

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96819

January 26, 2024

Chairperson and Members
Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Land Board Members:

SUBJECT: Reconsideration of Rent under Revocable Permit No. 15 to Kona Sailing Club, as Permittee, for Trailered Boat Storage, Sailing Related Equipment, Storage, and Boating and Ocean Safety Education/Training Purposes, Keahuolu, North Kona, Hawaii, Tax Map Key: (3) 7-4-008:003 (por).

APPLICANT:

Kona Sailing Club

LEGAL REFERENCE:

Section 171-43.1, 55 Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Honokohau Small Boat Harbor, Keahuolu, North Kona, Hawaii, identified by Tax Map Key: (3) 7-4-008:003 (por.), as shown on the attached map labeled **Exhibit A**.

AREA:

14,196 sq. ft.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: Open

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES ___ NO X

CHARACTER OF USE:

Trailer boat storage, sailing related equipment, storage, and boating and ocean safety education/training.

TERM:

July 1, 2023, through June 30, 2024

ANNUAL RENT:

\$20,118.00

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO ___
Registered business name confirmed:	YES <u>X</u>	NO ___
Applicant in good standing confirmed:	YES <u>X</u>	NO ___

REMARKS:

Kona Sailing Club was first issued a revocable permit commencing October 1, 1997. The permit has been renewed and reissued over the years, always at market rent.

At its meeting on September 29, 2023, item J-2, staff provided an informational briefing to the Board on DOBOR's non-profit rent policy (see **Exhibit B**), which categorizes its non-profit permittees into the following four (4) categories:

- Community Mission
- Contributes to DLNR's Mission
- Statutory
- Benefits a Specific Group

Staff believes the applicant falls into the category of an organization that benefits a specific group (i.e., boat owners). This view is further supported by the fact that the club charges membership fees and has a limited community mission.

The applicant received its determination letter from the IRS exempting it from federal income tax under Section 501(c)(3) effective November 5, 2021 (see **Exhibit C**).

As a revocable permit issued pursuant to Section 171-55, HRS, the Board has the statutory authority to grant nominal consideration to 501(c)(1) and 501(c)(3) entities pursuant to 171-43.1, HRS (“§171-43.1”).

It is worth noting, however, that the House committee report for H.B. No. 2271 (1982), amending §171-43.1, noted that the legislative intent was “to permit those eleemosynary organizations which have been chartered by the United States Congress for fraternal, patriotic, historical, and educational purposes to lease public lands without recourse to public auction” (see **Exhibit D**). The report listed the American Legion, Veterans of Foreign Wars, and the Red Cross as examples of such organizations.

The statute was changed again in 1991 (Act 212, SLH 1991), removing references to Congress and patriotic organizations, and replacing that language with 501(c)(1) and 501(c)(3) organizations. The committee report did not explain the reason for the change, leaving staff to rely on the 1982 committee report to discern the legislative intent of the statute.

In the past, DOBOR’s Deputy Attorney General has advised staff that 501(c)(1) and 501(c)(3) entities, pursuant to §171.43.1, are entitled to either the minimum rent allowed by the Board or the market rent; nothing in between.

Staff’s intention is to offer the applicant a ten (10) year direct lease but requires the Board’s direction with respect to lease rent before proceeding.

ALTERNATIVES:

Staff has identified the following alternatives for the Board's discretion:

1. Confirm that the rents under Revocable Permit No. 15, Kona Sailing Club, Permittee shall be at fair market rent for the time period January 1, 2024, to June 30, 2024.
2. Find that the annual rental for Revocable Permit No. 15, Kona Sailing Club, Permittee be lowered to \$480.00 per annum.

RECOMMENDATION:

That the Board confirm that the rental under Revocable Permit No. 15, to Kona Sailing Club, Permittee, shall be at fair market rent for the period January 1, 2024, to June 30, 2024.

