

ACT 289

H.B. NO. 2682

A Bill for an Act Relating to Commercial Activities on Ocean Waters.

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

SECTION 1. The purpose of this Act is to authorize the department of land and natural resources to regulate commercial enterprises that operate out of private marinas and use state waters or marine resources. It is not the intent of this Act to provide for additional regulation of existing regulated commercial enterprises, but to address currently unregulated activities only.

SECTION 2. Section 200-3, Hawaii Revised Statutes, is amended to read as follows:

“[§200-3] 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;] state waters and marine resources, including operations originating from private marinas;
- (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.”

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

“(a) The chairperson may adopt rules necessary:

- (1) To regulate the manner in which all vessels may enter the ocean waters and navigable streams of the State and moor, anchor, or dock at small boat harbors, launching ramps, and other boating facilities owned or controlled by the State;
- (2) To regulate the embarking and disembarking of passengers at small boat harbors, launching ramps, other boating facilities, and public beaches;
- (3) For the safety of small boat harbors, launching ramps, and other boating facilities, and the vessels anchored or moored therein;
- (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:]~~, including:
 - (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:]~~, including:

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

For the purposes of this paragraph:

"Commercial activity" means to engage in any action or attempt to engage in any action for compensation in any form. The action or actions may include providing or attempting to provide guide services, charters, tours, and transportation to and from the location or locations for which such services are provided.

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

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 Statutory material to be repealed is bracketed and stricken.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

SECTION 5. This Act shall take effect on July 1, 2012.

(Approved July 9, 2012.)