

JAN 26 2011

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, two thousand
4 one hundred twenty-two moorings and berths, and nineteen piers
5 spread throughout the various counties of the State. The
6 legislature finds that these ocean recreation facilities, in
7 light of the present demand, are in short supply and, in most
8 cases where they exist, are in dire need of long overdue repair
9 and maintenance. Some facilities are in such need of repair and
10 replacement that they cannot be used and pose public safety
11 hazards.

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-used and, if properly developed, can potentially generate
18 revenues that cannot only benefit 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 boat 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 boat harbor facilities that are
20 presently under-used to maximize the revenue potential
21 from its facilities.



1 SECTION 2. Section 46-80.5, Hawaii Revised Statutes, is
2 amended by amending subsection (e) to read as follows:

3 "(e) Exemptions.

4 (1) Property owned by the state or county governments or
5 entities, may be exempt from the assessment except as
6 provided in paragraph (3);

7 (2) Property owned by the federal government or entities,
8 shall be exempt from the assessment except as provided
9 in paragraph (3);

10 (3) If a public body owning property, including property
11 held in trust for any beneficiary, which is exempt
12 from an assessment pursuant to paragraphs (1) and (2),
13 grants a leasehold or other possessory interest in the
14 property to a nonexempt person or entity, the
15 assessment, notwithstanding paragraphs (1) and (2),
16 shall be levied on the leasehold or possessory
17 interest and shall be payable by the lessee; [and]

18 (4) The Ala Wai boat harbor shall be exempt from the
19 assessment and any special improvement district
20 requirements regarding redevelopment authorized by
21 subsection (a); and



1 [~~(4)~~] (5) No other properties or owners shall be exempt
2 from the assessment unless the properties or owners
3 are expressly exempted in the ordinance establishing a
4 district adopted pursuant to this section or amending
5 the rate or method of assessment of an existing
6 district."

7 SECTION 3. Section 200-2.5, Hawaii Revised Statutes, is
8 amended by amending subsections (b) and (c) to read as follows:

9 "(b) The permissible uses under any lease disposed of
10 under this section shall be consistent with the purpose for
11 which the land was set aside by the governor pursuant to section
12 171-11. Permissible uses may include any use that will
13 complement or support the ocean recreation or maritime
14 activities of state boating facilities.

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

19 SECTION 4. Section 200-8, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "[-]§200-8[+] Boating program; payment of costs. The cost
2 of administering a comprehensive statewide boating program,
3 including, but not limited to, the cost of:

4 (1) Operating, maintaining, and managing all boating
5 facilities under the control of the department;
6 provided that any fees collected within small boat
7 harbors shall be expended only for costs related to
8 the operation, upkeep, maintenance, and improvement of
9 the small boat harbors;

10 (2) Improving boating safety;

11 (3) Operating a vessel registration and boating casualty
12 investigation and reporting system; and

13 (4) Other boating program activities,

14 shall be paid from the boating special fund. The amortization
15 (principal and interest) of the costs of capital improvements
16 for boating facilities appropriated after July 1, 1975,
17 including, but not limited to, berths, slips, ramps, related
18 accommodations, general navigation channels, breakwaters, aids
19 to navigation, and other harbor structures, may be paid from the
20 boating special fund or from general revenues as the legislature
21 may authorize in each situation. Revenues provided in this
22 chapter for the boating special fund shall be at least



1 sufficient to pay the special fund costs established in this
2 section."

3 SECTION 5. Section 200-9, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§200-9 Purpose and use of state small boat harbors. (a)

6 State small boat harbors are constructed, maintained, and
7 operated for the purposes of:

- 8 (1) Recreational boating activities;
- 9 (2) Landing of fish; and
- 10 (3) Commercial vessel activities.

11 For the purpose of this section, "recreational boating
12 activities" means the [~~utilization~~] use of watercraft for
13 sports, hobbies, or pleasure, and "commercial vessel activities"
14 means the [~~utilization~~] use of vessels for activities or
15 services provided on a fee basis. To implement these purposes,
16 only vessels in good material and operating condition that are
17 regularly navigated beyond the confines of the small boat
18 harbor[~~7~~] and [~~which~~] that are used for recreational activities,
19 the landing of fish, or commercial vessel activities shall be
20 permitted to moor, anchor, or berth at [~~such~~] a state small boat
21 harbor or use any of its facilities.



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

16 (c) The total number of valid commercial use permits that
17 may be issued for vessels assigned mooring in Ala Wai boat
18 harbor shall not exceed fifteen per cent of the total berths and
19 shall not exceed thirty-five per cent of the total berths at the
20 Keehi boat harbor; provided that at the Ala Wai boat harbor,
21 vessels issued commercial use permits shall:

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



- 1 (2) Occupy not more than fifty-six berths located along
2 the row of berths furthestmost mauka or adjacent to
3 Holomua street, with the remainder located throughout
4 the Ala Wai boat harbor, with a priority assigned to
5 row seven hundred and row eight hundred;
- 6 (3) Be phased-in in a manner that does not displace any
7 existing recreational boater or existing catamaran
8 operator; and
- 9 (4) Include commercial catamarans, for which valid
10 commercial use permits or existing registration
11 certificates have been issued by the department that
12 allow the catamarans to operate upon Waikiki shore
13 waters for hire.

