

ACT 272

H.B. NO. 917

A Bill for an Act Relating to the Transfer of All Functions, Powers and Duties Involving the Regulation of Ocean Recreational Boating and Coastal Activities.

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

SECTION 1. The legislature recognizes that the principal function of the department of transportation is to provide for the transportation of people and goods into, out of, and within the State.

The boating program with the objective of providing boating and other ocean-based recreation programs does not fit into the primary functions of the department although some elements are intertwined with certain commercial harbor facilities and activities.

The coastal areas program with the objective of preserving and enhancing the natural beauty and unique characteristics of coastal areas also does not fit neatly into the primary functions of the department.

The legislature finds that ocean-based recreation and coastal activities in Hawaii are now controlled in part by two different agencies: the department of transportation and the department of land and natural resources. The activities of boating and other ocean recreational activities and their impact on the marine environment are inseparable, and jurisdiction for recreational waterborne activities and protection of the marine life should rest in one department.

The regulation and development of ocean-based recreation and coastal area use would better be accomplished under the umbrella of one central agency.

The legislature further finds that the transfer of the boating and coastal areas programs from the department of transportation to the department of land and natural resources is appropriate, because the department of land and natural resources will be able to address the impact an activity may have on the marine environment when it regulates small boat harbors, boating, and ocean-based recreation activities.

The purpose of this Act is to establish the department of land and natural resources as the agency responsible for overseeing and administering the boating and coastal areas programs and to provide for the orderly transfer of the jurisdiction, functions, powers, and duties of the boating and coastal areas programs, from the department of transportation to the department of land and natural resources including the transfer of personnel, records, equipment, appropriations, and other property.

This Act also provides that in the interim between the Act's effective date of July 1, 1991, and July 1, 1992, a management team shall be selected by the director of transportation and the chairperson of the board of land and natural resources, with necessary staff hired by the director of transportation and the chairperson of the board of land and natural resources, to develop the appropriate transitional plans, rework position descriptions, review personnel classifications, develop an organizational structure, and attend to other administrative details so that the newly transferred functions and personnel can be initially operational on July 1, 1992.

SECTION 2. Effective July 1, 1992, the Hawaii Revised Statutes is amended by adding a new subtitle and a new chapter to be appropriately designated and to read as follows:

**“SUBTITLE . OCEAN RECREATION AND COASTAL AREAS
CHAPTER
OCEAN RECREATION AND COASTAL AREAS PROGRAMS
PART I. GENERAL PROVISIONS**

§ -1 **Definitions.** As used in this chapter, unless the context otherwise requires:

“Beaches encumbered with easements in favor of the public” means any lands which lie along the shores of the State which are now, or may hereafter be, encumbered by easements granted in favor of the public for bathing, swimming, or other similar or related purposes and for foot passage.

“Board” means the board of land and natural resources.

“Chairperson” means the chairperson of the board of land and natural resources.

“Department” means the department of land and natural resources.

“Ocean waters” means all waters seaward of the shoreline within the jurisdiction of the State.

“Shoreline” means the upper reaches of the wash of the waves, usually evidenced by the edge of vegetation growth or by the upper limit of debris left by the wash of the waves.

§ -2 **Board of land and natural resources, powers and duties.** The board shall establish within the department a separate administrative unit which shall have the primary responsibility for administering the ocean recreation and coastal areas programs and performing the functions heretofore performed by the department of transportation.

§ -3 **Ocean recreation and coastal areas programs.** The board shall assume the following functions of the department of transportation:

- (1) Managing and administering the ocean-based recreation and coastal areas programs of the State;
- (2) Planning, developing, operating, administering, and maintaining

- small boat harbors, launching ramps, and other boating facilities and associated aids to navigation throughout the State;
- (3) Developing and administering an ocean recreation management plan;
 - (4) Administering and operating a vessel registration system for the State;
 - (5) Regulating the commercial use of boating facilities;
 - (6) Regulating boat regattas and other ocean water events;
 - (7) Administering a marine casualty and investigation program;
 - (8) Assisting in abating air, water, and noise pollution;
 - (9) Conducting public education in boating safety;
 - (10) Administering the boating special fund;
 - (11) Assisting in controlling shoreline erosion;
 - (12) Repairing seawalls and other existing coastal protective structures under the jurisdiction of the State; and
 - (13) Removing nonnatural obstructions and public safety hazards from the shoreline, navigable streams, harbors, channels, and coastal areas of the State.

§ -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, the vessels anchored or moored therein;
- (4) For the conduct of the public using small boat harbors, launching ramps, and other boating facilities owned or controlled by the State;
- (5) To regulate and control recreational and commercial use of small boat harbors, launching ramps, and other boating facilities owned or controlled by the State and the ocean waters and navigable streams of the State;
- (6) To prevent the discharge or throwing into small boat harbors, launching ramps, other boating facilities, ocean waters, and navigable streams, of rubbish, refuse, garbage, or other substances likely to affect the quality of the water or that contribute to making the small boat harbors, launching ramps, other boating facilities, ocean waters, and streams unsightly, unhealthful, or unclean, or that are liable to fill up, shoal, or shallow the waters in, near, or affecting small boat harbors, launching ramps, and other boating facilities and the ocean waters and navigable streams of the State, and likewise to prevent the escape of fuel or other oils or substances into the waters in, near, or affecting small boat harbors, launching ramps, or other boating facilities and the ocean waters and navigable streams of the State from any source point, including, but not limited to, any vessel or from pipes or storage tanks upon land. The rules may include:
 - (A) Requirements for permits and fees for:
 - (i) The mooring, docking, or anchoring of recreational and commercial vessels or the launching of recreational or commercial vessels at small boat harbors, launching ramps, and other boating facilities; or

- (ii) Other uses of these facilities;
- (B) Requirements for permits and fees for use of a vessel as a principal place of habitation while moored at a state small boat harbor;
- (C) Requirements governing:
 - (i) The transfer of any state commercial, mooring, launching, or any other type of use or other permit, directly or indirectly, including, but not limited to, the imposition or assessment of a business transfer fee upon transfer of ownership of vessels operating commercially from, within or in any way related to the state small boat harbors; and
 - (ii) The use of state small boat harbors, launching ramps, or other boating facilities belonging to or controlled by the State, including, but not limited to, the establishment of minimum amounts of annual gross receipts required to renew a commercial use permit, and conditions under which a state commercial, mooring, launching, or any other type of use or other permit may be terminated, canceled, or forfeited; and
- (D) Any other rule necessary to implement this chapter pertaining to small boat harbors, launching ramps, and other boating facilities belonging to or controlled by the State;
- (7) To continue the ocean recreational and coastal areas programs and govern the ocean waters and navigable streams of the State, and beaches encumbered with easements in favor of the public to protect and foster public peace and tranquility and to promote public safety, health, and welfare in or on the ocean waters and navigable streams of the State, and on beaches encumbered with easements in favor of the public. The rules may include:
 - (A) Regulating the anchoring and mooring of vessels, houseboats, and other contrivances outside of any harbor or boating facility, including:
 - (i) The designation of offshore mooring areas;
 - (ii) The licensing and registration of vessels, houseboats, and other contrivances; and the issuance of permits for offshore anchoring and mooring of vessels, houseboats, and other contrivances; and
 - (iii) The living aboard on such vessels, houseboats, or other contrivances while they are anchored or moored within ocean waters or navigable streams of the State.

The rules shall provide for consideration of environmental impacts on the State's aquatic resources in the issuance of any permits for offshore mooring;
 - (B) Safety measures, requirements, and practices in or on the ocean waters and navigable streams of the State;
 - (C) The licensing and registration of persons or organizations engaged in commercial activities in or on the ocean waters and navigable streams of the State;
 - (D) The licensing and registration of equipment utilized for commercial activities in or on the ocean waters and navigable streams of the State;
 - (E) For beaches encumbered with easements in favor of the

public, the prohibition or denial of the following uses and activities:

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

(b) All rules shall be adopted in accordance with chapter 91 and shall have the force and effect of law.

§ -5 Commercial harbors excluded. For purposes of this chapter, ocean waters and navigable streams shall not include the commercial harbors of the State.

§ -6 Limitation of private use of ocean waters and navigable streams. (a) No person shall erect or place any structure or similar object, or sink any type of watercraft or other sizeable object, or abandon any type of watercraft or other sizeable object, either sunk or unsunk, on or within the ocean waters or navigable streams of the State without a written permit from the department. The department may require any person violating this section to remove any structure, similar object, watercraft, or other sizeable object on or within the ocean waters or navigable streams of the State. If any person fails to remove the same within a time limit set by the department, the department may effect the removal and charge the person with the cost thereof. The department may enforce compliance with this section by the use of any appropriate remedy including, but not limited to, injunction or other equitable or legal process in the courts of the State.

