

JAN 25 2023

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# A BILL FOR AN ACT

RELATING TO KANEOHE BAY.

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

1           SECTION 1. The legislature finds that Kaneohe Bay,  
2 including Ahu o Laka, known as the sandbar, has a rich cultural  
3 history that blends into our understanding of present day  
4 significance and is a sacred wahi pana to the native Hawaiian  
5 lineal and generational inhabitants of Koolaupoko - Waimanalo,  
6 Kailua, Kaneohe, Heeia, Kahaluu, Waihee, Kaalea, Waiahole,  
7 Waikane, Hakipuu, and Kualoa. Over the years,  
8 over-commercialization of Kaneohe Bay, including Ahu o Laka, has  
9 been unnaturally encouraged via social media and through  
10 unpermitted tour operators who can advertise and operate without  
11 regard for rules, regulations, and cultural awareness. Kaneohe  
12 Bay and attractions in the Bay such as Ahu o Laka are advertised  
13 as "must see" tourist stops without the mention of cultural  
14 awareness or significance, and non-permitted commercial  
15 operators set up advertisements and online payment schemes and  
16 bring guests, circumventing principles and intentions of the  
17 original 1992 Kaneohe Bay master plan. This problem is



1 exacerbated because state entities responsible for protecting  
2 resources do not work on weekends or holidays, which encourages  
3 noncompliance with laws, rules, and regulations. Furthermore,  
4 unauthorized advertising on social media and online has  
5 increased private and rental vehicles parking illegally at Heeia  
6 boat harbor and along both sides of Kamehameha highway, causing  
7 unsafe traffic situations.

8         The legislature further finds that the Kaneohe Bay master  
9 plan was developed pursuant to Act 208, Session Laws of Hawaii  
10 1990, which established a framework for the sustainable  
11 management of the bay's natural resources while accommodating a  
12 variety of uses. A compromise of competing interests resulted  
13 in a cap on the number of commercial enterprises and volume of  
14 permitted commercial activity. The vision continues to be the  
15 preservation and protection of the bay's natural resources for  
16 the continuing enjoyment of all.

17         The legislature also finds that limits on commercial  
18 activity have been exceeded by other activities not previously  
19 envisioned and by new technologies that support their  
20 proliferation. One example is the pre-positioning of rental  
21 kayaks at Heeia state park and Heeia Kea pier, internet



1 advertisements for boats, kayaks, and other commercial  
2 recreational uses, and the ability of customers to pay online  
3 and through mobile money transfer platforms such as Venmo.

4 Accordingly, the purpose of this Act is to update the law  
5 regarding restricted activities in Kaneohe Bay.

6 SECTION 2. Section 200-24, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "[~~§~~200-24~~§~~] **Rules.** The department shall adopt rules  
9 pursuant to chapter 91 to implement the policy and purpose of  
10 this part, and to classify vessels into appropriate categories  
11 and classes.

12 The department shall adopt rules pursuant to chapter 91  
13 with respect to the following:

- 14 (1) The registration and numbering of vessels;
- 15 (2) The operation, use, and equipment of vessels on or in  
16 the waters of the State;
- 17 (3) The conduct of persons involved in boating accidents  
18 and in the reporting of accidents and other casualties  
19 and losses to the department; [~~and~~]
- 20 (4) The designation of areas of the waters of the State  
21 and time periods during which thrill craft may be



1 operated, and waters on or above which, and time  
2 periods during which, persons may engage in  
3 parasailing, commercial high speed boating, and water  
4 sledding; provided that in designating the areas, the  
5 department shall use the official recommendation of  
6 the National Marine Fisheries Service with regard to  
7 the protection of protected marine life and habitats  
8 in adopting rules to implement this section, except as  
9 otherwise provided by law[-];

10 (5) Prescribing procedures for enforcement personnel to  
11 issue subpoenas and to take custody of property  
12 suspected to be used in unauthorized commercial ocean  
13 use activity pursuant to section 200-39(h);

14 (6) Establishing administrative penalties and fines for  
15 violations of this part; and

16 (7) Prescribing any other procedures determined by the  
17 department in its experience and discretion to  
18 effectuate the intent of this part and the Kaneohe Bay  
19 master plan."

20 SECTION 3. Section 200-39, Hawaii Revised Statutes, is  
21 amended to read as follows:



1           "§200-39 Kaneohe Bay commercial ocean use activities;  
2 permits; restrictions. [~~(a) For the purposes of this section,~~  
3 ~~"ocean use activities" means commercial operation of thrill~~  
4 ~~craft, high speed boating, parasailing, water sledding, sailing~~  
5 ~~and snorkeling tours, glassbottom boat tours, or any other~~  
6 ~~similar commercial ocean recreation activity for hire.~~

7           ~~(b)]~~ (a) Any other provision of this chapter to the  
8 contrary notwithstanding, no person shall operate thrill craft,  
9 parasailing, water sledding, or commercial high speed boating  
10 unless the person meets the requirements of section 200-37 and  
11 all rules adopted by the department that regulate or restrict  
12 these activities.

13           (b) No person shall conduct any commercial ocean use  
14 activity within Kaneohe Bay waters without a permit issued by  
15 the department.

16           (c) The following shall be construed as conducting  
17 commercial ocean use activity:

18           (1) Delivering or pre-positioning any commercial ocean  
19 recreational equipment for hire, within one thousand  
20 feet of any shoreline of Kaneohe Bay; or



1       (2) Transporting customers to or from any location on  
2       Oahu, including but not limited to Heeia Kea, the  
3       Kaneohe Yacht Club, or any private residence, to  
4       Kaneohe Bay to participate in unpermitted commercial  
5       ocean use activity.