Respectfully Submitted,



Edward R. Underwood
Administrator

APPROVED FOR SUBMITTAL:



Dawn N.S. Chang, Chairperson
Board of Land and Natural Resources

Attachments:

- A Site Location
- B DOBOR's Non-Profit Rent Policy
- C Kona Sailing Club's IRS Determination Letter
- D House Committee Report H.B. No. 2271 (1982)

Exhibit A
Kona Sailing Club
Honokohau Small Boat Harbor





Informational Briefing on DOBOR's Non-Profit Rent Policy for 501(c)(1) & 501(c)(3) Organizations

SEPTEMBER 22, 2023

DIVISION OF BOATING AND OCEAN RECREATION (DOBOR)

HRS 171-43.1

Lease to eleemosynary organizations

The board may lease, at nominal consideration, by direct negotiation and without recourse to public auction, public lands to an eleemosynary organization which has been certified to be tax exempt under sections 501(c)(1) or 501(c)(3) of the Internal Revenue Code of 1986, as amended. The lands shall be used by such eleemosynary organizations for the purposes for which their charter was issued and for which they were certified by the Internal Revenue Service. [L 1970, c83, §5; am L 1971, c 100, §1; am L 1982, c 202, §1; am L 1991, c212, §3]

Categorizing Non-profit Organizations

- DOBOR categorizes 501(c)(1) and 501(c)(3) entities requesting revocable permits to formulate its rental recommendations to the Board of Land and Natural Resources. The four categories are as follows:
 1. Provides a clear community benefit to the public.
 2. Contributes to DLNR's mission of conserving and protecting culture and/or historic resources.
 3. Applies to statutory criteria HRS 200-20.
 4. Benefits a specific group.
 - a) Charge membership fees
 - b) Charge for services



DOBOR's Rental Policy for Non-Profit Organizations

- Permittee must demonstrate a broad community involvement, further DLNR's mission to protect and preserve Hawaiian culture, or satisfy the statutory criteria to receive the minimum allowable rent or gratis.
 - DOBOR's minimum allowable rent is \$40.
- Staff will make its future monthly rental recommendations to the Board for non-profit revocable permit applicants on a case-by-case basis based on 4 different criteria.

DOBOR

Non-profit Organizations



DOBOR Permittees

DOBOR currently has fifteen (15) revocable permits issued to non-profit 501(c)(1) and 501(c)(3) organizations.

- O‘ahu
 - Hui Nalu O Hawaii Canoe Club
 - Ka Kahui Kai
 - Kaneohe Cultural Foundation (2)
 - Friends of Hokule‘a & Hawai‘iloa
 - Manu O Ke Kai Canoe Club
 - Lanikai Canoe Club
 - Hui Pākōlea
 - North Shore Canoe Club
- Hawai‘i Island
 - The Island of Hawai‘i YMCA
 - Nā Kālai Wa‘a
 - Hoemana Canoe Club
 - Hawaii Big Game Fishing Club
 - Hawaii Island Paddlesports Association
 - Kona Sailing Club

Category 1:
Provides Community
Benefit



The Island of Hawai'i YMCA

Location: South Kawaihae Small Boat Harbor, Hawai'i Island

Usage: Sailing programs, storage purposes, marine education and youth programs.

Annual Rental: \$480.00

Criteria for Rental Determination:

The YMCA's sailing program at Kawaihae South is just one of the programs it offers to the public on Hawaii Island. The YMCA "is dedicated to providing comprehensive programs and services that enrich communities – and all of the people who live in them – across the country in fulfillment of our mission." Considering the scope of programs and services it provides to the Hawai'i Island community, staff believes it is eligible for the Board's minimum allowable rent.



Hui Nalu O Hawaii Canoe Club

Location: Maunalua Bay, O'ahu

Usage: Storage of Hawaiian racing canoes.