(b) No person shall anchor, moor, or otherwise place any vessel, houseboat, or other contrivance on or within the ocean waters or navigable streams of the State without a permit from the department. This section shall not apply to:

- (1) Vessels owned by the United States;
- (2) Vessels engaged in interstate or foreign commerce; or
- (3) Pleasure craft or fishing vessels temporarily anchored for a period of less than seventy-two hours.

The department may require any person violating this section to remove any vessel, houseboat, or other contrivance from the ocean waters or navigable streams of the State. If any person fails to remove the same within the time limit set by the department, the department may effect the removal and charge the person with the cost thereof. The department may enforce compliance with this section by the use of any appropriate remedy, including, but not limited to, injunction or other equitable or legal process in the courts of the State. As used in this section:

“Contrivance” means any human-made object or artificial arrangement not used or intended to be used for transportation which may be floated upon or suspended within the water.

“Houseboat” means any vessel which is fitted for use as a permanent or temporary place of habitation, and is either stationary or capable of being moved by oars, sweeps, or towing.

“Vessel” means every description of watercraft used or capable of being used as a means of transportation on water, including, but not limited to, power boats, ships, tugs, sailing vessels, barges, scows, lighters, ferry boats, pleasure craft, floating equipment, floating gear, dry docks, and any and all other watercraft.

(c) The permittee shall pay fees to the department for the offshore mooring permit issued by the department. The fees shall be based on, but not limited to, the use of the vessel, its effect on the waters and aquatic resources of the State, and the administrative expenses incurred by the department and other state agencies in administering offshore mooring. All revenues collected under this section shall be deposited in the boating special fund.

§ -7 **Waiver of mooring charges.** The department shall waive the mooring charge for any and all sea scout craft using moorings belonging to or controlled by the State, when moorings are available as determined by the department; provided the craft are owned and used exclusively for the purpose of regular organized sea scout groups.

§ -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. 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.

§ -9 **Purpose and use of state small boat harbors.** 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 utilization of watercraft for sports, hobbies, or pleasure, and “commercial vessel activities” means the utilization 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 are used for recreational activities, the landing of fish, or commercial vessel activities shall be permitted to moor, anchor, or berth at such harbor or use any of its facilities. Vessels used for purposes of recreational boating activities which 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. The chairperson may adopt rules pursuant to chapter 91 to further implement this section.

§ -10 **Permits and fees for state small boat harbors.** (a) No person shall moor a vessel in a state small boat harbor without:

- (1) First obtaining a use permit from the department; and
- (2) Being the owner of the vessel.

(b) In order to obtain a permit or a permit renewal, the owner of a vessel shall provide, at the owner's own expense:

- (1) A marine surveyor's inspection no more than two years old, certifying that the surveyor has inspected the vessel and considers it to fulfill the requirements set by the department; and
- (2) Documentation that the person is the owner of the vessel. The documentation shall meet requirements established by the department.

(c) The permittee shall pay moorage fees to the department for the use permit which 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 fees shall be established by the department and shall be higher for nonresidents;
- (2) 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) 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 which shall be:
 - (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 non-resident;

provided that the liveaboard fees established by this subsection 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 1 of each year; and

- (4) 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 a percentage of the gross revenues derived from the use of the vessel which shall be not less than two times the moorage fee assessed for a recreational vessel of the same size.

(d) The department shall not renew or issue a permit to a person who is not the owner of the vessel which is moored or which the person desires to moor in a state small boat harbor. Any individual who is an owner of a vessel used for commercial purposes, including commercial fishing as a principal means of livelihood, and possesses a valid mooring permit or commercial permit, or both, in accordance with the rules adopted by the chairperson pursuant to chapter 91,

may transfer ownership of the vessel from personal ownership to corporate or other business ownership without terminating the right to moor or operate the vessel under the permit or permits. The existing permit or permits shall be reissued in the name of the transferee corporation or other business entity.

For the purposes of this section, "person" means any individual, firm, partnership, corporation, trust, association, joint venture, organization, institution, or any other legal entity, and "owner" includes the legal owner of a vessel where there is no security interest held by anyone on the vessel, a buyer under a purchase money security interest, a debtor under any security interest, a demise charterer of a vessel, or a lessee or charterer of a vessel under a lease or charter which provides the lessee or charterer with exclusive right to possession of the vessel to the exclusion of the lessor or the person from whom the vessel is chartered. No permittee shall be allowed to moor a leased vessel in a berth unless the terms of the lease are set at fair market value. A "legal owner" includes a person who holds unencumbered title to a vessel or is a secured party under a security interest in the vessel. An owner who is issued a permit to moor a vessel in a state small boat harbor shall notify the department in writing of a transfer of interest or possession in the vessel within seven days of transfer.

Any person owning an interest in a corporation or other business entity possessing a valid commercial permit issued by the department, in accordance with rules adopted by the chairperson pursuant to chapter 91, may transfer any or all stock or other interest to another person without terminating the right of the corporation or business entity to retain or renew its commercial permit or any other permit issued to it by the department; provided that:

- (1) The corporation or business entity has been engaged in the same commercial vessel activity, as defined in section -9, for a minimum of one year; and
- (2) The seller shall pay the department a business transfer fee based on the passenger-carrying capacity of the vessels owned or operated by the corporation or business entity as provided by rules adopted by the chairperson pursuant to chapter 91.

Any person possessing a commercial permit shall be required to meet minimum revenue standards, as a condition of retaining or renewing the commercial permit.

(e) The department may designate moorage space within state small boat harbors to accommodate commercial fishing vessels and transient vessels.

(f) All revenues from the foregoing operations shall be deposited in the boating special fund.

§ -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 -9 and -10.

§ -12 Administration of state small boat harbors. The department shall include a separate administrative unit which shall administer the state small boat harbors and the state comprehensive recreational boating program. The unit shall:

- (1) Adopt necessary rules under section -4 for the purposes of this section;
- (2) Organize a comprehensive recreational boating program; and
- (3) Develop standard permits, and fees, for moorage in state small boat harbors to comply with section -10.

§ -13 **Marine inspections.** (a) The department shall:

- (1) Develop a list of minimum requirements for the marine inspection of vessels seeking permits to moor in state small boat harbors;
- (2) Approve qualified marine surveyors to inspect vessels seeking permits to moor in state small boat harbors; and
- (3) Approve a fee schedule for marine surveyors' inspections.

(b) Vessels failing the marine inspection for a permit or a permit renewal shall have thirty days to correct deficiencies and complete the inspection.

(c) Owners of vessels that fail the marine inspection may contest the inspection before an arbitration board of three inspectors approved by the department and the original inspector.

§ -14 **Violation of rules; penalty.** Any person who violates any rule adopted and published by the department under this part or who violates this part, shall be fined not more than \$10,000 for each offense, and any vessel, the agents, owner, or crew of which violate the rules of the department or this part, shall be fined not more than \$10,000 for each violation; provided that in addition to or as a condition to the suspension of the fines and penalties, the court may deprive the offender of the privilege of operating or mooring any vessel in state waters for a period of not more than two years.

§ -15 **Vessels or property taken into legal custody; unauthorized control.** No person shall exercise control over a vessel or other property that is under legal custody, seizure, or detention by the department.

§ -16 **Mooring of unauthorized vessel in state small boat harbors and offshore mooring areas; impoundment and disposal proceedings.** (a) No person shall moor a vessel in a state small boat harbor or offshore mooring area without obtaining a use permit; nor shall a person continue to moor a vessel in any state small boat harbor or offshore mooring area if the use permit authorizing the vessel to moor has expired or otherwise been terminated. A vessel moored without a use permit or with a use permit that has expired or been terminated is an unauthorized vessel and is subject to subsections (b) to (d).

(b) The department shall cause to be placed upon, or as near to the unauthorized vessel as possible, a notice to remove vessel, which shall indicate that the vessel is in violation of this section, the date and time the notice was posted, and that the vessel must be removed within seventy-two hours from the time the notice was posted.

(c) An unauthorized vessel may be impounded by the department at the sole cost and risk of the owner of the vessel, if the vessel is not removed after the seventy-two hour period or if during that period the vessel is removed and remoored in the harbor or mooring or anchorage area or any other state harbor or mooring or anchorage area without a use permit.

(d) Custody of an unauthorized vessel shall be returned to the person entitled to possession upon payment to the department of all fees and costs due, and fines levied by the department or a court. In addition, the department, within seventy-two hours of impoundment, shall send by certified mail, return receipt requested, a notice of impoundment to the registered owner or operator of the impounded vessel. The owner or operator of the impounded vessel shall have ten days after receipt of notice of impoundment of the vessel to request in writing an administrative hearing. This administrative hearing is solely for the purpose of allowing the owner or operator of an impounded vessel to contest the basis given by the department for the impoundment of the vessel. The hearing must be held

within seventy-two hours of the department's receipt of the written request. The chairperson shall adopt rules pursuant to chapter 91 to implement the requirement for this post-seizure administrative hearing process.

