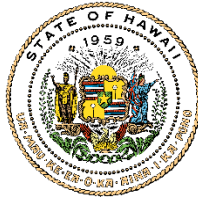


JOSH GREEN, M.D.  
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE  
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
KA 'OIHANA KUMUWAIWAI 'ĀINA

P.O. BOX 621  
HONOLULU, HAWAII 96809

Testimony of  
DAWN N.S. CHANG  
Chairperson

Before the Senate Committee on  
WATER AND LAND

Monday, February 12, 2024  
1:00 PM  
State Capitol, Conference Room 229

In consideration of  
SENATE BILL 2555  
RELATING TO STATE BOATING FACILITIES

Senate Bill 2555 proposes to establish a State boating facility lease pilot program within the Department of Land and Natural Resources (Department) to lease one State small boat harbor for private development, management, maintenance, and operation in a county with a population of less than 900,000. **The Department strongly supports this measure and offers an amendment.**

The Department supports a small boat harbor lease pilot program and notes that there are currently four harbor facilities on O'ahu being managed under a public-private partnership (P3) with the Department's Division of Boating and Ocean Recreation: La Mariana Sailing Club, Ke'ehi Marine Center, Waikīkī Yacht Club, and Hawai'i Yacht Club. The Department believes that the P3 model for management and operation of small boat harbors is the most effective way to manage these facilities. Kewalo Basin Harbor, which is under the jurisdiction of the Hawai'i Community Development Authority, is also a prime example of a State-owned harbor under a P3 management model.

The Department notes two common misconceptions among critics to the management model proposed by this measure: (1) private management would lead to exorbitantly high mooring fee rates; and (2) private management would lead to the transfer of state lands under public trust to the private sector. The Department clarifies that: (1) the authority and method for determining fees remains unchanged, where the Department will set fees pursuant to Section 200-10, Hawaii Revised Statutes, with the Board of Land and Natural Resources maintaining authority for approval of any proposed fee increases; and (2) this measure will not authorize any sale or transfer of State lands and only proposes to allow a lease of one or more small boat harbors and associated submerged lands in the state to attract private partners who plan to make

DAWN N.S. CHANG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT

RYAN K.P. KANAKA'OLE  
FIRST DEPUTY

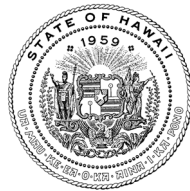
DEAN D. UYENO  
ACTING DEPUTY DIRECTOR - WATER

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

improvements and improve the State small boat harbor facilities. The Department has no plans for any sale of State lands and will only offer leases as part of a public-private partnership model.

After discussion with the introducer of this measure, the Department recommends that the location restriction for a small boat harbor pilot lease on page 3, lines 2 through 4, of this bill be removed so that the Department has the ability to select a small boat harbor on any island. The Department would benefit from flexibility to select a harbor statewide and has identified Ala Wai Small Boat Harbor on O‘ahu as one of the top candidates for a successful P3 pilot.

Mahalo for the opportunity to provide testimony on this measure.



JOSH GREEN, M.D.  
GOVERNOR

SYLVIA LUKE  
LIEUTENANT GOVERNOR

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

LUIS P. SALAVERIA  
DIRECTOR

SABRINA NASIR  
DEPUTY DIRECTOR

**STATE OF HAWAII**  
**DEPARTMENT OF BUDGET AND FINANCE**  
*Ka 'Oihana Mālama Mo'ohelu a Kālā*  
P.O. BOX 150  
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ADMINISTRATIVE AND RESEARCH OFFICE  
BUDGET, PROGRAM PLANNING AND MANAGEMENT DIVISION  
FINANCIAL ADMINISTRATION DIVISION  
OFFICE OF FEDERAL AWARDS MANAGEMENT

**WRITTEN ONLY**  
TESTIMONY BY LUIS P. SALAVERIA  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
TO THE SENATE COMMITTEE ON WATER AND LAND  
ON  
SENATE BILL NO. 2555

**February 12, 2024**  
**1:00 p.m.**  
**Room 229 and Videoconference**

RELATING TO STATE BOATING FACILITIES

The Department of Budget and Finance offers comments on this bill.

Senate Bill No. 2555: 1) establishes a State Boating Facility Lease Pilot Program within the Department of Land and Natural Resources to lease one State small boat harbor for private development, management, maintenance, and operation in a county with a population of less than 900,000; 2) repeals provisions related to the leasing of fast lands and submerged lands of the Ala Wai boat harbor; 3) specifies reporting requirements; and 4) terminates the pilot program on June 30, 2044.

It should be noted that most small boat harbors were developed or improved using general obligation bond funds. Consequently, the pilot program needs to be structured in compliance with restrictions set forth by the Internal Revenue Service on the use of governmental bonds.

Thank you for your consideration of our comments.



