

AN ACT

To repeal sections "1.(2)" and "2. B." of Koror Public Law No. K6-87-98, to repeal Koror State Public Law No. K6-111-2000, to limit the number of live-aboard vessels to seven (7) and to provide for a ban on the operation of new live-aboard dive boats within the waters of the State of Koror, to require the Governor to promulgate regulations applicable to live-aboard dive boat operations allowed pursuant to the terms hereof, to provide for the payment of an annual environmental impact fee by live-aboard dive boat operators and penalties for violations of this Act, and for related purposes.

THE PEOPLE OF KOROR REPRESENTED IN THE LEGISLATURE OF THE STATE OF KOROR DO ENACT AS FOLLOWS:

Section 1. Authority; Finding. The Sixth Koror State Legislature (the "Legislature") hereby finds that Koror State is the exclusive owner of all living and non-living resources located from the traditional baselines to twelve nautical miles seaward under Article I, Section 2 of the Republic of Palau Constitution, and that this ownership is confirmed in Article 1, Section 4 of the Koror State Constitution. Additionally, the Legislature finds that the Government of the State of Koror is charged with taking every step reasonable and necessary to promote, among other things, the well being of all of the people in the State of Koror pursuant to Article X, Section 3 of the Koror State Constitution. The Legislature also finds that the referenced constitutional provisions are in keeping with the still valid law of the Trust Territory of the Pacific Islands contained in Title 4, Chapter 2, Section 51, of the Trust Territory Code which (a) allocated to the Municipality of Koror, predecessor in interest to the State of Koror, the responsibility of creating legislation affecting the peace, safety and public welfare of its inhabitants and (b) granted rights to Koror State to perform all acts of law enforcement not otherwise provided for by law. Additionally, the Legislature finds that the Supreme

Court of the Republic of Palau in *State of Koror v. Blanco*, 4 ROP Intrm. 208 (1994), affirmed the right of the State of Koror to exercise its police power to pass ordinances concerning boating and fishing within its waters.

The Legislature additionally finds that the living and non-living resources contained within the waters of the State of Koror constitute a fragile marine ecosystem that has developed over hundreds of thousands of years. This irreplaceable ecosystem is subject to instantaneous injury or loss and degradation from a variety of acts or omissions of various parties, in addition to being subject to various natural stresses and threats, and must be protected to the fullest by the laws and regulations of the State of Koror. The Legislature finds that the total effects of live-aboard vessels and related

activities upon the waters of the State of Koror are unknown and may be severely deleterious and further finds that until it is shown that there is in fact no negative impact by such operations within the waters of the State of Koror, the Legislature wishes to exercise extreme precaution in protecting the marine ecosystem contained in and comprising the waters of the State of Koror and limit the number of legal live-aboard vessels operating thereupon.

Accordingly, the Legislature finds that it is in the best interests of and in promotion of the well being of the People of the State of Koror and the Republic of Palau that the Legislature provide for a ban on the operation of any new live-aboard vessels in the waters of the State of Koror, to protect and preserve the health and well being of the marine ecosystem contained in the waters of the State of Koror by protecting against all physical damage and non-physical damage such as sub-lethal and non-lethal impacts caused by overuse, chemicals or any other hazardous or noxious waste including (without limitation) petroleum based products, sediment or pollution, raw effluence or solid waste that may impair the natural functions of marine ecosystems in any portion of the waters of the State of Koror by any live-aboard vessel or associated person on behalf and for the benefit of past, current and future generations of the people of the State of Koror and the Republic of Palau and the people of all nations of the Earth.

Section 2. Definitions. As used in this Act, the following words shall have the meaning described below:

(A) "emergency situations" means situations in which action is required to alleviate a person's immediate danger of physical injury, either due to a person's physical health or due to natural causes such as inclement weather.

(B) "human occupancy" means actual occupancy or intended occupancy by any person of any room or space as a paying, overnight guest, including (without limitation) any area where the owner, proprietor or operator is required to pay hotel room tax pursuant to 40 PNCA 1401 or vessel cabin tax pursuant to 40 PNCA 1407.

