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# A BILL FOR AN ACT

RELATING TO SMALL BOAT HARBORS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that the department of  
2 land and natural resources, through its division of boating and  
3 ocean recreation, operates and manages twenty-one harbors, fifty  
4 boat ramps, 2,122 moorings and berths, and nineteen piers spread  
5 throughout the various counties of the state. However, the  
6 legislature further finds that these ocean recreation  
7 facilities, in light of the present demand, are in short supply  
8 and, in most cases where they exist, are in dire need of long  
9 overdue repair and maintenance. Some facilities are in such  
10 need of repair and replacement that they cannot be used and are  
11 hazards to public safety.

12           One of these facilities, the Ala Wai boat harbor has been  
13 the recipient of some recent badly needed repair and replacement  
14 of floating docks; however, the need for further maintenance  
15 remains unfulfilled. In spite of its needs, the Ala Wai boat  
16 harbor includes certain assets within its facilities that are  
17 under-utilized and if properly developed can potentially  
18 generate revenues that can benefit not only its continued



1 improvement and maintenance but also benefit the rest of the  
2 facilities now operated by the division of boating and ocean  
3 recreation.

4 In these times of economic malaise and with the State  
5 facing a massive budget deficit over the next biennium, the  
6 further decline in the valuable assets that the state's small  
7 boat harbors possess would be a huge loss that the State cannot  
8 allow.

9 The purpose of this Act is to:

- 10 (1) Allow the limited issuance of commercial use permits  
11 for vessels with assigned moorings in Ala Wai and  
12 Keehi boat harbors;
- 13 (2) Provide for future mooring fees to be established by  
14 appraisal by a state licensed appraiser and assigned a  
15 schedule B rate, while existing mooring holders remain  
16 in a schedule A class that shall equal schedule B  
17 rates over a five-year period; and
- 18 (3) Authorize the department of land and natural resources  
19 to use the request for proposals process to enter into  
20 a public-private partnership for the development of  
21 portions of Ala Wai boat harbor facilities that are



1           presently under-utilized in order to maximize the  
2           revenue potential from its facilities.

3           SECTION 2. Section 200-2.5, Hawaii Revised Statutes, is  
4 amended to read as follows:

5           "~~§~~200-2.5~~§~~ **Disposition of state boating facility**  
6 **properties.** (a) Notwithstanding any law to the contrary, the  
7 board may lease fast lands and submerged lands within an  
8 existing state boating facility by public auction, a request for  
9 proposals, or by direct negotiation pursuant to section 171-  
10 59~~§~~ and chapter 190D, for private development, management, and  
11 operation. For the purpose of this section, the term "state  
12 boating facility" means a state small boat harbor, launching  
13 ramp, offshore mooring, pier, wharf, landing, or any other area  
14 under the jurisdiction of the department pursuant to this  
15 chapter.

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



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

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

8 SECTION 3. Section 200-9, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 **"§200-9 Purpose and use of state small boat harbors. (a)**

11 State small boat harbors are constructed, maintained, and  
12 operated for the purposes of:

- 13 (1) Recreational boating activities;
- 14 (2) Landing of fish; and
- 15 (3) Commercial vessel activities.

16 For the purpose of this section, "recreational boating  
17 activities" means the [~~utilization~~] use of watercraft for  
18 sports, hobbies, or pleasure, and "commercial vessel activities"  
19 means the [~~utilization~~] use of vessels for activities or  
20 services provided on a fee basis. To implement these purposes,  
21 only vessels in good material and operating condition that are  
22 regularly navigated beyond the confines of the small boat



1 harbor[7] and [~~which~~] that are used for recreational activities,  
2 the landing of fish, or commercial vessel activities shall be  
3 permitted to moor, anchor, or berth at [~~such~~] a state small boat  
4 harbor or use any of its facilities.

5 (b) Vessels used for purposes of recreational boating  
6 activities [~~which~~] that are also the principal habitation of the  
7 owners shall occupy no more than one hundred twenty-nine berths  
8 at Ala Wai boat harbor and thirty-five berths at Keehi boat  
9 harbor, which is equal to fifteen per cent of the respective  
10 total moorage space that was available as of July 1, 1976, at  
11 the Ala Wai and Keehi boat harbors. [~~Notwithstanding the~~  
12 ~~purposes of small boat harbors, moorage for commercial vessels~~  
13 ~~and commercial vessel activities is not permitted in the Ala Wai~~  
14 ~~and Keehi boat harbors, provided that commercial] Commercial  
15 catamarans, for which valid use permits or existing registration  
16 certificates have been issued by the department [~~which~~] that  
17 allow the catamarans to operate upon Waikiki shore waters for  
18 hire, may be permitted to moor in Ala Wai boat harbor at  
19 facilities leased for commercial purposes.~~

20 (c) The total number of valid commercial use permits that  
21 may be issued for vessels assigned mooring in Ala Wai boat  
22 harbor shall not exceed fifteen per cent of the total berths and



1 shall not exceed thirty-five per cent of the total berths at  
2 Keehi boat harbor. The board shall designate mooring areas for  
3 commercial vessels within the Ala Wai and Keehi boat harbors to  
4 minimize the effects on the harbors and recreational boaters.  
5 Commercial mooring areas shall be phased-in in such a way as to  
6 not permanently displace any existing recreational boaters or  
7 existing catamaran operators.