## UNITED PUBLIC WORKERS

AFSCME Local 646, AFL-CIO

**THE SENATE  
KA 'AHA KENEKOA  
THE THIRTY-SECOND LEGISLATURE  
REGULAR SESSION OF 2024**

**COMMITTEE ON WATER AND LAND**  
Senator Lorraine R. Inouye, Chair  
Senator Brandon J.C. Elefante, Vice Chair

Monday, February 12, 2024, 1:00 PM  
Conference Room 229 & Videoconference

**Re: Testimony on SB2555 – RELATING TO STATE BOATING FACILITIES**

Chair Inouye, Vice Chair Elefante, and Members of the Committee:

The United Public Workers, AFSCME Local 646, AFL-CIO (“UPW”) is the exclusive bargaining representative for approximately 14,000 public employees, which includes blue collar, non-supervisory employees in Bargaining Unit 1 and institutional, health, and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties.

UPW **opposes** SB2555, which establishes a state boating facility lease pilot program within the Department of Land and Natural Resources (“DLNR”) to lease one state small boat harbor for private development, management, maintenance, and operation in a county with a population of less than 900,000. This measure also repeals provisions related to the leasing of fast lands and submerged lands of the Ala Wai boat harbor.

This bill provides the Land Board with the authority to lease the submerged lands of a state boating facility without the need for prior legislative authorization, via a concurrent resolution, by exempting the proposed pilot project from Section 171-60(a). UPW understands that this exemption may be necessary for DLNR’s Division of Boating and Ocean Recreation (“DOBOR”) to maintain facilities that have historically proven to be a burden for managing agencies, but we believe that this public-private partnership, and others like it, degrade the working rights of public workers.

While this bill does attempt to preserve the rights the impacted civil service positions, we fear that the success of such a pilot program will lead to the expansion of private-public partnerships for state boating facilities and the eventual loss of these types of positions in the future.

Mahalo for the opportunity to testify on this measure.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kalani Werner", is written over a light blue horizontal line.

Kalani Werner  
State Director

---

**HEADQUARTERS**

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**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**  
AFSCME Local 152, AFL-CIO

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

The Thirty-Second Legislature, State of Hawaii  
The Senate  
Committee on Water and Land

Testimony by  
Hawaii Government Employees Association

February 12, 2024

S.B.2555 – Relating to State Boating Facilities

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO opposes the purpose and intent of S.B.2555, which establishes a state boating facility lease pilot program. The proposed bill would allow the Department of Land and Natural Resources to lease one small boat harbor in its entirety and allow a private partner under lease or contract for private development, management, maintenance, and operation.

The proposed privatization language of S.B.2555 is very broad and will likely displace career civil servants who currently operate these small boat harbors across the state. Additionally, the pilot project does not identify which small boat harbor will be impacted, rather it empowers the Board the exclusive authority to negotiate the private development, management, maintenance, and operation. From a policy perspective, we respectfully argue that the Legislature should maintain sole responsibility in determining which public assets should be privatized and should allow the public an opportunity to weigh in.

If the justification of this measure is to preserve coastal resources and provide a method of timely maintenance, then it would behoove the Legislature to provide more support to our employees and departments – not allow the Board to contract out these functions.

Thank you for the opportunity to testify in opposition of S.B.2555.

Respectfully submitted,

Randy Perreira  
Executive Director

**SB-2555**

Submitted on: 2/6/2024 8:44:52 PM

Testimony for WTL on 2/12/2024 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
John & Rita Shockley	Testifying for Free Access Coalition	Oppose	Written Testimony Only

Comments:

Aloha!

The Free Access Coalition OPPOSES SB2555. The State may actually be doing something unconstitutional regarding giving up State Property to private interests. Our concern comes when a private entity is able to "manage away" the free access to the Ala Wai Boat Harbor by the tax-paying public.

Please drop this bill and it's companion HB 1919. The State DOBOR section of DLNR needs to find better management to address the issues that are causing the Ala Wai Boat Harbor area to go into disrepair.

Mahalo for your time.

**SB-2555**

Submitted on: 2/9/2024 1:03:33 PM

Testimony for WTL on 2/12/2024 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
ROBERT DUERR	Testifying for Albatross News	Oppose	Written Testimony Only

Comments:

Strongly Oppose. SB2555. Aloha Chair Lorraine Inouye and Senators on the Water and Land Committee.

HB1919 is once again DLNR and Division of Boating and Ocean Recreation’s non-transparent and non-accountable effort championed by DOBOR head Ed Underwood to privatize boating. This is a yearly event by Mr. Underwood.

A little boating history. In 2004 DLNR first tried and failed to give harbor operations to the counties. In 2011 [Act 197](#) there was the failed attempt to lease harbor management by public auction, a request for proposals, or by direct negotiation.

In 2019 the Division of Boating and Ocean Recreation had private sector selloff as a key to its [Strategic Action Plan](#). “Modernizing Ocean Recreation Management in Hawai’i Strategic Action Plan - 2019 Department of Land and Natural Resources Division of Boating and Ocean Recreation.”

