



GOV. MSG. NO. 872

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 8, 2008

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith SB2196 SD2 HD2 CD1, without my approval, and with the statement of objections relating to the measure.

SB2196 SD2 HD2 CD1

A BILL FOR AN ACT RELATING TO COMMERCIAL
ACTIVITIES ON OCEAN WATERS.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

July 8, 2008

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 2196

Honorable Members
Twenty-Fourth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 2196, entitled "A Bill for an Act Relating to Commercial Activities on Ocean Waters."

The purpose of this bill is to regulate commercial activities in the Waianae Coast ocean waters that originate from a private marina. This bill is objectionable because it is unnecessary and vague.

Act 6, Special Session Laws of Hawaii 2005, and Act 314, Session Laws of Hawaii 2006, authorized \$120,000 in general funds to complete a baseline environmental study of the Waianae Coast ocean area for the purpose of establishing a Waianae Coast ocean recreation management area (ORMA). The purpose of establishing an ORMA is to resolve user conflicts through rulemaking for that ORMA. The baseline environmental study is expected to be completed in July 2008. Once the baseline environmental study is completed, rulemaking based on the study may commence, and such rulemaking may address any needed regulation of commercial activities in the ORMA, including those originating from a private marina.

The establishment of a Waianae Coast ORMA is authorized under current law. Senate Bill No. 2196 does not

STATEMENT OF OBJECTIONS
SENATE BILL NO. 2196
Page 2

provide any required statutory authority for the establishment of a Waianae Coast ORMA.

Furthermore, Senate Bill No. 2196 is vague. Senate Bill No. 2196 is unclear as to what extent commercial activities within a private marina itself are intended to be regulated, what circumstances would warrant such regulation, and how such regulation may be enforced.

For the foregoing reasons, I am returning Senate Bill No. 2196 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "Linda Lingle", written in a cursive style.

LINDA LINGLE
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO COMMERCIAL ACTIVITIES ON OCEAN WATERS.

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

1 SECTION 1. The purpose of this Act is to authorize the
2 department of land and natural resources to regulate those
3 commercial enterprises that operate out of private marinas.

4 It is not the intent of this Act to provide for additional
5 regulation of existing regulated commercial enterprises, but to
6 address only currently unregulated activities.

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

9 "~~§~~200-3~~§~~ **Ocean recreation and coastal areas programs.**

10 The board shall assume the following functions of the department
11 of transportation:

12 (1) Managing and administering the ocean-based recreation
13 and coastal areas programs of the State;

14 (2) Planning, developing, operating, administering, and
15 maintaining small boat harbors, launching ramps, and
16 other boating facilities and associated aids to
17 navigation throughout the State;



2011/11/17

- 1 (3) Developing and administering an ocean recreation
- 2 management plan;
- 3 (4) Administering and operating a vessel registration
- 4 system for the State;
- 5 (5) Regulating the [~~commercial~~] commercially permitted use
- 6 of both governmental and private boating facilities;
- 7 provided that no new permit shall be required for, or
- 8 new regulation shall apply to, activities permitted or
- 9 regulated under any other chapter;
- 10 (6) Regulating boat regattas and other ocean water events;
- 11 (7) Administering a marine casualty and investigation
- 12 program;
- 13 (8) Assisting in abating air, water, and noise pollution;
- 14 (9) Conducting public education in boating safety;
- 15 (10) Administering the boating special fund;
- 16 (11) Assisting in controlling shoreline erosion;
- 17 (12) Repairing seawalls and other existing coastal
- 18 protective structures under the jurisdiction of the
- 19 State; and
- 20 (13) Removing nonnatural obstructions and public safety
- 21 hazards from the shoreline, navigable streams,
- 22 harbors, channels, and coastal areas of the State."



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

3 "(a) The chairperson may adopt rules necessary:

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

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

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

15 (4) For the conduct of the public using small boat
16 harbors, launching ramps, and other boating facilities
17 owned or controlled by the State;

18 (5) To regulate and control recreational and commercial
19 use of small boat harbors, launching ramps, and other
20 boating facilities owned or controlled by the State
21 and the ocean waters and navigable streams of the
22 State;