8 The department shall allow a sole proprietor of a catamaran  
9 operating with a valid commercial use permit or existing  
10 registration certificate issued by the department for a  
11 commercial catamaran to land its commercial catamaran on Waikiki  
12 beach and to operate upon Waikiki shore waters for hire, to  
13 transfer the ownership of the vessel from personal ownership to  
14 corporate or other business ownership without terminating the  
15 right to operate under the commercial use permit or existing  
16 registration certificate. The existing commercial use permit or  
17 existing registration certificate shall be reissued in a timely  
18 manner in the name of the transferee corporation or other  
19 business entity. No commercial use permit or existing  
20 registration certificate issued to an owner of a commercial  
21 catamaran operating in the Waikiki area shall be denied or



1 revoked without a prior hearing held in accordance with chapter  
2 91.

3 ~~[(e)]~~ (d) Notwithstanding any limitations on commercial  
4 permits for Maui county small boat facilities, vessels engaging  
5 in inter-island ferry service within Maui county shall be  
6 afforded preferential consideration for ferry landings,  
7 including the issuance of a commercial operating permit and the  
8 waiver of any applicable fees, at Maui county small boat  
9 facilities; provided that:

10 (1) The vessel operator has been issued a certificate of  
11 public convenience and necessity for the purpose of  
12 engaging in inter-island ferry service that includes a  
13 route within Maui county;

14 (2) The design and performance characteristics of the  
15 vessel will permit safe navigation within the harbor  
16 entrance channel and safe docking within Maui county  
17 small boat facilities;

18 (3) The vessel operations will not result in unreasonable  
19 interference with the use of Maui county small boat  
20 facilities by other vessels; and

21 (4) All preferential consideration and waivers, including  
22 any commercial permits issued under this section,



1 shall cease upon the vessel operator's termination of  
2 inter-island ferry service within Maui county.

3 [~~(d)~~] (e) The chairperson may adopt rules pursuant to  
4 chapter 91 to further implement this section."

5 SECTION 4. Section 200-10, Hawaii Revised Statutes, is  
6 amended by amending subsection (c) to read as follows:

7 "(c) The permittee shall pay moorage fees to the  
8 department for the use permit that shall be based on[+] but not  
9 limited to[+] the use of the vessel, its effect on the harbor,  
10 use of facilities, and the cost of administering this mooring  
11 program; and, furthermore:

12 (1) ~~[Moorage]~~ Except for commercial maritime activities  
13 where there is a tariff established by the department  
14 of transportation, moorage fees shall be established  
15 by appraisal by a state licensed appraiser approved by  
16 the department and shall be higher for  
17 nonresidents[+]. The mooring fees shall be set by  
18 appraisal categories schedule A and schedule B, to be  
19 determined by the department, and shall increase  
20 accordingly, annually, by an amount equal to the  
21 consumer price index increase, if any; provided that:





- 1           (A) Schedule A shall include existing mooring holders  
2           with an annual increase toward schedule B rates  
3           spread out evenly over a five-year period; and
- 4           (B) Schedule B shall apply to all new mooring  
5           applicants and transient slips on or after  
6           July 1, 2009;
- 7           (2) For commercial maritime activities where there is a  
8           tariff established by the department of  
9           transportation, harbors division, the department may  
10           adopt the published tariff of the department of  
11           transportation, harbors division, or establish the fee  
12           by appraisal by a state-licensed appraiser approved by  
13           the department;
- 14           ~~[(2)]~~ (3) An application fee shall be collected when  
15           applying for moorage in state small boat harbors and  
16           shall thereafter be collected annually when the  
17           application is renewed. The application fee shall be:
- 18            (A) Set by the department; and
- 19            (B) Not less than \$100 for nonresidents;
- 20           ~~[(3)]~~ (4) If a recreational vessel is used as a place of  
21           principal habitation, the permittee shall pay, in



1 addition to the moorage fee, a liveaboard fee that  
2 shall be calculated at a rate of:

3 (A) \$5.20 a foot of vessel length a month if the  
4 permittee is a state resident; and

5 (B) \$7.80 a foot of vessel length a month if the  
6 permittee is a nonresident;

7 provided that the liveaboard fees established by this  
8 paragraph may be increased by the department at the  
9 rate of the annual cost-of-living index, but not more  
10 than five per cent in any one year, beginning  
11 [~~January~~] July 1 of each year; [~~and~~]

12 [~~(4)~~] (5) If a vessel is used for commercial purposes from  
13 its permitted mooring, the permittee shall pay, in  
14 lieu of the moorage and liveaboard fee, a fee based on  
15 three per cent of the gross revenues derived from the  
16 use of the vessel or two times the moorage fee  
17 assessed for a recreational vessel of the same size,  
18 whichever is greater~~[ ]~~; and

19 (6) In addition, the department is authorized to assess  
20 and collect utility fees, including but not limited to  
21 electrical and water charges, and common area  
22 maintenance fees in small boat harbors."