Why does a boating division on an island state want out of boating? Boaters might say because DOBOR doesn’t understand boating but DOBOR says otherwise in its Strategic Plan : “But the boom in ocean recreation, the weather, and Hawai’i’s landscape and culture - the engine that keeps Hawai’i’s economy healthy - does not result in a **windfall in funding** for DLNR or DOBOR.”

The coveted windfall funding from tourists is a reality. DOBOR has cashed in on the tourist kala-money trade. And now like in the Kona manta ray tourist business they have created a business model that is dangerous and overcrowded. There's 2024 legislation addressing this issue.

Also in 2019 HB [HB 1032](#) passed. It wanted to privatize Lanai’s only small boat harbor. Pulama Lanai, which manages and operates billionaire Larry Ellison’s 98% property interests on the Lanai, supported it. Governor Ige vetoed the bill because of lack of transparency. DOBOR and Mr. Underwood failed to tell Lanai, Hawaii boaters or Hawaii citizens that one of the world’s richest super yacht owner was buying their small boat harbor. Super yachts don’t normally fish holoholo for first birthday celebrations.

Further it is DOBOR's view that leases which can be up to 65 years are not subject to transparency or accountability. Leases between a state agency and a private company are private. With private public partnership for harbors DOBOR's lack of transparency will be fixed and accountability will be beyond citizen, press or legislative overview. There's no public transparency in public private partnerships.

What harbor does DOBOR want to privatize with HB1919? What are the terms and how will it affect Hawaii boating? Why should legislators care? DOBOR's botched Ala Wai harbor rental to the so called wedding chapel Honey Bee USA cost the Boating Special Fund and the state at least \$500,000 in lost payments.

Beyond a failed wedding chapel GOOGLING DOBOR and Ed Underwood makes fascinating reading on administrative practices found at DOBOR.

Neither SB2555 or HB 1919 or DOBOR's privatization of small boat harbors have been shared with boaters. But privatization will have a direct effect on the Boating Special Fund. DLNR's Division of Aquatic Resources held a statewide Zoom meeting to inform fishers about 2024 fishing related bills. DOBOR code of silence does not inform.

DOBOR explains the problem at DOBOR in the Strategic Plan: "At the core of the problem lies an inefficient harbor management model." Privatizing small boat harbors does not fix DOBOR.

The Boating Special Fund was created in the early 1950's to ensure sustainable ocean access to the sea for Hawaii citizens putting fish for food on their table. In 2019 DOBOR eliminated fishing from their kuleana and now they want to eliminate boating.

Before selling off harbors. The Boating Special Fund needs a transparent accounting so that the legislators and the public can understand the state of boating in Hawaii. Boaters and fishers want to know where is the Hawaii Boating Special Fund money? Let voters know.

Mahalo. Be Ocean Safe.

Robert Duerr

Albatross News

Senior Active Member Outdoor Writers of America Association

Hilo, Hawaii



**SB-2555**

Submitted on: 2/9/2024 11:36:00 AM

Testimony for WTL on 2/12/2024 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Margaret Hallahan	Individual	Oppose	Remotely Via Zoom

Comments:

Dear Senate Water and Land Chair Senator Inouye and Senate Members,

I am strongly opposed to SB2555.

Due to public demand for higher levels of transparency in government. The push for Sunshine laws in recent years, and this year, is important in this case.

How can the public believe in democracy and the preservation of the public trust, when a vague bill such as SB2555 is introduced?

The bill doesn't even say which State harbor is being considered.

I'm glad to see the Ala Wai Small Boat Harbor was taken off this bill but not saying which harbor is being considered is a low blow to 'transparency'.

Please make no amends to HRS 200\_2.5 at this time. Please consider bringing HRS 200-2.5 (2011) to the **BALLOT so the public can vote YES/NO regarding the disposition of state boating facility properties.**

**The State Harbors are on public trust land: 'Accretion lands' and as such this land has special status within the definition of "Public Lands", which need to be managed within the identified purposes for their management as defined within Section 5 of the Admissions Act.**

**Let's bring this to BALLOT.**

**Keeping, or losing, full control of these ocean access lands by auction, bid, sale, direct negotiation, longer-term lease of 'Pilot-study' through a public-private partnership is a matter worthy of a Statewide vote, for all of Hawaii's residents to determine.**

**Mahalo Senators for considering my testimony.**

Captain Maggie Hallahan

I plan to join the meeting on Zoom.

**§200-2.5 Disposition of state boating facility properties.** (a) Notwithstanding any law to the contrary, the board may 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 and chapter 190D, 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, regardless to which state boating facility the fast or submerged lands are attached.

As used in this section, the term "state boating facility" means a state small boat harbor, launching ramp, offshore mooring, pier, wharf, landing, or any other area under the jurisdiction of the department pursuant to this chapter.

(b) The permissible uses under any lease disposed of under this section shall be consistent with the purpose for which the land was set aside by the governor pursuant to section 171-11. Permissible uses may include any use that will complement or support the ocean-recreation or maritime activities of state boating facilities.

(c) Disposition of public lands of state boating facilities constructed, maintained, and operated in accordance with this chapter shall not exceed a maximum term of sixty-five years.

