

JAN 25 2023

A BILL FOR AN ACT

RELATING TO A STATE BOATING FACILITY LEASE PILOT PROGRAM.

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

1 SECTION 1. Section 76-16, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) The civil service to which this chapter applies shall
4 comprise all positions in the State now existing or hereafter
5 established and embrace all personal services performed for the
6 State, except the following:

7 (1) Commissioned and enlisted personnel of the Hawaii
8 National Guard as such, and positions in the Hawaii
9 National Guard that are required by state or federal
10 laws or regulations or orders of the National Guard to
11 be filled from those commissioned or enlisted
12 personnel;

13 (2) Positions filled by persons employed by contract where
14 the director of human resources development has
15 certified that the service is special or unique or is
16 essential to the public interest and that, because of
17 circumstances surrounding its fulfillment, personnel

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- 1 to perform the service cannot be obtained through
2 normal civil service recruitment procedures. Any such
3 contract may be for any period not exceeding one year;
- 4 (3) Positions that must be filled without delay to comply
5 with a court order or decree if the director
6 determines that recruitment through normal recruitment
7 civil service procedures would result in delay or
8 noncompliance, such as the Felix-Cayetano consent
9 decree;
- 10 (4) Positions filled by the legislature or by either house
11 or any committee thereof;
- 12 (5) Employees in the office of the governor and office of
13 the lieutenant governor, and household employees at
14 Washington Place;
- 15 (6) Positions filled by popular vote;
- 16 (7) Department heads, officers, and members of any board,
17 commission, or other state agency whose appointments
18 are made by the governor or are required by law to be
19 confirmed by the senate;
- 20 (8) Judges, referees, receivers, masters, jurors, notaries
21 public, land court examiners, court commissioners, and

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1 attorneys appointed by a state court for a special
2 temporary service;

3 (9) One bailiff for the chief justice of the supreme court
4 who shall have the powers and duties of a court
5 officer and bailiff under section 606-14; one
6 secretary or clerk for each justice of the supreme
7 court, each judge of the intermediate appellate court,
8 and each judge of the circuit court; one secretary for
9 the judicial council; one deputy administrative
10 director of the courts; three law clerks for the chief
11 justice of the supreme court, two law clerks for each
12 associate justice of the supreme court and each judge
13 of the intermediate appellate court, one law clerk for
14 each judge of the circuit court, two additional law
15 clerks for the civil administrative judge of the
16 circuit court of the first circuit, two additional law
17 clerks for the criminal administrative judge of the
18 circuit court of the first circuit, one additional law
19 clerk for the senior judge of the family court of the
20 first circuit, two additional law clerks for the civil
21 motions judge of the circuit court of the first

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1 circuit, two additional law clerks for the criminal
2 motions judge of the circuit court of the first
3 circuit, and two law clerks for the administrative
4 judge of the district court of the first circuit; and
5 one private secretary for the administrative director
6 of the courts, the deputy administrative director of
7 the courts, each department head, each deputy or first
8 assistant, and each additional deputy, or assistant
9 deputy, or assistant defined in paragraph (16);

10 (10) First deputy and deputy attorneys general, the
11 administrative services manager of the department of
12 the attorney general, one secretary for the
13 administrative services manager, an administrator and
14 any support staff for the criminal and juvenile
15 justice resources coordination functions, and law
16 clerks;

17 (11) (A) Teachers, principals, vice-principals, complex
18 area superintendents, deputy and assistant
19 superintendents, other certificated personnel,
20 not more than twenty noncertificated
21 administrative, professional, and technical
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1 personnel not engaged in instructional work;
2 (B) Effective July 1, 2003, teaching assistants,
3 educational assistants, bilingual/bicultural
4 school-home assistants, school psychologists,
5 psychological examiners, speech pathologists,
6 athletic health care trainers, alternative school
7 work study assistants, alternative school
8 educational/supportive services specialists,
9 alternative school project coordinators, and
10 communications aides in the department of
11 education;

12 (C) The special assistant to the state librarian and
13 one secretary for the special assistant to the
14 state librarian; and

15 (D) Members of the faculty of the University of
16 Hawaii, including research workers, extension
17 agents, personnel engaged in instructional work,
18 and administrative, professional, and technical
19 personnel of the university;

20 (12) Employees engaged in special, research, or
21 demonstration projects approved by the governor;
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1 their duties concurrently with their private business
2 or profession or other private employment and whose
3 duties require only a portion of their time, if it is
4 impracticable to ascertain or anticipate the portion
5 of time to be devoted to the service of the State;

6 (16) Positions of first deputies or first assistants of
7 each department head appointed under or in the manner
8 provided in section 6, article V, of the Hawaii State
9 Constitution; three additional deputies or assistants
10 either in charge of the highways, harbors, and
11 airports divisions or other functions within the
12 department of transportation as may be assigned by the
13 director of transportation, with the approval of the
14 governor; four additional deputies in the department
15 of health, each in charge of one of the following:
16 behavioral health, environmental health, hospitals,
17 and health resources administration, including other
18 functions within the department as may be assigned by
19 the director of health, with the approval of the
20 governor; two additional deputies in charge of the law
21 enforcement programs, administration, or other