(C) "live-aboard vessel" means any vessel, other than a floating hotel (as defined in Koror State Public Law K6-87-98) which has more than four (4) but less than thirty (30) vessel cabins, and which carries people who enter the Republic of Palau under a "tourist" visa for the purpose of

engaging in recreational activities, and which anchors, moors or lingers at or in locations located within the waters of the State of Koror. Specifically excluded from this definition are vessels which are powered primarily by sail and ocean-going cruise line vessels which do not operate within the waters of the State of Koror for more than five (5) days in any one month, and which travel to and from international ports as part of their normal operations.

(D) "marine ecosystem" means all of the living and non-living organisms, structures and systems inhabiting and comprising in a synergistic biological manner the biological community contained in the waters of the State of Koror.

(E) "person" means any and all persons, natural or artificial, foreign or domestic, including any individual, association, firm, partnership, business, cooperative, corporation, joint venture, principal, agent, partnership, company, or any other entity cognizable in law or equity, including (without limitation) any foreign governmental entity and all political subdivisions, regions, districts, municipalities and public agencies thereof.

(F) "waters of the State of Koror" means the waters within the territory of the State of Koror as described in Article 1, Section 4 of the Constitution of the State of Koror, and includes all waters from the traditional baselines to twelve nautical miles seaward, including (without limitation) any pond, lake, marine lake, marine bay, river, creek, mangrove swamp, lagoon or other standing or

flowing water that flows directly into the North Pacific Ocean or Philippine Sea from within the territory of the State of Koror, or any fresh or salt water that is located in, originates in or passes through the territorial limits of the State of Koror.

The plural form shall include the singular form of the word, and the singular form shall include the plural form.

Section 3. Ban on new live-aboard vessels declared, Prohibitions. There is hereby established a ban on the establishment or operation of live-aboard vessels and operations related thereto within the waters of the State of Koror other than as described and allowed herein; provided, however, that such ban shall not be applicable to those live-aboard vessels and related operations currently existing, functioning and operating in the waters of the State of Koror as of the effective date of this Act (individually, a "Legal Live-Aboard," collectively, the "Legal Live-Aboards"). Accordingly:

(i)

shall be unlawful to for any person to cause, allow or permit any live-aboard vessel other than a Legal Live-Aboard to moor, anchor, linger, discharge waste or effluence of any type or allow or permit any human occupancy thereupon or therein in any portion of the waters of the State of Koror; (ii) it shall be unlawful for any person to cause, allow or permit any live-aboard vessel other than a Legal Live-Aboard to carry passengers for overnight lodging in the waters of the State of Koror; and (iii) it shall be unlawful for any person to operate, maintain, own, establish or otherwise navigate a live-aboard vessel in violation of this Act or any regulations promulgated pursuant to the terms hereof.

Notwithstanding the foregoing, live-aboard vessels may transit or pass through any portion of the waters of the State of Koror solely for the purposes of navigation or to engage in interstate or foreign commerce without allowing any person to dive in the waters of the State of Koror, but such live-aboard vessels may only anchor within Malakal Harbor or such other area or areas as are designated by the Governor of the State of Koror in his or her sole and absolute discretion. The Koror State Government reserves the right in its sole and absolute discretion to amend, modify and repeal the ban described herein in any manner it deems acceptable, or further limit the operation of Legal Live-Aboard vessels, or admit additional live-aboard vessels within the waters of the State of Koror, or replace current Legal Live-Aboard operations with new operations upon any discontinuance or termination of operation within the waters of the State of Koror by any Legal Live-Aboard;

provided, however; that not withstanding anything to the contrary set forth herein, at no

time shall

the amount of Legal Live-Aboards operating in the waters of the State of Koror exceed seven (7) vessels.

The following persons are exempt from the terms and conditions contained herein above:

(A) Those persons who must operate a live-aboard vessel in the waters of the State of Koror during emergency situations.

