profit margins. We want to ensure that the appraisal process follows the normal State procedures.

OTC offers the following small edit to section 7:

(7) All fees established by appraisal pursuant to this subsection shall be set at fair market value determined in accordance with Haw.Rev. Stat . § 171-17.

Please pass SB 1250 with the above amendment.

Sincerely

James E. Coon, President

Ocean Tourism Coalition



Alan McConnell  
348 Puuhale Rd, #307  
Honolulu, Hi, 96820  
[In808@live.com](mailto:In808@live.com)  
808-753-7221  
2/13/2019

### **Executive Summary:**

For many boaters their vessel is merely a form of recreation and relaxation to share with family and friends. For stay-aboard boaters, their vessel may be the last refuge between independent living and being homeless. Dobor's own appraisal states on Page 60 Paragraph 2 the values were compared and calculated based on average rentals (See **NOTE** on last page of this document).

The average one-bedroom apartment within 10 miles of Honolulu, in Jan 2019 rents for \$1578/mo, or roughly \$3 per square foot. An average 40-foot stay-aboard boat is roughly 100-130 Square feet. In Ala Wai and Keehi harbor slip rent would rise to \$7-\$9 per square foot. At \$930/mo, the same 40' vessel OWNER would pay two to three times the cost of a Waikiki apartment for what is essentially an outdoor floating dock. Furthermore, unlike an apartment, the boater OWNS his floating apartment, pays his own insurance, and performs his own maintenance (See NOTE on last page).

To an island state, there can be nothing more precious than it's shoreline management. I'll let others speak to the history of neglect visited upon our small boat harbors. My concern is in the seemingly arbitrary and capricious manner in which this fee increase has been proposed.

Well-managed organizations would perform due diligence before implementing a fee increase of such magnitude. Prudence demands management project anticipated revenues and define where those revenues might be best used to maintain and improve the asset value. According to Ed Underwood, no such cash-flow analysis took place before the fee increase was requested.

According to ED Underwood, this proposed windfall is NOT intended to increase maintenance, repair, or improve the State Harbors, but rather to fund 35% more DOBOR employees. I'm unclear on how exactly this increase in staff will be beneficial to the harbors or those they serve.

### **Why I Oppose The Rate Increase:**

In an email exchange with Administrator Underwood, nearly a year ago, I asked if a state-wide "Master Plan" existed for the administration of the additional revenue. He replied that no such plan existed and there was no intent to develop one in the future. Forgive me, but the "squeaky wheel" system falls far short of effective revenue management.

In the same email exchange, Mr. Underwood went on to write that allocations for maintenance & repair MIGHT be increased IF, DOBOR was unable to hire 35% more staff. Already, State harbors have many times the number of harbor employees of typical for-profit marinas.

Put another way, "We'll hire a bunch of people, and continue to use the maintenance system that has so obviously failed for the last 40 or 50 years." In my opinion an effective management staff studies and projects the impact, both negative and positive, of a substantial (and sudden) rate increase. Such a study would undertake to answer several vital questions, including:

- 1.) If DOBOR is successful in doubling the fees and their annual revenue goes from \$20 million to

- \$30 or 40 million, where will that extra income be most effectively used?
- 2.) What are the negative (unintended) consequences of this fee increase? How many boats will be abandoned and/or stop paying fees altogether? How many vessels will sink as a direct result of the owners walking away from them? At tens-of-thousands of dollars each, how many boats will be raised from the bottom and crushed? One? Ten? A hundred? Three hundred?  
Apparently no one knows.
  - 3.) What is the average length of time between a boat being abandoned and the state removing it from the harbor? What will happen to that average delay if there are a hundred or more boats occupying slips that are no longer paying any rent, let alone the new higher rates?
  - 4.) What kind of damage can we expect to our harbor waters and reefs if the number of sunken boats should suddenly increase dramatically?
  - 5.) If it costs \$30,000 to raise a single sunken boat, crush it, and send it to our landfill, how will the increase in costs affect the revenue anticipated?
  - 6.) Other coastal states have used boats to create artificial ocean habitat. Is this a better idea than crushing tons of fiberglass that never deteriorates and dumping it into our already stressed landfills?
  - 7.) Has Mr. Underwood (or anyone else) developed a plan to bring the state harbors up to minimum conventional harbor standards with fuel docks, pump-out stations, or even the most basic harbor features such as printed harbor rule book, wind socks, weather flags, radio monitoring, Coast Guard liaison, or available work docks?