(d) All revenues due to the State derived from leases of state boating facilities shall be deposited in the boating special fund.

(e) The department shall adopt rules in accordance with chapter 91 to implement this section. [L 2001, c 299, §2; am L 2011, c 197, §4]

Requirement for leases. L 2011, c 197, §8.

**SB-2555**

Submitted on: 2/8/2024 1:09:38 PM

Testimony for WTL on 2/12/2024 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Kate Thompson	Testifying for Kama'aina Boaters (141 members, Facebook group)	Oppose	In Person

Comments:

Testimony OPPOSING SB2555, Relating to State Boating Facility Lease Pilot Program

Submitted to the Senate Committee on the Water and Land.

Hearing to be held: Monday, February 12, 2024, State Capitol & Videoconference Hearing

Dear Senate Chair Inouye and Committee members on the Senate Water and Land:

Please vote NO on the privatization pilot study, through Public-Private-Partnership, in a harbor area with a population of less than 900,000.

This bill is ‘too mysterious’.

1. What is the length of the lease?
2. Which harbor is being considered?
3. The basic design for the harbor improvements?
4. How will the public be included in the process?
5. How will public access to the harbor and nearby beaches be secured?

Many questions are yet to be answered about this bill by DLNR/DOBOR.

I strongly OPPOSE SB2555 because it does not include the provision to maintain any public access, has not demonstrated public engagement, and has not named the likely harbor to be considered.

Thank you to the legislators involved in striking the Ala Wai Small Boat Harbor language from this measure (from the 2023 measure). The Ala Wai Small Boat Harbor is the most likely to be self-sufficient financially if the funds already generated are used correctly.

DOBOR/DLNR reports that the existing privatized harbors have been ‘successful’ and yet they are essentially ‘closed to the public’.

Ko'Olina Marina: has not accepted 'overnight guest boats' since the pandemic (2020). Parking near the harbor is limited to tenants of the harbor. Nearby Paid-public parking is limited in number. The boat ramp has been essentially unavailable for most of the years Ko'Olina Marina has had the lease, and now Ko'Olina Mariana is charging for trailer parking and has a high insurance minimum, effectively excluding many local small power boat owners from using the boat ramp.

Keehi Marine Center: looks like Fort Knox with huge metal gates at the entrance and members of the public can not launch a personal kayak there, or enter to buy supplies like ice, or use the bathroom in the marina. The public can not access parking, paid or unpaid. it is essentially a private yacht club.

#### Amendment #1

If the Senate integrated a certain amount of public access into this bill, there would be more public support for a public-private partnership.

For instance 1) public paid/or free Hawai'i Resident parking, 2) a public use boat ramp at the side of the locked part of the harbor 3) public access mini-mart 4) free public access pump out station.

A minimum of 10 % of the mooring slips must be available for visiting boats that can stay from 1-7 nights. These boats would need to prove insurance and would need to prove they have already cleared the DOBOR-required vessel safety inspection. The 'visiting' out-of-state/country boat owners can pay for an inspection from the list of state-approved boat surveyors (the cost is about \$150.00 for this type of inspection and the clearance is good for 2 years).

#### Amendment #2

Lease only ONE Parcel, or Lot at a time. For instance, a Fuel Dock area, or a large 'Portion of the Harbor' and the parking near those slips. The 'pilot group' could earn money from their portion of the harbor.

Another idea would be to fund with matching State CIP / 'Private Investor' funds, for a 20-35 year (limited, no future) lease.

Only the existing fast lands and submerged land areas should be used for a pilot project 'build'. If the developer wants to skip the Environmental Impact Statement (EIS) it should have the build area clearly defined. A certain amount of fast land disturbance is expected to improve existing docks. Using the land to build condos or a shopping center is different, and should require an Environmental Impact Statement.

In summary, both the Legislature and the Public deserve bill language that specifically describes the goals of the pilot project that the private-company applicants would need to meet, such as 1) the length of time of the lease 2) the basic design revealed, 3) basic explanation of the environmental impact, 4) two community meetings, one before the RFP is posted and one before

the meeting where the decision is made 5) and an applicant selection committee should have 9 members: 4 from DOBOR/DLNR, one State property appraiser, 2 local community members, and 2 'at large' members with professional expertise such as Marine Engineering, and/or State Real Estate transfer.

In general, we know funds are already available in the Boating Special Fund for improvements. Yet, some supplemental private funding could expedite harbor improvements with good design plans and construction efficiency, but the source of the private money and the harbor design needs to be forthcoming. The transactions and processes need to be transparent.

The contracts need to protect the State and provide at least some public access to public land.

Instead of selling harbors by auction, or behind closed doors in a small selection committee, a harbor 'public-private partnership' should require language that specifies the ways the public will be involved in the vision plan and still have at least some guaranteed access to the harbor and in some cases, it's nearby beaches.

We sincerely appreciate your efforts to ensure that Hawai'i Residents, in particular, will be able to access harbors and the ocean.

