

DAVID Y. IGE
GOVERNOR OF HAWAII



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 Committees on
WATER AND LAND
and
WAYS AND MEANS

Monday, February 25, 2019
10:00 A.M.
State Capitol, Conference Room 211

In consideration of
SENATE BILL 1258
RELATING TO STATE BOATING FACILITIES

Senate Bill 1258 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.

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

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.

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.

DAVID Y. IGE
GOVERNOR



RODERICK K. BECKER
DIRECTOR

ROBERT YU
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
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ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN ONLY

TESTIMONY BY RODERICK K. BECKER
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEES ON WATER AND LAND
AND WAYS AND MEANS
ON
SENATE BILL NO. 1258

February 25, 2019
10:00 A.M.
Room 211

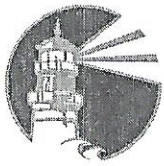
RELATING TO STATE BOATING FACILITIES.

Senate Bill No. 1258 allows the Board of Land and Natural Resources (Board) to, among other things, lease any existing state boating facility in its entirety, and fast lands and submerged lands within any existing state boating facility, by public auction, a request for proposals, or direct negotiation for private development, management, and operation subject to complying with certain requirements.

The Department has technical comments on this bill. The Department would like to note that the state boating facilities may have been originally financed with tax-exempt general obligation bonds. The sale or lease of a public facility that was previously financed with tax-exempt general obligation bonds (that are currently outstanding) may trigger a "change of use" of the bond financed facility, as the potential owner and/or lessee of the facility for federal tax purposes may be a private entity. This may result in the tax-exempt general obligation bonds becoming taxable which will create a liability for the State. The Department respectfully recommends that a

comprehensive tax analyses be done to determine if there will be any adverse tax impacts should a sale or lease of the facility be pursued.

Thank you for your consideration of our comments.



COMMITTEE ON WATER AND LAND

Senator Kaiali'i Kahele, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

COMMITTEE ON WAYS AND MEANS

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

LATE

NOTICE OF HEARING

DATE: Monday, February 25, 2019
TIME: 10:00 A.M.

**TESTIMONY OF THE OCEAN TOURISM COALITION IN STRONG OPPOSITION
SB1258 RELATING TO STATE BOATING FACILITIES**

Chair Kahele, Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of
WTL/WAM Committees:

My name is James E. Coon, President of the Ocean Tourism Coalition (OTC),
speaking in Strong Opposition to SB1258 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 individual 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.

SB1258 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 SB1258.

Sincerely. James E. Coon, President OTC



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

LATE

The Thirtieth Legislature, State of Hawaii
The Senate
Committee on Water and Land
Committee on Ways and Means

Testimony by
Hawaii Government Employees Association

February 25, 2019

S.B. 1258 – RELATING TO STATE BOATING FACILITIES

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO opposes the purpose and intent of S.B. 1258 which allows the Board of Land and Natural Resources (Board) to lease any existing state boating facility in its entirety, and fast lands and submerged lands within any existing state boating facility, by public auction, request for proposals, or direct negotiation for private development, management, and operation.

State oversight is necessary to maintain and ensure the mission of the Division of Boating and Ocean Recreation, which is “DOBOR aims to preserve Hawaii’s natural and cultural resources while ensuring public access to State waters and enhancing the ocean experience.” Having State oversight will continue to have the proper State enforcement agencies that are currently in place to enforce statutes and policies. Should there be any threats to Hawaii’s local harbors, a private entity is not equipped nor qualified to protect and enforce against potential and questionable illegal activities. The Department of Land and Natural Resources currently has the appropriate divisions with the expertise to keep State boating facilities and lands safe for the people of Hawaii.

Thank you for the opportunity to provide testimony in opposition of S.B. 1258.

Respectfully submitted,

Randy Perreira
Executive Director