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## A BILL FOR AN ACT

RELATING TO THE STATE BOATING PROGRAM.

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

1           SECTION 1. The COVID-19 pandemic has not only devastated  
2 the State's economy but has also revealed the shortcomings in  
3 many of the services that the government provides. The demands  
4 on government for the delivery of these services will only  
5 increase. However, tax and fee increases are counterproductive  
6 to necessary economic recovery. Therefore, the government  
7 should have the ability to deliver services by the most  
8 efficient means possible while continuing to maintain government  
9 ownership of public trust assets.

10           The State and its counties have long used the private  
11 sector to provide public services to Hawaii's citizens.  
12 Historically, government agencies and private organizations have  
13 benefitted from outsourcing to increase efficiency and take  
14 advantage of larger economies of scale, being able to utilize  
15 resources owned or developed by the private sector to achieve  
16 improvements and cost savings for the long-term. When time and  
17 need have suggested that opportunities would be missed or that  
18 costs could be avoided or minimized, government has utilized

1 private sector services and expertise rather than "starting from  
2 scratch." In many instances, utilizing the private sector can  
3 provide the government with the flexibility needed to  
4 effectively provide services for the ever-changing needs of the  
5 public.

6 Due to budgetary constraints, the department of land and  
7 natural resources' state boating program constantly experiences  
8 extensive maintenance backlogs and increased public safety  
9 concerns at its boating facilities, which are only amplified by  
10 the effects of the COVID-19 pandemic. The department of land  
11 and natural resources would greatly benefit from a method to  
12 address these issues more quickly and efficiently. Thus,  
13 providing public sector management with a full complement of  
14 management tools to choose from, namely public-private  
15 partnerships, would afford agencies a vast array of options to  
16 achieve increased government efficiency.

17 Furthermore, the two aspects of enabling this increased  
18 efficiency are:

19 (1) Allowing the department of land and natural resources  
20 to lease small boat harbors and boating facilities in  
21 their entirety without the need for legislative  
22 approval; and

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1           (2) Ensuring that any employees contracted under a public-  
2           private partnership are not included in the civil  
3           service law.

4           Therefore, the purpose of this Act is to allow the  
5           department of land and natural resources to lease any existing  
6           state boating facility in part or in its entirety without the  
7           need for prior legislative approval, as well as amend the civil  
8           service law, and to make the necessary changes that would allow  
9           a private partner to assist the department with administrative  
10          support services, such as vessel slip management, maintenance,  
11          and monitoring.

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

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

18          (1) Commissioned and enlisted personnel of the Hawaii  
19          National Guard as such, and positions in the Hawaii  
20          National Guard that are required by state or federal  
21          laws or regulations or orders of the National Guard to

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- 1 be filled from those commissioned or enlisted  
2 personnel;
- 3 (2) Positions filled by persons employed by contract where  
4 the director of human resources development has  
5 certified that the service is special or unique or is  
6 essential to the public interest and that, because of  
7 circumstances surrounding its fulfillment, personnel  
8 to perform the service cannot be obtained through  
9 normal civil service recruitment procedures. Any such  
10 contract may be for any period not exceeding one year;
- 11 (3) Positions that must be filled without delay to comply  
12 with a court order or decree if the director  
13 determines that recruitment through normal recruitment  
14 civil service procedures would result in delay or  
15 noncompliance, such as the Felix-Cayetano consent  
16 decree;
- 17 (4) Positions filled by the legislature or by either house  
18 or any committee thereof;
- 19 (5) Employees in the office of the governor and office of  
20 the lieutenant governor, and household employees at  
21 Washington Place;
- 22 (6) Positions filled by popular vote;

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- 1 (7) Department heads, officers, and members of any board,  
2 commission, or other state agency whose appointments  
3 are made by the governor or are required by law to be  
4 confirmed by the senate;
- 5 (8) Judges, referees, receivers, masters, jurors, notaries  
6 public, land court examiners, court commissioners, and  
7 attorneys appointed by a state court for a special  
8 temporary service;
- 9 (9) One bailiff for the chief justice of the supreme court  
10 who shall have the powers and duties of a court  
11 officer and bailiff under section 606-14; one  
12 secretary or clerk for each justice of the supreme  
13 court, each judge of the intermediate appellate court,  
14 and each judge of the circuit court; one secretary for  
15 the judicial council; one deputy administrative  
16 director of the courts; three law clerks for the chief  
17 justice of the supreme court, two law clerks for each  
18 associate justice of the supreme court and each judge  
19 of the intermediate appellate court, one law clerk for  
20 each judge of the circuit court, two additional law  
21 clerks for the civil administrative judge of the  
22 circuit court of the first circuit, two additional law