Thank you for the opportunity to submit this testimony on behalf of Kama'aina Boaters.

Mahalo,

Kate Thompson,

Kama'aina Boaters, katet@me.com P.O. Box 342082, Kailua, Hawai'i 96734

Douglas Meller  
2615 Aaliamanu Place  
Honolulu, Hawaii 96813  
douglasmeller@gmail.com

**Testimony Requesting Amendment of SB 2555  
Relating to State Boating Facilities**

Submitted to Senate Committee on Water and Land  
Monday, February 12, 2024, 1 pm, State Capitol Room 229 & Videoconference Hearing

Please amend SB 2555 to require that:

*Any lease of fast lands and submerged lands of the Ala Wai boat harbor shall provide for the maintenance of at least three hundred public parking stalls at no cost for recreational ocean access and for the practice of traditional and customary Native Hawaiian rights.*

Free public parking in Ala Wai Harbor was substantially reduced in 2008. The State should retain the existing 300 free parking stalls. It's simply wrong to allow private lessees, concessions, or contractors to charge fees for Hawaii residents to park on public property to use the beach, swim, fish, or surf. Public parking lots which Hawaii residents use for recreational ocean access should be maintained with public general funds and managed like a kind of park facility.

Future Oahu residents should be guaranteed the same recreational ocean access that I had. I am 76. I have parked at Ala Wai Harbor for access to Waikiki Beach and surf spots for 60 years. Before we had kids my wife and I owned a 23' trimaran daysailer moored in a slip at Ala Wai Harbor. None of our relatives and friends would have spent the day sailing with us if they had to pay substantial parking fees or risked a parking citation and having their car towed.

## **An open testimony**

*(Note: This testimony has been published on the Hawaii Ocean News website so that all of Hawaii might be aware of its existence.)*

Regarding [SB2555](#) (and companion bill HB1919):

**RELATING TO [THE PRIVATIZATION OF THE PUBLIC'S] SMALL BOAT HARBORS**

**We strongly OPPOSE this Measure**

**Testimony submitted by:**

Katherine Lindell  
Honolulu, Hawaii  
*Katherine@HawaiiOceanNews.com*

On: February 07, 2023

### **Testimony**

ANY legislation designed to circumvent existing rules that help to protect the Supreme Court's Public Trust Doctrine is a reprehensible and disgusting act on the part of each and every legislator who participates.

This piece of legislation, instigated by the DoBOR's administrator, Ed Underwood, attempts to erase the oversight that is so necessary to the legalities encompassed by the Public Trust Doctrine and keeping publicly-owned properties out of the hands of for-profit out-of-state corporations – entities that clearly do not have the best interests of the people of Hawaii in their agenda.

Passing a bill like this would represent a brand new low for our legislature. The public now knows well that the "Pilot Public/Private Project" subterfuge will NOT benefit anyone except those who will profit from it. ENOUGH . . . BE PONO and stop pandering to wealthy interests who have no interest in Hawaii's community other than to plunder it.

**We strongly OPPOSE this Measure.**

Katherine Lindell  
*Honolulu, Hawaii*



February 11, 2024

Committee on Water and Land  
Senator Lorraine R. Inouye, Chair  
Senator Brandon J.C. Elefante, Vice Chair

**Testimony in Opposition to SB2555**

Chair Inouye, Vice Chair Elefante, and Members of the Committee,

UNITE HERE Local 5 represents 10,000 working people in the hotel, food service and health care industries across Hawaii.

We urge lawmakers to stop thinking that privatization deals, also referred to as Public Private Partnerships (PPP), are the de facto option when faced with challenging governance problems. Governments are not supposed to be profit-making enterprises. Citizens are public stakeholders, not consumers to be judged for their economic viability by private businesses. Local government should provide public spaces for public activities under the oversight of elected lawmakers.

We can only assume SB2555 is founded on the same general motivations as 2023's House Bill 1089 that looked to privatize the Ala Wai Boat Harbor.

While SB2555 doesn't explicitly state it seeks to privatize Ala Wai Harbor, and SB2555 as currently written would exclude Ala Wai (based on the bill's county-population threshold of less than nine hundred thousand people), we are wary of any future amendments that could bring the Ala Wai harbor back into HB1919's scope.

In our testimony to HB1089 in 2023, we highlighted shortcomings in the "*Modernizing Ocean Recreation Management in Hawaii Strategic Action Plan – 2019*" plan authored in 2019 by DLNR and DOBOR. That plan laid out a rationale for why certain interests wanted to privatize the Ala Wai. Our testimony raised concerns about the shortcomings of the arguments made for privatization of Hawaii boat harbors, in general. We stand by our testimony for HB1089 made in 2023.

We urge you to read our testimony on HB1089 in 2023 (attached here as Exhibit 1). Many of our argument there would apply to SB2555's attempts to privatize publicly owned and operated public boat harbors now in 2024.

**We urge you to vote against SB 2555.**

Thank you for your consideration.



