

JAN 26 2022

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# A BILL FOR AN ACT

RELATING TO A STATE BOATING FACILITY LEASE 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  
18 to perform the service cannot be obtained through

S.B. NO. 3131

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

S.B. NO. 3131

(9) One bailiff for the chief justice of the supreme court who shall have the powers and duties of a court officer and bailiff under section 606-14; one secretary or clerk for each justice of the supreme court, each judge of the intermediate appellate court, and each judge of the circuit court; one secretary for the judicial council; one deputy administrative director of the courts; three law clerks for the chief justice of the supreme court, two law clerks for each associate justice of the supreme court and each judge of the intermediate appellate court, one law clerk for each judge of the circuit court, two additional law clerks for the civil administrative judge of the circuit court of the first circuit, two additional law clerks for the criminal administrative judge of the circuit court of the first circuit, one additional law clerk for the senior judge of the family court of the first circuit, two additional law clerks for the civil motions judge of the circuit court of the first circuit, two additional law clerks for the criminal motions judge of the circuit court of the first circuit, and two law clerks for the administrative

S.B. NO. 3131

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

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

14 (11) (A) Teachers, principals, vice-principals, complex  
15 area superintendents, deputy and assistant  
16 superintendents, other certificated personnel,  
17 not more than twenty noncertificated  
18 administrative, professional, and technical  
19  
20 personnel not engaged in instructional work;  
21 (B) Effective July 1, 2003, teaching assistants,  
22 educational assistants, bilingual/bicultural

S.B. NO. 3131

1 school-home assistants, school psychologists,  
2 psychological examiners, speech pathologists,  
3 athletic health care trainers, alternative school  
4 work study assistants, alternative school  
5 educational/supportive services specialists,  
6 alternative school project coordinators, and  
7 communications aides in the department of  
8 education;

9 (C) The special assistant to the state librarian and  
10 one secretary for the special assistant to the  
11 state librarian; and

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

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

19 (13) (A) Positions filled by inmates, patients of state  
20 institutions, persons with severe physical or  
21 mental disabilities participating in the work  
22 experience training programs;

S.B. NO. 3131

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

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

(14) A custodian or guide at Iolani Palace, the Royal Mausoleum, and Hulihee Palace;

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

S.B. NO. 3131

- 1       (16) Positions of first deputies or first assistants of  
2       each department head appointed under or in the manner  
3       provided in section 6, article V, of the Hawaii State  
4       Constitution; three additional deputies or assistants  
5       either in charge of the highways, harbors, and  
6       airports divisions or other functions within the  
7       department of transportation as may be assigned by the  
8       director of transportation, with the approval of the  
9       governor; four additional deputies in the department  
10      of health, each in charge of one of the following:  
11      behavioral health, environmental health, hospitals,  
12      and health resources administration, including other  
13      functions within the department as may be assigned by  
14      the director of health, with the approval of the  
15      governor; an administrative assistant to the state  
16      librarian; and an administrative assistant to the  
17      superintendent of education;
- 18      (17) Positions specifically exempted from this part by any  
19      other law; provided that:
- 20           (A) Any exemption created after July 1, 2014, shall  
21           expire three years after its enactment unless

# S.B. NO. 3131

1                   affirmatively extended by an act of the

2                   legislature; and

3           (B) All of the positions defined by paragraph (9)

4                   shall be included in the position classification

5                   plan;

6       (18) Positions in the state foster grandparent program and

7                   positions for temporary employment of senior citizens

8                   in occupations in which there is a severe personnel

9                   shortage or in special projects;

10      (19) Household employees at the official residence of the

11                   president of the University of Hawaii;

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

13                   the supervision of students during meal periods in the

14                   distribution, collection, and counting of meal

15                   tickets, and in the cleaning of classrooms after

16                   school hours on a less than half-time basis;

17      (21) Employees hired under the tenant hire program of the

18                   Hawaii public housing authority; provided that not

19                   more than twenty-six per cent of the authority's

20                   workforce in any housing project maintained or

21                   operated by the authority shall be hired under the

22                   tenant hire program;



# S.B. NO. 3131

- 1       (22) Positions of the federally funded expanded food and  
2           nutrition program of the University of Hawaii that  
3           require the hiring of nutrition program assistants who  
4           live in the areas they serve;
- 5       (23) Positions filled by persons with severe disabilities  
6           who are certified by the state vocational  
7           rehabilitation office that they are able to perform  
8           safely the duties of the positions;
- 9       (24) The sheriff;
- 10      (25) A gender and other fairness coordinator hired by the  
11          judiciary;
- 12      (26) Positions in the Hawaii National Guard youth and adult  
13          education programs;
- 14      (27) In the state energy office in the department of  
15          business, economic development, and tourism, all  
16          energy program managers, energy program specialists,  
17          energy program assistants, and energy analysts;
- 18      (28) Administrative appeals hearing officers in the  
19          department of human services;
- 20      (29) In the Med-QUEST division of the department of human

