

LATE

HB 1766

The Pacific Resource
PARTNERSHIP



LATE

Testimony of C. Mike Kido
External Affairs
The Pacific Resource Partnership

Senate Committee on Ways and Means
Senator Donna Mercado Kim, Chair
Senator Shan Tsutsui, Vice Chair

HB 1766, HD2, SD1 – Relating to Small Boat Harbors
Monday, April 6, 2009
9:30 am
Conference Room 211

Chair Kim, Vice Chair Tsutsui and Members of the Senate Committee on Ways and Means:

My name is C. Mike Kido, External Affairs of the Pacific Resource Partnership (PRP), a labor-management consortium representing over 240 signatory contractors and the Hawaii Carpenters Union.

Pacific Resource Partnership supports the Department of Land and Natural Resources' Recreational Renaissance Plan to provide funding and the policy tools to help upgrade and maintain state parks, trails and ocean recreational facilities at a much higher standard. However, HB1766, HD2, SD1 – Relating to Small Boat Harbors, is not effective to address the recreational needs across the state. We respectfully request your support of the real Recreational Renaissance SB 636, that is a comprehensive plan to address recreational facilities across the state. Please support SB 636 and the Recreational Renaissance CIP budget.

Thank you for allowing us to share our opinion.

ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES
of Hawaii

LATE

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Website: www.acechawaii.org

April 6, 2009

EMAILED TESTIMONY TO: Senate Committee on Ways and Means

**Hearing Date: Monday, April 6, 9:30 a.m., Conference Room 211
(Senate Committee on Ways and Means)**

Honorable Senators Donna Mercado Kim, Chair, Shan S. Tsutsumi, Vice Chair,
and Members of the Committee

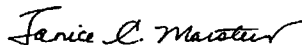
Subject: HB1766, Relating to Small Boat Harbors

Dear Chair Mercado Kim, Vice Chair Tsutsumi, and Committee Members,

The American Council of Engineering Companies of Hawaii (ACECH),
represents more than 70 consulting engineering firms in Hawaii with more than
1,500 employees.

We believe that HB1766 does not adequately address the needs for state-wide
recreational, natural and cultural resources and urge you to support SB636,
Relating to DLNR. We are in full support of the comprehensive and innovative
Recreational Renaissance plan contained in SB636. Please support Senate Bill
636 and the Recreational Renaissance CIP budget.

Kind Regards,



Janice C. Marsters
National Director

LATE

kim4 - Elizabeth

From: Tim Lyons [timlyons@cs.com]
Sent: Sunday, April 05, 2009 7:09 PM
To: WAM Testimony
Cc: Sen. Clayton Hee
Subject: HB 1766 HD2 on 4/6/09 at 9:30 am

Relating to Small Boat Harbors

Chair Donna Mercado Kim and Members of the Committee:

I am Tim Lyons, Executive Director of the Ocean Tourism Coalition and we have problems with this bill.

We believe that the program as envisioned in the RR bill was far more accommodating to the harbors, our tourists, our residents and the financial well being of the commercial tourism industry.

We are confused by the provisions in this bill that call for the use of an appraisal to set fees while at the same time maintaining the language which currently sets our fees to three (3) percent of the gross revenue.

We also object to Section 4 re: Section 200-10 (c) (6) which allows the Department to separately assess us CAM fees when those fees should already be included in the current 3% of our gross revenue fee. Please be reminded that it was only one and one half year ago that we took a 50% increase in the fees by going from 2% of our gross to 3%. Most of our members were just getting used to paying those fees when the meltdown happened and now most are struggling to handle the payment of these fees. This is a very fragile industry which has a severely depressed mark up margin and cannot sustain more fees. Ocean tourism activities are optional ones that visitors select once they get here and in the current market we are among many options of which only a few will be selected.

We would like to ask for your strong consideration of language in 200-10 (c) (6) (2) that would read: "In addition, for other than commercial purposes, the department....." This would maintain our fees which are set at a percentage of our gross so if we do well so does the State. We understand the logic of imposing this on the recreational boaters whose fees are set by the lineal foot which has little relationship to the CAM cost but in the case of commercial it was intended to be included when the agreement was reached to go to three per cent.

Thank you for considering our comments.

Tim Lyons

Email message sent from CompuServe - visit us today at <http://www.cs.com>



Ocean Tourism Coalition

LATE

The Voice for Hawaii's Ocean Tourism Industry
820 Mililani Street, #810
Honolulu, HI 96813
(808) 205-1745 Phone (808) 533-2739 Fax
office@oceantourism.org

April 6, 2009 9:30 Room 211

Testimony To: Senate Committee on Ways and Means

Senator Donna Mercado Kim, Chair
Senator Shan S. Tsutsui, Vice Chair

Presented By: James E. Coon, President

Subject: HB 1766 HD 2 Relating to Small Boat Harbors

Speaking in **OPPOSITION** to **HB 1766 HD2**

Chair Kim, Vice Chair Tsutsui and Respected Members of the Committee:

I am Jim Coon, President of the Ocean Tourism Coalition (OTC) speaking in opposition of this bill as written. HB 1766 HD 2 is inadequate to address all harbor improvements and in fact would gut the resources of the boating program even further. It is our opinion that this bill creates many more problems for the boating program than it solves. We would like this bill held. In spite of this if HB 1766 were to pass out of this committee we are offering some amendments:

Section 2 (a) (Page 3 line 4): DELETE [and submerged lands]

Section 4, (c) (5) (Page 10 Line 16 & 17) ADD "two times the moorage fee plus utility/common area maintenance fees assessed for a recreational vessel of the same size, whichever is greater.