# Exhibit 1



*Eric W. Gill, Financial Secretary-Treasurer*

*Gemma G. Weinstein, President*

*Cade Watanabe, Senior Vice-President*

March 17, 2023

Senate Committee on Water and Land (Monday, March 20, 2023, 1:05pm)  
Senator Lorraine R. Inouye, Chair  
Senator Brandon J.C. Elefante, Vice Chair

## **Testimony in opposition to HB1089\_HD1**

Chair Inouye, Vice Chair Elefante and Members of the Committee:

UNITE HERE Local 5 represents working people throughout Hawaii's hotel, food service and health care industries. We **strongly oppose the intent of HB1089** to privatize public harbors via Public Private Partnerships.

HB1089 is one of many examples of the trend among lawmakers to hand off public commons to for-profit companies. This faith in the "free market" is fundamentally misaligned with the function and intent of governance. We urge lawmakers to stop thinking that Public Private Partnerships (PPP) are the de facto option when faced with challenging governance problems. Governments are not supposed to be profit-making enterprises. Citizens are public stakeholders, not consumers to be judged for their economic viability by private businesses. Local government should provide public spaces for public activities under the oversight of elected lawmakers.

We assume the "*Modernizing Ocean Recreation Management in Hawaii Strategic Action Plan – 2019*"<sup>1</sup> (the "Plan") authored in 2019 by DLNR and DOBOR is the foundation for HB1089 since it lays out the desire to permanently privatize *all of* DOBORs small boat harbors. The Plan focused on the Ala Wai harbor as the primary target for PPP over any other harbor. It's clear HB1089's intent is to privatize the Ala Wai harbor as a first step and in isolation from other harbor privatizations. HB1089 calls for a twenty-year timeline that allows only "one" small boat harbor to be leased while at the same time deleting existing statutory language (HRS200-2.6) that limited leasable areas in Ala Wai harbor to only certain smaller parcels.

The Plan is flawed, and a critical analysis of its claims leads to the conclusion that **privatizing public harbors is not necessary or desirable**. The 24-page glossy document (averaging less than 240 words a page) contains repetitive rhetoric repeating the claim that a PPP will produce a promised result. The Plan provides no substance and the public has *not* shown it even wants that promised result. In 2019 Civil Beat reported on a vetoed harbor privatization bill and the State's other longtime efforts to offload harbor management<sup>2</sup>. The Plan lacks guardrails, detail, context, objective metrics, statutory frameworks, financial context, guidelines, utilization data, investment expectations, and generally lacks convincing arguments for PPP.

**HB1089 and its intent should not be passed** because:

<sup>1</sup> [https://dlnr.hawaii.gov/dobor/files/2019/09/DOBOR-Strategic-Plan-2019\\_webpost.pdf](https://dlnr.hawaii.gov/dobor/files/2019/09/DOBOR-Strategic-Plan-2019_webpost.pdf)

<sup>2</sup> <https://www.civilbeat.org/2019/05/blindsided-by-a-last-minute-plan-to-privatize-lanais-small-boat-harbor/>

- It takes away the legislature’s future discretion to approve or disapprove privatization actions (HB1089\_HD1).
- Statewide, there are 20 small boat harbors in the DOBOR’s care. The focus on privatizing the Ala Wai harbor is concerning for systemwide revenue if less desirable/profitable harbors will remain a State responsibility.
- It wrongly paints public agencies that are not “profitable” as a problem. Government provides services for taxpayers - its justification should not be based on its profit generation.
- It ignores or doesn’t value the non-financial benefit of providing residents with ample free and paid public parking in Waikiki.
- The State wants to move away from boat harbor management to focus on “rule-making, oversight, enforcement, and safety education.” Citizens may balk at the idea of agency staff doing more rule-making, oversight, and enforcement.
- There are other ways to address obstacles to harbor management.
- DOBOR is not the appropriate entity to manage multi-million or multi-billion dollar privatization deals.
- There are no guardrails to what kind of commercial development is allowed.
- This 20 year “pilot program” fails to account for context once a PPP is entered into. Many public land leases are 65 years. The Plan declared a goal of permanently privatizing all harbors. A 20-year pilot project privatization deal will presumably be extended into a multi-generational loss of public control over Ala Wai harbor.

The 2019 Plan is confusing and doesn’t provide a convincing argument for PPP. To summarize its main issues, the Plan simply repeats the belief that PPP will solve perceived problems, but provides no real substantive details. The Plan conflates the lack of resources to manage State harbors in a *statewide context*. *After* demonstrating the Ala Wai harbor is a crown jewel in terms of profitability, it makes claims about how unprofitable harbors are and then calls for the privatization of Ala Wai harbor. Moreover, a lack of resources is an issue that can be solved without resorting to giving away public land and resources to private companies.

