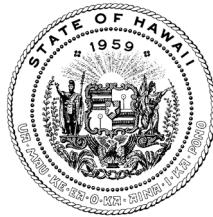


DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Testimony of
SUZANNE D. CASE
Chairperson

Before the House Committee on
WATER & LAND

Thursday, March 18, 2021
8:30 A.M.

State Capitol, Via Videoconference, Conference Room 430

In consideration of
SENATE BILL 795, SENATE DRAFT 2
RELATING TO STATE SMALL BOAT HARBOR FEES

Senate Bill 795, Senate Draft 2 proposes to amend the various fees the Department of Land and Natural Resources (Department) may charge for the usage of state small boat harbors and amends the manner in which those fees are applied. **The Department strongly supports this measure.**

The Department's Division of Boating and Ocean Recreation has identified approximately \$300 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 will also add the option to charge a commercial fee per passenger carried for hire, which would allow the Department to collect appropriate fee amounts in the event that an operator attempts to circumvent the gross receipt collection method.

An increase in fees collected under Section 200-10, Hawaii Revised Statutes, would go toward funding upgrades to state small boat harbor facilities resulting in improved sanitation, maintenance, and cleanliness of the small boat harbor facilities.

Thank you for the opportunity to comment on this measure.

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

SB-795-SD-2

Submitted on: 3/16/2021 9:28:50 AM

Testimony for WAL on 3/18/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Tim Mann	Ocean People, Inc	Oppose	No

Comments:

I have been a commercial fisherman on the Big Island since 1978. I own three commercial fishing boats now, that I am forced to operate off trailers because I can't get slips for them. I have three grown sons who are learning to be commercial fishermen now, and we also operate a commercial boatbuilding business. I remember when Ian Birnie was running the Hilo small harbors, Bill Akau was running the Kawaihae harbor, and the fees were reasonable, the facilities were in good repair, and the small fisherman had a chance to make a living. What ever happened to that?

Over the last 40 years I have seen the Hawaii harbors become less and less accessible to the small fisherman, and cost more and more to use. Now we've got a brand-new harbor in Kawaihae South that is full of rich people's sailboats and fishing charter boats that basically just sit in their slips because Covid 19 has stopped the tourists. Where's the slips for the commercial fishermen?

As a commercial fisherman, there is no way I can get a slip there without waiting for four to five years; because there are no slips reserved for true commercial fishermen. I've been on that waiting list for two years, with a boat that's 36 feet long; which is too big to fish off a trailer. I can't fish that boat unless I have a slip for it, and there are 33 rich people's sailboats and commercial fishing charter boats ahead of me. And that boat just sits in my yard now, taunting me, instead of earning a living for me and my family.

Is this really what you want to encourage? Can't we find some slips for commercial fishermen, on an island that is surrounded by some of the best fishing waters in the world? Do we have to make it harder for them to fish?

At the same time, as the responsibility for the small harbors has bounced around from agency to agency, there has been less and less repair and upkeep done on all the harbors except for Honokohau, which is primarily paid for by the charter boat revenues.

I'm not a charter fisherman; that is, I don't get paid \$1,200 a day for just going out, whether or not I catch anything. I have to catch fish to make a living, and it's difficult enough already without fees increasing and the mismanagement that DOBOR has exhibited over the last 20 years or so.

This is NOT what we need. And we certainly don't need to privatize the harbors, because then there will be NO affordable slips for commercial fishermen, only slips for rich people's yachts. The operators will clean them up, sure. And DOBOR and the State won't have to deal with them any longer, sure. But the fees will be ten times what they are now; and the harbors will become unaffordable and inaccessible to the local residents of the Big Island.

We need slips for commercial fishermen, at a cost that is as reasonable as possible. We don't need yachts and rich people harbors.

That's my story, and I'm sticking to it.

With Warm Aloha, Tim Mann

SB-795-SD-2

Submitted on: 3/16/2021 9:38:15 AM

Testimony for WAL on 3/18/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
William N Jardine	Paradise Fishing Club	Oppose	No

Comments:

With regards to the legislation contemplated, the undersigned opposes the measures that will convert the State harbor facilities from a public service basis to a for-profit service that cannot serve the interests of all of the boating community.

Public facilities must be made available to all of the members of the public, not just to those who have found material success that allows them to pay more than another user. If we were to follow this idea in public parks, for instance, the poorer segments of our Hawaii society would be unable to access public parks.

