

From: John A. Weigant, 18989 NE Marine Dr, Slip 15, Portland, OR 97230
To: Senate Committee on Natural Resources,
Date: February 21, 2019
Re: Testimony in opposition to SB 47

SUMMARY: SB 47 is a bad bill on many counts, an OSMB empire-building bill under the guise of service to users. It is counterproductive to their mission.

Summary of points:

1. It violates Oregon's Admission Act of 1859, to the Union.
2. It's inconsistent with long-established precedent for free access to public rights of way on land. When bikers and skateboarders pay access fees to use streets, roads and sidewalks, consider the same for boaters.
3. It's opposite to current major efforts to cut greenhouse gases. It discourages, not encourages, behavior that's in the best interest of the state and planet.
4. It's inequitable: "fees" exceed "service received," the standard for determining fee levels. Services are not equitable among different payer classes.
5. The majority of OSMB fees are redistributed in grants, an insatiable "need".
6. Generally, supporters are bodies seeking free money; opposers are those who pay for it and their added nuisance.
7. Conclusion: Recommended action: Delete Water Access Fees, or kill entirely.

I will expand on these points as time permits. Details are in written testimony.

1. It violates a founding document, as specified in:

Act of Congress admitting Oregon to the Union

1. **Boundaries ... (unchanged)**
2. **"Concurrent Jurisdiction on Columbia & Other Rivers--Navigable Waters to be Common Highway**
The said State of Oregon shall have concurrent jurisdiction on the Columbia and all other rivers and waters bordering on the said State of Oregon, so far as the same shall form a common boundary to said state, and any other state or states now or hereafter to be formed or bounded by the same; *and said rivers and waters, and all the navigable waters of said state, shall be common highways and forever free, as well as to the inhabitants of said state as to all other citizens of the United States, without any tax, duty & impost, or toll thereof.*" (emphasis added.)
3. **Representatives in Congress ... (one; change allowed)**
4. **Propositions proposed to the people of the state. (five are proposed; change is granted)**
5. **Residue of Territory...(goes to Territory of Washington; unchanged)**

Approved February 14, 1859.

Proposition of Congress accepted by the Legislative Assembly of the State of Oregon on June 3, 1859

Sources: Oregon Blue Book; <https://sos.oregon.gov/blue-book/Pages/facts/history/congress-act.aspx>

Even if some subsequent legislative detail allows fees like a Water Access Fee, I believe Oregonians want to follow our founding documents.

2. It is inconsistent with established majority precedent:

- a. Public rights-of-way, both land and water, have traditionally had free access by the nonmotorized vehicles that use them—bikes, skateboards, canoes, kayaks, rowboats, etc.
- b. Motorized land vehicles have paid for land rights of way with fees and taxes, being in the vast majority. Consistent rules should apply to water rights of way.
- c. Motorized vehicle operators on land and water typically complain that nonmotorized vehicles use the facilities they pay for, without charge. On land, it's generally accepted that nonmotorized vehicles are in the public interest, reducing the load on rights of way, fostering recreation, public health and infrastructure use, including parking. So too, on water.
- d. Land nonmotorized vehicles are a high majority, so any fee to use public rights of way should originate on land. Only after a "Street Access Fee" has been adopted is it appropriate to consider a similar "Water Access Fee."
- e. Consistency is a high value in legislation and all other human activities.

3. It is inconsistent with the future needs of the state and planet.

- a. Taxes and fees suppress undesired activities; subsidies increase desired activities.
- b. This legislative session will likely enact major policies to cut climate change by replacing fossil-based energy sources with sustainable sources. The need for such action has been apparent
- c. Nonmotorized boating is consistent with this need. Muscle and wind power is not only sustainable, it's a public benefit, and should be promoted over fossil-powered boating.
- d. I will be testifying on HB 1080 that its committee should tell OSMB to base boat registration fees on both length and horsepower, not just higher fees on length. Horsepower measures fuel use.