1 (6) To prevent the discharge or throwing into small boat
2 harbors, launching ramps, other boating facilities,
3 ocean waters, and navigable streams, of rubbish,
4 refuse, garbage, or other substances likely to affect
5 the quality of the water or that contribute to making
6 the small boat harbors, launching ramps, other boating
7 facilities, ocean waters, and streams unsightly,
8 unhealthful, or unclean, or that are liable to fill
9 up, shoal, or shallow the waters in, near, or
10 affecting small boat harbors, launching ramps, and
11 other boating facilities and the ocean waters and
12 navigable streams of the State, and likewise to
13 prevent the escape of fuel or other oils or substances
14 into the waters in, near, or affecting small boat
15 harbors, launching ramps, or other boating facilities
16 and the ocean waters and navigable streams of the
17 State from any source point, including, but not
18 limited to, any vessel or from pipes or storage tanks
19 upon land. The rules may include:

20 (A) Requirements for permits and fees for:

21 (i) *The mooring, docking, or anchoring of*

22 recreational and commercial vessels or the



1 launching of recreational or commercial
2 vessels at small boat harbors, launching
3 ramps, and other boating facilities; or
4 (ii) Other uses of these facilities;

5 (B) Requirements for permits and fees for use of a
6 vessel as a principal place of habitation while
7 moored at a state small boat harbor;

8 (C) Requirements governing:

9 (i) The transfer of any state commercial,
10 mooring, launching, or any other type of use
11 or other permit, directly or indirectly,
12 including, but not limited to, the
13 imposition or assessment of a business
14 transfer fee upon transfer of ownership of
15 vessels operating commercially from, within
16 or in any way related to the state small
17 boat harbors; and

18 (ii) The use of state small boat harbors,
19 launching ramps, or other boating facilities
20 belonging to or controlled by the State,
21 including, but not limited to, the
22 establishment of minimum amounts of annual



1 gross receipts required to renew a
2 commercial use permit, and conditions under
3 which a state commercial, mooring,
4 launching, or any other type of use or other
5 permit may be terminated, canceled, or
6 forfeited; and

7 (D) Any other rule necessary to implement this
8 chapter pertaining to small boat harbors,
9 launching ramps, and other boating facilities
10 belonging to or controlled by the State;

11 (7) To continue the ocean recreational and coastal areas
12 programs and govern the ocean waters and navigable
13 streams of the State, and beaches encumbered with
14 easements in favor of the public to protect and foster
15 public peace and tranquility and to promote public
16 safety, health, and welfare in or on the ocean waters
17 and navigable streams of the State, and on beaches
18 encumbered with easements in favor of the public. The
19 rules may include:

20 (A) Regulating the anchoring and mooring of vessels,
21 houseboats, and other contrivances outside of any
22 harbor or boating facility, including:



- 1 (i) The designation of offshore mooring areas;
- 2 (ii) The licensing and registration of vessels,
- 3 houseboats, and other contrivances; and the
- 4 issuance of permits for offshore anchoring
- 5 and mooring of vessels, houseboats, and
- 6 other contrivances; and
- 7 (iii) The living aboard on such vessels,
- 8 houseboats, or other contrivances while they
- 9 are anchored or moored within ocean waters
- 10 or navigable streams of the State.

11 The rules shall provide for consideration of

12 environmental impacts on the State's aquatic resources

13 in the issuance of any permits for offshore mooring;

14 (B) Safety measures, requirements, and practices in

15 or on the ocean waters and navigable streams of

16 the State;

17 (C) The licensing and registration of persons or

18 organizations engaged in commercial activities in

19 or on the ocean waters and navigable streams of

20 the State;



- 1 (D) The licensing and registration of equipment
- 2 utilized for commercial activities in or on the
- 3 ocean waters and navigable streams of the State;
- 4 (E) For beaches encumbered with easements in favor of
- 5 the public, the prohibition or denial of the
- 6 following uses and activities:
- 7 (i) Commercial activities;
- 8 (ii) The storage, parking, and display of any
- 9 personal property;
- 10 (iii) The placement of structures or obstructions;
- 11 (iv) The beaching, landing, mooring, or anchoring
- 12 of any vessels; and
- 13 (v) Other uses or activities that may interfere
- 14 with the public use and enjoyment of these
- 15 beaches; and
- 16 (F) Any other matter relating to the safety, health,
- 17 and welfare of the general public; [~~and~~]
- 18 (8) To regulate the examination, guidance, and control of
- 19 harbor agents and their assistants[-]; and
- 20 (9) To regulate commercial activities in private marinas;
- 21 provided that no new permit shall be required for
- 22 those commercial activities in private marinas



1 regulated by any other chapter. For the purpose of
2 this paragraph, "commercial activity" shall have the
3 same meaning as in section 188-40.6."

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

6 SECTION 5. This Act shall take effect on July 1, 2008.