PART II. BOATING LAW

§ **-21 Declaration of policy.** The legislature hereby finds, determines, and declares that this part is necessary to promote and attain:

- (1) The full use and enjoyment of the waters of the State;
- (2) The safety of persons and the protection of property as related to the use of the waters of the State;
- (3) A reasonable uniformity of laws and rules regarding the use of the waters of the State; and
- (4) Conformity with, and implementation of, federal laws and requirements.

§ **-22 Purpose.** The purpose of this part is to authorize the chairperson to adopt rules for the regulation of vessels and their use in the waters of the State, which, together with the provisions of this part, shall conform with and supplement federal laws and requirements to fully implement the declared policy of section -21.

§ **-23 Definitions.** As used in this part unless the context otherwise requires:

"Boat dealer" means a person engaged wholly or partly, for gain or compensation, in the business of selling vessels or offering vessels for sale, buying or taking in vessels for the purpose of resale, or exchanging vessels.

"Boat livery" means the business of holding out vessels for rent, lease, or charter.

"Boat manufacturer" means a person engaged in:

- (1) The manufacture, construction, or assembly of boats or associated equipment;
- (2) The manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly; or
- (3) The importation into the United States for sale of boats, associated equipment, or components thereof.

"Boating accident" means any occurrence involving a vessel or its equipment that results in:

- (1) The death of a person;
- (2) The loss of consciousness by any person, the receipt of medical treatment by any person, or the incapacity of any person for more than twenty-four hours;
- (3) Damage to the vessel and other property totalling more than \$200; or
- (4) The disappearance of a person from the vessel under circumstances that indicate death or injury.

"Certificate" means certificate of number for an undocumented vessel.

"Coast Guard" means the Coast Guard of the United States, or its successor agency.

"Commercial high speed boating" means the use of an open ocean racing boat to provide high speed rides to passengers who pay compensation for the rides. "Commercial high speed boating" does not include:

- (1) The use of an open ocean racing boat during an official racing competition; or
- (2) The use of an open ocean racing boat while practicing for racing competition; provided that no passenger pays compensation for riding the boat during the practice.

“Federal laws and requirements” means all statutes, rules, and other laws of the United States, which may apply to any and all subject matter of this part, and of the rules adopted pursuant to this part.

“Length” means the measurement of a vessel from end to end over the deck.

“Open ocean racing boat” means a motorized vessel which:

- (1) Is designed, modified, or restored for the primary purpose of high speed boat racing; and
- (2) Has the capacity to carry not more than the operator and five passengers.

“Operate” means to navigate or otherwise use a vessel on or in the waters of the State.

“Operator” means a person who operates, or who has charge of the navigation or use of, a vessel.

“Parasailing” means the activity in which an individual is transported or carried aloft by a parachute, sail, or other material attached to a towline which is towed by a vessel.

“Person” means an individual, partnership, firm, corporation, association, or other legal entity.

“State” means the State of Hawaii.

“Thrill craft” means any motorized vessel which is generally less than thirteen feet in length as manufactured, is capable of exceeding a speed of twenty miles per hour, and has the capacity to carry not more than the operator and one other person while in operation. The term includes, but is not limited to, a jet ski, wet bike, surf jet, miniature speed boat, and hovercraft.

“Undocumented vessel” means any vessel which does not have and is not required to have a valid marine document as a vessel of the United States.

“Vessel” means all description of watercraft, used or capable of being used as a means of transportation on or in the water, except a seaplane.

“Water sledding” means the activity in which an individual is transported or carried over the surface of the water on an apparatus that is more than twelve inches wide and is attached to a towline which is towed by a vessel. If the apparatus is round with a hollow center, the width shall be measured as a straight line:

- (1) Starting from a point on the outer edge of the apparatus;
- (2) Bisecting the hollow center; and
- (3) Ending at the farthest point on the opposite outer edge.

“Waters of the State” means any waters within the jurisdiction of the State, the marginal seas adjacent to the State, and the high seas when navigated as part of a journey or ride to or from the shores of the State.

§ -24 Rules. The department shall adopt rules pursuant to chapter 91 to implement the policy and purpose of this part, and to classify vessels into appropriate categories and classes.

The department shall adopt rules pursuant to chapter 91 with respect to the following:

- (1) The registration and numbering of vessels;
- (2) The operation, use, and equipment of vessels on or in the waters of the State;

- (3) The conduct of persons involved in boating accidents and in the reporting of accidents and other casualties and losses to the department; and
- (4) The designation of areas of the waters of the State and time periods during which thrill craft may be operated, and waters on or above which, and time periods during which, persons may engage in parasailing, commercial high speed boating, and water sledding; provided that in designating the areas, the department shall use the official recommendation of the National Marine Fisheries Service with regard to the protection of protected marine life and habitats in adopting rules to implement this section, except as otherwise provided by law.

§ -25 **Fines and penalties.** Any person violating any of the provisions of this part, or of the rules adopted pursuant to this part, shall be guilty of a misdemeanor; provided that in addition to, or as a condition to the suspension of, the fines and penalties, the court may deprive the offender of the privilege of operating any vessel, including, but not limited to, any thrill craft or vessel engaged in parasailing, in the waters of the State for a period of not more than two years.

§ -26 **Arrest or citation.** (a) Except when required by state law to take immediately before a district judge a person arrested for a violation of any provision of this part, including any rule adopted pursuant to this part, any person authorized to enforce this part, hereinafter referred to as an enforcement officer, upon arresting a person for violation of any provision of this part, including any rule adopted pursuant to this part, in the discretion of the enforcement officer, shall either:

- (1) Issue to the purported violator a summons or citation, printed in the form described, warning the purported violator to appear and answer to the charge against the purported violator at a certain place and at a time within seven days after such arrest; or
- (2) Take the purported violator without unnecessary delay before a district judge.

(b) The summons or citation shall be printed in a form comparable to the form of other summonses and citations used for arresting offenders and shall be designed to provide for inclusion of all necessary information. The form and content of such summons or citation shall be adopted or prescribed by the district courts.

The original of the summons or citation shall be given to the purported violator and the other copy or copies distributed in the manner prescribed by the district courts; provided that the district courts may prescribe alternative methods of distribution for the original and any other copies.

Summonses and citations shall be consecutively numbered and the carbon copy or copies of each shall bear the same number.

(c) Any person who fails to appear at the place and within the time specified in the summons or citation issued to the person by the enforcement officer, upon the person's arrest for violation of any provision of this part, including any rule adopted pursuant to this part, shall be guilty of a misdemeanor.

In the event any person fails to comply with a summons or citation issued to that person, or if any person fails or refuses to deposit bail as required, the enforcement officer shall cause a complaint to be entered against that person and secure the issuance of a warrant for the person's arrest.

- (d) When a complaint is made to any prosecuting officer of the violation

of any provision of this part, including any rule adopted thereunder, the enforcement officer who issued the summons or citation shall subscribe to it under oath administered by another official of the department whose name has been submitted to the prosecuting officer and who has been designated by the chairperson to administer the same.

§ -27 **Police reports.** For the purpose of enforcement, it shall be incumbent upon the director of public safety and the police chief of each county to transmit to the department a copy of every investigation report submitted by the director of public safety and the police chief's subordinate officers which relate to boating accidents or the theft, loss, or recovery of vessels required to be registered and numbered pursuant to section -31.

§ -28 **Duty of operator involved in, and at the scene of, a boating accident; limitations on liability.** (a) An operator involved in a boating accident, if and so far as the operator can do so without serious danger to the operator's own vessel, or person aboard, shall render such assistance as may be practicable and necessary to other persons and any property in order to save them from danger caused by the accident. The operator shall also make every reasonable effort to identify oneself by giving the operator's name and address and the identification of the vessel the operator was operating to:

- (1) All persons injured;
- (2) All owners of properties damaged; and
- (3) All operators of other vessels involved in the accident.

It shall further be the operator's duty to reasonably cooperate with all duly authorized personnel of governmental agencies investigating the accident.

(b) Any person who renders assistance in compliance with subsection (a) and any person who in good faith without remuneration or expectation of remuneration renders assistance at the scene of a vessel collision, accident, or other casualty without objection of any person assisted, shall not be liable for any civil damages resulting from the person's acts or omissions in providing or arranging towage, medical treatment, or other assistance, except for damages as may result from the person's gross negligence or wanton acts or omissions.

§ -29 **Accident reports by operators; confidential nature.** The operator of:

- (1) Any vessel involved in a boating accident in the waters of the State; and
- (2) Any vessel required to be registered, or registered, with the department and involved in a boating accident in any waters,

shall file a written report with the department truthfully setting forth all relevant information required by the department; provided that the report need not be filed with the department where the operator is required by federal laws and requirements to report the accident to the Coast Guard.

The department shall transmit information of all boating accidents to the Coast Guard as may be requested by the agency for compilation, analysis, and publication of statistics.