Section 4, (c) (6) (Page 10 Line 19): DELETE [In addition,]

Section 5 (a) (Page 11 Line 3): Delete [and submerged lands]

Section 5 (f) (Page 14 Lines 12-13): Delete [and submerged lands]

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OTC recognizes that the small boat harbors of the State in dire need of repair. HB 1766 is too flawed even with amendments to be effective. We would like to see the Recreational Renaissance Plan (SB 636) have a fair hearing and pass.

Commercial boaters represent less than 3% of the total boats using these facilities yet produce close to 50% of all revenues derived from boater fees. Commercial boaters recently supported legislation to have their fees raised by 50% with the promise that this would provide enough extra revenue for DOBOR to upgrade our harbors. As an industry we just cannot afford any significant increase on top of what we are already paying. We are paying more than our fair share! We are not complaining, but do not want to see a draconian open ended fee system added on to our already strained resources to the point where it drives us out of business. If you privatize the Ala Wai Small Boat Harbor, you will eviscerate the Recreational Renaissance Plan.

We humbly ask you to please hold HB 1766 HD2.

If you do pass HB 1766 please include the proposed amendments.

Thank you,

James E. Coon, President
Ocean Tourism Coalition

kim4 - Elizabeth

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, April 05, 2009 5:28 PM
To: WAM Testimony
Cc: tmzszakasone@hawaiiintel.net
Subject: Testimony for HB1766 on 4/6/2009 9:30:00 AM

Testimony for WAM 4/6/2009 9:30:00 AM HB1766

Conference room: 211
Testifier position: support
Testifier will be present: No
Submitted by: Martin Nakasone
Organization: Individual
Address:
Phone:
E-mail: tmzszakasone@hawaiiintel.net
Submitted on: 4/5/2009

Comments:

Similar to most public recreational improvement programs in the State, the Hawaii's Parks and Small Boat Harbors do not receive the adequate funding to provide our locals and tourists a safe, friendly and clean facility. The communities donate many hours of labor and appreciable amounts of monies to keep the sites open, but piecemeal improvements by the State only provide a bandage, hiding the effects of low priority projects.

We simply must provide a comprehensive program to keep our parks and harbors open to our residents and for our visitor industry. We need to continue to provide our people a proud environment to truly stand behind our common slogan of "living in paradise".

kim4 - Elizabeth

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, April 05, 2009 7:27 PM
To: WAM Testimony
Cc: tomrepleh@hotmail.com
Subject: Testimony for HB1766 on 4/6/2009 9:30:00 AM
Attachments: HB 1766

Testimony for WAM 4/6/2009 9:30:00 AM HB1766

Conference room: 211
Testifier position: oppose
Testifier will be present: No
Submitted by: Tom Helper
Organization: Individual
Address: 230 Aikane St. HI
Phone: 808 254-2817
E-mail: tomrepleh@hotmail.com
Submitted on: 4/5/2009

Comments:



LATE

CAPT. NANCY W. SWEATT
75-5822 Pelekila Place, Kailua Kona, HI 96740
808-329-3030/800-328-1218
info@dolphinjournneys.com - www.dolphinjournneys.com

April 4, 2009

Committee on Ways and Means
State Capitol Room 211
415 South Beretania Street
Honolulu, HI

RE: Bill on Recreational Renaissance, HB 1766

I do not support HB1766

I better and more effective Bill is SB 636 which I would like to see replace the proposed HB1766.

I support the Recreational Renaissance SB 636.
This plan is the best solution for Hawaii, the local residence and our visitor industry alike.

I am a daily user of Honokohau Harbor. I greet my guests each day and deal with the constant embarrassment of the facility. Bathrooms are in disrepair and the piers are unsafe. We have fortunately had only 2 accidents of tourist falling in the crevices between the dock and the wall. I could write you a volume of the problems.

The Recreational Renaissance SB 636 is essential for our state. Please pass this bill.

Mahalo.

Nancy W. Sweatt

Committee on Ways and Means
Tuesday, April 7, 2009, 9:30 am
Conference Room 211, Hawaii State Capitol

LATE

Thank you for this opportunity to express my concerns regarding the **HB200**.

I have been a civil service employee since 1994, and I oppose any layoffs within HHSC especially layoffs of civil service employees.

I do understand that we are in the midst of economic downturn, and extreme measures must be taken in order to balance the budget.

However, other options must be explored first before resorting to layoffs in HHSC.

Legislature must consider the following alternatives to prevent layoffs:

1. HR: **Centralize certain functions**; a hiring freeze on non-direct patient care positions, reduce overtime on non-direct patient care positions, use "in-house" resources, voluntary furloughs, reduce FTE;
2. Expenses: Limit travel expenses, temporary assignments, suspend any projects that do not have any direct impact on patient care;
3. Benefits: Review salaries of **non-civil service positions** to reduce/adjust pay increases and bonuses. Compensation should be comparable to other state agencies.
4. Full disclosure of cost savings of the above measures.

If layoffs are inevitable, I urge the committee to protect the rights of civil service employees.

Again, thank you for this opportunity.