4. Taxes and fees should be "equitable" and proportionate. Progressive *taxes* consider ability to pay and *serve the general public*. *Fees* are based on *amount of service received by the payer*. Both can discourage undesirable behavior and subsidize desirable behavior. OSMB's fee structures don't conform.

- a. There are four general classes of "boats" OSMB tries to manage, each with different needs.
- b. Motorboats need the most services, create the most problems, cost the most and use fossil fuel.
- c. Sailboats over 12 feet in length are more self contained, use fewer services, and "fuel" is wind.
- d. Nonmotorized boats need few services, cost less, and have near-zero environmental impact.
- e. Floating homes. After a one-time modest registration fee, they are left alone. Thank you.
- f. Regarding the AIS Permit:¹

¹ Re: <https://olis.leg.state.or.us/liz/2019R1/Downloads/CommitteeMeetingDocument/158066>

This 2/7/2019 letter from Larry Warren, OSMB Director, to the House Committee on Natural Resources provides additional data on income and expenditures relating to Aquatic Invasive Species (AIS) permits. In current biennium, \$624,790 was raised from nonmotorized boaters, about 39% of all income. I find it hard to believe this much was spent to inspect nonmotorized boats.

- i. Nonmotorized boats are typically transported cartop, clean and dry, and are stored dry. The rate of invasive species detection is far less than they pay. They subsidize other boaters.²
- ii. Motorboats get wet bilges, are stored and transported on trailers, travel relatively far and are the primary source of invasive species.
- iii. Sailboats are more likely to be stored in the water, and don't go far. Any "invasive species" are already here. Deep keels make launch difficult; lowering/raising masts for transport is also time-consuming. Sailboats frequently go out because there's wind, not a destination.
- g. Regarding Registration fees:
 - i. Nonmotorized boats: none, consistent with nonmotorized land vehicles.
 - ii. All motorboats, and sailboats over 12 feet in length now pay \$4.50/foot, to increase to \$5.95/foot (HB 2080). The fee is both simple and simplistic. A far better scheme would charge according to both length and horsepower. Fees based only on length discriminate against sailboats, since speed is based solely on waterline length.
- h. The geographic distributions of fees and their payers is not even. Most of the population is urban, and use waterways is near home. "Services" to nonmotorized boaters seems to be concentrated in rural areas used by a fraction of nonmotorized boaters.
- i. Personal experience: I'm in a class of boaters OSMB doesn't seem to recognize. I've lived on a houseboat for over 25 years, in a moorage of 77 homes. Many neighbors have lived here longer. Recently we counted 104 nonmotorized boats here, nearly all stored dry and clean. My kayak is 50 feet from my front door; my wife's is 20 feet from it. My car is 1/10 mile from my door. It's more hassle to bike (for free) on Marine Drive's bike trails than to hop in my kayak. My 6-year old grandson loves kayaking with me (I have a 2-seater). My 26-foot sailboat is along side. Its 7.5 horsepower motor pushes it to near "hull speed," a function of length, about 7 knots. Displacement boats need *excessive* power to go faster than their hull speed. Sailing is an Olympic sport, requiring skill; powerboating fun is often proportional to fuel use, to speed or distance travelled or both. A friend once observed, when comparing ocean cruising to canoeing, "The amount of fun you have on the water is proportional to your closeness to it." I agree. In short, we on houseboats pay our fees, but use few OSMB services. I hope I can use my nonmotorized houseboat 365 days/year without paying a water access fee. I access water daily.

5. Does OSMB need more money? Of course.

- a. Its major expenditures are grants to public bodies.
- b. The "need" for free money by public bodies approaches infinity.
- c. If local governments need more funding, e.g. policing, their own budgeting process creates an efficiency of cost to benefit not present in free money for the grantor's purposes.
- d. If the grantor's source is taxes/fees from users, it's poor tax policy.
- e. This bill and other House Bills help satisfy OSMBs need to follow Parkinson's Law, to increase staff by over 5% per year, regardless of need.³

6. The Pattern of Support. The pattern of support for SB 47 will likely be similar to the pattern of support for HB 2320 of the 2017 Legislature.