In a November 20<sup>th</sup> article, the Star Advertiser quoted DLNR's stated charter this way: "The law gives the board discretion to set [rates] at levels that serve the state's interests but **does not require that they be equal to fair market value.**"

Recognizing the jurisdictional issues, I believe public parks, public beaches, nature preserves, and perhaps the best example, public golf courses, quite clearly illustrate the concept of serving the public good. The fee increase requested is precisely what the appraisal recommended. It seems clear enough that harbor administrators paid little heed to that portion of their charter that specifically requires they set fees at levels that "serve the state's interests".

Apparently unsure if even these NEW rates will sustain DOBOR operations, Mr. Underwood, stated that future CIP would depend on the legislature allocating additional investments from the general fund. So, even a doubling of fees may not be enough to support DOBOR's anticipated personnel overhead. So while the average for-profit harbor might employ from one to three employees, DOBOR claims it needs 150 employees when over 80% of boats using state harbors are in just FOUR harbors. The remaining fourteen harbors average fewer than 30 vessels.

The absurdity of increasing DOBOR personnel expenses from the current \$6 million/yr to \$8-9 million to administer 2 large, 2 medium and 14 very small harbors is manifest. Taking Underwood at his word, the new personnel budget would eclipse the \$6 million spent on maintenance in any recent year.

There are currently over 220 pages of rules dedicated to Small Boat Harbors. The average private marina has a dozen at most. Does Hawaii need more harbor micro-managing? Or does it need better harbors? Will any of those 35 new employees contribute anything at all to the repair and maintenance, or to harbor improvements?

Harbor offices have a responsibility to inform those most affected by this dramatic rate increase so they can plan for them and adjust their finances accordingly. These hearings do little to meet that

responsibility. While some of us have tried to spread the word, the office (both Keehi and the district office) have downplayed this fee increase and few actually know the magnitude of the request. It seems fair to assume if DOBOR can post notices when the water will be shut off for an hour, they could certainly post a notice that fees are headed steeply northward.

A reasonable person will recognize the condition and management of any asset has an irrefutable effect on its fair market value. For decades Hawaii harbors have been the laughing stock of the nation. Some of you have been around long enough to remember the Disney embarrassment. Others have read the many awful reviews on sailing forums around the world.

Significant improvement has been accomplished since the Tsunami forced the state to do something about some harbors. But before Motel 6 raises its rates to those of Embassy Suites, I'm convinced they need to perform due diligence.

I reiterate, No one can logically conclude that ANYONE knows what unintended consequences will arise if this fee increase is approved. Mr. Underwood, in our previous email exchange you clearly revealed your concern is to increase the size of your staff. I submit, sir, that your concern should, more appropriately be focused on your public charter to SERVE the ocean recreation community.

A quick comparison between the State employees parking and that of boat owners in Keehi harbor demonstrates somewhere along the line, DOBOR has forgotten what their responsibilities are.

The legislature ordered the fees be BASED UPON appraisal, not necessarily EQUAL TO appraised value. Perhaps instead of an amusement park or a Ferris wheel, DOBOR would be better served by concentrating on its ramshackle harbors.

#### **NOTE**

The following paragraph, taken from DOBOR's appraisal highlights the flawed methodology used to calculate proposed slip fees. Using these "familiar practices" for establishing the value of renting a home or apartment fails to consider that the actual HOME or APARTMENT is already owned by the vessel owner. He/she is not renting an apartment. He/she is renting a floating parking place with an outdoor deck, electrical connection and a water spigot.

**In establishing existing mooring rates, DOBOR employed a rating system that considered locational characteristics, general physical condition, and services and amenities available at the small boat harbors. This historical rating system offers a reasonable basis for establishing mooring fees that a typical tenant could understand since it resembles familiar practices associated with renting a home or apartment. Therefore, we judged this approach to be reasonable and have employed a similar rating methodology in this study. Initially, the market rent for the benchmark Ala Wai Small Boat Harbor catwalk was estimated employing the six comparable indicators. Subsequently, the catwalks at all other small boat harbors statewide were compared to the benchmark Ala Wai Small Boat Harbor to arrive at catwalk rents for each of the facilities.**