(B) Those persons who operate live-aboard vessels in the waters of the State of Koror for purposes of scientific or educational research and monitoring by written permit obtained from Koror State Government.

Section 4. Live-aboard environmental impact fee. Each and every Legal Live Aboard, whether now existing or existing in the future, shall pay to the Koror State Government on or before

January 1st of each calendar year an annual environmental impact fee (the "Fee"), such fee to be in the amount of \$1,000.00 for vessels with five (5) to ten (10) cabins and in the amount of \$2,000.00 for vessels with eleven (11) to thirty (30) cabins. This impact fee shall also be paid for any fraction of the year that a live-aboard operates within the waters of the State of Koror, and all fees shall be paid before any live-aboard operations are conducted in the State of Koror. All sums paid to the Koror State Government pursuant to the terms and provisions of this Act in the form of Fees or fines, penalties or civil damages collected pursuant to any current or future laws or regulations promulgated in connection herewith shall be used for the following purposes: to purchase and maintain mooring buoys and conservation marker buoys, and channel navigation markers; to construct or otherwise create a system at the sea terminal to allow live-aboards to pump sewage and waste water directly into the main sewer system, or to construct a sewage and wastewater holding tank to allow live-aboards to empty their holding tanks, one of which shall be completed within one year of the effective date of this Act; and to maintain any wastewater and sewage holding tank system established pursuant to this Act. The fee required by this Act shall be collected for a period of ten (10) years from the effective date of this Act.

Section 5. Misdemeanor. Every person who violates or attempts to violate any provision of this Act, or conspires to violate any provision of this Act shall be guilty of a misdemeanor and,

upon conviction of a first offense, shall pay a fine of no less than \$100.00, and may be sentenced to five (5) days in jail, or both. Upon conviction of a second offense, the criminal penalty shall be a fine of no less than \$100.00 and five days in jail. Upon conviction of a third and subsequent offenses, the party shall pay no less than \$100.00 and serve up to ninety (90) days in jail. The penalties of this Act shall not apply to any government employee who processes any application or who issues any permit or license, or provides similar assistance to any person, while acting within the course and the scope of such government employment. Each illegal act committed in derogation of the terms hereof shall be deemed a separate offense, and each individual item of marine life, whether flora or fauna, that is killed or substantially damaged or otherwise unreasonably disturbed in violation of this Act shall also be deemed as a separate violation and offense for all purposes of this Act, which may be punished

separately. This Act shall be enforced by the Governor of the State of Koror and his duly authorized agents provided that all revenues derived from violations are deposited into the Koror State Treasury.

Section 6. Civil damages.

(A) Civil damages are separate from criminal penalties and punishment and may be collected independently of or in addition to criminal charges and sentences.

(B) Any person who is found by any court of competent jurisdiction in a civil proceeding to have committed an act prohibited by the terms hereof, his employer, principal, superior, or supervisor if the violation was committed as part of a commercial operation or enterprise, and any person who aids or abets in such violation, shall be liable to the State of Koror for civil damages in an amount to be determined by a court of competent jurisdiction.

(C) In determining the amount of such civil damages, all courts of competent jurisdiction shall, in addition to valuing the damage to the marine or coral reef ecosystem in accordance with applicable law, take into account the nature, circumstances, extent and gravity of the prohibited acts committed and, with respect to the violators, the degree of culpability, any history of prior offenses, and such other matters as justice may require.

(D) The Koror State Legal Counsel is authorized to initiate all civil proceedings brought pursuant to the terms hereof and to recover the amount assessed as civil damages.

(E) Any person who violates the terms hereof shall be liable in a civil action brought by any person residing within Koror State. If a judgment is entered against the defendant in an action brought by a resident of Koror State, the plaintiff shall receive fifty percent (50%) of the

amount

recovered, and shall be entitled to recover from the defendant the plaintiffs costs of litigation,

including reasonable attorneys' fees at trial and on appeal. Before a resident may bring an action

pursuant to this section, the resident must submit a written request to the Koror State Legal Counsel asking that the Koror State Legal Counsel bring a civil action. If the Koror State Legal Counsel fails

to bring a civil action within sixty (60) days after receipt of the written request, the resident may

thereafter bring a civil action pursuant to this section.