Respectfully,

Joanne S. Agnes, PHR
Honolulu, Hawaii

LATE

kim4 - Elizabeth

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, April 05, 2009 11:44 PM
To: WAM Testimony
Cc: wichman@ntbg.org
Subject: Testimony for HB1766 on 4/6/2009 9:30:00 AM

Testimony for WAM 4/6/2009 9:30:00 AM HB1766

Conference room: 211
Testifier position: support
Testifier will be present: No
Submitted by: Chipper Wichman
Organization: Individual
Address: 3535 Papalina Road Kalaheo, HI
Phone: 651-4266
E-mail: wichman@ntbg.org
Submitted on: 4/5/2009

Comments:

While I am concerned about the debt service that this bill will create I do support it as an effective way to obtain the funding needed to properly run our State Parks.

Mahalo, Chipper Wichman

LATE

kim4 - Elizabeth

From: mailinglist@capitol.hawaii.gov
Sent: Monday, April 06, 2009 4:03 AM
To: WAM Testimony
Cc: drgeorgepc@yahoo.com
Subject: Testimony for HB1766 on 4/6/2009 9:30:00 AM

Testimony for WAM 4/6/2009 9:30:00 AM HB1766

Conference room: 211
Testifier position: oppose
Testifier will be present: No
Submitted by: Dr. George Carayannis
Organization: Ala Wai Boat Association
Address: 1741 Ala Moana Blvd.#70
Phone: 808 781 - 6164
E-mail: drgeorgepc@yahoo.com
Submitted on: 4/6/2009

Comments:

I wish to bring up to your attention reasons why this legislation scheduled for hearing by your Committee should not be approved.

Specifically:

Section 2 amends 200-2.5 HRS by adding "submerged lands", "request for proposals", "chapter 190D" to subparagraph (a).

Section 5 uses the amended 200-2.5 HRS as the authority to allow the "department of land and natural resources" to lease the "submerged lands" (as well as the fast lands already authorized) of the Ala Wai SBH, and specifically eliminates the use of 171-53 HRS.

The differences in leasing fast and submerged lands were thoroughly discussed previously and it was agreed that the wording in the amendment would specifically limit its application to "Fast" land, and that is how it is written. The reasons for doing so previously were the same as those being presented in this testimony. Please deny this amendment in the public interest.

Also it is important to note that the public hearings required in the legislative process imposed by 171-53 HRS, provide the public with the opportunity to become aware of a proposal and to provide opportunities for public input to the Legislative Committee hearing the Bill. The amendments proposed in Section 2 and Section 5 of this Bill will eliminate the involvement and control of the Legislature (and thus the public) by removing Section 171-53 HRS from the process of leasing submerged land. Please don't let that happen.

In brief, HB1766 represents another ill-conceived legislation that would essentially "privatize" selected portions of our existing public recreational boating facilities. This would reduce the number of existing public boat slips intended for middle-class boaters by leasing these slips out to become private slips that would command fees that would be four to five times the current (public) fee levels. Public ocean access opportunities provided by these submerged lands (slips) and protected by our constitution would be severely reduced. Given the growing demand for boat slips (and ramps), we strongly oppose HB1766 because it allows the conversion of existing public boat slips to private boat slips that the average boating public can't afford - without increasing the total number of boat slips in Hawaii. Let those that want the private high-end marinas develop their own marinas instead of trying

to take away the public boating facilities already being used by the "average" middle class boaters whose user fees actually paid for the facilities.

Please do not let this happen.

Sincerely

Dr. George Carayannis

Hawaii boater at the Ala Wai boat harbor since 1963

From: mailinglist@capitol.hawaii.gov
Sent: Monday, April 06, 2009 6:17 AM
To: WAM Testimony
Cc: gshiromahi@hotmail.com
Subject: Testimony for HB1766 on 4/6/2009 9:30:00 AM

Testimony for WAM 4/6/2009 9:30:00 AM HB1766

Conference room: 211
Testifier position: oppose
Testifier will be present: No
Submitted by: Glenn Shiroma
Organization: Individual
Address: Hilo, Hawaii
Phone:
E-mail: gshiromahi@hotmail.com
Submitted on: 4/6/2009

Comments:

HB1766 HD2 SD1 contains some of the language as in re-worded SB636 SD1 HD1, Relating to Department of Land & Natural Resources (DLNR) Recreational Renaissance Plan. Division of Boating and Ocean Recreation (DoBOR) continue to demonstrate the lack of government transparency by not taking the proposed changes in this bill, to the small boat harbor stakeholders via public informational meetings, statewide, prior to submittal to the Legislature.

For example, DoBOR track records of non-government transparency are as follows:

- a. Hawaii Administrative Rule changes for the parking rules, primary for the Ala Wai SBH, had statewide consequences. On the Big Island, no public informational meeting has held for small boat harbor stakeholders to review and ask questions, only a public hearing in Waimea, not in Hilo or Kona.
- b. No public informational meeting was held for the Pohoiki Launch Ramp & Loading Dock Replacement Project, after the final design plans were completed in February 2008. Repeated requests to DoBOR Administrator and DLNR Director had fallen on deaf ears. Stakeholders complained during the pre-construction meeting held on December 8, 2008, regarding about unresolved design concerns expressed during previous meetings. As the result, "change order" for designs changes were very expensive but could have been avoided. A major design flaw was addressed with half-okole solutions, which only increases the liability for the State of Hawaii.
- c. No public informational meeting was held for the Kawaihae South SBH Facilities Improvement Project, after the designs were completed and bids received in June 2008. Repeated requests to DoBOR Administrator and DLNR Director have fallen on deaf ears. Kawaihae South SBH stakeholders have not had the opportunity to review and ask questions on the final design plans, as of this date. DoBOR's refusal to design the launch ramp with years of proven and safety design protocols is unacceptable. As the result, the fishermen and boaters will be exposed to unsafe conditions.
- d. Department of Land and Natural Resources annual report to the 2009 Legislature in response to Act 100, Sections 6 & 7, Session Laws of Hawaii 1999, under DoBOR's Policy H, "Provide equal opportunities for access, use and enjoyment of waters of the State while minimizing user conflicts. DoBOR has refused to hold public informational meeting for the

Wailoa SBH and East Hawaii Ocean Recreational Management Area, for years. As the result, stakeholder conflicts are escalating along with unresolved safety concerns.

Is the INTENT of the 2009 Legislature, to adopt Hawaii Revised Statutes without requiring DoBOR to hold statewide public informational meeting on proposed laws that directly affect statewide small boat harbor stakeholders?

Thank you for this opportunity to provide testimony.

LATE

RE: HE 980 HD2. & HE 1766 - relating to Recreational Renaissance Can \ Water Activities
in the small boat Harbors throughout the State of Hawaii

HB1766 HD2 – Strongly opposed

Date: April 5, 2009

Re: WTL Testimony

Dear Sirs,

Permitting the DLNR to determine fee increases again allows the State to collect fees from the only captured fee source available. The determination of fee increases should **not** be proposed by interested parties with **very little financial oversight that will personally financially profit from the increase.**

This Bill is too costly, far-reaching and concentrates power in too few hands with very little financial oversight.

Regarding SECTION 4. Section 200-10. "(c) *The mooring fees shall be set by appraisal categories schedule A and schedule B, to be determined by the department, and shall increase accordingly, annually, by an amount equal to the consumer price index increase, if any; provided that:*

(A) Schedule A shall include existing mooring permittees with an annual increase toward schedule B rates spread out evenly over a five-year period;

The **ONLY** source of additional fee increases is the current slip holders. We have been a “captured” fee source for too long. Any and all “Fee” increases are applied to current slip holders. Additional increases for this bill are NOT WARRANTED and unfair to propose they be applied to only the existing slip holders.

Regarding Specifically SECTION 2. Chapter 171, Hawaii Revised Statutes
The Ala Wai Boat Harbor was given to the State with the provision it be kept in fortuity for RECREATION ONLY. **This bill for commercial vessels in the harbor violates this provision.**

Sincerely,
Susan Ray
P.O. Box 75028 Honolulu, Hi 96836

RE: HE 980 HD2. & HE 1766 - relating to Recreational Renaissance Cn \ Water Activities
in the small boat Harbors throughout the State of Hawaii

LATE

HB1766 HD2 – Strongly opposed

Date: April 5, 2009

Re: WTL Testimony

Dear Sirs,

Permitting the DLNR to determine fee increases again allows the State to collect fees from the only captured fee source available. The determination of fee increases should **not** be proposed by interested parties with **very little financial oversight that will personally financially profit from the increase.**

This Bill is too costly, far-reaching and concentrates power in too few hands with very little financial oversight.

Regarding SECTION 4. Section 200-10. "(c) *The mooring fees shall be set by appraisal categories schedule A and schedule B, to be determined by the department, and shall increase accordingly, annually, by an amount equal to the consumer price index increase, if any; provided that:*

*(A) Schedule A shall include **existing mooring permittees** with an annual increase toward schedule B rates spread out evenly over a five-year period;*

The **ONLY** source of additional fee increases is the current slip holders. We have been a “captured” fee source for too long. Any and all “Fee” increases are applied to current slip holders. Additional increases for this bill are NOT WARRANTED and unfair to propose they be applied to only the existing slip holders.

Regarding Specifically SECTION 2. Chapter 171, Hawaii Revised Statutes
The Ala Wai Boat Harbor was given to the State with the provision it be kept in fortuity for RECREATION ONLY. **This bill for commercial vessels in the harbor violates this provision.**

Sincerely,
Dennis Cooney

kim4 - Elizabeth

From: mailinglist@capitol.hawaii.gov
Sent: Monday, April 06, 2009 8:53 AM
To: WAM Testimony
Cc: larry@lawrencehoover.com
Subject: Testimony for HB1766 on 4/6/2009 9:30:00 AM

Testimony for WAM 4/6/2009 9:30:00 AM HB1766

Conference room: 211
Testifier position: oppose
Testifier will be present: No
Submitted by: Lawrence Hoover
Organization: Individual
Address: 1741 Ala Moana Blvd. Unit 14 Honolulu, Hawaii
Phone: 808-946-6094
E-mail: larry@lawrencehoover.com
Submitted on: 4/6/2009

Comments:

Representatives:

I am opposed to HB1766 as it will create more problems than it is supposed to solve.
Thanks, Larry.

kim4 - Elizabeth

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Monday, April 06, 2009 9:00 AM
To: WAM Testimony
Cc: ChrisTStevens@gmail.com
Subject: Testimony for HB1766 on 4/6/2009 9:30:00 AM

Testimony for WAM 4/6/2009 9:30:00 AM HB1766

Conference room: 211
Testifier position: oppose
Testifier will be present: No
Submitted by: Chris Stevens
Organization: Individual
Address: Honolulu, HI 96817
Phone:
E-mail: ChrisTStevens@gmail.com
Submitted on: 4/6/2009

Comments:

HB 1766 is not effective to address the recreational needs across the state. Please support the real Recreational Renaissance, Senate Bill 636, that is a comprehensive plan to address recreational facilities across the state. Please support Senate Bill 636 and the Recreational Renaissance improvements budget.

