

AN OVERVIEW BY THE LEGISLATIVE AUDITOR
OF THE
MANAGEMENT AUDIT OF THE RECREATIONAL BOATING PROGRAM

INTRODUCTION

The audit of the State's recreational boating program was conducted in response to House Resolution No. 415, H.D. 1, 1974, which requested the legislative auditor "to conduct an examination of the financial and management practices, policies and procedures of the harbors division with emphasis on the small boat harbors program." This overview summarizes the results of the audit, including the major findings and recommendations and the responses of the various agencies and governments affected by the report.

SUMMARY OF FINDINGS AND RECOMMENDATIONS

The audit approached the issues of recreational boating from two perspectives. *First*, it examined the management of the program, including the organization of the program and, in what has come to be one of the major functions of the harbors division of the department of transportation, the management of real property; *second*, it considered those issues related to financing, including mooring rates, live-aboards and residence fees, and other revenues of the program.

MANAGEMENT OF RECREATIONAL BOATING

Organization. The agency with primary responsibility for the recreational boating program is the harbors division of the department of transportation. Our basic finding is that the organization for administering the program within the department of transportation is insufficient to do justice to the program. The present structure does not allow for a comprehensive programmatic approach to recreational boating. There is no provision for the coordination and integration of the various elements of the program and the units involved in recreational boating except at the level of the harbors division chief. The problem with this situation is that the harbors division chief is responsible not only for recreational boating but also for commercial harbors, and, considering the basic orientation of the department of transportation toward commercial activities, the recreational boating program has been submerged in importance.

There are significant consequences which result from the organizational defects. *First*, there are no real plans or strategy for recreational boating, and it is not possible to discern where this program is headed. *Second*, no one is really in charge of recreational boating as a program, and important and basic policy decisions go unresolved or are handled on a piecemeal basis. Issues such as the live-aboard issue, user charges, and enforcement have plagued the harbors division and the department of transportation for years, but the division as well as the department has vacillated on these and other issues. If the program is to be administered effectively and in a comprehensive manner, the present organizational and management structure needs to be changed.

There are clear options as to how the program can be reorganized. Our first recommendation is that the legislature consider transferring the recreational boating program to the counties which already have general responsibility for organized recreation, beach control, and activities that take place on beaches. In addition, all counties have provided and now operate various boat launching ramps. Moreover, the counties also play an active or potential part in boating operations through their general responsibility for public safety, including fire department rescue operations, lifeguard operations, and police service. It would make even greater sense to transfer recreational boating to the counties if it were included in a total transfer of outdoor recreation responsibilities from the State to the counties. The result would be that one level of government would be in a position to consider and evaluate the competing needs and relative costs and benefits of the entire range of outdoor recreational activities. The State, with its greater resources, could provide aid to counties for the construction of facilities, but the management and operation of such facilities would be the responsibility of the counties.

If the legislature chooses to retain the recreational boating program at the state level, a better organizational placement would be to locate the program in the department of land and natural resources. The department already has responsibility for virtually all of the state recreational programs. Indeed, it appears that only the ocean-based recreational boating program is currently outside its jurisdiction. The transfer of recreational boating to the department of land and natural resources would complete the integration into one agency of all of the state programs involving outdoor activities. Such integration within a single organization would facilitate and improve the State's ability to develop adequate recreational policies, determine priorities, and rationally allocate the State's resources among the various types of recreation.

Finally, if the legislature decides to keep the recreational boating program in the department of transportation, an organizational entity should be created which will focus exclusively on all aspects of recreational boating. To this unit should be assigned all of the present functions of the boating branch and the small boat harbors sections of the various harbor district offices.

Property Management. In connection with managing small boat and commercial harbors, the department of transportation has under its control a considerable amount of public lands and other natural resources. In the exercise of control with respect to some of the lands and resources, it shares responsibilities with the department of land and natural resources. Problems abound, to-wit:

The statutes, particularly Chapter 266, grant broad authority to the department of transportation to control and manage public lands and resources, but such authority is of doubtful constitutionality. Section 2 of Article X of the State Constitution clearly mandates that the State's natural resources shall be managed by one or more executive boards or commissions, except for "land set aside for public use." The department of transportation is headed by a single executive, not a board or commission. Yet, the statutes provide for management by the department of transportation of such natural resources as shores, shorewaters, and navigable streams. The statutes should be reviewed, and, to conform to the State Constitution, all references to the department's jurisdiction over public lands and resources, other than lands set aside for public use, should be deleted.

Numerous parcels of land have been set aside to the department of transportation which are no longer being used in conformity with the purposes of the set-asides, but are nevertheless still being managed and controlled by the department of transportation. The parcels of land not now being used for public purposes should be returned to the department of land and natural resources for management. The continued control of these parcels by the department of transportation causes anomalous situations to arise. For example, at Pier 11 in Honolulu, a building houses an advertising company, a real estate firm, a textile distributor, a photographer, and an office of the city and county of Honolulu. All of these tenancies are managed by the department of transportation, except the tenancy of the advertising firm, which is being managed by the department of land and natural resources. This makes no sense at all. The obvious solution to this strange arrangement—and there are others also reflective of uncoordinated management of properties—is to withdraw all lands set aside to the department of transportation but which are not in fact used for harbor purposes.