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1 clerks for the criminal administrative judge of the  
2 circuit court of the first circuit, one additional law  
3 clerk for the senior judge of the family court of the  
4 first circuit, two additional law clerks for the civil  
5 motions judge of the circuit court of the first  
6 circuit, two additional law clerks for the criminal  
7 motions judge of the circuit court of the first  
8 circuit, and two law clerks for the administrative  
9 judge of the district court of the first circuit; and  
10 one private secretary for the administrative director  
11 of the courts, the deputy administrative director of  
12 the courts, each department head, each deputy or first  
13 assistant, and each additional deputy, or assistant  
14 deputy, or assistant defined in paragraph (16);  
15 (10) First deputy and deputy attorneys general, the  
16 administrative services manager of the department of  
17 the attorney general, one secretary for the  
18 administrative services manager, an administrator and  
19 any support staff for the criminal and juvenile  
20 justice resources coordination functions, and law  
21 clerks;  
22 (11) (A) Teachers, principals, vice-principals, complex

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1 area superintendents, deputy and assistant  
2 superintendents, other certificated personnel,  
3 not more than twenty noncertificated  
4 administrative, professional, and technical  
5 personnel not engaged in instructional work;  
6 (B) Effective July 1, 2003, teaching assistants,  
7 educational assistants, bilingual/bicultural  
8 school-home assistants, school psychologists,  
9 psychological examiners, speech pathologists,  
10 athletic health care trainers, alternative school  
11 work study assistants, alternative school  
12 educational/supportive services specialists,  
13 alternative school project coordinators, and  
14 communications aides in the department of  
15 education;  
16 (C) The special assistant to the state librarian and  
17 one secretary for the special assistant to the  
18 state librarian; and  
19 (D) Members of the faculty of the University of  
20 Hawaii, including research workers, extension  
21 agents, personnel engaged in instructional work,

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1                   and administrative, professional, and technical  
2                   personnel of the university;

3       (12)   Employees engaged in special, research, or  
4           demonstration projects approved by the governor;

5       (13)   (A)   Positions filled by inmates, patients of state  
6           institutions, persons with severe physical or  
7           mental disabilities participating in the work  
8           experience training programs;

9           (B)   Positions filled with students in accordance with  
10          guidelines for established state employment  
11          programs; and

12       (C)   Positions that provide work experience training  
13          or temporary public service employment that are  
14          filled by persons entering the workforce or  
15          persons transitioning into other careers under  
16          programs such as the federal Workforce Investment  
17          Act of 1998, as amended, or the Senior Community  
18          Service Employment Program of the Employment and  
19          Training Administration of the United States  
20          Department of Labor, or under other similar state  
21          programs;

22       (14)   A custodian or guide at Iolani Palace, the Royal

1 Mausoleum, and Hulihee Palace;

2 (15) Positions filled by persons employed on a fee,  
3 contract, or piecework basis, who may lawfully perform  
4 their duties concurrently with their private business  
5 or profession or other private employment and whose  
6 duties require only a portion of their time, if it is  
7 impracticable to ascertain or anticipate the portion  
8 of time to be devoted to the service of the State;

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

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1           governor; an administrative assistant to the state  
2           librarian; and an administrative assistant to the  
3           superintendent of education;

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

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

10          (B) All of the positions defined by paragraph (9)  
11          shall be included in the position classification  
12          plan;

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

17       (19) Household employees at the official residence of the  
18       president of the University of Hawaii;

19       (20) Employees in the department of education engaged in

20  
21       the supervision of students during meal periods in the  
22       distribution, collection, and counting of meal

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

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- 1 business, economic development, and tourism, all  
2 energy program managers, energy program specialists,  
3 energy program assistants, and energy analysts;
- 4 (28) Administrative appeals hearing officers in the  
5 department of human services;
- 6 (29) In the Med-QUEST division of the department of human  
7 services, the division administrator, finance officer,  
8 health care services branch administrator, medical  
9 director, and clinical standards administrator;
- 10 (30) In the director's office of the department of human  
11 services, the enterprise officer, information security  
12 and privacy compliance officer, security and privacy  
13 compliance engineer, and security and privacy  
14 compliance analyst; ~~and~~
- 15 [†] (31) [†] The Alzheimer's disease and related dementia  
16 services coordinator in the executive office on  
17 aging[-]; and
- 18 (32) Positions filled by persons employed by contract with  
19  
20 the department of land and natural resources engaged  
21 in management and maintenance of state small boat  
22 harbors.