Considering the link between the 2019 Plan and HB1089, we would like to share some key problems with the Plan itself. Excerpts from the Plan are quoted below followed by our counter points:

- *“Although the Ala Wai stands out as the highest net income generating harbor, its earning potential remains untapped. Like other State harbors, the harbor itself underperforms in revenue; it is the parking revenues that account for Ala Wai Small Boat Harbor’s comparative “success.”* (Page 5)
  - o The State is literally admitting the Ala Wai is its best profit generator! Why does the State want to privatize the crown jewel of its portfolio?
- *“DOBOR’s regulatory scope covers a wide range of ocean-related matters, from issuance of use permits for harbors and ocean recreation management areas to regulation of ocean activities, such as diving, kayaking, surfing, and jet skiing.”* (Page 4)
  - o We don’t believe the State’s public harbor management role should be abandoned or “sold” to private interests.
- *“The Ala Wai Small Boat Harbor is just one example of a State small boat harbor that can be better managed in order to protect the resource sustainably and serve the people of Hawai’i. Situated near Ala Moana Center, a premier retail complex that draws 48 million shopping visitations annually, the Ala Wai should offer safe and aesthetically pleasing facilities. Yet, the harbor languishes in disrepair.”* (Page 5)
  - o As noted, Ala Wai is its best performing harbor. There’s no nexus as to why it should be redeveloped to complement the Ala Moana Shopping Center customer experience.

- Magic Island, Ala Moana Beach Park, Waikiki and Kapiolani Blvd surround the Ala Wai harbor. Why does the Plan compare a boat harbor with those world class destinations? Furthermore, the scope of re-development needed for the harbor to *successfully* compete with or complement those destinations should worry any stakeholder.
- *"Although harbor management represents just a single statutory mandate, it depletes a disproportionate share of DOBOR's personnel resources. Furthermore, investing substantial funds and staff into the harbors has not produced a commensurate return. Revenue generated by the harbors does not even begin to offset management and maintenance costs. For the past several years, harbor management as a whole operated at a net loss. In fiscal year (FY) 2018, for example, Hawai'i's small boat harbors incurred a net loss of nearly \$2 million while consuming 69% of staff resources"* (Page 7)
  - Again, government public services are not meant to provide high investment returns.
  - The State is not claiming Ala Wai harbor alone is losing \$2M a year; Ala Wai was its best profit generator.
  - The statistics from FY2018 conflate the profitable Ala Wai harbor with the DOBOR harbor program's *statewide* unprofitability.
  - A \$2 million single year deficit for 20 small boat harbors across all islands is not an unreasonable cost to provide such a significant public service.
  - It would be more informative to provide detailed financial analysis over five, ten or more years.
  - The "consumption" of 69% of staff resources for harbors should be taken in context. Boat harbors would necessarily require more manpower than managing something like a boat ramp (essentially a parking lot with a concrete ramp).
- *"In fact, over the past five years, an average of as much as 84.2% of staff resources were allocated towards harbor management."* (Page 7)
  - An objective analysis needs a more detailed breakdown of how work hours were allocated in the calculation of this statistic.
  - If HB1089 is to pass, which it shouldn't, we strongly support HB1089\_HD1 amendments that protect good union jobs in the face of privatization. A missing piece of information is how many workers would be reassigned from the Ala Wai asset (and what percentage of department staff that'd constitute). And it needs to be said that there is no payroll cost savings, merely the reassignment of staff away from the Ala Wai.
- *FY2018 financial chart* (Page 8)
  - There are many issues with this chart.
  - Providing a single year snapshot of narrow financial data is insufficient data for analysis.
  - The single year loss of \$2M was for the statewide harbor program *as a whole* and not just the Ala Wai harbor. Again, Ala Wai was the State's best performing harbor.
  - A lot of budgetary context is missing. We need longer trends, financial information about DOBOR as a whole and by segments, explanation of expenses and cashflow, allocation of DOBOR expenses to harbors versus other segments, etc.
  - Isolating a segment that loses money in an agency as large as DLNR/DOBOR may not be appropriate.
  - If harbors are labor intensive, then it may require the most staff payroll. In comparison, boat ramps probably require less staff resources.
  - The chart metrics are confusing.
    - Is the chart exhaustive of *all* DOBOR segments' attributable profit and loss? Or is it a narrow, tailored snapshot?
    - The "non-harbor admin" profit sources are not explained. Presumably it is revenues generated by fees, licenses, fines, leases, etc. The same questions arise with the "ocean recreation" category.