Thank you for the opportunity to submit testimony.

kim2 - Arline

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Monday, April 06, 2009 9:08 AM
To: WAM Testimony
Cc: jnishimura@fainc.org
Subject: Testimony for HB1766 on 4/6/2009 9:30:00 AM

Testimony for WAM 4/6/2009 9:30:00 AM HB1766

Conference room: 211
Testifier position: oppose
Testifier will be present: No
Submitted by: Jon Nishimura
Organization: Fukunaga & Associates, Inc.
Address:
Phone:
E-mail: jnishimura@fainc.org
Submitted on: 4/6/2009

Comments:

We do not support this measure as presently written, in particular, SECTION 5 of this bill which directs the DLNR to lease specific submerged lands at the Ala Wai Harbor.

In addition, House Bill 1766, House Draft 2, Senate Draft 1, as written, is inadequate and fails to address the full spectrum of critical improvements, repairs and maintenance necessary for Hawaii's outdoor recreational places - our parks trails and harbors - that serve all our residents and virtually all the tourists who visit our state.

kim2 - Arline

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Monday, April 06, 2009 7:14 AM
To: WAM Testimony
Cc: losekos@hotmail.com
Subject: Testimony for HB1766 on 4/6/2009 9:30:00 AM
Attachments: Senate Bill 636 Testimony.doc

Follow Up Flag: Follow up
Flag Status: Completed

Testimony for WAM 4/6/2009 9:30:00 AM HB1766

Conference room: 211
Testifier position:
Testifier will be present: No
Submitted by: James D Thompson
Organization: Individual
Address: Koloa
Phone: 8083465030
E-mail: losekos@hotmail.com
Submitted on: 4/6/2009

Comments:
House Bill 1766 and Senate Bill 636 (Recreational Renaissance)

LATE

As you, our Senators, meet in after-hours sessions making difficult Budget decisions, we should all pause for a minute to look more closely at Senate Bill 636 and House Bill 1766. These bills would allow the DLNR to fund much needed repairs and maintenance for our State Parks and Harbors.

What's most important to note is that DLNR does not request appropriations from the general fund, nor does it compete with other important services or programs in this time of fiscal contraction. Amazingly, the Department is not asking for money. What these bills propose is that money generated within the Parks and Harbors through new programs be dedicated exclusively to the Recreational Renaissance.

In an impressive show of unity, the various Divisions within the DLNR have identified potential revenue streams which would allow them to fund their own projects. Rents and leases in the Land Division, access fees for some parks (to be charged only to visitors, not kama aina), adjustments to user's fees in our harbors, and limited commercial operation in select harbors would fund the entire proposal.

By developing these incomes, the Department has shown that it can use these resources to springboard the sale of \$40M in General Obligation Bonds, followed by an additional \$200M in Reimbursable General Obligation Bonds. In plain English, this will allow the DLNR to conduct repairs and maintenance of our Parks and Harbors without us taxpayers having to contribute any money, be it from the General Fund or otherwise.

If only other Departments could be as creative in finding their own revenue to provide their services! The DLNR is to be commended for their ingenuity.

The State is currently looking for ways to cut costs and increase revenue. In this economy, if the DLNR were asking for a hand-out, we might all agree to deny them the money. This, even though our Parks and Harbors are essential to the Visitor Industry and are in a sorry state of neglect. But the Department isn't asking for money. As incredible as it seems, they have devised their own financing for these improvements.

As our nation looks to develop Green Technologies; as our society look to "get back to nature"; as we fight to defend state lands and the Hawaiian Culture; and as we depend so entirely on our visitor industry; we can ill afford to allow our Parks and Harbors to deteriorate further. Too many hikers are being injured and killed in falls. Too many docks have fallen into the water. Our most valuable natural resources are being criminally neglected. To avoid further declines in visitor numbers, we must act quickly to bring our State Parks and Harbors back up to safe operating standards.

Senate Bill 636 and House Bill 1766 are a refreshing and encouraging attempt by a State Department to clean its own house, using only money it generates from within. The Recreational Renaissance proposes a re-birth in the way we care for our land and ocean recreation spaces. It is a defense of the natural and cultural resources within our State Parks, Small Boat Harbors, Boat Ramps, Hiking Trails, Nature Reserves, Forests and Beaches. Are any of these places special to you?

If you love your Aina; if you fish, sail, surf, paddle, dive, or otherwise enjoy our ocean; if you or anyone you know relies on the visitor industry for their livelihood; stand in support of the DLNR's Recreational Renaissance. Make this your kuleana.

Esteemed Senators and Congressmen and women, we wholeheartedly support the DLNR in their plan to provide their own resources for the care of our valuable state properties. Please recommend passage of these bills to the House and Senate at large, and specifically encourage Senator Sloan to make an exception to his rigid opposition to special funds. We respectfully remind all concerned parties that these Bills does not seek appropriations or diversions from the General Fund.

