

## ACT 42

S.B. NO. 795

A Bill for an Act Relating to State Small Boat Harbor Fees.

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

SECTION 1. The legislature finds that the department of land and natural resources' division of boating and ocean recreation is responsible for operating and maintaining dozens of facilities and installations for the boating public in addition to regulating ocean recreation activities in state ocean waters from the shoreline to three nautical miles from shore.

The division of boating and ocean recreation is responsible for operating and maintaining seventeen small boat harbors statewide. The small boat harbor program, which had a \$300,000,000 backlog in deferred maintenance projects, was transferred from the department of transportation to the department of land and natural resources in 1991. Adjusted for inflation, the deferred maintenance balance is equivalent to approximately \$570,000,000 in 2021. The current deferred maintenance balance of the state small boat harbor program is approximately \$310,000,000, a roughly forty-six per cent decrease since 1991, when adjusted for inflation. While the department of land and natural resources has been able to incrementally decrease the deferred maintenance balance, inflation and rising costs have outpaced, and continue to outpace, the division of boating and ocean recreation's revenue generation capabilities and the legislature's ability to fund maintenance projects through capital funds. The legislature recognizes that the coronavirus disease 2019 (COVID-19) pandemic has exacerbated economic issues statewide, affecting the boating and ocean recreation program just as much as other government programs.

Generally, the small boat harbor program operates at a loss, with only a few small boat harbors generating revenue from mooring fees sufficient to offset costs. The legislature notes that the inability to collect adequate small boat harbor fees is one of the factors preventing the division of boating and ocean recreation from generating sufficient revenue. Continuing inadequate revenue generation will lead to a reduction in services offered by the division of boating and ocean recreation, increased delays in addressing maintenance needs at small

boat harbors, and a potential inability to maintain clean and sanitary facilities for the public.

The legislature further finds that public health and safety are at risk if the small boat harbor program cannot increase revenues. Enforcement patrols are necessary to reduce criminal activity and provide regular police presence in division of boating and ocean recreation facilities.

Additionally, the legislature recognizes that improving the division of boating and ocean recreation's ability to generate revenue will help the division to better maintain and repair small boat harbors and fund enforcement efforts through the department of land and natural resources' division of conservation and resources enforcement.

Accordingly, the purpose of this Act is to:

- (1) Require the division of boating and ocean recreation to set its small boat harbor mooring and liveboard fees at fair market value, as determined by a state-licensed appraiser, without separate nonresident fees and cost-of-living adjustments; and
- (2) Allow the division of boating and ocean recreation an additional option in determining commercial ocean operation fees.

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

“(c) The permittee shall pay moorage fees to the department for the use permit that shall be based on but not limited to the use of the vessel, ~~[its]~~ the vessel's effect on the harbor, use of facilities, and the cost of administering ~~[this]~~ the mooring program; ~~[and, furthermore:]~~ provided that:

- (1) Except for commercial maritime activities ~~[where there is]~~ in which a tariff is established by the department of transportation, moorage fees shall be established by appraisal by a state-licensed appraiser approved by the department ~~[and shall be higher for nonresidents than for residents. The moorage fees shall be set by appraisal categories schedule A and schedule B, to be determined by the department, and may be increased annually by the department, to reflect a cost of living index increase; provided that:~~
  - (A) Schedule A shall include existing mooring permittees; and
  - (B) Schedule B shall apply to all new mooring applicants and transient slips on or after July 1, 2011;

~~provided further that schedule A rates shall be increased by the same amount each year so that schedule A rates equal schedule B rates by July 1, 2014];~~
- (2) For commercial maritime activities ~~[where there is]~~ in which a tariff is established by the harbors division of the department of transportation, the department may adopt the published tariff of the harbors division of the department of transportation or establish the fee by appraisal by a state-licensed appraiser approved by the department;
- (3) An application fee shall be collected when applying for moorage in state small boat harbors and shall thereafter be collected annually when the application is renewed~~[- The];~~ provided that the application fee shall be~~;~~
  - (A) ~~Set]~~ set by the department; ~~[and~~
  - (B) ~~Not less than \$100 for nonresidents;]~~
- (4) If a recreational vessel is used as a place of principal habitation, the permittee shall pay, in ~~[addition to]~~ in lieu of the moorage fee~~;~~

required by paragraph (1), a monthly liveaboard fee that shall be [calculated at a rate of:

(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 nonresident;~~

provided that the liveaboard fees established by this paragraph 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 July 1 of each year;] two times the moorage fee that would otherwise be assessed for a vessel of the same size;

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

(A) ~~Three~~ per cent of the gross revenues derived from the use of the vessel; [~~or two~~]

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

(C) Two times the moorage fee that would otherwise be assessed for a recreational vessel of the same size[; whichever is greater; and];

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

(7) All fees established by appraisal pursuant to this subsection shall be set at fair market value.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 8, 2021.)