The accident reports required by this section shall be used only to enable the department and the Coast Guard to make findings with respect to the causes of accidents and recommendations for their prevention, and to compile information for use in making statistical reports; except that the accident reports may also be used in the prosecution of the filing of false accident reports.

§ -30 **Reciprocal agreements and courtesy.** The department may enter into, amend, revise, suspend, or revoke reciprocal agreements or arrangements with appropriate and duly authorized agencies of other jurisdictions whereby vessels properly numbered and equipped under the laws and regulations of this State are granted the same or substantially similar privileges, exemptions, and benefits enjoyed by vessels properly registered and equipped in such other jurisdictions in exchange for substantially similar privileges, exemptions, and benefits granted to properly registered and equipped vessels from other jurisdictions by the State. The department by appropriate rules may define the extent and nature of privileges, exemptions, and benefits which may be extended, as a matter of courtesy, to vessels properly numbered and equipped in other jurisdictions not covered by reciprocal agreements or arrangements.

Notwithstanding the preceding language of this section, the department shall recognize the validity of a number awarded to any vessel by:

- (1) Another state under a numbering system approved by the Coast Guard under appropriate federal laws and requirements; or
- (2) By the Coast Guard, for a period of at least sixty days.

§ -31 **Vessels required to be registered and numbered.** Every undocumented vessel shall be registered and numbered before its use or operation on or in the waters of the State on an annual basis in accordance with the rules of the department except:

- (1) Foreign vessels temporarily using the waters of this State;
- (2) Public vessels of the United States;
- (3) Ships' life boats; and
- (4) Other vessels exempted by the department, if federal laws and requirements permit the department to exempt the vessels.

§ -32 **Fees and charges.** (a) Except for vessels for which fees and charges are provided in subsection (b), the department shall assess and collect from the owner of each vessel required to be registered and numbered by section -31, the following fees and charges:

- (1) Initial annual registration fee. For the issuance of an original certificate:
 - (A) For each vessel less than twenty feet in length, \$13;
 - (B) For each vessel twenty feet or more in length, \$25; and
 - (C) For each amphibious vehicle licensed as a motor vehicle, \$15;
- (2) Annual certificate renewal fee. For the annual renewal of a certificate:
 - (A) For each vessel less than twenty feet in length, \$10;
 - (B) For each vessel twenty feet or more in length, \$15; and
 - (C) For each amphibious vehicle licensed as a motor vehicle, \$10;
- (3) Reregistration fee. For the reregistration of a vessel, after a certificate has been canceled or voided, the appropriate amount provided in paragraph (1);
- (4) Transfer fee. For the transfer of a certificate, \$5;
- (5) Certificate and registration sticker replacement fee. For the issuance of a replacement certificate or a replacement set of vessel registration stickers, \$5;
- (6) Certificate modification fee. For modifying a certificate, \$5;
- (7) Penalty charges for late registration, etc. For each month or fraction thereof that a registration, renewal, reregistration, or transfer is delinquent, one-tenth of the appropriate fee shall be added to the

normal fee, and the department may take such other enforcement action it deems appropriate; and

- (8) Exemptions. The department may reasonably establish, by rules, exemptions from the fees required by this section.

(b) For vessels owned by or operated under the custody or control of a boat manufacturer or boat dealer, the manufacturer or dealer shall pay, in lieu of the fees and charges provided for in subsection (a):

- (1) Boat manufacturer and boat dealer annual certificate fee. For each certificate, a fee of \$20;
- (2) Annual certificate renewal fee. For the annual renewal of a certificate, a fee of \$15;
- (3) Certificate reissuance. For the reissuance of a certificate after a certificate has been canceled or voided, a fee of \$20; and
- (4) Certificate and registration sticker replacement fee. For the replacement of a certificate or registration sticker, a fee of \$5.

§ -33 **Future fee and charge increases or decreases.** Notwithstanding section -32, all future fee and charge increases or decreases for vessels required to be registered and numbered pursuant to section -31 or for vessels owned by or operated under the custody of a boat manufacturer or boat dealer shall be established by rules adopted by the department pursuant to chapter 91. Fees and charges established pursuant to this section shall supersede the fees and charges set forth in section -32.

§ -34 **Disposition of revenues.** All fees and penalties collected pursuant to section -32 shall be deposited in the boating special fund.

§ -35 **Uniformity.** This part shall be interpreted and construed in the manner best able to effectuate the general purposes of attaining uniformity in the laws of the State, and with the laws of other states and the United States.

§ -36 **Preemption of local law and special rules.** If any ordinance or rule of any county of the State conflicts or is inconsistent with this part or with the rules adopted pursuant thereto, the ordinance or rule shall be void.

Any county of the State, at any time, may make formal request to the chairperson for the department to adopt special rules with reference to the operation and use of vessels on any waters within its jurisdiction. The request shall set forth the reasons which make these special rules necessary or appropriate.

The department may make special rules with reference to the operation and use of vessels on any waters of the State as may be reasonably necessary to implement the declared policy of section -21.

§ -37 **Operation of thrill craft; parasailing; water sledding; commercial high speed boating.** (a) No person shall operate a thrill craft unless the person is fifteen years of age or older.

(b) The department shall adopt rules to designate areas where, and time periods during which, thrill craft may be operated and parasailing, water sledding, and commercial high speed boating may be engaged in.

(c) No person shall operate a thrill craft in the waters of the State, except:

- (1) In areas and during time periods designated by the department; and
- (2) Through areas designated by the department to serve as avenues for the ingress and egress of thrill craft between the areas designated under paragraph (1) and the shore.

(d) No person shall:

(1) Engage in parasailing; or

(2) Operate a motorized vessel towing a person engaged in parasailing; on or above the waters of the State, except on or above areas and during time periods designated by the department.

(e) No person shall:

(1) Engage in water sledding; or

(2) Operate a motorized vessel towing a person engaged in water sledding;

in the waters of the State, except in areas and during time periods designated by the department.

(f) No person shall engage in commercial high speed boating or operate an open ocean racing boat for commercial high speed boating purposes in the waters of the State, except:

(1) In areas and during time periods designated by the department; and

(2) Through areas designated by the department to serve as avenues for the ingress and egress of open ocean racing boats between the areas designated under paragraph (1) and the shore.

(g) During all weekends and state and federal holidays, no commercial operator shall operate a thrill craft, or engage in parasailing, water sledding, or commercial high speed boating, or operate a motor vessel towing a person engaged in water sledding or parasailing in Kaneohe Bay and Maunaloa Bay on Oahu as provided for in section -38.

(h) On Sundays, all commercial ocean recreation activities, including those listed in this section, shall be prohibited on Oahu in Kaneohe Bay and Maunaloa Bay as provided for in section -38.

(i) Between December 15 and May 15 of each year, no person shall operate a thrill craft, or engage in parasailing, water sledding, or commercial high speed boating, or operate a motor vessel towing a person engaged in water sledding or parasailing on the west and south shore of Maui as provided in section -38.

(j) All commercial use and operator permits issued by the department for commercial thrill craft and parasailing activities shall be nontransferable and shall expire upon the dissolution, sale, or transfer of any or all interests in the corporation, business entity, or person to which the permit was originally issued.

§ -38 Ocean recreation management areas. (a) Notwithstanding any other law to the contrary, no commercial operator shall operate a thrill craft, engage in parasailing, water sledding, or commercial high speed boating, operate a motorized vessel towing a person engaged in parasailing, or operate a motor vessel towing a person engaged in water sledding during all weekends and state and federal holidays on Oahu:

(1) In Kaneohe Bay from Mokapu Point to Makahonu Point which includes commercial zones a, b, c, d, e, f, g, i, and j; and

(2) In Maunaloa Bay from Kawaihoa (Portlock) Point to Waiupe Peninsula and commercial zones a, b, and c.

(b) Notwithstanding any other law to the contrary, all commercial ocean recreation activities shall be prohibited on all Sundays on Oahu in Kaneohe Bay and Maunaloa Bay as defined in subsection (a)(1) and (2).

(c) Notwithstanding any other law to the contrary, no person shall operate a thrill craft, engage in parasailing, operate a motorized vessel towing a person engaged in parasailing, engage in commercial water sledding or commercial high speed boating, or operate a commercial motor vessel towing a person engaged in

water sledding between December 15 and May 15 of each year in the waters of west and south Maui from Pu'u Ola'i to Hawea Point.

(d) The department may adopt rules pursuant to chapter 91 to further implement this section.

PART III. ABANDONED VESSELS ON PUBLIC AND PRIVATE PROPERTY GENERALLY

§ -41 **Disposition by chairperson of certain abandoned vessels.** Any vessel which:

- (1) Has been left unattended for a continuous period of more than thirty days; and
- (2) Is within the waters of the State or on public property, or is on private property without authorization of the owner or occupant of the property,

may be caused by the chairperson to be taken into custody and disposed of pursuant to this part.

