

JAN 21 2011

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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, 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 harbor, has been the  
13 recipient of some recent badly needed repair and replacement of  
14 floating docks; however, the need for further maintenance  
15 remains unfulfilled. In spite of its needs, the Ala Wai harbor  
16 includes certain assets within its facilities that are under-  
17 used and, if properly developed, can potentially generate  
18 revenues that can not 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 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 200-8, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "[~~+~~]**\$200-8**[~~+~~] **Boating program; payment of costs.** The cost  
16 of administering a comprehensive statewide boating program,  
17 including, but not limited to, the cost of:

18 (1) Operating, maintaining, and managing all boating  
19 facilities under the control of the department;  
20 provided that any fees collected within each small  
21 boat harbor shall only be expended on costs related to  
22 the operation, upkeep, maintenance, and improvement of



1           the small boat harbor from which the fee revenues were  
2           collected;

3           (2) Improving boating safety;

4           (3) Operating a vessel registration and boating casualty  
5           investigation and reporting system; and

6           (4) Other boating program activities,

7 shall be paid from the boating special fund. The amortization  
8 (principal and interest) of the costs of capital improvements  
9 for boating facilities appropriated after July 1, 1975,  
10 including, but not limited to, berths, slips, ramps, related  
11 accommodations, general navigation channels, breakwaters, aids  
12 to navigation, and other harbor structures, may be paid from the  
13 boating special fund or from general revenues as the legislature  
14 may authorize in each situation. Revenues provided in this  
15 chapter for the boating special fund shall be at least  
16 sufficient to pay the special fund costs established in this  
17 section."

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

20           "**§200-9 Purpose and use of state small boat harbors.** (a)

21 State small boat harbors are constructed, maintained, and

22 operated for the purposes of:



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

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

15 (b) Vessels used for purposes of recreational boating  
16 activities [which] that are also the principal habitation of the  
17 owners shall occupy no more than one hundred twenty-nine berths  
18 at Ala Wai boat harbor and thirty-five berths at Keehi boat  
19 harbor, which is equal to fifteen per cent of the respective  
20 total moorage space that was available as of July 1, 1976, at  
21 the Ala Wai and Keehi boat harbors. [~~Notwithstanding the~~  
22 ~~purposes of small boat harbors, moorage for commercial vessels~~



1 ~~and commercial vessel activities is not permitted in the Ala Wai~~  
2 ~~and Keehi boat harbors; provided that commercial catamarans, for~~  
3 ~~which valid permits or registration certificates have been~~  
4 ~~issued by the department which allow catamarans to operate upon~~  
5 ~~Waikiki shore waters for hire, may be permitted to moor in Ala~~  
6 ~~Wai boat harbor at facilities leased for commercial purposes.]~~

7 (c) The total number of valid commercial use permits that  
8 may be issued for vessels assigned mooring in Ala Wai boat  
9 harbor shall not exceed fifteen per cent of the total berths and  
10 shall not exceed thirty-five per cent of the total berths at the  
11 Keehi boat harbor; provided that at the Ala Wai boat harbor,  
12 vessels issued commercial use permits shall:

- 13 (1) Not exceed sixty-five feet in length;  
14 (2) Occupy not more than fifty-six berths located along  
15 the row of berths furthestmost mauka or adjacent to  
16 Holomua street, with the remainder located throughout  
17 the Ala Wai boat harbor, with a priority assigned to  
18 row seven hundred and row eight hundred;  
19 (3) Be phased-in in a manner that does not displace any  
20 existing recreational boater or existing catamaran  
21 operator; and



1       (4) Include commercial catamarans, for which valid  
2       commercial use permits or existing registration  
3       certificates have been issued by the department that  
4       allow the catamarans to operate upon Waikiki shore  
5       waters for hire.

6       The department shall allow a sole proprietor of a catamaran  
7       operating with a valid commercial use permit or existing  
8       registration certificate, issued by the department, for a  
9       commercial catamaran to land its commercial catamaran on Waikiki  
10      beach and to operate upon Waikiki shore waters for hire, to  
11      transfer the ownership of the vessel from personal ownership to  
12      corporate or other business ownership without terminating the  
13      right to operate under the commercial use permit or existing  
14      registration certificate. The existing commercial use permit or  
15      existing registration certificate shall be reissued in a timely  
16      manner in the name of the transferee corporation or other  
17      business entity. No valid commercial use permit or existing  
18      registration certificate issued to an owner of a commercial  
19      catamaran operating in the Waikiki area shall be denied or  
20      revoked without a prior hearing held in accordance with chapter  
21      91.