There are probably many illegal structures in Hawaii's shorewaters today. The department of transportation itself estimates that there are about 200 apparently illegal structures in the shorewaters of Oahu, but there exists little coordination between the departments of transportation and land and natural resources in inspecting for violations and enforcing requirements when violations are uncovered. The classic case is that of the Outrigger Canoe Club which installed a mooring without an authorizing permit. Six years elapsed before the problem was resolved. A coordinated procedure for the enforcement of shorewater regulations by the departments of transportation and land and natural resources is clearly in order and, furthermore, those structures that are now illegally in place should be made to conform to regulations.

FINANCING RECREATIONAL BOATING

The Special Fund for Boating. The recreational boating program is currently supported by a special fund, i.e., certain revenues are earmarked to support recreational boating, including the small boat harbor facilities. In our view, a special fund is appropriate, but not for the whole of recreational boating. It is appropriate only with respect to small boat harbor facilities.

Except for harbor facilities, recreational boating should be treated no differently from other recreational programs. To require recreational boating to be specially funded is to deny the State the opportunity to view recreational boating in the context of the entire recreational program. The proper course is to fund recreational boating through the general fund. This would place it on equal footing with other state recreational programs, cause it to compete with other programs for funds, and enable comparisons to be made between and among all recreational programs of their respective costs and benefits. Although a special fund for recreational boating as a whole is not appropriate, a special fund appears useful for small boat harbor facilities. Small boat harbors serve primarily to provide boat storage facilities for a limited number of boaters. Under this circumstance, it is reasonable to expect harbor users to pay for the facilities provided, and a special fund, which accounts for all costs of the harbors and all revenues derived from the use of the harbors, is both desirable and proper.

At the present time, revenues from certain sources are inappropriately being included in the boating special fund. These revenues include revenues generated by rental and use of property adjacent to or associated with small boat harbors. With some exceptions, some of these properties have little or nothing to do with small boat harbor operations; they just happen to be valuable properties near the small boat harbors. Examples are the parking area leased to Spencecliff Corporation for the Tahitian Lanai restaurant and the driveway access for Kaiser Hospital. Revenues from such rentals should not be included in the special fund for small boat harbors but should be a realization of the general fund.

The Basic Issue in Financing. Basically, we find that the users of small boat harbors should pay for the costs of constructing, maintaining, and operating small boat harbors. However, if users are required to pay for all costs associated with the construction and maintenance of small boat harbors, the user charges (i.e., the mooring fees) would need to be increased considerably. In light of the likely heavy opposition by boaters to any drastic, sudden increase in user charges, the State may elect to subsidize boaters, at least until the notion of full cost payments by users is gradually but fully implemented. The basic issue then is the extent and form of such subsidization.

As a general rule, all operating expenditures should be met by the users themselves. The case for having users pay all costs of operating the small boat harbors is persuasive. Personnel

at harbors are entirely involved in service to boaters, and maintenance of facilities is directly related to the benefit of boaters and no others. If state subsidy is to be made, such subsidy is more appropriate in the area of capital improvements. Facilities which are built are state assets, not the property of boaters. They continue to have value for many years. This is not to say that the State should necessarily pay the entire cost of capital facilities. The amount of state support should be on a project-by-project basis, and to determine what amount should be subsidized, the agency responsible for small boat harbors should be required to submit a financial impact statement. Such a statement, with respect to authorized and future improvements, should show the fiscal impact of the improvements on the state general fund and on user fees, with recommendations as to means of financing (general fund, user fees, or both). With respect to improvements which are already in place, the financial impact statement should show the amount of the unamortized costs of the improvements in total and the impact of such costs on the general fund and user fees, with a recommended method of payment.

Mooring Rates. The present schedule of mooring charges has been in effect since 1970. Comparison of Hawaii rates with 14 West Coast marinas shows that the average rate for the 14 West Coast marinas is well over twice the highest rate in Hawaii. Although numerous attempts have been made to adjust the mooring charges, no new rate schedule has been adopted. The basic problem is that the department of transportation has been trying to make changes in mooring rates without first coming to grips with a number of policy decisions. Among the policy decisions which should be made are: who should pay for what, what treatment should be accorded commercial boaters who use small boat harbors, how should the burden of recreational boating be distributed among boaters, and how the live-aboard issue should be resolved. Without a prior resolution of these issues, no mooring rate schedule is likely ever to be satisfactory to the parties concerned.

The audit report suggests an approach that might be taken in establishing mooring rates. The approach includes the establishment of basic policies to govern the setting of mooring rates, including the policy that (1) the users of small boat harbors are basically responsible for the full costs of constructing and maintaining small boat harbors; (2) commercial users should be treated differently from recreational users (a system of charging commercial users a percentage of their gross income for use of small boat harbor facilities would be entirely appropriate; if public policy declares that some users, such as commercial fishermen are to be supported in their use of harbors, the loss of revenues resulting from any reduction in fees should be borne by the general fund and not by other boaters); (3) the costs of small boat harbors to be borne by the users as a whole, once determined, should be distributed among the users based on the benefits received; and (4) there should be a basis for determining the fees to be charged for the privilege of living aboard boats berthed at small boat harbors. Under these policies, the report outlines the specific steps to be followed in calculating mooring rates.