§ -42 **Notice to owner.** Upon taking custody of any such vessel, a written notice shall immediately be posted on the vessel and a duplicate original thereof sent by registered or certified mail, with a return receipt requested, to the registered owner of the vessel at the registered owner's last known address and to all lien holders shown on the records of the department. The notice shall contain a brief description of the vessel, the location of custody, and the intended disposition of the vessel if not repossessed within twenty days after the mailing of the notice. A notice need not be sent to any purported owner or any other person whose interest in the vessel is not recorded with the department.

§ -43 **Public auction.** If the vessel is not repossessed within twenty days after the mailing of the notice, the vessel shall be disposed of by public auction, through oral tenders, or by sealed bids, after public advertisement has been made once in a newspaper of general circulation; provided that the public auction shall not be held less than five days after the publication of the advertisement. Where no bid is received, the vessel may be sold by negotiation, disposed of as junk, or donated to any governmental agency.

§ -44 **Possession by interested party.** Any person having an interest in the vessel may take possession of the vessel prior to the date of public auction upon payment to the department of all use fees, towing, handling and storage charges, appraisal and advertising expenses, and any other expenses incurred by the department in connection with the vessel. If the person taking possession of the vessel is not the registered owner, the person, prior to taking possession of the vessel, shall pay the foregoing expenses and post security satisfactory to the department which shall not exceed the value of the vessel. The security, if not forfeited, shall be returned to the person posting it within two years after receipt.

§ -45 **When public auction not required.** Public auction shall not be required when the appraised value of any vessel is less than \$250, as determined by an independent appraiser who has at least one year of experience in the sale or purchase of vessels. Upon that determination the chairperson may sell the vessel by negotiation, dispose of it as junk, or donate the vessel to any governmental agency.

§ -46 **Effect of sale.** The transfer of interest by sale hereunder shall be evidenced by a bill of sale from the department, shall be considered a transfer by operation of law, and shall be governed by provisions applicable thereto.

§ -47 **Disposition of proceeds.** The department shall deposit that portion of the proceeds of the sale of a vessel as shall represent the mooring or other fees and charges due the department, the expenses of the auction, and any other expense incurred by the department in taking into custody and disposing of an abandoned vessel, into the boating special fund from which the expenses incurred in connection with the abandoned vessel, were paid. The balance, if any, shall be deposited into the general fund of the State. The owner may recover any such balance of the proceeds from the State only if the owner files a claim therefor with the department of budget and finance within one year after the execution of the bill of sale. If no claim is made within the year allowed, the money shall become a state realization. A lien holder shall receive priority in payment from the balance of the proceeds to the extent of the lien holder's lien on the vessel. If the proceeds of the sale are insufficient to cover the mooring and other fees and charges, the expenses of the auction and the other expenses incurred by the department in taking into custody and disposing of the abandoned vessel, the department may bring an action for the deficiency in a court of appropriate jurisdiction against the registered owner or any person who had an interest in the vessel when custody was taken by the department.

§ -48 **Derelict vessel.** A vessel which has been left unattended for a continuous period of more than twenty-four hours is a derelict if:

- (1) The vessel is sunk or in immediate danger of sinking, is obstructing a waterway, or is endangering life or property; or
- (2) The vessel has been moored or otherwise left in the waters of the State or on public property contrary to law, or rules having the force and effect of law, or the vessel has been left on private property without authorization of the owner or occupant of the property and if:
 - (A) The vessel's registration certificate or marine document has expired and the registered owner no longer resided at the address listed in the vessel registration or marine document records of the department or the United States Coast Guard;
 - (B) The last registered owner of record disclaims ownership and the current owner's name or address cannot be determined;
 - (C) The vessel identification numbers and other means of identification have been removed so as to hinder or nullify efforts to locate or identify the owner; or
 - (D) The vessel registration records of the department and the marine document records of the United States Coast Guard contain no record that the vessel has ever been registered or documented and the owner's name or address cannot be determined.

§ -49 **Disposition of derelict vessel.** The chairperson may cause a derelict vessel to be immediately taken into custody. Upon taking custody of a derelict vessel the chairperson shall concurrently:

- (1) Publish a notice of intended disposition, once, in a newspaper of general circulation;

- (2) When possible, post a notice of intended disposition on the vessel; and
- (3) Serve a duplicate original of the notice of intended disposition by certified mail, return receipt requested on:
 - (A) The registered owner of the vessel, if known, at the registered owner's last known address or the address on record with the United States Coast Guard; and
 - (B) All lien holders who have properly filed a financing statement, referencing the name of the registered owner, in the bureau of conveyances or who are shown on the records of the department or United States Coast Guard.

If the vessel is not repossessed within twenty days after the publication or mailing of the notice, whichever occurs later, the vessel may be disposed of by negotiated sale except that, when two or more purchasers indicate an interest in purchasing the vessel, the vessel will be sold at public auction to the highest bidder. If no purchaser expresses a desire to purchase the vessel, the vessel may be destroyed.

PART IV. VESSELS ABANDONED ON BUSINESS PREMISES OF PERSONS ENGAGED IN REPAIR BUSINESS

§ -51 Disposition of vessels by persons in vessel repair business.

When any person abandons a vessel upon the premises of a vessel repair business, the owner of the business or the owner's representative may sell or dispose of the vessel in accord with this part.

§ -52 When vessel deemed abandoned. A vessel shall be deemed to be abandoned upon satisfaction of all the following conditions:

- (1) The service requested or required by a person whose vessel is towed or brought to a vessel repair business, such as towing and rendering estimates of the cost of repairs, has been performed;
- (2) No authorization is given to perform any further service respecting the vessel but the vessel is left on the repair business premises;
- (3) The owner of the repair business or the owner's authorized representative has given notice by registered or certified mail, to the registered owner of the vessel at the address on record at the vessel repair business and the address on record in the department or United States Coast Guard, and to any person with a recorded interest in the vessel stating that, if the vessel is not repossessed within thirty days after the mailing of the notice, it will be sold or disposed of. The notice also shall contain a description of the vessel and its location. The notice need not be sent to an owner or any person with an unrecorded interest in the vessel whose name or address cannot be determined; and
- (4) The vessel is not repossessed within the thirty-day period.

§ -53 Sale or disposition of vessel. When a vessel is abandoned, the owner of the vessel repair business, or the owner's authorized representative, after one public advertisement in a newspaper of general circulation in the State, may negotiate a sale of the vessel or dispose of it; provided that the vessel shall not be sold or disposed of less than five days after the publication of the advertisement.

§ -54 Disposition of proceeds. The authorized seller of the vessel shall

be entitled to the proceeds of the sale to the extent of the compensation that is due the seller for services rendered in connection with the vessel, including reasonable and customary charges for towing, handling, and storage, and the cost of notices and advertising required by this part. A lien holder shall receive priority in payment from the balance to the extent of the lien holder's lien. Any remaining balance shall be forwarded to the registered owner of the vessel, if the registered owner can be found. If the registered owner cannot be found, the balance shall be deposited with the director of finance of the State and shall be paid out to the registered owner of the vessel, if a proper claim is filed thereof within one year from the execution of the sale agreement. If no claim is made within the year allowed, the money shall become a State realization.

§ -55 **Effect of transfer of title.** The transfer of title and interest by sale under this part is a transfer by operation of law; provided that a bill of sale executed by an authorized seller is satisfactory evidence authorizing the transfer of the title or interest.

PART V. TRESPASS TO VESSEL

§ -61 **Definitions.** As used in this part:

"Enforcement officer" means a police officer and any other state or county officer charged with the enforcement of state laws.

"Vessel" means every description of watercraft used or capable of being used as a means of transportation on water.

"Waters of the State" means any waters within the jurisdiction of the State, the marginal seas adjacent to the State, and the high seas when navigated as part of a journey or ride to or from the shores of the State.

§ -62 **Trespass to vessel; penalty.** Whoever, without right, boards or remains in or upon any vessel of another within the waters of the State shall be guilty of a misdemeanor.

§ -63 **Questioning and detaining suspected persons aboard a vessel.** An enforcement officer may detain any person found upon a vessel under circumstances as reasonably justify a suspicion that the person boarded without permission for the purpose of demanding, and may demand of the person, the person's name, address, and the nature of the person's business upon the vessel. If the enforcement officer has reason to believe that the person has no right to be upon the vessel, the enforcement officer may arrest the person without a warrant on the charge of violating section -62.

PART VI. VESSEL IDENTIFICATION NUMBERS

§ -71 **Hull, defined.** As used in this part, "hull" means the shell, frame, or body of a vessel, exclusive of masts, yards sails, riggings, machinery, and equipment.