Fishing in Hawaii has a long history of benefiting the community and is a cherished activity joined in by wealthy, modest and poor participants. Favoring the wealthy has never been good public policy, and I urge you to reject this initiative in its entirety.

Mahalo and Imua,

William N Jardine, PO Bos 1377, Kamuela HI 96743

SB-795-SD-2

Submitted on: 3/17/2021 7:09:13 AM

Testimony for WAL on 3/18/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Denver Saxton Coon	Ocean Tourism Coalition	Comments	No

Comments:

The Ocean Tourism Coalition agreed to the current language of "\$1.50 per passenger" and would likely not support the bill if this were to be increased.

SB-795-SD-2

Submitted on: 3/16/2021 8:38:03 AM

Testimony for WAL on 3/18/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Peter Plotzeneder	Individual	Oppose	No

Comments:

Massive increases were just put in place last year. All that was accomplished is that in turn harbors lost revenue due to boaters moving to private harbors.

On top of that, the public bathrooms remain closed 14 hours a day and the conditions of the restrooms that you have to pay for are still dismal, no shower heads, no soap, and the homeless continue to occupy the area.

Audit the Division of Boating before any changes are made, Ed Underwood does not know how to run the division and his underling Megan makes it even worse.

Mahalo for your time and consideration!

SB-795-SD-2

Submitted on: 3/16/2021 5:15:08 PM

Testimony for WAL on 3/18/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Randall Winston B. Albright, Esq.	Individual	Oppose	No

Comments:

Aloha, My family relies on its mooring to access the ocean for sailing and fishing. SB795 will take away access to our Oceans and Traditional way of life in Hawaii. In Hilo small boats owned by families need moorings to access traditional fishing grounds and recreation areas. Annual increases in the cost-of-living index should be the measure as the public owns an interest in the access. DBOR wants to privatize all Hawaii small boat harbors. Higher fees are a cornerstone for the DBOR strategic scheme to exit boating. Private investors need higher fees. DBOR had two legislative mandates to promote boating and fishing. Most boats using Hawaii harbors and ramps are small fishing vessels. DBOR has already deleted it's obligation to promote fishing. DBOR has not been transparent in any of this DBOR public-private partnership scheme's roll out. Boaters statewide ask where is the money in the Special Boating Fund in all this?

SB-795-SD-2

Submitted on: 3/16/2021 5:26:56 PM

Testimony for WAL on 3/18/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Stephen Louis Paulmier	Individual	Oppose	No

Comments:

- As a boater and a resident of Hawai'i I am shocked that the Legislature would consider this change to the way a State agency malamas this essential resource. There is absolutely no excuse for using the 'aina that is entrusted to the people of the State for their nourishment and recreation as a way of maximizing the amount of profit in a monetary sense an agency can squeeze out of users. Raising the fees for boaters to so-called market rates can not be rationalized in the context of the Hawaiian people's history and treatment by the occupying power. The only conceivable outcome of such a change is to price present users out of their ability to afford this natural treasure and make all residents culturally disenfranchised. The authors of this legislation deserve to be sanctioned and made to attend rigorous historical education classes on the Hawaiian history of resource management.

SB-795-SD-2

Submitted on: 3/16/2021 5:41:36 PM

Testimony for WAL on 3/18/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Susan Oliver	Individual	Oppose	No

Comments:

Aloha, as a boater that enjoys sailing with family and friends increased fees make this a barrier to my ohana. I wonder where the collected fees go. I think an audit of the books is in order. If improvements were made and the harbors and ramps were made more inviting and safe, then raising fees could be justified. I encourage folks to visit their nearby boat harbor, see for yourself the lack of maintenance and general disrepair. Fishing and boating are a fabulous and healthy outdoor activity for all. I want this to be available to all our citizens. Not just a few wealthy. Please make our harbors safe and keep them affordable. Support our oceans. Please include the fishing and boating community informed and involved in decision making. The harbors are owned by the people. We need a voice and transparency. Mahalo.

PUBLIC TESTIMONY

Katherine Lindell

Honolulu, Hawaii

Tuesday, March 16, 2020, 8:30 A.M.