S.B. NO. 3131

1 services, the division administrator, finance officer,  
2 health care services branch administrator, medical  
3 director, and clinical standards administrator;

4 (30) In the director's office of the department of human  
5 services, the enterprise officer, information security  
6 and privacy compliance officer, security and privacy  
7 compliance engineer, and security and privacy  
8 compliance analyst;

9 (31) The Alzheimer's disease and related dementia services  
10 coordinator in the executive office on aging;

11 [+] (32) [+] In the Hawaii emergency management agency, the  
12 executive officer, public information officer, civil  
13 defense administrative officer, branch chiefs, and  
14 emergency operations center state warning point  
15 personnel; provided that, for state warning point  
16 personnel, the director shall determine that  
17 recruitment through normal civil service recruitment  
18 procedures would result in delay or noncompliance;

19 [and]

20 [+] (33) [+] The executive director and seven full-time  
21 administrative positions of the school facilities  
22 authority[-]; and

S.B. NO. 3131

1        (34) Positions at a state small boat harbor filled by  
2                persons employed by any lessee of the department of  
3                land and natural resources for private development,  
4                management, and maintenance of a state boating  
5                facility.

6            The director shall determine the applicability of this  
7 section to specific positions.

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

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

12          "(a) Notwithstanding any law to the contrary, the board  
13 may lease fast lands and submerged lands within ~~[an]~~ any  
14 existing state boating facility, by public auction, a request  
15 for proposals, or by direct negotiation pursuant to section 171-  
16 59, and chapter 190D, for private development, management, and  
17 operation~~[, provided that any lease of fast lands or submerged~~  
18 ~~lands pursuant to a request for proposals shall be subject~~  
19 ~~to section 200-2.6, regardless to which state boating facility~~  
20 ~~the fast or submerged lands are attached].~~

21          As used in this section, the term "state boating facility"  
22 means a state small boat harbor, launching ramp, offshore

# S.B. NO. 3131

1 mooring, pier, wharf, landing, or any other area under the  
2 jurisdiction of the department pursuant to this chapter."

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

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

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

12 ~~(2) The fast land described as a portion of tax map key:~~  
13 ~~(1) 2-3-37-12, composed of approximately 112,580~~  
14 ~~square feet, presently used for harbor offices and~~  
15 ~~permitted vehicular parking; and~~

16 ~~(3) The fast land described as a portion of tax map key:~~  
17 ~~(1) 2-3-37-12, which is a triangular area located~~  
18 ~~Diamond Head of Mole B, presently used for permitted~~  
19 ~~vehicular parking."]~~

20 SECTION 4. (a) There is established a state boating  
21 facility lease pilot program within the department of land and

S.B. NO. 3131

1 natural resources to be implemented and managed by the division  
2 of boating and ocean recreation to allow the board of land and  
3 natural resources to lease one small boat harbor in its  
4 entirety, and fast lands and submerged lands within it, by  
5 public auction, request for proposals, or direct negotiation,  
6 for private development, management, and operation.

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

9 (c) The department of land and natural resources shall  
10 submit a report of its findings and recommendations, including  
11 any proposed legislation, to the legislature no later than  
12 twenty days prior to the convening of each regular session. The  
13 report shall include a recommendation on whether the pilot  
14 program should be continued, modified, or terminated.

15 (d) The state boating facility lease pilot program shall  
16 terminate on June 30, 2042.

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

20 SECTION 6. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.

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S.B. NO. 3131

1       SECTION 7.   This Act shall take effect upon its approval.

2

3

INTRODUCED BY: 

4

BY REQUEST

# S.B. NO. 3131

**Report Title:**

State Boating Facility Lease Program Pilot Program

**Description:**

Establishes a state boating facility lease pilot program within the Department of Land and Natural Resources. 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

DEPARTMENT: Land and Natural Resources

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

PURPOSE: To establish a state boating facility lease  
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  
chapter 76, 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), 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 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 also  
being made to section 200-2.5, HRS, as well  
as a 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 that are filled by  
employees of a private partner leasing or  
contracting with the Department would not be  
subject to the civil service law, which



would increase efficiency with the development, management, and maintenance of a state small boat harbor.

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.