

JAN 19 2022

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# A BILL FOR AN ACT

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RELATING TO STATE SMALL BOAT HARBORS.

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

SECTION 1. Section 200-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"§200-4 Rules. (a) The chairperson may adopt rules necessary:

(1) To regulate the manner in which all vessels may enter the ocean waters and navigable streams of the State and moor, anchor, or dock at small boat harbors, launching ramps, and other boating facilities owned or controlled by the State;

(2) To regulate the embarking and disembarking of passengers at small boat harbors, launching ramps, other boating facilities, and public beaches;

(3) For the safety of small boat harbors, launching ramps, and other boating facilities, and the vessels anchored or moored therein;



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- 1           (4) For the conduct of the public using small boat
- 2           harbors, launching ramps, and other boating facilities
- 3           owned or controlled by the State;
- 4           (5) To regulate and control recreational and commercial
- 5           use of small boat harbors, launching ramps, and other
- 6           boating facilities owned or controlled by the State
- 7           and the ocean waters and navigable streams of the
- 8           State;
- 9           (6) To prevent the discharge or throwing into small boat
- 10          harbors, launching ramps, other boating facilities,
- 11          ocean waters, and navigable streams, of rubbish,
- 12          refuse, garbage, or other substances likely to affect
- 13          the quality of the water or that contribute to making
- 14          the small boat harbors, launching ramps, other boating
- 15          facilities, ocean waters, and streams unsightly,
- 16          unhealthful, or unclean, or that are liable to fill
- 17          up, shoal, or shallow the waters in, near, or
- 18          affecting small boat harbors, launching ramps, and
- 19          other boating facilities and the ocean waters and
- 20          navigable streams of the State, and likewise to
- 21          prevent the escape of fuel or other oils or substances



1           into the waters in, near, or affecting small boat  
2           harbors, launching ramps, or other boating facilities  
3           and the ocean waters and navigable streams of the  
4           State from any source point, including but not limited  
5           to any vessel or from pipes or storage tanks upon  
6           land, including:

7           (A)   Requirements for permits and fees for:

8                   (i)   The mooring, docking, or anchoring of  
9                        recreational and commercial vessels or the  
10                      launching of recreational or commercial  
11                      vessels at small boat harbors, launching  
12                      ramps, and other boating facilities; or

13           (ii)   Other uses of these facilities;

14           ~~[(B)   Requirements for permits and fees for use of a~~  
15               ~~vessel as a principal place of habitation while~~  
16               ~~moored at a state small boat harbor;~~

17           ~~-(C)]~~ (B)   Requirements governing:

18                   (i)   The transfer of any state commercial,  
19                        mooring, launching, or any other type of use  
20                        or other permit, directly or indirectly,  
21                        including but not limited to the imposition



1 or assessment of a business transfer fee  
2 upon transfer of ownership of vessels  
3 operating commercially from, within or in  
4 any way related to the state small boat  
5 harbors; and

6 (ii) The use of state small boat harbors,  
7 launching ramps, or other boating facilities  
8 belonging to or controlled by the State,  
9 including but not limited to the  
10 establishment of minimum amounts of annual  
11 gross receipts required to renew a  
12 commercial use permit, and conditions under  
13 which a state commercial, mooring,  
14 launching, or any other type of use or other  
15 permit may be terminated, canceled, or  
16 forfeited; and

17 [~~(D)~~] (C) Any other rule necessary to implement this  
18 chapter pertaining to small boat harbors,  
19 launching ramps, and other boating facilities  
20 belonging to or controlled by the State;



1           (7) To continue the ocean recreational and coastal areas  
2           programs and govern the ocean waters and navigable  
3           streams of the State, and beaches encumbered with  
4           easements in favor of the public to protect and foster  
5           public peace and tranquility and to promote public  
6           safety, health, and welfare in or on the ocean waters  
7           and navigable streams of the State, and on beaches  
8           encumbered with easements in favor of the public,  
9           including:

10          (A) Regulating the anchoring and mooring of vessels,  
11              houseboats, and other contrivances outside of any  
12              harbor or boating facility, including:

13              (i) The designation of offshore mooring areas;

14              (ii) The licensing and registration of vessels,  
15                  houseboats, and other contrivances; and the  
16                  issuance of permits for offshore anchoring  
17                  and mooring of vessels, houseboats, and  
18                  other contrivances; and

19              (iii) The living aboard on vessels, houseboats, or  
20                  other contrivances while they are anchored



1                   or moored within ocean waters or navigable  
2                   streams of the State.