This testimony has been published on the Hawaii Ocean News website (HawaiiOceanNews.com)

(This senate bill is scheduled to be heard on Thursday, 03-18-21, 8:30AM, in House conference room 430, via video conference)

This testimony is intended for the following legislators: David A. Tarnas, Patrick Pihana Branco, Sonny Ganaden, Bertrand Kobayashi, Dee Morikawa, Takashi Ohno, and Bob McDermott.

In consideration of

Senate Bill 795 SD2, RELATING TO PUBLIC BOAT HARBOR FEES

WE STRONGLY OPPOSE SB795, WITHOUT RESERVATION, for the following reasons:

- 1) SB795's HRS 200-10 is currently being challenged in Hawaii's First Circuit Court (1CCV-20-0000016). Passing SB795 while the legality of its central premise is pending a court hearing, presumes upon the court's judgment and weakens Hawaii's system of checks and balances.
- 2) SB795 will not achieve increased revenues for the State; SB795 will cost the Special Boating Fund and Hawaii Taxpayers in lost revenues and in the huge related expenses associated with illegal liveaboards, boat squatting and homelessness:

Should SB795 become law, many boating families holding current Principle Habitation Permits issued by the State will be left with no other choice but to drop their permit (with it's huge fees) and continue to live on board their vessels illegally. This will create an instant revenue shortfall and a huge new, complicated, and expensive enforcement problem for the State.

- Harbor rates were just increased in 2019. Some boaters experienced a sudden more-than-doubling of harbor monthly fees. As a result, boats left the harbor system – or were abandoned leaving the State holding the bill for lost slip

revenues, salvage and disposal. In this exact same way, SB795 promises to create even more losses for the State. ***SB795 will be instrumental in triggering significant financial loss for the State at a time when we can least afford it.***

- Forcing boater families to drop their Principle Habitation Permit is, of course, **the true goal of this legislation: to evict boater families with Principle Habitation Permits so as to make our publicly-owned recreational harbors more attractive to big-stakes private bidders waiting to seize harbor properties from the public – a mean-spirited, immoral and ethically challenged endgame at best.**
- In a recent survey conducted by *Hawaii Ocean News*, 41% of those we surveyed in the harbor system who held Principal Habitation Permits said that they do not have the means to shoulder a sudden, near doubling of their rent. Most of this 41% (90%) said that they were concerned about becoming homeless.

3) SB795 will simply create more homelessness

According to Lt. Gov. Josh Green:

- Hawaii is currently facing one of the worst homeless epidemics in the country with the highest rate of homelessness per capita in the nation.
- The average public cost for an unsheltered homeless person is \$2,897 per month.

SB-795-SD-2

Submitted on: 3/16/2021 9:18:57 PM

Testimony for WAL on 3/18/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Dana Lim	Individual	Oppose	No

Comments:

Cost of living index should continued being used to determine maximum slip fee increase. The last few fee increases have far exceeded cost of living index and should be credited or refunded to slip holders.

This land was given by the Native Hawaiians to the public, and thus should remain public. Privatizing land that was gifted to the people is wrong. I believe that maintaining the harbour's status as public will benefit everyone most.

Thank you for your consideration.

TO: Representative David A. Tarnas, Chair
Representative Patrick Pihana Branco, Vice Chair
Members of the House Committee on Water & Land

FROM: James Callahan
1651 Ala Moana Blvd,
Honolulu, Hawai'i 96815

Date: March 18, 2021
Time: 8:30 AM
Place: 430 & Videoconference

RE: SENATE BILL 795 SD2, RELATING TO STATE SMALL BOAT HARBOR FEES

Dear House Members of the Water & Land Committee,

The current language proposed in Senate Bill 795 SD2 would increase principal habitation permit fees beyond the current legal amount for both local and non-resident boaters.

A local resident with a current principal habitation permit and a 40 foot vessel moorage fee will see at least a 50% increase in their monthly payment to DOBOR.

Recreational boaters with a liveaboard permit currently do not receive any additional services or amenities for their additional fee. All facilities and amenities at the harbor are available to all mooring tenets at all hours of the day. There is no evidence that principal habitation permittees pose an additional cost burden to the facility compared to regular mooring fee permit holders.

The additional fee is for the privilege to call one's recreational vessel a domicile. This is a right recreational boat owners have nationally and can be exercised by signing up on a marina's liveaboard waitlist, with the intention to obtain a principal habitation permit, also called a liveaboard permit.