14 The department shall allow a sole proprietor of a catamaran
15 operating with a valid commercial use permit or existing
16 registration certificate, issued by the department, for a
17 commercial catamaran to land its commercial catamaran on Waikiki
18 beach and to operate upon Waikiki shore waters for hire, to
19 transfer the ownership of the vessel from personal ownership to
20 corporate or other business ownership without terminating the
21 right to operate under the commercial use permit or existing
22 registration certificate. The existing commercial use permit or



1 existing registration certificate shall be reissued in a timely
2 manner in the name of the transferee corporation or other
3 business entity. No valid commercial use permit or existing
4 registration certificate issued to an owner of a commercial
5 catamaran operating in the Waikiki area shall be denied or
6 revoked without a prior hearing held in accordance with chapter
7 91.

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

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

19 (2) The design and performance characteristics of the
20 vessel will permit safe navigation within the harbor
21 entrance channel and safe docking within Maui county
22 small boat facilities;



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

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

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

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

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

17 (1) [~~Moorage~~] Except for commercial maritime activities
18 where there is a tariff established by the department
19 of transportation, moorage fees shall be established
20 by appraisal by a state-licensed appraiser approved by
21 the department and shall be higher for
22 nonresidents [7]. The mooring fees shall be set by



1 appraisal categories schedule A and schedule B, to be
2 determined by the department, and may be increased
3 annually by the department, to reflect a cost-of-
4 living index increase; provided that:

5 (A) Schedule A shall include existing mooring
6 permittees; provided further that schedule A
7 rates shall be increased by the same amount each
8 year so that schedule A rates equal schedule B
9 rates by July 1, 2014; and

10 (B) Schedule B shall apply to all new mooring
11 applicants and transient slips on or after July
12 1, 2011;

13 (2) For commercial maritime activities where there is a
14 tariff established by the department of
15 transportation, harbors division, the department may
16 adopt the published tariff of the department of
17 transportation, harbors division, or establish the fee
18 by appraisal by a state licensed appraiser approved by
19 the department;

20 ~~[-(2)]~~ (3) An application fee shall be collected when
21 applying for moorage in state small boat harbors and



1 shall thereafter be collected annually when the
2 application is renewed. The application fee shall be:

- 3 (A) Set by the department; and
4 (B) Not less than \$100 for nonresidents;

5 ~~[(3)]~~ (4) If a recreational vessel is used as a place of
6 principal habitation, the permittee shall pay, in
7 addition to the moorage fee, a liveaboard fee that
8 shall be calculated at a rate of:

- 9 (A) \$5.20 a foot of vessel length a month if the
10 permittee is a state resident; and
11 (B) \$7.80 a foot of vessel length a month if the
12 permittee is a nonresident;

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

18 ~~[(4)]~~ (5) If a vessel is used for commercial purposes from
19 its permitted mooring, the permittee shall pay, in
20 lieu of the moorage and liveaboard fee, a fee based on
21 three per cent of the gross revenues derived from the
22 use of the vessel or two times the moorage fee



1 assessed for a recreational vessel of the same size,
2 whichever is greater[-]; and

3 (6) The department is authorized to assess and collect
4 utility fees, including electrical and water charges,
5 and common area maintenance fees in small boat
6 harbors."

7 SECTION 7. (a) Pursuant to section 200-2.5, Hawaii
8 Revised Statutes, the department of land and natural resources
9 is directed to lease certain fast lands at the Ala Wai boat
10 harbor using the request for proposals process for the public-
11 private development, management, and operation of areas of Ala
12 Wai boat harbor.

13 (b) The permissible uses under the lease issued pursuant
14 to subsection (a) shall include:

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

17 (A) Not more than forty berths shall be available for
18 vessels used for purposes of recreational boating
19 activities that are also the principal habitation
20 of the owners;

21 (B) Not more than thirty berths, including those
22 allowed pursuant to section 200-9(c), Hawaii



1 Revised Statutes, shall be available for vessels
2 issued commercial use permits; and

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

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

10 (3) Vehicular parking, including a minimum of parking
11 stalls for division of boating and ocean recreation
12 use and for public metered parking;

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

16 (5) Hotel, residential, and timeshare uses;

17 (6) Vessel fueling facilities;

18 (7) Vessel haul-out, storage, and repair facilities; and

19 (8) Deep sea water air conditioning plant.

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



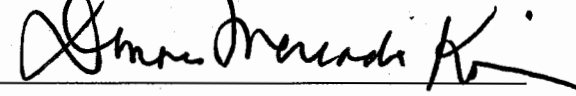
1 (1) A minimum lease rent that is the greater of a
2 commercially acceptable percentage of the gross
3 receipts of the lessee from the developed leased
4 premises or a fair return on the fair market value of
5 the vacant leased premises, as determined by appraisal
6 by a state-licensed appraiser approved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

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

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

14 SECTION 8. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 9. This Act shall take effect on July 1, 2011.

17 INTRODUCED BY: 

By Request

Report Title:

Small Boat Harbors; Commercial Vessels; Development

Description:

Permits commercial permits in Ala Wai and Keehi small boat harbors; establishes that small boat harbor fees can be used only for the operating and maintenance of small boat the harbors; authorizes a process for a public-private partnership to develop a portion of Ala Wai small boat harbor; changes mooring fee rate process.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