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1 functions within the department of law enforcement as
2 may be assigned by the director of law enforcement,
3 with the approval of the governor; an administrative
4 assistant to the state librarian; and an
5 administrative assistant to the superintendent of
6 education;

7 (17) Positions specifically exempted from this part by any
8 other law; provided that:

9 (A) Any exemption created after July 1, 2014, shall
10 expire three years after its enactment unless
11 affirmatively extended by an act of the
12 legislature; and

13 (B) All of the positions defined by paragraph (9)
14 shall be included in the position classification
15 plan;

16 (18) Positions in the state foster grandparent program and
17 positions for temporary employment of senior citizens
18 in occupations in which there is a severe personnel
19 shortage or in special projects;

20 (19) Household employees at the official residence of the
21 president of the University of Hawaii;

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- 1 (20) Employees in the department of education engaged in
2 the supervision of students during meal periods in the
3 distribution, collection, and counting of meal
4 tickets, and in the cleaning of classrooms after
5 school hours on a less than half-time basis;
- 6 (21) Employees hired under the tenant hire program of the
7 Hawaii public housing authority; provided that not
8 more than twenty-six per cent of the authority's
9 workforce in any housing project maintained or
10 operated by the authority shall be hired under the
11 tenant hire program;
- 12 (22) Positions of the federally funded expanded food and
13 nutrition program of the University of Hawaii that
14 require the hiring of nutrition program assistants who
15 live in the areas they serve;
- 16 (23) Positions filled by persons with severe disabilities
17 who are certified by the state vocational
18 rehabilitation office that they are able to perform
19 safely the duties of the positions;
- 20 (24) The sheriff;
- 21 (25) A gender and other fairness coordinator hired by the
22 judiciary;

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- 1 (26) Positions in the Hawaii National Guard youth and adult
2 education programs;
- 3 (27) In the state energy office in the department of
4 business, economic development, and tourism, all
5 energy program managers, energy program specialists,
6 energy program assistants, and energy analysts;
- 7 (28) Administrative appeals hearing officers in the
8 department of human services;
- 9 (29) In the Med-QUEST division of the department of human
10 services, the division administrator, finance officer,
11 health care services branch administrator, medical
12 director, and clinical standards administrator;
- 13 (30) In the director's office of the department of human
14 services, the enterprise officer, information security
15 and privacy compliance officer, security and privacy
16 compliance engineer, and security and privacy
17 compliance analyst;
- 18 (31) The Alzheimer's disease and related dementia services
19 coordinator in the executive office on aging;
- 20 (32) In the Hawaii emergency management agency, the
21 executive officer, public information officer, civil

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1 defense administrative officer, branch chiefs, and
2 emergency operations center state warning point
3 personnel; provided that, for state warning point
4 personnel, the director shall determine that
5 recruitment through normal civil service recruitment
6 procedures would result in delay or noncompliance;

7 (33) The executive director and seven full-time
8 administrative positions of the school facilities
9 authority;

10 (34) Positions in the Mauna Kea stewardship and oversight
11 authority[-]; [~~and~~

12 +] (35) [+] In the office of homeland security of the
13 department of defense, the statewide interoperable
14 communications coordinator[-]; and

15 (36) Positions at a state small boat harbor filled by
16 persons employed by any lessee of the department of
17 land and natural resources for private development,
18 management, and maintenance of a state boating
19 facility.

20 The director shall determine the applicability of this
21 section to specific positions.

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1 Nothing in this section shall be deemed to affect the civil
2 service status of any incumbent as it existed on July 1, 1955."

3 SECTION 2. Section 200-2.5, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) Notwithstanding any law to the contrary, the board
6 may lease fast lands and submerged lands within ~~[an]~~ any
7 existing state boating facility, by public auction, a request
8 for proposals, or by direct negotiation pursuant to section 171-
9 59, and chapter 190D, for private development, management, and
10 operation[; ~~provided that any lease of fast lands or submerged~~
11 ~~lands pursuant to a request for proposals shall be subject~~
12 ~~to section 200-2.6, regardless to which state boating facility~~
13 ~~the fast or submerged lands are attached].~~

14 As used in this section, the term "state boating facility"
15 means a state small boat harbor, launching ramp, offshore
16 mooring, pier, wharf, landing, or any other area under the
17 jurisdiction of the department pursuant to this chapter."