It is common at other public harbors on the West Coast for a recreational boater to wait several years for such a privilege. Furthermore, the fee at which this privilege is assessed is independent, separate from the moorage fee.

For example at Shilshole Bay Marina operated by the Port of Seattle, a 15 minute drive from Amazon Corporate Headquarters, has a 7 year waitlist for principal habitation permits. The monthly fee a liveaboard pays is \$117.00 in addition to the regular monthly moorage fee as of March 2021. The waitlist is comparable to that at the Alai Wai Small Boat Harbor but the \$117.00 fee is actually lower than my current liveaboard fee.

The Hawai'i Administrative Rules §13-234-8 as Amended in 2019 state that the principal habitation permit fee is to be adjusted by the annual cost of living index and not to exceed five percent per calendar year:

...the principal habitation fees established by this subsection shall be increased based on the increase in the annual cost of living index, but the increase for any calendar year shall not exceed five percent (HAR §13-234-8)

From January 2020 to January 2021, urban Hawai'i had a 1.4% change in the consumer price index (U.S Department of Labor, U.S. City Average Urban Consumer Price Index for "all items").

Thus, a principal habitation permit fee increase in excess of 5% in any one year is in violation of HAR §13-234-8 as amended in 2019.

Furthermore, SR 795 SD2 attempts to bind a use fee with a privilege fee. Moorage fees should increase more frequently than a privilege fee since the costs to operate a marina facility will continue to grow with time.

With the committee's consideration, the language of this amendment should be restored to that denoted in HAR §13-234-8 as amended in 2019, with the exception of combining nonresident and resident principal habitation holders to the same fee rate of \$5.25 per vessel length and adjusted by the annual cost of living index, not to exceed five percent per calendar year:

In this way, there would be one annual rate for principal habitation permits instead of the current indicated rates of \$5.25 for local and \$7.80 per vessel length for nonresidents. Furthermore, this would stay within the bounds of the rules governing principal habitation fee increases HAR §13-234-8 for both the local and nonresident parties currently under separate fee structures.

Respectfully,

James Callahan
Principal Habitation Permit Holder.

SB-795-SD-2

Submitted on: 3/17/2021 6:48:32 AM

Testimony for WAL on 3/18/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Tommy Penrose	Individual	Oppose	No

Comments:

The real issues with the harbors and funding is the mismanagement of current funds that are received from mooring and slip fees. Using the Ala Wai Boat harbor as an example it has 600 slips (according to DOBOR website) but only 500 are usable. As a SWAG, using 35 foot as the average size, and not counting the extra payments for live-a-boards, dock box rentals, or commercial operations, the Ala Wai takes in approximately \$225,000 per month. The money goes into some kind of general fund and is not used to keep the harbor in good order. Today the fixed piers are deteriorating and are not being replaced nor is there a replacement plan. The harbor is in bad shape. It hasn't been dredged in over a decade and some of the larger slips can not be used except by smaller boats because of sledge build up. The floating piers are in need of upgrades to the floats. Boat owners in the harbor are angry by the mismanagement of the harbor and the fact that structures are beginning to fail.

When this bill was suggested by the DLNR-DOBOR the harbors were in different financial shape than there are now. Prior to the Pandemic and the last unilateral raise of mooring and slip rates there were three to five years wait lists for each category of boats. Today, March 2021, there is only one wait list for Category C which is 35 to 45 foot boats. There are over 50 empty slips that haven't been let or there is no demand.

This is two real reasons for this Bill. The first is to cover DOBOR from a law suit going through the system for unilateral raising rates and stopping live aboard permits without as so much as a public hearing, and the second is to allow the conversion of the harbors to commercial operators.

How is the fair market value of a boat slip determined? The only other harbor that is not owned by DOBOR is Kawala Basin which is run by Hughes. They determined the price of the slips off of what DOBOR was charging, and most of the slips there are commercial. Where would comparisons of compatible slips come from?

What this bill does is allows Mr. Underwood of DOBOR to convert the harbor to commercial operators which he has publicly attempted to do in the past.

I recommend this Bill be defeated and force DOBOR to spend funds to upgrade the harbor facilities. A Bill that would require DOBOR to spend 80% of each Harbor's income at that harbor would be a better Bill for the government and the users.