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1           The director shall determine the applicability of this  
2 section to specific positions.

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

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

7           "(a) Notwithstanding any law to the contrary, the board  
8 may lease any existing state boating facility in part or in its  
9 entirety, and fast lands and submerged lands within [an] any  
10 existing state boating facility, by public auction, a request  
11 for proposals, or by direct negotiation pursuant to section 171-  
12 59, and chapter 190D, for private development, management, and  
13 operation; provided that [~~any lease of fast lands or submerged~~  
14 ~~lands pursuant to a request for proposals shall be subject~~  
15 ~~to section 200-2.6, regardless to which state boating facility~~  
16 ~~the fast or submerged lands are attached.] prior authorization  
17 from the legislature shall not be required for a lease pursuant  
18 to this subsection.~~

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

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1 SECTION 4. Section 200-2.6, Hawaii Revised Statutes, is  
2 repealed.

3 ~~["§200-2.6] Ala Wai boat harbor; leases. The fast lands~~  
4 ~~and submerged lands of the Ala Wai boat harbor that may be~~  
5 ~~leased include the following:~~

6 ~~(1) All fast lands and submerged lands described in the~~  
7 ~~request for qualifications or request for proposals~~  
8 ~~issued by the division of boating and ocean recreation~~  
9 ~~of the department on November 25, 2008;~~

10 ~~(2) The fast land described as a portion of tax map key:~~

11 ~~(1) 2-3-37-12, composed of approximately 112,580~~  
12 ~~square feet, presently used for harbor offices and~~  
13 ~~permitted vehicular parking; and~~

14 ~~(3) The fast land described as a portion of tax map key:~~

15 ~~(1) 2-3-37-12, which is a triangular area located~~  
16 ~~Diamond Head of Mole B, presently used for permitted~~  
17 ~~vehicular parking." ]~~

18

19 SECTION 5. This Act does not affect rights and duties that  
20 matured, penalties that were incurred, and proceedings that were  
21 begun before its effective date.

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

3 SECTION 7. This Act, upon its approval, shall take effect  
4 on July 1, 2021.

5

6

INTRODUCED BY: \_\_\_\_\_

*Alan*

7

BY REQUEST

8

JAN 25 2021

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**Report Title:**

Public-Private Partnerships; Leasing State Boating Facilities

**Description:**

Clarifies that the Department of Land and Natural Resources (Department) may lease any existing state boating facility in part or in its entirety without the need for prior legislative approval, and amends chapter 76, Hawaii Revised Statutes, to allow a private partner under contract to assist the Department with administrative support services, such as vessel slip management, maintenance, and monitoring.

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

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## JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO THE STATE BOATING PROGRAM.

PURPOSE: To clarify that the Department may lease any existing state boating facility in part or in its entirety without the need for prior legislative approval; and amend chapter 76, Hawaii Revised Statutes (HRS), to allow a private partner under contract to assist the Department with administrative support services, such as vessel slip management, maintenance, and monitoring.

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

JUSTIFICATION: The Department 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 authorize the Board of Land and Natural Resources (Board) to lease any existing state boating facility in part or in its entirety, and fast lands and submerged lands within any existing state boating facility, by public auction, request for proposals, or direct negotiation for private development, management, and operation.

Currently, section 200-2.5(a), HRS, authorizes the Board to 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, HRS, and chapter 190D, HRS, 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 200-2.6, HRS, regardless to which state boating facility the fast or submerged lands are attached. In turn, however, section 200-2.6, HRS, only addresses leases of the Ala Wai Boat Harbor. The reference to section 200-2.6, HRS, within section 200-2.5(a), HRS, is ambiguous and confusing. This proposal seeks to remove the reference to section 200-2.6, HRS, within section 200-2.5, HRS, to not limit the fast lands and submerged lands of the Ala Wai Boat Harbor that may be leased.

The amendment to section 76-16(b), HRS, seeks to clarify that any employees of a private partner contracting with the Department would not be subject to the civil service law, which would increase efficiency in hiring and management of those employees.

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.

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: July 1, 2021.