- It's unclear why "non-harbor admin" is compared with "harbors", their titles seem like mutually exclusive segments.
  - Is it appropriate to break out and compare "boat harbors", "boat ramps", "ocean recreation" and "non-harbor administration" segments? They are not defined. Any inter-relationship or overlap is not explained.
    - What is "non-harbor admin" and how did it net \$2.5M in FY2018?
    - What is "ocean recreation" and how did it net \$540k in FY2018?
    - What is "boat ramps" and how did it net \$225k in FY2018?
  - Why does the chart use the terms "net revenue (+)" and "net revenue (-)" to describe what we assume is net income or loss? Are there material implications in the word selections?
  - Other than lease rent, profit is not going to be enjoyed by the State, it will be privatized profit. Failing to squeeze every last dime out of a public asset is not a reason to privatize.
- *"The management model that DOBOR inherited at its inception does not allow the division to fulfill its statutory mandates and meet its needs – it was and continues to be a system that shackles the division". (Page 9)*
  - There are many ways to help the State in its work, or to move the work to a more appropriate department, instead of defaulting to a PPP.
- *"The division is proposing to shift to public-private partnership small boat harbor management, moving staff away from day-to-day direct harbor management, allowing staff to prioritize the exclusive governmental functions of ocean recreation management, rulemaking, oversight, and enforcement." (Page 10)*
  - State agencies are best suited to actively manage public lands on behalf of voters.
- *"The State is underutilizing the opportunity to generate revenue from State-owned fast lands. Fast lands have immense commercial development potential to attract greater foot traffic in harbor areas and yield higher income to the State. Through this strategic plan, DOBOR can realize a more efficient management and development scheme that takes advantage of this opportunity." (Page 11)*
  - Again, the State is not a money-making venture. It should not pursue maximization of profit.
  - Ala Wai is a public boat harbor to serve boaters.
- *"DOBOR already has demonstrated the economic viability of the concept on a small scale with Waikīkī Yacht Club, Hawai'i Yacht Club, La Mariana Sailing Club and Ke'ehi Marine Center. These four operations pay DOBOR just under \$825,000 per year through long-term leases of fast lands, and manage their own boating operations on those lands". (Page 13)*
  - Private yacht clubs with monthly dues, minimum food and beverage spend requirement, rules, wait lists, sponsorship process, etc. is **not** something a public agency should promote. The \$825k paid in rent to the agency is money from local taxpayers (and visitors) who can afford private yacht club memberships. It's a form of taxation that segregates rich and poor ocean enthusiasts.
- *Moreover, because firms aim to increase their customer base, they are adept at making business decisions that satisfy consumer needs and can respond more quickly to change as needs arise. (Page 13)*
  - Ala Wai boat harbor is finite in size. It's not clear how any private partner will "expand" its "customer base" (boaters).
- *"At the time of the division's transfer from DOT to DLNR, there was approximately \$300 million dollars in deferred maintenance in the recreational small boat harbors, launch ramps, and other related facilities. Some progress has been made, but this list continues to grow as the facilities age." (Page 4)*

- The DOT to DLNR transfer took place about thirty years ago in 1991 (Session Act 272). If the *statewide* deferred maintenance was \$300M then, what is the more recent figures and the figures for Ala Wai?

We do not think the bill should be passed but we can propose one mitigatory amendment to improve community benefit. A PPP deal should provide the State with percentage rent in addition to base rent. If maximizing profit is justification for a PPP, then a percentage rent system allows the State to actually directly benefit from the profit generated from the public property.

UNITE HERE Local 5 **strongly opposes the intent of HB1089** to privatize public harbors via public private partnerships. Thank you for your attention to this matter.

Aloha Chair, Vice Chair, and members of the committee.

My name is Nathaniel Fisher and I strongly oppose bill SB2555. This is a very mysterious bill that lacks clarity and creates hundreds of questions. In 2023 this same bill introduced to privatize the Ala Wai Harbor was vetoed by the Governor. This year the reference to the Ala Wai is repealed, and the population is decreased to less than 900,000 which opens the 20-year privatization pilot program to ALL harbors on any of the neighbor islands. This is truly a concern that affects not only commercial, but recreational harbor users on all neighbor islands.

The concerns are:

\*The elimination of DOCARE enforcement will now be transferred to the private entity and/or local police department that is already heavily understaffed.

\*Reduced access for the general public

\*Increased fees in addition to the fees that ALL boaters (recreational & commercial) already pay for harbor maintenance and improvements.

\*A decrease or elimination of all existing commercial permits, especially in a harbor that has been recently deemed to be over the commercial capacity limit.

\*Or the possibility of more commercial activity taking place at the discretion of a private entity rather than the formal government approval process.

I can grasp the concept of minor repairs and maintenance being conducted more swiftly by a private entity, but what happens in regards to multi-million dollar maintenance items like dredging, rebuilding docks, additional ramps, and in the case of Kikia'ola Small Boat Harbor on Kaua'i, the sand bypass from the east end of the harbor to the west end of the harbor, etc.

I believe the concept has potential and the overall idea may be well intended, but this measure needs to go back for input from ALL recreational users, fisherman, and commercial permit holders on ALL islands.

We're all in support of a better managed harbor but a massive decision like this requires a clearly laid out plan without any ambiguities. As it stands this bill is far too vague and I hope you will support my position to strongly oppose this bill and others to follow until there is more community awareness and input.

Mahalo for your time and consideration,  
Nathaniel Fisher

**SB-2555**

Submitted on: 2/11/2024 12:05:25 PM

Testimony for WTL on 2/12/2024 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Shyla Moon	Individual	Oppose	Written Testimony Only

Comments:

This could be a bad decision. We need our small boat harbors for PUBLIC use. DLNR needs to step it up and manage it. Don't make it private.