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

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

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

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

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





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

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

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

10        (1) ~~[Moorage]~~ Except for commercial maritime activities  
11 where there is a tariff established by the department  
12 of transportation, moorage fees shall be established  
13 by appraisal by a state-licensed appraiser approved by  
14 the department and shall be higher for  
15 nonresidents~~7~~. The mooring fees shall be set by  
16 appraisal categories schedule A and schedule B, to be  
17 determined by the department, and may be increased  
18 annually by the department, to reflect a cost-of-  
19 living index increase; provided that:

20        (A) Schedule A shall include existing mooring  
21 permittees; provided further that schedule A  
22 rates shall be increased by the same amount each



1                   year so schedule A rates will equal schedule B  
2                   rates by July 1, 2014; and

3                   (B) Schedule B shall apply to all new mooring  
4                   applicants and transient slips on or after  
5                   July 1, 2009;

6                   (2) For commercial maritime activities where there is a  
7                   tariff established by the department of  
8                   transportation, harbors division, the department may  
9                   adopt the published tariff of the department of  
10                   transportation, harbors division, or establish the fee  
11                   by appraisal by a state licensed appraiser approved by  
12                   the department;

13                   ~~[(2)]~~ (3) An application fee shall be collected when  
14                   applying for moorage in state small boat harbors and  
15                   shall thereafter be collected annually when the  
16                   application is renewed. The application fee shall be:

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

19                   ~~[(3)]~~ (4) If a recreational vessel is used as a place of  
20                   principal habitation, the permittee shall pay, in  
21                   addition to the moorage fee, a liveaboard fee that  
22                   shall be calculated at a rate of:



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

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

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

10 [~~(4)~~] (5) If a vessel is used for commercial purposes from  
11 its permitted mooring, the permittee shall pay, in  
12 lieu of the moorage and liveaboard fee, a fee based on  
13 three per cent of the gross revenues derived from the  
14 use of the vessel or two times the moorage fee  
15 assessed for a recreational vessel of the same size,  
16 whichever is greater~~[-]~~; and

17 (6) In addition, the department is authorized to assess  
18 and collect utility fees, including electrical and  
19 water charges, and common area maintenance fees in  
20 small boat harbors."

21 SECTION 6. (a) Pursuant to section 200-2.5, Hawaii  
22 Revised Statutes, the department of land and natural resources



1 is directed to lease certain fast lands at the Ala Wai harbor  
2 using the request for proposals process for the public-private  
3 development, management, and operation of areas of Ala Wai  
4 harbor.

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

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

8 (A) Not more than forty 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 thirty berths, including those  
13 allowed pursuant to section 200-9(c), Hawaii  
14 Revised Statutes, shall be available for vessels  
15 issued commercial use 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) Hotel, residential and timeshare uses;
- 8           (6) Vessel fueling facilities;
- 9           (7) Vessel haul-out and repair facilities;
- 10          (8) Vessel haul-out and storage facilities; and
- 11          (9) Deep sea water air conditioning plant
- 12          (c) The lease shall not exceed a maximum term of
- 13 sixty-five years and shall provide for:
- 14          (1) A minimum lease rent that is the greater of a
- 15                   commercially acceptable percentage of the gross
- 16                   receipts of the lessee from the developed leased
- 17                   premises or a fair return on the fair market value of
- 18                   the vacant leased premises, as determined by appraisal
- 19                   by a state-licensed appraiser approved by the
- 20                   department, with reasonable periodic step-ups in the
- 21                   minimum lease rent over the term of the lease; and

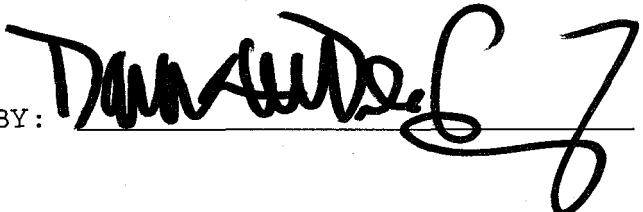


1 (2) A three-year development period with a fixed reduced  
2 lease rent.

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

6 SECTION 7. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 8. This Act shall take effect on July 1, 2020.

9 INTRODUCED BY: 



**Report Title:**

Small Boat Harbors; Commercial Vessels; Development

**Description:**

Permits commercial permits in Ala Wai and Keehi small boat harbors; limits small boat harbor fees to be used only in the small boat harbor where the fees were collected; 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. Effective July 1, 2020.

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

