

ACT 197

H.B. NO. 1566

A Bill for an Act Relating to Small Boat Harbors.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The department of land and natural resources, through its division of boating and ocean recreation, operates and manages twenty-one harbors, fifty boat ramps, two thousand one hundred twenty-two moorings and berths, and nineteen piers spread throughout the various counties of the State. The legislature further finds that these ocean recreation facilities are in short supply and in many cases are in dire need of long overdue repair and maintenance. Some facilities are in such disrepair that they cannot be safely used.

One of these facilities, the Ala Wai boat harbor, has been a recent recipient of some badly needed repair and replacement of floating docks; however, the need for further maintenance at Ala Wai and other boat harbors remains unfulfilled. In spite of its needs, the Ala Wai boat harbor includes certain assets within its facilities that are underused and if properly developed could potentially generate revenues that would enable not only its own continued improvement and maintenance but the improvement and maintenance of the rest of the facilities now operated by the division of boating and ocean recreation of the department of land and natural resources.

In these times of economic malaise and with the State facing a massive budget deficit over the next biennium, a further decline in the State's small boat harbors would be a huge loss that the State cannot allow.

The purpose of this Act is to:

- (1) Allow the limited issuance of commercial use permits for vessels with assigned moorings in Ala Wai and Keehi boat harbors;
- (2) Provide for future moorage fees to be established by appraisal by a state-licensed appraiser and assigned a schedule B rate, while existing mooring holders remain in a schedule A class that shall equal schedule B rates over a three-year period; and
- (3) Direct the department of land and natural resources to use the request for proposals process to enter into a public-private partnership for the development of portions of Ala Wai boat harbor facilities that are presently underused to maximize the revenue potential from its facilities.

SECTION 2. Chapter 200, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§200- Ala Wai boat harbor; leases. The fast lands and submerged lands of the Ala Wai boat harbor that may be leased include the following:

- (1) All fast lands and submerged lands described in the request for qualifications or request for proposals issued by the division of boating and ocean recreation of the department on November 25, 2008;
- (2) The fast land described as a portion of tax map key: (1) 2-3-37-12, composed of approximately 112,580 square feet, presently used for harbor offices and permitted vehicular parking; and
- (3) The fast land described as a portion of tax map key: (1) 2-3-37-12, which is a triangular area located Diamond Head of Mole B, presently used for permitted vehicular parking.”

SECTION 3. Section 46-80.5, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Exemptions.

- (1) Property owned by the state or county governments or entities, may be exempt from the assessment except as provided in paragraph (3);
- (2) Property owned by the federal government or entities, shall be exempt from the assessment except as provided in paragraph (3);
- (3) If a public body owning property, including property held in trust for any beneficiary, which is exempt from an assessment pursuant to paragraphs (1) and (2), grants a leasehold or other possessory interest in the property to a nonexempt person or entity, the assessment, notwithstanding paragraphs (1) and (2), shall be levied on the

leasehold or possessory interest and shall be payable by the lessee;
[and]

- (4) The redevelopment of the Ala Wai boat harbor shall be exempt from the assessment and any special improvement district requirements authorized by subsection (a); and
- (4) (5) No other properties or owners shall be exempt from the assessment unless the properties or owners are expressly exempted in the ordinance establishing a district adopted pursuant to this section or amending the rate or method of assessment of an existing district."

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

~~“[§200-2.5] Disposition of state boating facility properties.~~ (a) Notwithstanding any law to the contrary, the board may lease fast lands and submerged lands within an existing state boating facility by public auction, a request for proposals, or by direct negotiation pursuant to section 171-59[.], and chapter 190D, for private development, management, and operation[.]; provided that any lease of fast lands or submerged lands pursuant to a request for proposals shall be subject to section 200- , regardless to which state boating facility the fast or submerged lands are attached.

~~[For the purpose of]~~ As used in this section, the term “state boating facility” means a state small boat harbor, launching ramp, offshore mooring, pier, wharf, landing, or any other area under the jurisdiction of the department pursuant to this chapter.

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

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

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

(e) The department shall adopt rules in accordance with chapter 91 to implement this section.

SECTION 5. Section 200-8, Hawaii Revised Statutes, is amended to read as follows:

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

- (1) Operating, maintaining, and managing all boating facilities under the control of the department;
- (2) Improving boating safety;
- (3) Operating a vessel registration and boating casualty investigation and reporting system; and
- (4) Other boating program activities,

shall be paid from the boating special fund[.]; provided that any fees collected within small boat harbors shall be expended only for costs related to the operation, upkeep, maintenance, and improvement of the small boat harbors. The amortization (principal and interest) of the costs of capital improvements for

boating facilities appropriated after July 1, 1975, including[;] but not limited to[;] berths, slips, ramps, related accommodations, general navigation channels, breakwaters, aids to navigation, and other harbor structures, may be paid from the boating special fund or from general revenues as the legislature may authorize in each situation. Revenues provided in this chapter for the boating special fund shall be at least sufficient to pay the special fund costs established in this section.”

SECTION 6. Section 200-9, Hawaii Revised Statutes, is amended to read as follows:

“§200-9 Purpose and use of state small boat harbors. (a) State small boat harbors are constructed, maintained, and operated for the purposes of:

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

For the purpose of this section, “recreational boating activities” means the [uti-
lization] use of watercraft for sports, hobbies, or pleasure, and “commercial vessel activities” means the [utilization] use of vessels for activities or services provided on a fee basis. To implement these purposes, only vessels in good material and operating condition that are regularly navigated beyond the confines of the small boat harbor[;] and [which] that are used for recreational activities, the landing of fish, or commercial vessel activities shall be permitted to moor, anchor, or berth at [such] a state small boat harbor or use any of its facilities.