A renewed investment in our Parks and Harbors is a necessary investment in our future; especially if the bill for that investment is not being laid at the feet of the taxpayers.

LATE

From: rawcohi@cs.com
Sent: Friday, April 03, 2009 10:03 PM
To: WAM Testimony
Subject: Testimony in opposition to HB 1766, HD2, SD1 Monday 4/06 at 0930 in room 211

HB 1766, SD1 is truly poison to all concerned. Hold this bill!!!

Senate Committee on Ways and Means in room 211 on Monday, 6 April 2009 at 0930

THOUGHTS REGARDING THE PROPOSED RECREATIONAL RENAISSANCE
HB 1766 or SB 636 or HB 980 or by whatever other name

Chair Kim and respected members of the Committee;

I do truly feel that we are lucky to have a DLNR management team that cares about our natural and recreational resources. I do think the proposed Recreational Renaissance Plan is a wonderful dream. Unfortunately this particular dream was put together without any stakeholder input. As a result, it misses the point in several very important places and therefore, this great dream could easily become our financial nightmare. It must have stakeholder input before enactment!

Did you know that Ala Wai Boat Harbor, verified by Marion Higa, was running at about a \$1.2 million annual surplus above costs until the slips had to be pulled out of service for maintenance? Did you know that the department is on the last legs of the slip renewal project at Ala Wai and that it soon will be restored to full revenue producing capability?

Has it ever occurred to you that if you lease out part of Ala Wai Harbor it will give to DLNR the same amount of income as they generate at present but will cost the boaters of Hawaii double what they now pay for the same thing? Don't give out the facilities that we have worked and paid for! Lease out undeveloped land for building new facilities, that's a real gain for all! Modify this bill so that the department may at any time, lease out for development into marinas or maritime enterprises, any presently undeveloped submerged and/or fast lands for such purposes. You'll aid in building an industry and you'll create jobs.

1. The harbors and boating facilities of Hawaii are owned and operated by the state for only one reason: To keep boating affordable for the people of Hawaii. This dream wants to turn all of our recreational marine facilities into "world class" establishments. Unfortunately, "world class" is not affordable for the average Hawaii boater. No, we must leave "world class" to the private developers like those at Koolina and concentrate on the original goal of providing serviceable facilities to the people of Hawaii at an affordable cost. We pay a "fee" and a "fee" has been defined over and over in law and case law as the recovery of the cost to provide a service or a facility. This means that all fees must regularly be justified and increased or reduced by the actual cost, not a real estate appraisal nor the cost of living or the consumer price index etc. Please do not change this system that enforces responsibility and accountability in the administration of our recreational harbors.
2. This dream RR special fund makes it even more difficult to assign costs as it further co-mingles expenses and charges so that it becomes more and more difficult to separate them one from the other for charging to the responsible department. That is to say, that by creating a fourth master fund and then mixing the monies from the original three special funds, it becomes very difficult to "follow

the money". This is only important because two of the funds receive regular taxpayer support while the boating special fund must, by law, be entirely self supporting. This is why the boaters resent it when their money is spent on projects other than boating facilities. Turn this proposed system around and let each fund pay it's own bills fed when and as required by the RR fund.

3. This bill speaks of leasing out land to make the division self supporting and to pay the reimbursement of the bond issues requested. This is a fine thought and it just might be doable, but that remains to be seen. The department has had the authority to do this for over twenty years and hasn't so far gotten around to it. Before issuing any bonds based for repayment by this plan, it should first be implemented and proven. The proposed land to be leased out seems to have many encumbrances that could deny the leasing of state marine waters of the area involved, or at the very least it could delay implementation of development, therefore delaying income from the leases. These concerns need to be addressed prior to issuing any bonds to be reimbursed by these leased out assets.

4. Bitter developer experience has proven that the present permitting process to plan and build marina facilities, even on private land, is mind boggling at best and totally destroying at worst. Cases in point:

a) Haseko and their effort for over 22 years to get permits to build a marina on land that they own at Ewa. Now, after all those years of determined effort, the permitted marina being built is about half the size originally proposed.

b) Jacoby in their quest to double the size of Honokohau Harbor at no cost to the state, on land leased from the state. A project that would have produced significant income into the boating special fund as well as creating businesses and jobs on the big island. Jacoby finally gave up and walked away.

Therefore, this bill must include provision to expedite the permitting process for development of marina and maritime facilities on land leased for the purpose from the state. This is no different from the same process approved for development of renewable energy sites.

5. Section 2 of this bill allows the chairperson to independent ly make many decisions that presently first require board or even legislative approval. Please do not destroy this system of checks and balances that preserves our land and our submerged lands.

6. Allowing commercial operations in Ala Wai Boat Harbor ignores the fact that the harbor is in the very center of a residential neighborhood and that there is no space on the roadways within the marina to handle all the traffic required by commercial operations. Forcing commercial operations into the limited recreational marina space we have in Hawaii is a disservice to the recreational boating community. There is a waiting list for recreational space at both of the marinas in question, Ala Wai and Keehi, and there is no waiting list for commercial space just four blocks down the street at Kewalo Basin, a commercial harbor. Leave the commercial operators at Kewalo and keep the traffic and noise off the streets and out of the channels in our recreational harbors. Do not change the use of our recreational harbors.

