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

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

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

3 In these times of economic malaise and with the State  
4 facing a massive budget deficit over the next biennium, the  
5 State cannot afford the huge loss in the valuable asset that a  
6 further decline of the State's small boat harbors would pose.

7 The purpose of this Act is to:

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

1 SECTION 2. Section 200-2.5, Hawaii Revised Statutes, is  
2 amended by amending subsections (b) and (c) to read as follows:

3 "(b) The permissible uses under any lease disposed of  
4 under this section shall be consistent with the purpose for  
5 which the land was set aside by the governor pursuant to section  
6 171-11. Permissible uses may include any use that will  
7 complement or support the ocean recreation or maritime  
8 activities of state boating facilities.

9 (c) Disposition of public lands of state boating  
10 facilities constructed, maintained, and operated in accordance  
11 with this chapter shall not exceed a maximum term of [~~fifty-~~  
12 ~~five]~~ sixty-five years."

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

15 "**§200-9 Purpose and use of state small boat harbors.** (a)

16 State small boat harbors are constructed, maintained, and  
17 operated for the purposes of:

- 18 (1) Recreational boating activities;  
19 (2) Landing of fish; and  
20 (3) Commercial vessel activities.

21 For the purpose of this section, "recreational boating  
22 activities" means the [~~utilization]~~ use of watercraft for

1 sports, hobbies, or pleasure, and "commercial vessel activities"  
2 means the ~~[utilization]~~ use of vessels for activities or  
3 services provided on a fee basis. To implement these purposes,  
4 only vessels in good material and operating condition that are  
5 regularly navigated beyond the confines of the small boat  
6 harbor~~[,]~~ and ~~[which]~~ that are used for recreational activities,  
7 the landing of fish, or commercial vessel activities shall be  
8 permitted to moor, anchor, or berth at ~~[such]~~ a state small boat  
9 harbor or use any of its facilities.

10 (b) Vessels used for purposes of recreational boating  
11 activities ~~[which]~~ that are also the principal habitation of the  
12 owners shall occupy no more than one hundred twenty-nine berths  
13 at Ala Wai boat harbor and thirty-five berths at Keehi boat  
14 harbor, which is equal to fifteen per cent of the respective  
15 total moorage space that was available as of July 1, 1976, at  
16 the Ala Wai and Keehi boat harbors. ~~[Notwithstanding the~~  
17 ~~purposes of small boat harbors, moorage for commercial vessels~~  
18 ~~and commercial vessel activities is not permitted in the Ala Wai~~  
19 ~~and Keehi boat harbors; provided that]~~

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 the  
2 Keehi boat harbor; provided that at the Ala Wai boat harbor,  
3 vessels issued commercial use permits shall:

4 (1) Not exceed sixty-five feet in length;

5 (2) Occupy not more than fifty-six berths located along  
6 the row of berths furthestmost mauka or adjacent to  
7 Holomua street, with the remainder located throughout  
8 the Ala Wai boat harbor, with a priority assigned to  
9 row seven hundred and row eight hundred;

10 (3) Be phased-in in a manner that does not displace any  
11 existing recreational boater or existing catamaran  
12 operator; and

13 (4) Include commercial catamarans, for which valid  
14 commercial use permits or existing registration  
15 certificates have been issued by the department  
16 [which] that allow the catamarans to operate upon  
17 Waikiki shore waters for hire[, may be permitted to  
18 moor in Ala Wai boat harbor at facilities leased for  
19 commercial purposes].

20 The department shall allow a sole proprietor of a catamaran  
21 operating with a valid commercial use permit or existing  
22 registration certificate, issued by the department, for a

1 commercial catamaran to land its commercial catamaran on Waikiki  
2 beach and to operate upon Waikiki shore waters for hire, to  
3 transfer the ownership of the vessel from personal ownership to  
4 corporate or other business ownership without terminating the  
5 right to operate under the commercial use permit or existing  
6 registration certificate. The existing commercial use permit or  
7 existing registration certificate shall be reissued in a timely  
8 manner in the name of the transferee corporation or other  
9 business entity. No valid commercial use permit or existing  
10 registration certificate issued to an owner of a commercial  
11 catamaran operating in the Waikiki area shall be denied or  
12 revoked without a prior hearing held in accordance with chapter  
13 91.

14 [~~e~~] (d) Notwithstanding any limitations on commercial  
15 permits for Maui county small boat facilities, vessels engaging  
16 in inter-island ferry service within Maui county shall be  
17 afforded preferential consideration for ferry landings,  
18 including the issuance of a commercial operating permit and the  
19 waiver of any applicable fees, at Maui county small boat  
20 facilities; provided that:

21 (1) The vessel operator has been issued a certificate of  
22 public convenience and necessity for the purpose of

1 engaging in inter-island ferry service that includes a  
2 route within Maui county;

3 (2) The design and performance characteristics of the  
4 vessel will permit safe navigation within the harbor  
5 entrance channel and safe docking within Maui county  
6 small boat facilities;

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

10 (4) All preferential consideration and waivers, including  
11 any commercial permits issued under this section,  
12 shall cease upon the vessel operator's termination of  
13 inter-island ferry service within Maui county.