1 SECTION 5. (a) Pursuant to section 200-2.5, Hawaii  
 2 Revised Statutes, the department of land and natural resources  
 3 may lease certain fast lands and submerged lands at the Ala Wai  
 4 boat harbor using the request for proposals process for the  
 5 public-private development, management, and operation of areas  
 6 of Ala Wai boat harbor designated in subsection (b).

7 (b) The areas that may be leased shall include but not be  
 8 limited to:

- 9 (1) Row seven hundred and row eight hundred at the makai  
 10 or ocean side of the Ala Wai boat harbor and adjoining  
 11 the breakwater;
- 12 (2) The area immediately mauka or landward of row seven  
 13 hundred, presently used for metered vehicular parking;
- 14 (3) The submerged lands between row seven hundred and row  
 15 eight hundred;
- 16 (4) A portion of tax map key: \_\_\_\_\_, comprising of  
 17 approximately \_\_\_\_\_ square feet, presently used for  
 18 harbor offices and permitted vehicular parking;
- 19 (5) Tax map key: (1) 2-3-37:20, comprising of 15,199  
 20 square feet more or less, and is the site of the  
 21 existing fuel dock facility; and



1 (6) Tax map key: (1) 2-6-10:05 and 16, comprising of  
2 38,369 square feet, more or less, and is the site of  
3 the existing haul-out and repair facility.

4 (c) The permissible uses under this lease shall include  
5 but not be limited to the following:

6 (1) A minimum of not less than berths for vessels;  
7 provided that:

8 (A) Not more than berths shall be available for  
9 vessels used for purposes of recreational boating  
10 activities that are also the principal habitation  
11 of the owners;

12 (B) Not more than berths, including those  
13 allowed pursuant to section 200-9(c), shall be  
14 available for vessels issued commercial use  
15 permits; and

16 (C) All berths provided under this paragraph shall be  
17 made available to the public pursuant to  
18 department of land and natural resources rules,  
19 with moorage fees to be determined by the  
20 developer;

21 (2) Office space, including a minimum of square  
22 feet for division of boating and ocean recreation use;



- 1 (3) Vehicular parking, including a minimum of  
2 parking stalls for division of boating and ocean  
3 recreation use and for public metered parking;
- 4 (4) Commercial uses, including but not limited to  
5 restaurants, retail shops, marine supplies shops, and  
6 sundry stores, all made available to the public;
- 7 (5) Residential uses;
- 8 (6) Vessel fueling facilities;
- 9 (7) Vessel haul-out and repair facilities; and
- 10 (8) Vessel haul-out and storage facilities.
- 11 (d) The lease shall not exceed a maximum term of sixty-  
12 five years and shall provide for:
- 13 (1) A minimum lease rent that is the greater of a  
14 commercially acceptable percentage of the gross  
15 receipts of the lessee from the developed leased  
16 premises or a fair return on the fair market value of  
17 the vacant leased premises, as determined by appraisal  
18 by a state licensed appraiser approved by the  
19 department, with reasonable periodic step-ups in the  
20 minimum lease rent over the term of the lease; and
- 21 (2) A three-year development period with a fixed reduced  
22 lease rent.



1 (e) Chapter 171 and section 190D-33, Hawaii Revised  
2 Statutes, notwithstanding, all revenues from the lease shall be  
3 deposited in the boating special fund.

4 (f) Chapters 171 and 190D, Hawaii Revised Statutes,  
5 notwithstanding, the lease for the fast lands and submerged  
6 lands set forth in this Act shall be pursuant to section  
7 200-2.5, Hawaii Revised Statutes. Further, section 171-53,  
8 Hawaii Revised Statutes, notwithstanding, the prior  
9 authorization of the legislature by concurrent resolution for  
10 the lease of submerged lands shall not be required.

11 SECTION 6. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

13 SECTION 7. This Act shall take effect upon its approval.



**Report Title:**

Small Boat Harbors; Commercial Vessels; Development

**Description:**

Permits BLNR to lease submerged lands, in accordance with Chapter 190D, HRS, by public auction, RFP, or negotiation, in a state boating facility and permits DLNR to provide an RFP for a public-private partnership to develop Ala Wai Small Boat Harbor. Permits commercial use permits to be issued for vessels assigned moorings in Ala Wai and Keehi Boat Harbors. Provides for future mooring fees to be established by appraisal. (HB1766 HD1)