I could go on, but to what end? At this point I think it becomes obvious that this dream is not yet ready for prime time. It needs to go back to the department and the stakeholders to be worked into something that will serve us all as we go forward together. In the mean time, the department can go ahead and lease out the proposed light industrial lands and they can generate the income into the special funds so they will be able to p ay for any bonds required to complete the job, and they may

even find out that with the income generated and the return of Ala Wai to full revenue generating capacity they truly don't even need the bonds after all.

Please bear in mind that in 2002 to 2004, prior to the recent almost 19% increase in fees, Ala Wai was generating a \$1.2 million annual surplus above costs. This is verified in Marion Higa's reports. In 2007 the stakeholders agreed to an across the board 8% increase in the base mooring fees and to two additional increases of 10% each dependant on the release of two \$10 million dollar reimbursable bonds. One of these bonds was issued and the fees were increased. All you have to do is issue the second \$10 million dollar bond and the second 10% fee increase will take place to more than cover the repayment of the funds at today's interest rates. The department has used the funds from the first bond issue to restore revenue flow by repairing or replacing deteriorated facilities at the most rewarding locations. The second issue will serve to restore the second tier income producing facilities to the revenue stream and better serve the boaters of Hawaii. When this work is completed, boating in Hawaii my well be able to support itself once again. All of this is already in place without HB1766 or HB980 or SB636 or whatever other disgui se this bill may take on during the remainder of this session.

Please hold HB 1766 or SB636 or HB 980 or whatever it's called today.

Thanks,

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HOUSE OF REPRESENTATIVES LATE TESTIMONY

STATE OF HAWAII
STATE CAPITOL
HONOLULU, HAWAII 96813

The Honorable Donna Mercado Kim
Hawaii State Senator
State Capitol, Room #210
Honolulu, Hawaii 96813

April 06, 2009

Testimony for House Bill 1766 HD 2 SD 1

Several constituents have approached me about House Bill 1766. We are concerned about three things:

1) Commercialization has Bad Consequences:

FOR THE PUBLIC: The Ala Wai Small Boat Harbor is public land that provides recreational opportunities to the average resident for sailing, boating, fishing, surfing, and swimming. By allowing DLNR to auction off these opportunities to the highest bidder for a profit, the average resident may be priced out.

FOR HARBOR RESIDENTS: Many are lower- and middle-class income earners who may not be able to afford the increase in fees they must pay, such as electrical, water charges, and common area maintenance (CAM) fees. CAM fees actually include providing public restrooms, trash removal, and parking, which the public does not pay for but benefit from.

2) A Question of Fairness:

Many boaters prefer a special boating fund wherein all fees generated by the Ala Wai Small Boat Harbor stay for repairs and maintenance of that harbor. Funds collected at the Ala Wai need to first go towards the repair and maintenance of that harbor before being diverted to other harbors.

Ala Wai and Lahaina harbor boaters may be unfairly paying a surplus to make up the shortfall for other lower-paying harbors over the years.

3) Congestion, Safety & Well-Being:

It would be in our best interest to continue making it easy for the public to utilize the Ala Wai Small Boat Harbor and beach area. The introduction of commercial vessels would be a danger to harbor users (i.e., surfers, paddlers, free divers, and body surfers). They may also take up valuable parking stalls from recreational users. Kewalo Basin, a commercial harbor nearby, would be a better fit for further commercialization.

I appreciate your consideration.

Tom Brower
State Representative- District 23: Waikiki, Ala Moana, Kakaako

Hawaii's Thousand Friends

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THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009

COMMITTEE ON WAYS AND MEANS

Senator Donna Mercado Kim, Chair
Senator Susan S. Tsutomi, Vice Chair

LATE

NOTICE OF DECISION MAKING

DATE: Monday April 6, 2009
TIME: 9:30 a.m.
PLACE: Conference Room 211
State Capitol
415 South Beretania Street

<p><u>HB 1766, HD2, SD1</u> <u>(SSCR1082)</u> <u>Testimony</u> <u>Status</u></p>	<p>RELATING TO SMALL BOAT HARBORS. Permits commercial permits in Ala Wai and Keeki small boat harbors; directs the department of land and natural resources to provide a request for proposal for a public-private partnership to develop a portion of Ala Wai small boat harbor; permits commercial use permits to be issued for vessels assigned moorings in Ala Wai and Keeki small boat harbors; and provides for future mooring fees to be established by appraisal. (SD1)</p>	<p>WTL, WAM</p>
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HB 1766, HD 2 (HSCR 579) Relating to Small Boat Harbors

**Hawaii's Thousand Friends' Testimony
Fred Madlener, Board Member**

Committee Chair and Members:

HB 1766 deals with privatization and management of Ke`ehi Lagoon and the Ala Wai Small Boat Harbor. Ke`ehi Lagoon cannot be altered by the State Department of Land and Natural Resources unless it secures the consent of the Federal Government to whom the State of Hawaii made certain promises to not develop it as a mitigation for filling over the reefs under the Reef Runway. We attach a brief with legal citations, and note that there are ceded and Public Trust lands in the Ke`ehi Lagoon as well as lands, fast and submerged, under the authority of the Federal Government.