The Live-Aboard Issue. There are numerous persons who use their boats moored in small boat harbors as places of habitation for long or short periods of time. One of the more prominent issues revolves around these live-aboards. The issue is twofold: to what extent, if any, is living aboard permitted or should be permitted; and, second, if permitted, what charges, if any, should the live-aboards pay for the privilege.

Neither the governing statute nor the rules of the department of transportation are clear as to the extent to which living aboard is permissible. In addition, the statute as currently worded is difficult to enforce. In the absence of standards or guidelines in the statute and rules, arguments have been heated on how the law should be applied. Some have argued that the law prohibits the use of a boat as a permanent place of residence; others have contended that the mere use of the boat as a permanent place of residence does not make habitation the sole or principal use of the boat, but rather that such habitation is incidental to the recreational use of the boat. The questions concerning live-aboards should be settled once and for all.

The legislature could settle the live-aboard question by adopting one of the following alternatives:

(1) *Prohibit all living aboard.* The first option is to prohibit all living aboard boats moored in small boat harbors. This option is the simplest and easiest in terms of enforcement. Prohibition of living aboard does not mean that some limited exceptions might not be made. For example, visiting vessels might be permitted to remain in harbor for a limited period with its occupants residing on board, or living aboard might be allowed in cases of making emergency repairs.

(2) *Allow all forms of living aboard.* The second alternative is to allow any boat to be lived on for any duration. This option also offers simplicity in application and enforcement. The only requirement is that the boat be used for recreational purposes as well as for habitation. Habitation in this case is deemed incidental to the purpose of recreation. However, the limitations of on-shore facilities (showers, sewage holding tanks, etc.) to support the use of boats for habitation purposes and the need to control pollution in surrounding waters might make it impossible for all boats moored in all small boat harbors to be used for habitation. If this be so, then the number of boats which might be used for living on board would need to be limited, and it might also be necessary to confine living aboard to certain harbors.

(3) *Limit living aboard.* The third option is to limit living aboard to specified periods of time. This option eliminates permanent residences on board all boats, and it would require a system of permits. It could take one or a combination of several forms: e.g., limit living aboard to a specified number of continuous days per permit with a further limitation on the number of permits per year, limit the aggregate number of days of living aboard any one boat

would be allowed in any year, set a specified period during which the boat can be lived on as many days as desired. The obvious difficulty with this option is that there would be problems in enforcement.

If living on boats moored in state harbors is permitted, a fee ought to be charged for the privilege of doing so except in those cases where living on board is necessitated for special or emergency reasons. The charges now being imposed for the privilege of living aboard are nominal and are not related to the benefits derived. As of June 1974, only eight boats in Ala Wai and one in Keehi were paying as much as \$22 per month, and the weighted averages were \$10.05 at Ala Wai and \$9.76 at Keehi. At the current mooring rates, the live-aboards are obviously being heavily subsidized through taxpayer provision of the physical plant which they use.

All sense of equity indicates that residence charges ought to be imposed for being allowed to live on boats moored in the state small boat harbors. If mooring charges alone are considered to equal the benefit from having a place to keep a recreational boat, it would appear that having, in addition, an opportunity to live aboard could be expressed in multiples of the mooring charges. Perhaps two or three times the mooring rate would be appropriate.

RESPONSES OF AFFECTED AGENCIES AND THE COUNTY GOVERNMENTS

Written comments on the audit report recommendations were received from the department of transportation, the department of land and natural resources, the mayor of Honolulu, and the mayor of Kauai. The comments are included in their entirety in the audit report.

The department of transportation, the principal agency affected by the audit report, has expressed general agreement with the report. However, it suggests that the recommendation to transfer to the counties the entire state outdoor recreation program (including recreational boating), or, alternatively, to transfer to the department of land and natural resources the recreational boating program be studied further by the organization commission which has been established by Act 148, S.L.H. 1975.

The department of land and natural resources believes that there are valid arguments for having the recreational boating program in either the department of transportation or the department of land and natural resources. It has also expressed concern over the recommendation to transfer the entire outdoor recreation program to the counties.

The two county mayors responding to the report have confined their comments to the question of transferring the recreational boating program to the counties. The mayor of Kauai has stated that it is "uninviting" for Kauai to undertake the recreational boating program unless an adequate funding program is attached to the transfer. The mayor of Honolulu is in favor of the transfer but has suggested that this matter await the conclusions and recommendations of the organization commission.

CONCLUSION

The question of which level of government should assume complete responsibility for outdoor recreation might well be further studied by the legislature as well as the organization commission. Meanwhile, there are pressing management and operational issues which need to be resolved and which can be resolved apart from the organizational question. Decisions on these issues and improvements in the recreational boating program should not await the development of the ultimate organization for outdoor recreation.

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March 8, 1976