3                   The rules shall provide for consideration of  
4                   environmental impacts on the State's aquatic  
5                   resources in the issuance of any permits for  
6                   offshore mooring;

7                   (B) Safety measures, requirements, and practices in  
8                   or on the ocean waters and navigable streams of  
9                   the State;

10                  (C) The licensing and registration of persons or  
11                  organizations engaged in commercial activities in  
12                  or on the ocean waters and navigable streams of  
13                  the State;

14                  (D) The licensing and registration of equipment  
15                  utilized for commercial activities in or on the  
16                  ocean waters and navigable streams of the State;

17                  (E) For beaches encumbered with easements in favor of  
18                  the public, the prohibition or denial of the  
19                  following uses and activities:

20                  (i) Commercial activities;



(ii) The storage, parking, and display of any personal property;

(iii) The placement of structures or obstructions;

(iv) The beaching, landing, mooring, or anchoring of any vessels; and

(v) Other uses or activities that may interfere with the public use and enjoyment of these beaches; and

(F) Any other matter relating to the safety, health, and welfare of the general public;

(8) To regulate the examination, guidance, and control of harbor agents and their assistants; and

(9) To regulate commercial activities in state waters including operations originating from private marinas; provided that no new or additional permits shall be required for those commercial activities regulated by any other chapter.

For the purposes of this paragraph:

"Commercial activity" means to engage in any action or attempt to engage in any action for compensation in any form. The action or actions may



1 include providing or attempting to provide guide  
2 services, charters, tours, and transportation to and  
3 from the location or locations for which such services  
4 are provided.

5 "Compensation" means money, barter, trade,  
6 credit, and other instruments of value, goods, and  
7 other forms of payment."

8 SECTION 2. Section 200-9, Hawaii Revised Statutes, is  
9 amended as follows:

10 1. By amending subsection (b) to read:

11 "(b) ~~[Vessels used for purposes of recreational boating~~  
12 ~~activities that are also the principal habitation of the owners~~  
13 ~~shall occupy no more than one hundred twenty nine berths at Ala~~  
14 ~~Wai boat harbor and thirty five berths at Keehi boat harbor,~~  
15 ~~which is equal to fifteen per cent of the respective total~~  
16 ~~moorage space that was available as of July 1, 1976, at the Ala~~  
17 ~~Wai and Keehi boat harbors.] Use of vessels as the principal~~  
18 ~~habitation of any person shall be prohibited at all state small~~  
19 ~~boat harbors.~~"

20 2. By amending subsection (d) to read:





1       "(d) Notwithstanding any limitations on commercial permits  
2 for Maui county small boat facilities, vessels engaging in  
3 inter-island ferry service within Maui county shall be afforded  
4 preferential consideration for [~~ferry landings, including~~] the  
5 issuance of a commercial operating permit [~~and the waiver of any~~  
6 ~~applicable fees,~~] at Maui county small boat facilities; provided  
7 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~~],  
20 including any commercial permits issued under this  
21 section, shall cease upon the vessel operator's



1            termination of inter-island ferry service within Maui  
2            county."

3            SECTION 3. 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 but not  
7 limited to the use of the vessel, the vessel's effect on the  
8 harbor, use of facilities, and the cost of administering the  
9 mooring program; provided that:

10           (1) Except for commercial maritime activities in which a  
11           tariff is established by the department of  
12           transportation, moorage fees shall be established by  
13           appraisal by a state-licensed appraiser approved by  
14           the department;

15           (2) For commercial maritime activities in which a tariff  
16           is established by the harbors division of the  
17           department of transportation, the department may adopt  
18           the published tariff of the harbors division of the  
19           department of transportation or establish the fee by  
20           appraisal by a state-licensed appraiser approved by  
21           the department;



(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; provided that the application fee shall be set by the department;

(4) ~~[If a recreational vessel is used as a place of principal habitation, the permittee shall pay, in lieu of the moorage fee required by paragraph (1), a monthly liveaboard fee that shall be two times the moorage fee that would otherwise be assessed for a vessel of the same size,~~

~~(5)]~~ If a vessel is used for commercial purposes from the vessel's permitted mooring, the permittee shall pay, in lieu of the moorage fee required by paragraph (1), a monthly fee that shall be the greater of:

(A) Three per cent of the gross revenues derived from the use of the vessel;

(B) \$1.50 per passenger carried for hire; or

(C) Two times the moorage fee that would otherwise be assessed for a recreational vessel of the same size;



[~~(6)~~] (5) The department is authorized to assess and collect utility fees, including electrical and water charges, and common-area maintenance fees in small boat harbors; and

[~~(7)~~] (6) All fees established by appraisal pursuant to this subsection shall be set at fair market value."

SECTION 4. Section 200-11, Hawaii Revised Statutes, is repealed.

~~["[§200-11] Existing permits. An owner of a vessel used as a principal place of habitation holding a permit for that use in a state small boat harbor on June 9, 1976, may continue to moor the vessel in that harbor for such purpose and be permitted to obtain a new mooring permit; provided that the owner conforms to conditions set forth in sections 200-9 and 200-10."]~~

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

SECTION 6. This Act shall take effect upon its approval.

INTRODUCED BY:

Marianne F. Smye

# S.B. NO. 2058

**Report Title:**

State Small Boat Harbors; Liveaboard Prohibition

**Description:**

Prohibits the use of vessels as the principal habitation of any person at all state small boat harbors.

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