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

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

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

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

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

- (1) The vessel operator has been issued a certificate of public convenience and necessity for the purpose of engaging in inter-island ferry service that includes a route within Maui county;
- (2) The design and performance characteristics of the vessel will permit safe navigation within the harbor entrance channel and safe docking within Maui county small boat facilities;
- (3) The vessel operations will not result in unreasonable interference with the use of Maui county small boat facilities by other vessels; and
- (4) All preferential consideration and waivers, including any commercial permits issued under this section, shall cease upon the vessel operator's termination of inter-island ferry service within Maui county.

~~(e)~~ (e) The chairperson may adopt rules pursuant to chapter 91 to further implement this section."

SECTION 7. Section 200-10, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

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

- (1) ~~[Moorage]~~ Except for commercial maritime activities where there is a tariff established by the department of transportation, moorage fees shall be established by appraisal by a state-licensed appraiser approved by the department and shall be higher for nonresidents~~;~~ than for residents. The moorage fees shall be set by appraisal categories schedule A and schedule B, to be determined by the department, and may be increased annually by the department, to reflect a cost-of-living index increase; provided that:
 - (A) Schedule A shall include existing mooring permittees; and
 - (B) Schedule B shall apply to all new mooring applicants and transient slips on or after July 1, 2011;
provided further that schedule A rates shall be increased by the same amount each year so that schedule A rates equal schedule B rates by July 1, 2014;
- (2) For commercial maritime activities where there is a tariff established by the harbors division of the department of transportation, the de-

- partment may adopt the published tariff of the harbors division of the department of transportation or establish the fee by appraisal by a state-licensed appraiser approved by the department:
- [(2)] (3) An application fee shall be collected when applying for moorage in state small boat harbors and shall thereafter be collected annually when the application is renewed. The application fee shall be:
- (A) Set by the department; and
- (B) Not less than \$100 for nonresidents;
- [(3)] (4) If a recreational vessel is used as a place of principal habitation, the permittee shall pay, in addition to the moorage fee, a liveaboard fee that shall be calculated at a rate of:
- (A) \$5.20 a foot of vessel length a month if the permittee is a state resident; and
- (B) \$7.80 a foot of vessel length a month if the permittee is a nonresident;
- provided that the liveaboard fees established by this paragraph may be increased by the department at the rate of the annual cost-of-living index, but not more than five per cent in any one year, beginning [~~January~~] July 1 of each year; [~~and~~
- [(4)] (5) If a vessel is used for commercial purposes from its permitted mooring, the permittee shall pay, in lieu of the moorage and liveaboard fee, a fee based on three per cent of the gross revenues derived from the use of the vessel or two times the moorage fee assessed for a recreational vessel of the same size, whichever is greater[-]; and
- (6) The department is authorized to assess and collect utility fees, including electrical and water charges, and common-area maintenance fees in small boat harbors.”

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

(b) The fast lands and submerged lands of the Ala Wai boat harbor that may be leased include the lands described in section 200- , Hawaii Revised Statutes.

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

- (1) A minimum of not less than one hundred twenty berths for vessels; provided that:
- (A) Notwithstanding section 200-9(b), Hawaii Revised Statutes, not more than forty berths shall be available for vessels used for purposes of recreational boating activities that are also the principal habitation of the owners;
- (B) Not more than thirty berths, including those allowed pursuant to section 200-9(c), Hawaii Revised Statutes, shall be available for vessels issued commercial use permits; and
- (C) All berths provided under this paragraph shall be made available to the public pursuant to rules of the department of land and natural resources, with moorage fees to be determined by the developer;
- (2) Office space for use by the division of boating and ocean recreation of the department of land and natural resources;

- (3) Vehicular parking, including parking stalls for use by the division of boating and ocean recreation of the department of land and natural resources and for public metered parking;
 - (4) Commercial uses, including but not limited to restaurants, retail stores, marine-supplies stores, and sundry stores, to be made available to the public;
 - (5) Hotel, residential, and timeshare uses;
 - (6) Training facilities for ocean recreation and support facilities for ocean recreation;
 - (7) Any uses described or referred to in the request for qualifications or request for proposals issued by the division of boating and ocean recreation of the department of land and natural resources on November 25, 2008;
 - (8) Vessel-fueling facilities;
 - (9) Vessel haul-out, storage, and repair facilities; and
 - (10) Deep seawater air-conditioning plants.
- (d) The lease shall not exceed a maximum term of sixty-five years and shall provide for:
- (1) A minimum lease rent that is the greater of a commercially acceptable percentage of the gross receipts of the lessee from the developed leased premises or a fair return on the fair market value of the vacant leased premises, as determined by appraisal by a state-licensed appraiser approved by the department, with reasonable periodic step-ups in the minimum lease rent over the term of the lease; and
 - (2) A three-year development period with a fixed reduced lease rent.
- (e) Notwithstanding chapter 171 and section 190D-33, Hawaii Revised Statutes, all revenues from the lease shall be deposited in the boating special fund.
- (f) Notwithstanding chapters 171 and 190D, Hawaii Revised Statutes, the lease of fast lands and submerged lands of Ala Wai boat harbor shall be subject to section 200-2.5(a), Hawaii Revised Statutes.
- (g) Notwithstanding section 171-53, Hawaii Revised Statutes, the prior authorization of the legislature by concurrent resolution shall not be required for the lease of submerged lands and lands beneath tidal waters at the Ala Wai boat harbor.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 10. This Act shall take effect on July 1, 2011.

(Approved July 7, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.