SB-795-SD-2

Submitted on: 3/17/2021 6:56:03 AM

Testimony for WAL on 3/18/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Alethea Rebman	Individual	Oppose	No

Comments:

To the extent that anyone cares about taxpaying citizens and boating in our state, please vote against this bill. This is a huge step DLNR's plans to alienate public resources into private hands, and to wash their hands of the responsibility of the agency to manage boating while still keeping all of their funding. They have grossly mismanaged our harbors, and this measure does not help that problem. This measure also moves our island state closer to having no affordable and accessible public boating options. Please vote NO.

SB-795-SD-2

Submitted on: 3/17/2021 7:07:33 AM

Testimony for WAL on 3/18/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
David Kamenar	Individual	Oppose	No

Comments:

This is not a good bill to pass for the sake of present and future boaters in Hawaii. This will allow rich boaters who do not use their boats to waste them away in berths while hardworking middle class aren't able to afford to keep their boats in the harbor. This will displace a lot of people and boats! Options for harbors are limited as it is. Don't contribute to the problem!

SB-795-SD-2

Submitted on: 3/17/2021 7:14:52 AM

Testimony for WAL on 3/18/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Nikki Deheart	Individual	Oppose	No

Comments:

I, Nikki Deheart, as a water person and boat owner

oppose SB 795.

SB-795-SD-2

Submitted on: 3/17/2021 7:35:56 AM

Testimony for WAL on 3/18/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Gordon Wood	Individual	Oppose	No

Comments:

I strongly oppose this proposed measure. DLNR-DOBOR was granted a 40% increase in fees just two years ago, and it is unconscionable that they are back again at the trough to ask for yet another major fee increase. The fact that there is a growing backlog in deferred maintenance is due to DOBOR's mismanagement of the millions of dollars they receive from boaters each year, **not** due to the boaters who pay those fees, and no reasonable person can understand why the boaters should be punished for DOBOR's failed management. Since the 40% fee increase, Hawaii's boaters have seen **no** improvement in the condition of the harbors, and DOBOR continues to let its revenues run down the drain. As an example of DOBOR's mismanagement, at Ala Wai harbor alone, more than 35% of the slips now sit empty, about half of those due to the fact that DOBOR has allowed them to fall into such disrepair that they **cannot** be used. As another example, more than 500 parking stalls at Ala Wai harbor are now free for anyone who wants to park in Waikik, because DOBOR has failed to either develop its own method to collect fees or to replace its parking concessionaire (the former one departed nearly a year ago).

I implore you to hold DOBOR responsible for the situation it has gotten itself into, and to require that the agency clean house and start to collect the fees it has chosen to neglect (i.e., empty slips and free parking) well before receiving any additional legislative relief in the form of increased boater fees. Hawaii's boating industry is fragile, and should not be forced to shoulder this unreasonable burden.

Thank you for providing this opportunity to testify on this egregious measure.

SB-795-SD-2

Submitted on: 3/17/2021 7:59:55 AM

Testimony for WAL on 3/18/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
jcholish	Individual	Oppose	No

Comments:

I testify that this is a TERRIBLE idea, and will cause massive financial damage to not only many citizens of Hawaii, but also the entire city as a whole. It will cause harmfully aggressive investors to overwhelmingly raise rates for those, like myself, that live, work, and enjoy these harbors recreationally, and in turn put all of us out of our homes and unable to survive during such a difficult time with the pandemic continuing. I hope that you all can see that this would be a heinously BAD decision to privatize, and it would make Hawaii even further bankrupted by wealthy manipulative corporations with bad intentions. SAVE THE CITIZENS, save Hawaii, do not allow this, PROTECT THE PEOPLE!

SB-795-SD-2

Submitted on: 3/17/2021 9:23:17 AM

Testimony for WAL on 3/18/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ted Bohlen	Individual	Support	No

Comments:

SUPPORT!

SB-795-SD-2

Submitted on: 3/17/2021 9:47:44 AM

Testimony for WAL on 3/18/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Veedubb0508@gmail.com	Individual	Oppose	No

Comments:

I strongly oppose this. You guys more than doubled the rates last year and Hawaii is becoming a very voter unfriendly place especially for being a bunch of islands. These Harbor should be making a lot of money and would be making a lot of money if the slips were just rented out. Then you wouldn't have to raise all of our rates. Most of The Harbours are half empty with a 10-year waiting list because the process in which the waiting list works is ridiculous it is so long that everybody gets on it before they even own a boat but then when it becomes time and they have a slip available for them the people don't even have a boat yet. Not to mention when a slip becomes available you guys mail them a letter and they have 30 days to respond. Well sense 1/2 of the people don't even have a boat and aren't even ready for the slip when it becomes available then it holds up the process one month at least until they send out the next notification through the mail to the next person. Each person gets a month to reply this is ridiculous they should get a phone call and have a week to be moved in at the most. Please stop making us all pay for this system that doesn't work.