6       The burden of proof shall be on the person cited for unlawful  
7       commercial ocean use activity that the conduct is not in  
8       violation of this chapter or that it is permitted pursuant to a  
9       permit, lease, or license issued by the department.

10       (d) No person shall advertise any commercial ocean use  
11       activity within Kaneohe Bay waters for which the person does not  
12       have a permit from the department. Advertisement in print, by  
13       word of mouth, or online in any form, including through social  
14       media, of unpermitted commercial ocean use activities or  
15       equipment shall be prima facie evidence that:

16       (1) The owner of the advertised commercial ocean use  
17       activity or equipment disseminated or directed the  
18       dissemination of the advertisement in that form and  
19       manner; and

20       (2) The commercial ocean use activity or equipment is  
21       being operated at the location advertised.



1 The burden of proof shall be on the provider of the commercial  
2 ocean use activity or the owner of the commercial ocean  
3 recreational equipment to establish that the equipment is not  
4 being used for a commercial ocean use activity or that the  
5 conduct is pursuant to a permit, lease, or license issued by the  
6 department, including the division of state parks.

7       ~~(e)~~ (e) Permits issued by the department for ~~the~~  
8 commercial ~~operation of~~ ocean use activities in Kaneohe Bay  
9 shall be limited to the number and locations, by permit type and  
10 vessel and passenger capacity, provided in the Kaneohe Bay  
11 master plan developed pursuant to Act 208, Session Laws of  
12 Hawaii 1990, until applicable rules consistent with the master  
13 plan are adopted by the department; provided that the passenger  
14 capacity for snorkeling tours and glassbottom boat tours shall  
15 be set through rules adopted pursuant to chapter 91. No thrill  
16 craft permit may be transferred after June 21, 1998; provided  
17 that transfers of permits may be made at any time between family  
18 members.

19       ~~(d)~~ (f) On Sundays and federal holidays, all commercial  
20 ocean use activities shall be prohibited.



1           ~~[(e)]~~ (g) All rules adopted by the department with regard  
2 to Kaneohe Bay shall be drafted in consultation with the Kaneohe  
3 Bay regional council. For those provisions of the Kaneohe Bay  
4 master plan previously adopted by the legislature, the rules  
5 adopted by the department shall be in accordance with those  
6 provisions. Notwithstanding subsection ~~[(e)]~~ (e) to the  
7 contrary, if the department determines for safety or  
8 environmental protection reasons that a permitted use should be  
9 relocated, the department may relocate the permitted use and the  
10 department shall have discretion to permit vessel substitution  
11 with a similar length vessel; provided that the increase is not  
12 greater than ten per cent of the current vessel length.

13           For those provisions of the Kaneohe Bay master plan  
14 developed pursuant to Act 208, Session Laws of Hawaii 1990, not  
15 previously adopted by the legislature, the master plan shall be  
16 used as the recommended guideline in the adoption and  
17 implementation of rules with regard to the regulation of all  
18 activities in Kaneohe Bay.

19           (h) Citations for violations of this section or any rules  
20 of the department adopted pursuant to this section may be issued  
21 by the department, Hawaii harbor police, or Honolulu police





1 department. In enforcing the provisions of this section, any  
2 duly authorized employee, agent, or representative of the  
3 department, Hawaii harbor police,' or law enforcement officer of  
4 the Honolulu police department shall have the power to issue  
5 subpoenas and take legal custody of any personal property that  
6 is the subject of or related to any violation of this section or  
7 rules established by the department pursuant to this section.  
8 The property may be released only upon approval by the board or  
9 the court that has jurisdiction over the case. All costs  
10 associated with custody and storage of the property shall be at  
11 the owner's cost and expense.

12 (i) In addition to any penalties and fines established by  
13 rules adopted by the department, any person who violates this  
14 section or any rule adopted pursuant to this section shall be  
15 subject to the penalties and fines set forth in sections 200-14  
16 and 200-14.5.

17 (j) For purposes of this section, "commercial ocean use  
18 activity" means any:

19 (1) Commercial operation, or the providing for hire, of  
20 thrill craft; high speed boating; parasailing; water  
21 sledding; kayaks; canoes; any manner of surfboards,



1           sailboards, paddleboard, or related watercraft;  
 2           sailing; snorkeling; diving tours; fishing tours;  
 3           glassbottom boat tours; or any other similar  
 4           commercial ocean activity; or

5           (2) Renting for use or hire any vessel or equipment used  
 6           in any of the activities listed in paragraph (1).

7           "Commercial ocean use activity" does not include commercial  
 8           fishing, commercial ocean activity providers operating pursuant  
 9           to a permit issued by the department, or those operating  
 10          pursuant to an existing lease or license issued by the  
 11          department or board."

12           SECTION 4. There is appropriated out of the general  
 13 revenues of the State of Hawaii the sum of \$            or so  
 14 much thereof as may be necessary for fiscal year 2023-2024 and  
 15 the same sum or so much thereof as may be necessary for fiscal  
 16 year 2024-2025 for           full-time equivalent (        FTE)  
 17 positions to enforce the provisions of this Act.

18           The sums appropriated shall be expended by the department  
 19 of land and natural resources for the purposes of this Act.

20           SECTION 5. Statutory material to be repealed is bracketed  
 21 and stricken. New statutory material is underscored.



1 SECTION 6. This Act shall take effect on July 1, 2023.

2

INTRODUCED BY: *Thomas R. Anney*



# S.B. NO. 1265

**Report Title:**

Kaneohe Bay; Restrictions; Commercial Ocean Use Activities;  
Permits

**Description:**

Prohibits commercial ocean use activity in Kaneohe Bay waters without a permit. Prohibits any person from advertising any commercial ocean use activity in Kaneohe Bay waters for which the person does not have a permit, lease, or license.

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