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

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

18 "(c) The permittee shall pay moorage fees to the  
19 department for the use permit that shall be based on[~~7~~] but not  
20 limited to[~~7~~] the use of the vessel, its effect on the harbor,  
21 use of facilities, and the cost of administering this mooring  
22 program; and, furthermore:

- 1           (1)    ~~[Moorage]~~ Except for commercial maritime activities  
2                    where there is a tariff established by the department  
3                    of transportation, moorage fees shall be established  
4                    by appraisal by a state-licensed appraiser approved by  
5                    the department and shall be higher for  
6                    nonresidents~~[+]~~. The mooring fees shall be set by  
7                    appraisal categories schedule A and schedule B, to be  
8                    determined by the department, and may be increased  
9                    annually by the department, to reflect a cost-of-  
10                  living index increase; provided that:  
11                  (A) Schedule A shall include existing mooring  
12                    permittees; provided further that schedule A  
13                    rates shall be increased by the same amount each  
14                    year so schedule A rates will equal schedule B  
15                    rates by July 1, 2014; and  
16                  (B) Schedule B shall apply to all new mooring  
17                    applicants and transient slips on or after  
18                    July 1, 2009;  
19            (2)    For commercial maritime activities where there is a  
20                    tariff established by the department of  
21                    transportation, harbors division, the department may  
22                    adopt the published tariff of the department of



1           transportation, harbors division, or establish the fee  
2           by appraisal by a state licensed appraiser approved by  
3           the department;

4       ~~[(+2)]~~ (3) An application fee shall be collected when  
5           applying for moorage in state small boat harbors and  
6           shall thereafter be collected annually when the  
7           application is renewed. The application fee shall be:

8           (A) Set by the department; and

9           (B) Not less than \$100 for nonresidents;

10       ~~[(+3)]~~ (4) If a recreational vessel is used as a place of  
11           principal habitation, the permittee shall pay, in  
12           addition to the moorage fee, a liveaboard fee that  
13           shall be calculated at a rate of:

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

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

18           provided that the liveaboard fees established by this  
19           paragraph may be increased by the department at the  
20           rate of the annual cost-of-living index, but not more  
21           than five per cent in any one year, beginning

22           ~~[January]~~ July 1 of each year; ~~[and]~~

1       ~~[(4)]~~ (5) If a vessel is used for commercial purposes from  
2           its permitted mooring, the permittee shall pay, in  
3           lieu of the moorage and liveaboard fee, a fee based on  
4           three per cent of the gross revenues derived from the  
5           use of the vessel or two times the moorage fee  
6           assessed for a recreational vessel of the same size,  
7           whichever is greater~~[-]~~; and  
8       (6) In addition, the department is authorized to assess  
9       and collect utility fees, including electrical and  
10       water charges, and common area maintenance fees in  
11       small boat harbors."

12       SECTION 5. (a) Pursuant to section 200-2.5, Hawaii  
13 Revised Statutes, the department of land and natural resources  
14 is directed to lease certain fast lands at the Ala Wai harbor  
15 using the request for proposals process for the public-private  
16 development, management, and operation of areas of Ala Wai  
17 harbor.

18       (b) The permissible uses under this lease shall include:

19       (1) A minimum of not less than one hundred twenty berths  
20       for vessels; provided that:

21       (A) Not more than forty berths shall be available for  
22       vessels used for purposes of recreational boating

1 activities that are also the principal habitation  
2 of the owners;

3 (B) Not more than thirty berths, including those  
4 allowed pursuant to section 200-9(c), Hawaii  
5 Revised Statutes, shall be available for vessels  
6 issued commercial use permits; and

7 (C) All berths provided under this paragraph shall be  
8 made available to the public pursuant to  
9 department of land and natural resources rules,  
10 with moorage fees to be determined by the  
11 developer;

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

14 (3) Vehicular parking, including a minimum of  
15 parking stalls for division of boating and ocean  
16 recreation use and for public metered parking;

17 (4) Commercial uses, including but not limited to  
18 restaurants, retail shops, marine supplies shops, and  
19 sundry stores, all made available to the public;

20 (5) Residential uses;

21 (6) Vessel fueling facilities;

22 (7) Vessel haul-out and repair facilities; and

1 (8) Vessel haul-out and storage facilities.

2 (c) The lease shall not exceed a maximum term of sixty-  
3 five years and shall provide for:

4 (1) A minimum lease rent that is the greater of a  
5 commercially acceptable percentage of the gross  
6 receipts of the lessee from the developed leased  
7 premises or a fair return on the fair market value of  
8 the vacant leased premises, as determined by appraisal  
9 by a state-licensed appraiser approved by the  
10 department, with reasonable periodic step-ups in the  
11 minimum lease rent over the term of the lease; and

12 (2) A three-year development period with a fixed reduced  
13 lease rent.

14 (d) Chapter 171 and section 190D-33, Hawaii Revised  
15 Statutes, notwithstanding, all revenues from the lease shall be  
16 deposited in the boating special fund.

17 SECTION 6. Statutory material to be repealed is bracketed  
18 and stricken. New statutory material is underscored.

19 SECTION 7. This Act shall take effect on July 1, 2009.

**Report Title:**

Small Boat Harbors; Commercial Vessels; Development

**Description:**

Permits commercial permits in Ala Wai and Keehi 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 Keehi small boat harbors; and provides for future mooring fees to be established by appraisal. (SD1)