I turn to the privatization of the Ala Wai Small Boat Harbor. To turn this harbor into a commercial harbor presents serious problems. Like Ke`ehi it has lands in it that are ceded, Public Trust, or dedicated by gift deed for recreational use. Nor was it ever designed for big boats or commercial ones. Its pathways are narrow and have tight turns. It has poor turning basins and bad visibility when one transits its canals. I know because I had a biggish yacht moored there and one needed to use extreme caution when surfers were crossing the harbor channel, or when canoes were in action. The harbor's outer breakwater is vulnerable to onshore winds of 50 knots or more, such as we had during Iniki, when I had four feet of water over my slip and 2 feet of water on the pier road where surges cleared away the dock boxes and stored gear in the vicinity of my slip. The pylons that hold the docks are driven into mud and are undersized and wobbly: the one at my slip was hit only twice by the pile driver to get it set on its depth. There are no fire hydrants or adequate water piping so that when I had a small fire on board we could not put it out because there was zero water pressure. We don't even have adequate parking for slip holders and there will be very little parking for visitors who come and go from the commercial vessels.

Hawaii's Thousand Friends' Testimony
HB 1766, HD 1
Page 2

The harbor is what its name implies: it is the Ala Wai Small Boat Harbor; it is NOT a commercial harbor. This harbor is designed to give Hawaii's citizens access to the sea, and it does that pretty well. It is the only small boat harbor that produces surplus income every year, about 1.2 million dollars. We have never been able to discover what DLNR does with the money our fees generate. But we do know it is not traditionally spent on our harbor. The State Auditor has noticed this problem too. Whenever Boating Division gathered some funds to do routine maintenance it was used elsewhere by DLNR. We never had the adult supervision necessary to keep track of our money. As a result, the maintenance did not get done. Now we are to privatize the harbor because it is run down.

And we propose to do this "all other rules and laws notwithstanding." When I see those words attached to something I care about it makes my blood run cold: Government is about to do something awful. Then we see that the fees are to be set by a state approved appraiser. These people do comparables. But this harbor is not a commercial harbor; it is a state recreational one that serves surfers, canoe paddlers, recreational boaters, and tourists out for a stroll. It is NOT commercial real estate. As an alternative, page 12, line 16 of HB 1766, HD 1 is more concrete: "mooring fees [are] to be determined by the developer." And the developer will have the right to develop "residential uses" (page 13, line 7). Nor will there be checks and balances because "...concurrent resolution for the lease of submerged lands shall not be required" (page 14, line 9). DLNR's dream come true: they can lease lands that may not even belong to them.

We at Hawaii's Thousand Friends have always tried to steer the State away from giving over our public lands. The Public Trust lands are the citizenry's great asset. We do not want them used as casually as this. Please don't send HB 1766, HD 1 forward. It has everything wrong with it.

On March 27, 2002, we testified to your Committee on the matter of Keeki Lagoon as follows:

We do not support transferring public lands to a body that acts out-of-sight of the public. After Board approval of the initial lease there is no public oversight or no appeals process. If the Department and the Board relinquish responsibility as trustees over public land who will protect the environment and assure adequate public access? Who protects the public's interest in public land?

The 8.7 miles of shoreline and 1,133 acres of waterway of Ke'ehi Lagoon is the only sheltered waterway and lagoon on O'ahu that provides calm water and a recreational environment large enough for all types of calm water activities. The intent of the 1977 DOT Ke'ehi Lagoon Recreation Plan was for public recreational uses of the lagoon not privatization and commercialization.

The dredging of the reef runway in the 1970s destroyed over 1000 acres of coastal bird habitat. To mitigate this destruction Ke'ehi Lagoon was set aside for recreational and habitat purposes. In 1978 the U.S. Fish and Wildlife Service, DLNR and the Governor's Office entered into a Memorandum of Understanding that Ke'ehi Lagoon was to be developed for recreational and wildlife purposes only, with no structures to be placed in the lagoon.

Since DLNR is obligated to abide by the MOU it is unclear if the department can simply relinquish its obligations by granting control of Ke'ehi Lagoon to a non-government entity.

In today's testimony we incorporate a legal brief, as follows:

We question whether the State of Hawaii will be able to establish clear title to the Keeki Lagoon lands. Most or all of the area included within the project area was designated as a Naval Defensive Sea Area by Executive Order prior to World War II, a designation which remains in effect, 32 CFR § 761.3(a)(i) (2008), notwithstanding the fact that restrictions on access have been temporarily suspended. 32 CFR § 761.4(d)(2) (2008). As the U.S. Court of Appeals for the Ninth Circuit held in a recent decision entitled *Kingman Reef Atoll Investments v. United States*, 541 F.3d 1189 (9th Cir. 2008), the Quiet Title Act, 28 U.S.C. § 2409a, imposes strict time limits on the assertion of claims challenging the title of the United States to lands within designated Naval Defensive Sea Areas. As the time for the assertion of such claims has long passed, see *State of Hawaii v. United States*, 676 F. Supp. 1024 (D. Haw. 1988), *aff'd*, 866 F.2d 313 (9th Cir. 1989), the State of Hawaii may be unable to proceed with the proposed development project until Congress or the U.S. Department of Defense waive the claims of the United States to these lands or otherwise authorize the development to proceed. We presume that both Congress and the Department of Defense, in considering any request for such a waiver, would take into account the interests of the U.S. Department of the Interior set forth in correspondence regarding environmental mitigation measures undertaken in connection with the construction of the Reef Runway.

Please note that the issue raised here is completely unrelated to the matters at issue in *State of Hawaii v. Office of Hawaiian Affairs*, now pending before the United States Supreme Court.