§ -72 **Defacing, etc., vessel hull identification numbers.** No person shall willfully deface, destroy, remove, or alter the vessel hull identification number which is carved, burned, stamped, embossed, or otherwise permanently affixed to the hull of a vessel by the manufacturer, or by the owner in the case of restoration, for the purpose of identifying the hull. This section does not prohibit the restoration by an owner of an original number when the restoration is

authorized by the department, nor prevent any manufacturer from placing in the ordinary course of business, numbers or marks upon new hulls.

§ -73 **Unlawful to possess certain vessels or hulls.** No person shall possess a vessel or hull, knowing that the vessel hull identification number, placed on the same by the manufacturer or the owner for the purpose of identification, has been changed, altered, erased, or mutilated for the purpose of changing the identity of the vessel or hull thereof. Any vessel or hull from which the vessel hull identification number carved, burned, stamped, embossed, or otherwise permanently affixed to the hull by the manufacturer or by the owner, has been removed, defaced, or altered shall be caused by the chairperson to be taken into custody and, if not identified, disposed of pursuant to part III. If identified, the chairperson shall:

- (1) Notify the owner at the owner's last known address or the address shown on the records of the department or United States Coast Guard, and all lien holders who have properly filed a financing statement, referencing the name of the registered owner, in the bureau of conveyances or who are shown on the records of the department or United States Coast Guard;
- (2) Authorize restoration of the original vessel hull identification number or if unknown, assign a new number; and
- (3) Restore the vessel or hull to the owner upon payment to the State of all costs and expenses incurred by the State causing the vessel to be taken into custody.

§ -74 **Penalty.** Any person who violates this part shall be guilty of a misdemeanor."

SECTION 3. Effective July 1, 1992, section 26-15, Hawaii Revised Statutes, is amended to read as follows:

"§26-15 **Department of land and natural resources.** (a) The department of land and natural resources shall be headed by an executive board to be known as the board of land and natural resources, except for matters relating to the state water code where the commission on water resource management shall have exclusive jurisdiction and final authority.

The board shall consist of six members, one from each land district and two at large. The appointment, tenure, and removal of the members and the filling of vacancies on the board shall be as provided in section 26-34. The governor shall appoint the chairperson of the board from among the members thereof.

The board may delegate to the chairperson such duties, powers, and authority, or so much thereof, as may be lawful or proper for the performance of the functions vested in the board.

The chairperson of the board shall serve in a full-time capacity. The chairperson [shall], in that capacity, shall perform those duties, and exercise those powers and authority, or so much thereof, as may be delegated by the board.

(b) The department shall manage and administer the public lands of the State and minerals thereon[,] and all water and coastal areas of the State except the commercial harbor areas of the State, including the soil conservation function, the forests and forest reserves, aquatic life [and], wildlife resources, aquaculture programs, [and] state parks, including historic sites[.], and all activities thereon and therein including, but not limited to, boating, ocean recreation, and coastal areas programs.

(c) The functions and authority heretofore exercised by the commissioner and board of public lands (including the hydrography division and the bureau of conveyances), the Hawaii water authority, the commission on ground water resources, the Hawaii land development authority, the soil conservation committee, and the commission on historical sites and the function of managing the state parks and the function of promoting the conservation, development and utilization of forests, including the regulatory powers over the forest reserve, aquatic life and wildlife resources of the State heretofore exercised by the board of commissioners of agriculture and forestry as heretofore constituted are transferred to the department of land and natural resources established by this chapter.”

SECTION 4. Effective July 1, 1992, section 171-3, Hawaii Revised Statutes, is amended to read as follows:

“§171-3 Department of land and natural resources. The department of land and natural resources shall be headed by an executive board to be known as the board of land and natural resources. The department shall manage, administer, and exercise control over public lands, the water resources, ocean waters, navigable streams, coastal areas (excluding commercial harbor areas), and minerals and all other interests therein and exercise such powers of disposition thereof as may be authorized by law. The department shall also manage and administer the state parks, historical sites, forests, forest reserves, [aquatic] aquatic life and aquaculture programs, aquatic life sanctuaries, public fishing areas, boating, ocean recreation, and coastal programs, wildlife, wildlife sanctuaries, game management areas, public hunting areas, natural area reserves, and other functions assigned by law.”

SECTION 5. Effective July 1, 1992, section 199-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The conservation and resources enforcement officers, with respect to all state lands, including public lands, state parks, forest reserves, forests, aquatic life and wildlife areas, and any other lands and waters subject to the jurisdiction of the department of land and natural resources, shall:

- (1) Enforce title 12, and chapter 6E, and rules adopted thereunder;
- (2) Investigate complaints, gather evidence, conduct investigations, and conduct field observations and inspections as required or assigned;
- (3) Cooperate with enforcement authorities of the State, counties, and federal government in development of programs and mutual agreements for conservation and resources enforcement activities within the State;
- (4) Cooperate with established search and rescue agencies of the counties and the federal government in developing plans and programs, and mutual aid agreements for search and rescue activities within the State;
- (5) Check and verify all leases, permits, and licenses issued by the department of land and natural resources;
- (6) Enforce the laws relating to firearms, ammunition and dangerous weapons contained in chapter 134;
- (7) Enforce the rules[, at the request of the department of transportation,] relative to the control and management of [the beaches encumbered with easements in favor of the public and ocean waters adopted by the director of transportation under chapter 266] boating

facilities owned or controlled by the State, ocean waters and navigable streams and any activities thereon or therein, and beaches encumbered with easements in favor of the public, and the rules [for the regulation of] regulating vessels and their use in the waters of the State [adopted by the department of transportation under chapter 267]; and

- (8) Carry out such other duties and responsibilities as the board of land and natural resources [may] from time to time may direct.”

SECTION 6. Effective July 1, 1992, section 205A-48, Hawaii Revised Statutes, is amended to read as follows:

“**§205A-48 Conflict of other laws.** In case of a conflict between the requirements of any other state law or county ordinance regarding shoreline set-back lines, the more restrictive requirements shall apply in furthering the purposes of this part. Nothing contained in this part shall be construed to diminish the jurisdiction of the state department of transportation over wharves, airports, docks, piers, [small boat,] or other commercial harbors, and any other maritime [or water sports recreational] facilities [to be] constructed [on state land] by the State; provided that such plans are submitted for the review and information of the officer of the respective agency charged with the administration of the county zoning laws, and found not to conflict with any county ordinances, zoning laws, and building [code.] codes.”

SECTION 7. Effective July 1, 1992, section 248-8, Hawaii Revised Statutes, is amended to read as follows:

“**§248-8 Special funds in treasury of State.** There are created in the treasury of the [state] State three special funds to be known, respectively, as the state highway fund, the airport revenue fund, and the boating special fund. All taxes collected under chapter 243 in each calendar year, except the “county of Hawaii fuel tax”, “city and county of Honolulu fuel tax”, “county of Maui fuel tax”, and “county of Kauai fuel tax”, shall be deposited in the state highway fund; provided that all taxes collected under chapter 243 in respect to gasoline or other aviation fuel sold for use in or used for airplanes shall be set aside in the airport revenue fund; and provided further that all taxes collected under chapter 243 with respect to liquid fuel sold for use in or used for small boats shall be deposited in the boating special fund. “Small boats” as used herein means all vessels and other watercraft except those operated in overseas transportation beyond the [state] State and ocean-going tugs and dredges. The [director of transportation] chairperson of the board of land and natural resources is directed, [prior to July 1, 1973,] from July 1, 1992, and every three years thereafter to establish standards or formulas that will as equitably as possible establish the [percentage of] total taxes collected under chapter 243 in each fiscal year that are derived from the sale of liquid fuel for use in or used for small boats. The amount so determined shall be deposited in the boating special fund.”

SECTION 8. Effective July 1, 1992, section 266-1, Hawaii Revised Statutes, is amended to read as follows:

“**§266-1 Department of transportation; harbors; jurisdiction.** All [ocean waters and navigable streams, and all] commercial harbors and roadsteads, and all commercial harbor and waterfront improvements[,] belonging to or controlled by

the State, and all vessels and shipping within the commercial harbors[,] and roadsteads[, waters, and streams] shall be under the care and control of the department of transportation.

For the purpose of this chapter, "commercial harbor" means a harbor or off-shore mooring facility which is primarily for the movement of commercial cargo, passenger and fishing vessels entering, leaving, or travelling within the State, and facilities and supporting services for loading, off-loading, and handling of cargo, passengers, and vessels."