Testimony of Erik Rask

Water and Land Committee

Thursday, March 18, 2021

Opposing Senate Bill 795

Dear Members of the Committee on Water and Land,

I am a live-aboard tenant at the Ala Wai Small Boat Harbor, submitting this testimony in opposition to SB795. The Bill provides a means for the Division of Boating and Ocean Recreation to cover its tracks after engaging in unauthorized rulemaking in 2019 and 2020. This Committee should table this Bill.

DOBOR Has Already Violated the Current Versions of HRS §§ 200-10(c)(1) and 200-10(c)(4) and Should Not Be Given More Authority at this Time

In 2019, DOBOR imposed mooring fee increases based upon an appraisal conducted by CBRE. Those rates are set forth in HAR 13-234-3 (2019), and resulted in mooring fee increases ranging from 26%-96% at harbors across Hawai'i, and 42% at the Ala Wai:

**STATE OF HAWAII'S RESPONSE TO PLAINTIFF'S FIRST REQUEST FOR
ADMISSIONS TO DEFENDANTS [SIC]**

RESPONSE TO REQUESTS FOR ADMISSION

Request for Admission No. 2: Admit that Defendants promulgated rules in 2019, set forth in Hawai'i Administrative Rules ("HAR") § 13-234-3 (2019), which increased the mooring fees at all Hawai'i public small boat harbors by percentages ranging from approximately 24% to approximately 96%.

Admit: **x** **Deny:** _____

However, HRS 200-10(c)(1) restricts mooring fee increases based upon the "cost-of-living index". In 2019, DOBOR ignored the "cost-of-living index" language provided for in Act 197, SLH 2011, codified in HRS 200-10(c)(1), and raised mooring fees based upon an appraisal that it had no authority to obtain, and imposed double-digit mooring fee increases based upon that appraisal.

DOBOR's current rules, HAR 13-234-3 (2019), fail to comply with Act 197, SLH 2011 on their face. The current version of HRS 200-10(c)(1) requires that mooring fees be set forth in appraisal categories "A" and "B." However, HAR 13-234-3 (2019) does not contain a schedule "A" or "B". In other words, DOBOR has completely departed from the mooring fee structure provided for in Act 197, SLH 2011, *without* prior authorization from the Hawaii State Legislature. DOBOR is now seeking to cover the tracks of its *ultra vires* rulemaking via SB795.

Moreover, Act 197, SLH 2011, codified in HRS 200-10(c)(1), required that the fees in schedule "A" be adjusted upward over a five-year period to equal the fees in schedule "B" by July 2014. See HRS 200-10(c)(1). Thereafter, Act 197, SLH 2011 provided that fees could be increased "annually by the department, **to reflect a cost-of-living index increase.**" See *id.* The mooring fee increases imposed in 2019 do not "reflect a cost-of-living index increase[,]" which DOBOR has admitted:

Request for Admission No. 22: Admit that the mooring fee increases which Defendants promulgated in 2019, as set forth in HAR § 13-234-3 (2019), do not reflect any relevant cost-of-living index increase.

Admit: x Deny:

As to the liveaboard fee, DOBOR already increased by 5% the liveaboard fee in 2019 and again in 2020 by 5%, in violation of HRS 200-10(c)(4), which authorizes increases based on the cost-of-living index increase. The Cost-of-Living index increase in the relevant years preceding 2019 and 2020 was 1.9%, and 1.6%, respectively. Moreover, DOBOR knew this but imposed 5% increases instead. The current liveaboard fee is also invalid and under scrutiny. See **Exhibit A** (emails between Hawaii State Economist Mary E. Blewitt and Ed Underwood providing 1.9% and 1.6% cost-of-living index data which Underwood then ignored).