²ORS 830.594 requires a biennial report from ODFW (with OSMB). It *should* identify the number inspected of each boat class, and number of invasive species found per class. (Existing invasive species should counted separately from new invasive species.) That report should be a basis for decisions on this bill.

³ *Parkinson's Law*, 1957. C. Northcote Parkinson, page 14.

- a. HB 2320 attempted to regulate more water users of nonmotorized "watercraft". It properly died in committee.
- b. 14 mostly favored it: 9 represented power boating organizations, Parks Departments or OSMB, winners who would benefit. Except for OSMB's presentation, comments totaled about 10 pages.
- c. 22 opposed it, mostly losers, in more detail, totaling about 56 pages. It died in committee.
- d. I believe opposition will be even stronger for SB 47

7. Conclusion.

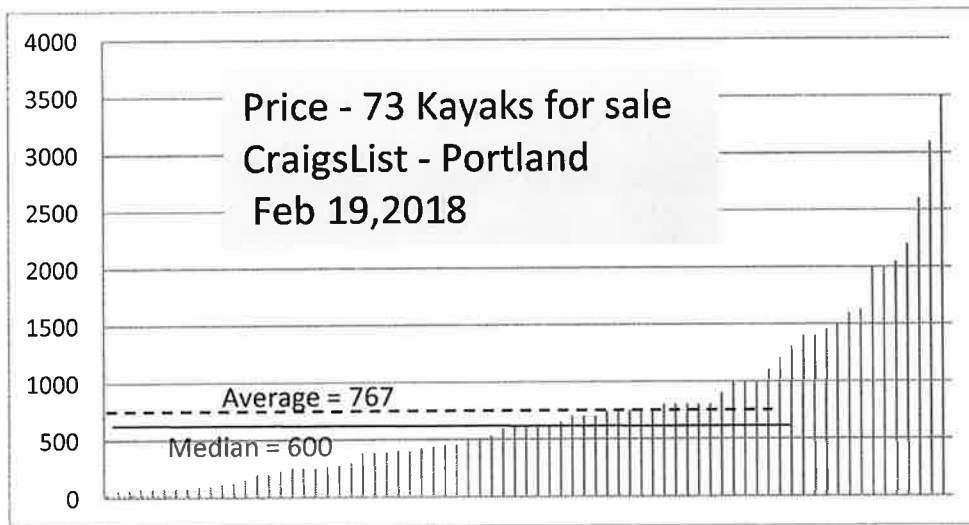
- a. Recommended Action: Delete Sections 5-7 (Waterway Access Permit, Fees, and Issuance) and necessary housekeeping. The Oregon Admission Act (as above) forbids fees to on navigable waters of the state. Sections 2 – 4 (Waterway Access Fund) may also be deleted, since its funding source is deleted. Keep Section 8, to cancel the Aquatic Invasive Species Permit for nonmotorized boats.
- b. Request OSMB to return to the next major legislative session with registration fees based both on horsepower and length.

Appendix—Supporting data.

PRICE	2/20/2019 Craigslist, Portland		
	All "boats"	"sail boats"	motorboats
\$50000+	178	2	176
25000+	206	6	200
15000+	121	1	120
10000+	80	2	78
5000+	156	14	142
3500+	54	3	51
2000+	77	5	72
1000+	82	5	77
<1000	243	13	230
TOTALS		51	1146

Note: Craigslist often has duplicates and noise

This sheet, extracted from Craigslist, Portland, gives a sense of boating activity information available to the public. The value of sailboats on the local market is about 2% of total boat value, guessing at average values of each price group. **The point:** The cost of AIS Permits at \$5/biennium is trivial compared to the cost of the boat, since half of motorboats cost over \$10,000.



For Kayaks (canoes were not searched), the cost of Water Access Fees or AIS Permits is not trivial.

John Weigant can be reached at johnweigant@comcast.net and (cell) at 503-841-1727
He has sailed since 1964 and kayaked since 1969.