SECTION 9. Effective July 1, 1992, section 266-2, Hawaii Revised Statutes, is amended to read as follows:

"§266-2 Powers and duties of department. (a) The department of transportation shall [have]:

- (1) Have and exercise all the powers and shall perform all the duties which may lawfully be exercised by or under the State relative to the control and management of [the shores, shore waters, navigable streams,] commercial harbors, commercial harbor and waterfront improvements, ports, docks, wharves, piers, quays, bulkheads, and landings belonging to or controlled by the State, and the shipping using the same[, and shall have]:
- (2) Have the authority to use and permit and regulate the use of the commercial docks, wharves, piers, [bulkheads,] quays, bulkheads, and landings belonging to or controlled by the State for receiving or discharging passengers and for loading and landing merchandise, with a right to collect wharfage and demurrage thereon or therefor[, and, subject]:
 - (A) Services rendered in mooring commercial vessels[, charges for the];
 - (B) The use of commercial moorings belonging to or controlled by the State[, rates or charges for wharfage];
 - (C) Wharfage or demurrage[, rents or charges for warehouses or warehouse];
 - (D) Warehouse space, [for offices or] office space, [for] and storage [of] space for freight, goods, wares and merchandise[, for storage space, for the use of donkey engines,]; and
 - (E) The use of derricks[,] or other equipment belonging to the State[,] or under the control of the department[, and to make];
- (4) Make other charges including toll or tonnage charges on freight passing over or across docks, wharves, [docks,] piers, quays, bulkheads, or landings[. The department shall likewise have power to appoint];
- (5) Appoint and remove clerks, [wharfingers,] harbor agents and their assistants, [pilot boat crews,] and all such other employees as may be necessary, and to fix their compensation; [to make]
- (6) Adopt rules pursuant to chapter 91 and not inconsistent with law; and [generally shall]
- (7) Generally have all powers necessary [fully] to fully carry out this chapter.

(b) Notwithstanding any law or provision to the contrary, the department of transportation is authorized to plan, construct, operate, and maintain any

commercial harbor facility in the State, including, but not limited to, the acquisition and use of lands necessary to stockpile dredged spoils, without the approval of county agencies.

All moneys appropriated for commercial harbor improvements, including new construction, reconstruction, repairs, salaries, and operating expenses, shall be expended under the supervision and control of the department, subject to this chapter and chapter 103.

All contracts and agreements authorized by law to be entered into by the department shall be executed on its behalf by the director of transportation.

(c) The department shall prepare and submit annually to the governor a report of its official acts during the preceding fiscal year, together with its recommendations as to commercial harbor improvements throughout the State.”

SECTION 10. Effective July 1, 1992, section 266-3, Hawaii Revised Statutes, is amended to read as follows:

“§266-3 Rules [and regulations]. (a) The director of transportation may [from time to time] adopt rules [not inconsistent with law] as [the director may deem] necessary [respecting] to:

- (1) Regulate the manner in which all vessels may enter and moor, anchor or dock in the [ocean waters, navigable streams,] commercial harbors, ports, and roadsteads of the State, or move from one dock, wharf, [bulkhead,] pier, quay, bulkhead, landing, anchorage, or mooring to another within the [waters, streams,] commercial harbors, ports, or roadsteads; [the]
- (2) The examination, guidance, and control of harbor masters and their assistants[,] and their conduct while on duty; [the]
- (3) The embarking or disembarking of passengers; [the]
- (4) The expeditious and careful handling of freight, goods, wares, and merchandise of every kind which may be delivered for shipment or discharged on the [wharves,] commercial docks, wharves, piers, quays, bulkheads, or landings belonging to or controlled by the State; and [defining]
- (5) Defining the duties and powers of carriers, shippers, and consignees respecting passengers, freight, goods, wares, and merchandise in and upon the [wharf, landing, dock, quay, or bulkhead,] docks, wharves, piers, quays, bulkheads, or landings within the commercial harbors, ports, and roadsteads of the State. The director may also make further rules [and regulations] for the safety of the docks, wharves, [landings,] piers, quays, bulkheads, and landings on, in, near, or affecting a commercial harbor and waterfront improvements belonging to or controlled by the State.

(b) The director may also[, from time to time, make, alter,] adopt, amend, and repeal such rules [not inconsistent with law as shall be deemed] as are necessary [for the]:

- (1) For the proper regulation and control of all shipping in the commercial harbors[, ocean waters, and navigable streams] belonging to or controlled by the State, and of the entry, departure, mooring, and berthing of vessels therein, and for the regulation and control of all other matters and things connected with such shipping [in all the harbors, ocean waters, and navigable streams; and rules and regulations to];

- (2) To prevent the discharge or throwing into [these] commercial harbors[, ocean waters, and navigable streams,] of rubbish, refuse, garbage, or other substances [liable to make] likely to affect water quality or that contribute to making such harbors[, ocean waters, and navigable streams] unsightly, unhealthful, or unclean, or that are liable to fill up [or] shoal or shallow [the] waters in, near, or affecting the commercial harbors[, ocean waters, and streams]; and [like-wise to]
- (3) To prevent the escape of fuel or other oils or substances into the waters in, near, or affecting commercial harbors[, ocean waters, and streams, either] from any source point, including, but not limited to, any vessel or [from] pipes or storage tanks upon the land.

[(c) In addition to the powers vested in the director by sections 266-1 and 266-2, the director, to protect and foster public peace and tranquility and to promote public safety, health, and welfare in or on the ocean waters, navigable streams, and on beaches encumbered with easements in favor of the public, may adopt rules governing the ocean waters, navigable streams, and beaches encumbered with easements in favor of the public. The rules to be adopted under this subsection may include:

- (1) Safety measures, requirements, and practices in or on the ocean waters and navigable streams of the State;
- (2) The licensing and registration of persons or organizations engaged in commercial activities in or on the ocean waters and navigable streams of the State;
- (3) The licensing and registration of equipment utilized for commercial activities in or on the ocean waters and navigable streams of the State;
- (4) For beaches encumbered with easements in favor of the public, the prohibition or denial of the following uses and activities:
 - (A) Commercial activities;
 - (B) The storage, parking, and display of any personal property;
 - (C) The placement of structures or obstructions;
 - (D) The beaching, landing, mooring, or anchoring of any vessels; and
 - (E) Other uses or activities that may interfere with the public use and enjoyment of these beaches; and
- (5) Any other matter relating to the safety, health, and welfare of the general public.

Management of all other beaches, shores, and submerged lands, belonging to or controlled by the State, shall be the responsibility of the department of land and natural resources.

For the purpose of this chapter, if not inconsistent with the context:

“Beaches encumbered with easements in favor of the public” means any lands which lie along the shores of the State which are now, or may hereafter be, encumbered by easements granted in favor of the public for bathing purposes and for foot passage.

“Ocean waters” means all waters seaward of the shoreline within the jurisdiction of the State.

“Shoreline” means the upper reaches of the wash of the waves, usually evidenced by the edge of vegetation growth or by the upper limit of debris left by the wash of the waves.]

[(d)] (c) The rules [and regulations] shall be adopted in the manner prescribed in chapter 91 and shall have the force and effect of law.”

SECTION 11. Effective July 1, 1992, section 266-21.4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department shall (1) develop a list of minimum requirements for the marine inspection of vessels seeking permits to moor in state [small boat] commercial harbors, (2) approve qualified marine surveyors to inspect vessels seeking permits to moor in state [small boat] commercial harbors, and (3) approve a fee schedule for marine surveyors’ inspections.”

SECTION 12. Effective July 1, 1992, section 266-24, Hawaii Revised Statutes, is amended to read as follows:

“**§266-24 Enforcement.** For the purpose of the enforcement of this chapter and of all rules adopted pursuant to this chapter [and the enforcement of title 12, chapter 6E, and chapter 266 and rules adopted thereunder, and chapter 267 and rules adopted thereunder,] the powers of police officers are conferred upon the director of transportation and any officer, employee, or representative of the department of transportation[, or employee of a county appointed by the director]. Without limiting the generality of the foregoing, the director and any person appointed by the director hereunder may serve and execute warrants, arrest offenders, and serve notices and orders. Every state and county officer charged with the enforcement of laws and ordinances shall enforce and assist in the enforcement of this chapter and of all rules adopted pursuant to this chapter [and in the enforcement of title 12, chapter 6E, and chapter 266 and rules adopted thereunder, and chapter 267 and rules adopted thereunder].”

SECTION 13. Effective July 1, 1992, section 266-27, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No person shall moor a vessel in a state commercial harbor without obtaining a use permit; nor shall a person continue to moor a vessel in any state commercial harbor[,] if the use permit authorizing the vessel to moor has expired or otherwise been terminated. A vessel moored without a use permit or with a use permit that has expired or been terminated is an unauthorized vessel and is subject to subsections (b) to (e).”

SECTION 14. Effective July 1, 1992, section 266-27, Hawaii Revised Statutes, is amended by amending subsections (c), (d), and (e) to read as follows:

“(c) An unauthorized vessel may be impounded by the department at the sole cost and risk of the owner of the vessel, if such a vessel is not removed after the seventy-two hour period or if during said period the vessel is removed and re-moored in said harbor or any other state commercial harbor without a use permit.