Now, SB795 proposes to increase the principal habitation fee by approximately 150%, based on my calculations of my own bill. The justification offered by DOBOR for increasing rates for liveaboards is that they are somehow a drain on DOBOR's resources and the cause of all problems affecting the Ala Wai. This, of course, is false. DOBOR is trying to get rid of liveaboards in order to hand over the harbors carte blanche to a private developer free of any annoying constitutionally-protected rights. *Brown v. Thompson*, 91 Hawai'i 1, 11, 979 P.2d 586, 596 (1999).

Notably, HRS § 200-9(3)(b) allows for up to 129 liveaboards at the Ala Wai. Currently, there are *less than 70* liveaboard permits outstanding, and DOBOR has offered no new liveaboard permits since before 2019, facts which DOBOR has admitted:

Request for Admission No. 8: Admit that current law allows 129 principal habitation permittees at AWSBH.

Admit: x Deny:

Request for Admission No. 9: Admit that there are currently less than 70 principal habitation permittees at AWSBH.

Admit: x Deny:

Request for Admission No. 10: Admit that Defendants have offered no new principal habitation permits at AWSBH since before the year 2019.

Admit: x Deny:

This begs the question, "Why is DOBOR so intent on inflicting pain on this small group of liveaboards during a pandemic and economic crisis?" The answer is obvious—DOBOR is seeking to get rid of them. If revenue were actually the issue, DOBOR would offer out liveaboard permits up to the 129 allowed by law. Revenue is not the issue, or the intent, however, and trying to squeeze a few extra hundred bucks each month out of the "less than 70" people who spent years on the waitlist to become

liveaboards and who get nothing for their liveaboard fee other than legal status is not going to cure DOBOR's management problems.

I respectfully request that this Committee table this Bill until at least such time as the members of the boating and ocean recreation community can come before you in-person and speak, and not allow these drastic changes to be made via "Zoom" during a pandemic when most people are simply unable to focus on what is happening here because of basic concerns about how to survive.

Thank you.

From: Blewitt, Mary E <mary.e.blewitt@hawaii.gov>
Sent: Tuesday, July 7, 2020 3:11:29 PM
To: Underwood, Ed R <ed.r.underwood@hawaii.gov>
Subject: FW: Recap: COLA vs CPI...resend but should we update?

Aloha Ed,

Got your request and decided to reply with a resend of our earlier e-correspondence so you may retrace your steps and then decide if an update is a good idea.

Our Quarterly Stat Report has 2019 data for Honolulu/Hawaii so I attached the table that appeared in the [QSER 2020Q2 report](#). The 2017 to 2018 (in previous email) was 1.9 percent & the 2018 to 2019 is 1.6 percent.

I could get the 2019 version of the U.S. snippet I pasted below but I think the Honolulu CPI might be more defensible as 'Recreation' includes so many unrelated components.

Good luck...with everything & everyone!

Best wishes,
Mary

From: Blewitt, Mary E
Sent: Wednesday, October 09, 2019 12:36 PM
To: Underwood, Ed R <ed.r.underwood@hawaii.gov>
Subject: RE: Recap: COLA vs CPI

Aloha Ed,

The CPI-U (Urban Consumers) for 'Honolulu MSA' "All Items" for 2017 to 2018 is 1.9 percent.

Note: Table B-14 (attached) from our [Quarterly Stat](#) report has both index numbers and percent changes annually & semi-annually for the U.S. All Items & the Honolulu All Items and selected components.

I did intend to get back to you on using 'Recreation' component (introduced in Dec. 1997) but when I looked at the methodology for that component of the CPI I found it included pets, magazines, TV's, etc. See Snippet pasted below. The numbers to the right show the share (of 100%) each item is in the U.S. CPI. They don't publish that much detail for ours. The U.S. shows that 'Recreation' counts for only 5.694% in the U.S. CPI & the purchase of a boat, much less maintenance, license, etc. isn't even broken out separately. It increased only about 29% from Dec. 1997 to 2018.

I have a call in to BLS to confirm the 'All Items' be a more universally applicable indicator.

See attached or the [U.S. Bureau of Labor Statistics website](#) for [How to Use the Consumer Price Index for Escalation](#). It mirrors what we've discussed and calculated but there are [alternatives](#). BLS also has an online discussion "[How the CPI measures price change of Owners' equivalent rent of primary residence \(OER\) and Rent of primary residence \(Rent\)](#)" (and attached) but that index is based on conventional housing units.