(F) Unless otherwise set forth herein, the proceeds of civil damages shall be remitted to the Koror State Government.

Section 7. Regulations.

A. The Governor of the State of Koror shall promulgate any regulations necessary for the enforcement or general publication of this Act within ten (10) days of the effective date of this Act. The regulations shall be deemed adopted unless disapproved by a Joint Resolution of the Legislature and the House of Traditional Leaders no later than thirty (30) days following promulgation of the regulations by the Governor. Any such resolution shall include specific recommendations for changes to the regulations, and the Governor, following consideration of such recommendations, may resubmit the regulations for reconsideration by the Legislature and the House of Traditional Leaders according to the process set forth herein.

B. Until the promulgation of permanent regulations by the Governor, the following preliminary regulations shall remain in force and effect. A violation hereof shall be deemed a violation of this Act:

- (1) Anchorage. Anchoring in any waters of the State of Koror where there are corals on the seabed or where the anchor or any part of the anchor line disturbs coral is prohibited;
- (2) Mooring. All live-aboats authorized to operate within the waters of the State of Koror may only moor at a pre-established location assigned by the Koror State Governor or his duly authorized representative;

(3) Wastewater. Wastewater from human body wastes and wastes from toilets and other receptacles intended to receive or retain body wastes and/or other domestic

wastewater such as those from dishwashing and showers shall be discharged only by emptying holding tanks on land into the sewer system or into a pump-truck, and with the approval of the Palau Environmental Quality Protection Board pursuant to the

EQPB Marine and Fresh Water Quality Regulations, Chapter 2401-11.

Before any wastewater or sewage is emptied at shore, the affected live-aboard shall contact the

Koror State Government office or the Koror State Marine Rangers to allow for the presence of Koror State Government personnel to inspect the holding tank prior to discharge, and to observe the discharge or emptying process.

- (4) Oil and Petroleum Waste. Discharge of oil and petroleum waste including bilgewater into any waters of the State of Koror is prohibited. Oil, petroleum and bilgewater shall be kept in a holding tank or container and brought to shore for proper disposal or for recycling.
- (5) Solid Waste Disposal. Solid waste such as food wastes, aluminum cans, plastic containers, plastic litters (such as utensils and six-pack rings) and green wastes shall be segregated contained and transported to appropriate dump site or landfill on shore for proper disposal or recycling.

Section 8. Severability. In the event that a court of competent jurisdiction determines that any part or portion of this law is invalid, then the offending portion or portions may be stricken, and the remaining portions shall continue in full force and effect.

Section 9. Effective date. This Act shall become effective upon its becoming law by operation of the Koror State Constitution, and thereafter upon approval by the Minister of justice pursuant to 40 PNCA 2103.

PASSED: October 10, 2001

CERTIFIED BY:

ATTESTED TO BY:

/s/ _____
Salvador Tellames, Speaker
6th Koror State Legislature

/s/ _____
Charlyne Uong, Clerk
6th Koror State Legislature

APPROVED ON THIS _____ DAY OF _____, 2001.

John C. Gibbons, Governor
Koror State

DISAPPROVED
~~APPROVED~~ ON THIS 31 DAY OF October, 2001.

SIXTH KOROR STATE LEGISLATURE
Eighth Regular Session, July 2001

KSPL NO. K6-124-2001
(Intro as Bill No. 6-96, LD1, HD1)

/s/
Ibedul Y.M. Gibbons, Chairman
House of Traditional Leaders
Koror State

OVERRIDE ACTION BY THE SIXTH KOROR STATE LEGISLATURE on November 7,
2001
was duly carried by a roll call vote of 16 to 0.

CERTIFIED BY:

ATTESTED TO BY:

/s/ _____
Salvador Tellames, Speaker
Sixth Koror State Legislature

/s/
Charlyne Uong, Clerk
Sixth Koror State Legislature