(d) Custody of an [unauthorized] impounded vessel shall be returned to the person entitled to possession upon payment to the department of all fees and costs due, and fines levied by a court. In addition, the department [shall], within seventy-two hours of impoundment, shall send by certified mail, return receipt requested, a notice of impoundment to the registered owner or operator of any [unauthorized] impounded vessel. The owner or operator of an [unauthorized] impounded vessel shall have ten days after receipt of notice of impoundment of the vessel to request in writing an administrative hearing. This administrative hearing is solely for the purpose of allowing the owner or operator of an [unauthorized] impounded vessel to contest the basis given by the department for the

[administrative] impoundment of the vessel. The administrative hearing must be held within seventy-two hours of the department's receipt of the written request. The department shall adopt rules pursuant to chapter 91 to implement the requirement for this post-seizure administrative hearing process.

(e) Any unauthorized vessel impounded under this section, which remains unclaimed by the person entitled to possession, the registered owner or a lien holder for more than thirty days, may be sold by the department at public auction [in accordance with the procedures set forth in chapter 267A].”

SECTION 15. Effective July 1, 1992, section 662-15, Hawaii Revised Statutes, is amended to read as follows:

“§662-15 Exceptions. This chapter shall not apply to:

- (1) Any claim based upon an act or omission of an employee of the State, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation is valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state officer or employee, whether or not the discretion involved has been abused;
- (2) Any claim arising in respect of the assessment or collection of any tax, or the detention of any goods or merchandise by law enforcement officers;
- (3) Any claim for which a remedy is provided elsewhere in the laws of the State;
- (4) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights;
- (5) Any claim arising out of the combatant activities of the Hawaii national guard and Hawaii state defense force during time of war, or during the times the Hawaii national guard is engaged in federal service pursuant to sections 316, 502, 503, 504, 505, or 709 of Title 32 of the United States Code;
- (6) Any claim arising in a foreign country; or
- (7) Any claim arising out of the acts or omissions of any boating enforcement officer [appointed under section 267-6].”

SECTION 16. Effective July 1, 1992, section 266-16, Hawaii Revised Statutes, is repealed.

SECTION 17. Effective July 1, 1992, section 266-18, Hawaii Revised Statutes, is repealed.

SECTION 18. Effective July 1, 1992, section 266-20, Hawaii Revised Statutes, is repealed.

SECTION 19. Effective July 1, 1992, section 266-21, Hawaii Revised Statutes, is repealed.

SECTION 20. Effective July 1, 1992, section 266-21.1, Hawaii Revised Statutes, is repealed.

SECTION 21. Effective July 1, 1992, section 266-21.2, Hawaii Revised Statutes, is repealed.

SECTION 22. Effective July 1, 1992, section 266-21.3, Hawaii Revised Statutes, is repealed.

SECTION 23. Effective July 1, 1992, Chapter 267, Hawaii Revised Statutes, is repealed.

SECTION 24. Effective July 1, 1992, Chapter 267A, Hawaii Revised Statutes, is repealed.

SECTION 25. Effective July 1, 1992, Chapter 267B, Hawaii Revised Statutes, is repealed.

SECTION 26. Effective July 1, 1992, Chapter 267C, Hawaii Revised Statutes, is repealed.

SECTION 27. **Plans and preparation for transfers.** The director of transportation and the chairperson of the board of land and natural resources shall appoint a management team and may hire necessary staff, who shall be exempt from chapters 76 and 77, Hawaii Revised Statutes, to develop the appropriate transition plans, rework position descriptions, revise personnel classifications, develop an organizational structure, and attend to other administrative details so that the transfer of functions can be implemented on July 1, 1992.

SECTION 28. **Transfer of functions.** Effective July 1, 1992, the jurisdiction, functions, powers, duties, and authority heretofore exercised by the department of transportation pursuant to chapters 266 and 267, Hawaii Revised Statutes, relating to boating and other ocean-based recreational activities and coastal areas shall be transferred to and conferred upon the department of land and natural resources by this Act and shall be performed and enforced in the same manner as previously authorized, entitled, or obligated except as otherwise authorized, directed, or instructed by this Act.

The department of land and natural resources shall succeed to all of the rights and powers previously exercised, and all of the duties and obligations incurred by the department of transportation in the exercise of the functions, powers, duties, and authority transferred, whether such functions, powers, duties, and authority are mentioned in or granted by any law, contract, or other document.

All rules, policies, procedures, guidelines, and other material adopted or developed by the department of transportation to implement provisions of the Hawaii Revised Statutes which are reenacted or made applicable to the department of land and natural resources by this Act, shall remain in full force and effect until amended or repealed by the chairperson of the board of land and natural resources pursuant to chapter 91, Hawaii Revised Statutes. In the interim, every reference to the department of transportation or director of transportation in those rules, policies, procedures, guidelines, and other material is amended to refer to the department of land and natural resources or chairperson of the board of land and natural resources as appropriate.

All deeds, leases, contracts, loans, agreements, permits, or other documents executed or entered into by or on behalf of the department of transportation pursuant to the provisions of the Hawaii Revised Statutes, which are reenacted or made applicable to the department of land and natural resources by this Act, shall remain in full force and effect. Effective July 1, 1992, every reference to the department of transportation or the director of transportation therein shall be

construed as a reference to the department of land and natural resources or the chairperson of the board of land and natural resources as appropriate.

SECTION 29. Transfer of personnel. All officers and employees whose functions are transferred to the department of land and natural resources by this Act shall be transferred with their current functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act. No officer or employee of the State shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave or other employee benefit or privilege as a consequence of this Act.

In the event that an office or position held by an officer or employee having tenure is abolished, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the State with the same pay and classification and shall be transferred to some other office or position for which the officer or employee is eligible under the personnel laws of the State as determined by the head of the department of personnel services or the governor.

SECTION 30. Transfer of records, equipment, appropriations, and other property. Effective July 1, 1992, all records, equipment, files, supplies, contracts, books, papers, documents, maps, appropriations, and other property heretofore made, used, acquired, or held by the department of transportation in the exercise of the functions to be transferred by this Act shall be transferred with the functions to which they relate to the department of land and natural resources.

SECTION 31. Enforcement by the marine patrol. Pursuant to section 1 of Act 211, Session Laws of Hawaii 1989, the law enforcement and security functions and employees of the department of transportation shall be transferred to the department of public safety effective July 1, 1991. It is the intent of the legislature that the marine patrol, which is currently under the department of transportation and will be transferred to the department of public safety on July 1, 1991, shall be primarily responsible for the enforcement of boating, ocean recreational, and coastal area programs pursuant to chapter . The department of land and natural resources shall cooperate with the department of public safety to ensure the effective coordination of resource management, conservation, education, enforcement, and control with regard to the enforcement of chapter .

SECTION 32. Federal aid, contract and bond obligations; not impaired. It is the intent of this Act to neither jeopardize the receipt of any federal aid nor to impair the obligation of the State or any agency thereof to persons with which it has existing contracts or to the holders of any bond issued by the State or by any such agency, and to the extent, and only to the extent, necessary to effectuate this intent, the governor may modify the strict provisions of this Act, but shall promptly report any such modification with reasons therefor to the legislature at its next session thereafter for review by the legislature.

SECTION 33. Use of state lands for the boating program. All executive orders, revocable permits, easements, and rights of entry for the use of state lands issued and granted to the department of transportation for use in connection with the boating program shall be withdrawn or terminated and appropriate land dispositions for use in connection with the boating program may be made by the board of land and natural resources, as appropriate, subsequent to the transfer of the boating program to the department of land and natural resources.

SECTION 34. Department of public safety report. The department of public safety shall report to the legislature on how the marine patrol transferred from the department of transportation is being assimilated into the department of public safety, how the marine patrol is being utilized, and how the marine patrol is functioning and an assessment of those functions under the department of public safety no later than twenty days before the convening of the regular session of 1992.

SECTION 35. Legislative auditor report. The legislative auditor shall report to the legislature on the effectiveness of the transfer of the marine patrol from the department of transportation to the department of public safety and the potential transfer and merger of the division of conservation and resource enforcement with the marine patrol in the department of public safety for the effective coordination of resource management, conservation, education, enforcement, and control no later than twenty days before the convening of the regular session of 1993.

SECTION 36. Conflict with provisions of this Act. All acts passed by the legislature during this regular session of 1991, whether enacted before or after the effective date of this Act, shall be amended to conform to this Act unless such acts specifically provide that this Act is being amended.

SECTION 37. Construction; severability. This Act shall be liberally construed in order to accomplish the purposes set forth herein. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 38. There is appropriated out of the boating special fund the sum of \$150,000, or so much thereof as may be necessary for fiscal year 1991-1992, to carry out the purposes of this Act.

The sum appropriated shall be expended by the department of transportation.

SECTION 39. Statutory material to be repealed is bracketed.¹ New statutory material is underscored.

SECTION 40. This Act shall take effect on July 1, 1991, except that specific provisions of this Act shall take effect as otherwise specified in this Act.

(Approved June 17, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.