Recreation.....	5.694
Video and audio.....	1.817
Televisions.....	.098
Cable and satellite television service.....	1.509
Other video equipment.....	.026
Video discs and other media, including rental of video.....	.086
Audio equipment.....	.043
Recorded music and music subscriptions.....	.047
Unsampled video and audio.....	.008
Pets, pet products and services.....	1.022
Pets and pet products.....	.605
Pet services including veterinary.....	.417
Sporting goods.....	.505
Sports vehicles including bicycles.....	.294
Sports equipment.....	.204
Unsampled sporting goods.....	.007
Photography.....	.073
Photographic equipment and supplies.....	.033
Photographers and photo processing.....	.039
Unsampled photography.....	.002
Other recreational goods.....	.324
Toys.....	.252
Sewing machines, fabric and supplies.....	.025
Music instruments and accessories.....	.036
Unsampled recreation commodities.....	.011
Other recreation services.....	1.836
Club membership for shopping clubs, fraternal, or other organizations, or participant sports fees.....	.680
Admissions.....	.662
Fees for lessons or instructions.....	.219
Unsampled recreation services.....	.276
Recreational reading materials.....	.116
Newspapers and magazines.....	.071
Recreational books.....	.045
Unsampled recreational reading materials.....	.000

Best wishes,
Mary

From: Underwood, Ed R
Sent: Wednesday, October 9, 2019 11:32 AM
To: Blewitt, Mary E <mary.e.blewitt@hawaii.gov>
Subject: RE: Recap: COLA vs CPI

Aloha Mary,

We appreciate all your help with the CPI calculations and I would like to ask if you could let me know what last years CPI amounted to.

Thanks,

Ed

Edward R. Underwood, Administrator
4 Sand Island Access Road
Honolulu, HI 96819
(808)587-1966

From: Underwood, Ed R
Sent: Thursday, September 26, 2019 11:53 AM
To: Blewitt, Mary E <mary.e.blewitt@hawaii.gov>
Subject: RE: Recap: COLA vs CPI

Aloha Mary,

Thank you for the information and it was very helpful. During our discussion, we discussed how we would apply the CPI to the liveboard rates for our tenants in the Ala Wai small boat harbor and what the rate would be from 2000 to present. You calculated that the increase would be 57% so the fee would go from \$5.25 to \$8.25. I'm not sure how to make a consideration for recreation so any guidance you can give us is really appreciated, if applicable.

Thanks again,

Ed

Edward R. Underwood, Administrator
4 Sand Island Access Road
Honolulu, HI 96819
(808)587-1966

From: Blewitt, Mary E <mary.e.blewitt@hawaii.gov>
Sent: Thursday, September 26, 2019 11:22 AM
To: Underwood, Ed R <ed.r.underwood@hawaii.gov>
Subject: Recap: COLA vs CPI

Aloha Ed,

As I mentioned, the COLA question is a classic and while we no longer have an official, i.e. federal government agency, that conducts/compiles one, the [Consumer Price Index](#) (U.S. Bureau of Labor Statistics) has become proxy justifiable in many situations.

I just wanted to get you the link to the data ([State of Hawaii Data Book 2018, Section 14](#)) we discussed on the phone and I'll assemble alternatives, etc. later today & get them off to you. I did discuss briefly with Eugene Tian, head of the Research Division, and he agreed that the CPI was the likely choice but speculated that the 'Recreation' component might be considered.

I'll send that detail, and his contact information, too.

Best wishes,
Mary

Mary E. Blewitt, Economist
State of Hawaii Dept. of Business, Economic Development & Tourism,
Research & Economic Analysis Division
P.O. Box 2359
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SB-795-SD-2

Submitted on: 3/17/2021 1:05:31 PM

Testimony for WAL on 3/18/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Gregory Martin	Individual	Oppose	No

Comments:

I am writing to express my opposition to SB795 SD2. I am a slip holder for two boats at Ala Wai harbor and do not live aboard. While it is reasonable to expect to pay fair market rates for marina services, DOBOR has failed to be a good steward of the funds they have collected already. The docks, parking lots and restroom facilities are in disrepair while there is so much unclaimed money they're leaving on the table by failing to remove derelict boats, renting out those slips and properly collecting live aboard fees. It's clear to everyone that SB795 is just an admission of incompetence by the leadership of DOBOR and an abdication of their responsibilities to the Hawaii boating community.