18 SECTION 3. Section 200-2.6, Hawaii Revised Statutes, is
19 repealed.

20 ~~["§200-2.6] Ala Wai boat harbor, leases. The fast lands~~
21 ~~and submerged lands of the Ala Wai boat harbor that may be~~
22 ~~leased include the following:~~

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- 1 ~~(1) All fast lands and submerged lands described in the~~
2 ~~request for qualifications or request for proposals~~
3 ~~issued by the division of boating and ocean recreation~~
4 ~~of the department on November 25, 2008;~~
- 5 ~~(2) The fast land described as a portion of tax map key:~~
6 ~~(1) 2-3-37-12, composed of approximately 112,580~~
7 ~~square feet, presently used for harbor offices and~~
8 ~~permitted vehicular parking; and~~
- 9 ~~(3) The fast land described as a portion of tax map key:~~
10 ~~(1) 2-3-37-12, which is a triangular area located~~
11 ~~Diamond Head of Mole B, presently used for permitted~~
12 ~~vehicular parking."]~~

13 SECTION 4. (a) There is established a state boating
14 facility lease pilot program within the department of land and
15 natural resources to be implemented and managed by the division
16 of boating and ocean recreation to allow the board of land and
17 natural resources to lease one small boat harbor in its
18 entirety, and fast lands and submerged lands within it, by
19 public auction, request for proposals, or direct negotiation,
20 for private development, management, and operation.

21 (b) Prior authorization from the legislature shall not be
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1 required for issuance of a lease under this pilot program.

2 (c) All employees of the division of boating and ocean
3 recreation of the department of land and natural resources who
4 occupy civil service positions and whose functions are replaced
5 as a result of this Act shall retain their civil service status,
6 whether permanent or temporary. Employees shall be reassigned
7 within the division of boating and ocean recreation without loss
8 of salary, seniority (except as prescribed by applicable
9 collective bargaining agreements), retention points, prior
10 service credit, any vacation and sick leave credits previously
11 earned, and other rights, benefits, and privileges, in
12 accordance with state personnel laws, provided that subsequent
13 changes in status may be made pursuant to applicable civil
14 service and compensation laws.

15 (d) The department of land and natural resources shall
16 submit a report of its findings and recommendations, including
17 any proposed legislation, to the legislature no later than
18 twenty days prior to the convening of each regular session. The
19 report shall include a recommendation on whether the pilot
20 program should be continued, modified, or terminated.

21 (e) The state boating facility lease pilot program shall
22 terminate on June 30, 2043.

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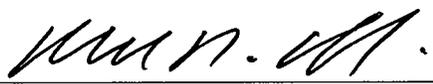
1 SECTION 5. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

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

6 SECTION 7. This Act shall take effect upon its approval;
7 provided that the amendments made to section 76-16(b), Hawaii
8 Revised Statutes, by section 1 of this Act shall not be repealed
9 when section 24 of Act 278, Session Laws of Hawaii 2022, takes
10 effect.

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INTRODUCED BY: 

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BY REQUEST

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Report Title:

State Small Boating Facility Lease; Public-Private Partnership;
Pilot Program

Description:

Establishes a state boating facility lease pilot program within the Department of Land and Natural Resources (Department). Clarifies that a private partner under lease or contract with the Department may assist with development, management, and maintenance of a state small boat harbor.

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

JUSTIFICATION SHEET

SB. NO. 1387

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO A STATE
BOATING FACILITY LEASE PILOT PROGRAM.

PURPOSE: To establish a state boating facility lease pilot program (Pilot Program) to allow the Board of Land and Natural Resources (Board) to lease one small boat harbor in its entirety, and fast lands and submerged lands within it, without the need for legislative approval; and to amend section 76-16(b), Hawaii Revised Statutes (HRS), to allow a private partner under lease or contract to assist the Department with development, management, and maintenance of a state small boat harbor.

MEANS: Amend sections 76-16(b) and 200-2.5(a), and repeal section 200-2.6, HRS.

JUSTIFICATION: The Department's Division of Boating and Ocean Recreation (Division) is exploring potential public-private partnerships for management of state small boat harbors and boating facilities as a way to preserve coastal resources and provide a method of ensuring timely maintenance and repairs to small boat harbors and boating facilities. This bill would create a pilot program to authorize the Board to lease one small boat harbor in its entirety, and fast lands and submerged lands within the harbor, by public auction, request for proposals, or direct negotiation for private development, management, and maintenance. Clarifying amendments are made to section 200-2.5, HRS, as well as repeal of section 200-2.6, HRS, to avoid any conflicting restrictions.

The amendment to section 76-16(b), HRS, clarifies that any positions at a state small boat harbor filled by employees of a private partner leasing or contracting with the Department would not be subject to the

civil service law, which would streamline the efficacy of hiring and facilitate ease of management of those employees, in conjunction with the Pilot Program.

The bill also clarifies that employees of the Division who occupy civil service positions and whose functions are replaced as a result of the Pilot Program shall retain their civil service status. Such employees shall be reassigned within the Division without loss of salary, seniority (except as prescribed by applicable collective bargaining agreements), retention points, prior service credit, any vacation and sick leave credits previously earned, and other rights, benefits, and privileges, in accordance with state personnel laws, provided subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

Impact on the public: This bill would provide the Department with more flexibility and options to upgrade and improve state boating facilities to the benefit of boaters and other harbor users.

Impact on the department and other agencies: This bill would provide the Department with more flexibility and options in managing, maintaining, and improving state boating facilities.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: LNR 801.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.