Annual Rental: \$480.00

Criteria for Rental Determination:

Hui Nalu is a member of the Oahu Hawaiian Canoe Racing Association ("OHCRA"), which in turn is a member association of the Hawaiian Canoe Racing Association. Hui Nalu is therefore eligible, under HRS 200-20, to store racing canoes on State shoreline free of charge. As there is no shoreline at Maunalua Bay, the permittee requested use of fast lands at the facility. Club members serve as Hawaiian outrigger racing canoe paddling team coaches for Kaiser and Kalani High Schools. Hui Nalu also supports these teams by allowing them to use the club's racing canoes. Hui Nalu also participates in beach clean ups and scattering the ashes of loved ones at sea for no charge. Proceeds from its Ka Iwi Coast Run & Walk support various organizations such as Livable Hawaii Kai Hui, Maunalua Fishpond Heritage Center, and the Hawaii Kai Lions Club. Due to its membership in OHCRA, and its history of community service, staff recommended the minimum allowable rent to the Board in connection with the issuance of its revocable permit.



Ka Lahui Kai

Location: Maunalua Bay, O‘ahu

Usage: Storage of Hawaiian racing canoes.

Annual Rental: \$480.00

Criteria for Rental Determination:

Ka Lahui Kai is a 501(c)(3) organization which applied to use State lands at Maunalua Bay. Staff recommended a market rent to the Board in connection to the issuance of its revocable permit; while the applicant argued it was eligible for the minimum allowable rent due to its community benefit (particularly ocean rescue services by club members). The Board agreed with Ka Lahui Kai and issued the RP with minimum allowable rent.



Category 2: Contributes to DLNR's Mission

“Enhance, protect, conserve and manage Hawai‘i’s unique and limited natural, cultural and historic resources held in public trust for current and future generations of the people of Hawaii nei, and its visitors in partnership with others from the public and private sectors.”

Kaneohe Cultural Foundation

Location: He'eia-Kea Small Boat Harbor, O'ahu

Usage: Storage of Hawaiian racing canoes on State shoreline.

Annual Rental: \$480.00

Criteria for Rental Determination:

Kaneohe Cultural Foundation is a member of Hui Wa'a and is eligible, under HRS 200-20, to store racing canoes on State shoreline free of charge. The permittee stores its canoes at Heeia-Kea and is charged the minimum allowable rent because it has erected a canoe hale. In addition to the statutory basis, staff believes its mission to promote healthy living through the revitalization of Hawaiian cultural practice qualifies it to receive the Board's minimum allowable rent.



Nā Kālai Wa'a

Location: South Kawaihae Small Boat Harbor, Hawai'i Island

Usage: Vessel storage, general storage, maintenance of improvements, youth programs, educational programs, and affiliated community programs.

Annual Rental: \$480.00

Criteria for Rental Determination:

Nā Kālai Wa'a is an educational based 501(c)(3) organization dedicated to the cultural values, knowledge and practices of deep-sea voyaging utilizing the double-hull sailing canoe Makali'i. Its mission is "to protect, perpetuate and honor the indigenous Hawaiian traditions and practices of wa'a culture through the Makali'i voyaging canoe programs, for the past, present and future generations." Staff believes this mission, which is in furtherance of DLNR's mission to protect cultural resources, is deserving of the Board's minimum monthly rent.



Friends of Hokule'a & Hawai'iloa

Location: Ke'ehi Small Boat Harbor, O'ahu

Usage: Teaching traditions of building, restoring, and caring for canoes.

Annual Rental: \$480.00

Criteria for Rental Determination:

Friends of Hokule'a and Hawai'iloa is a 501(c)(3) organization dedicated to the perpetuation of the values and skills of traditional Hawaiian canoe building as well as the cultural and religious setting in which the canoes were built. Following the permittee's application to use State lands, staff recommended the minimum allowable rent because of the organization's cultural mission, which furthers DLNR's mission to protect cultural resources, and the Board agreed.



Manu O Ke Kai Canoe Club

Location: Haleiwa Small Boat Harbor, O'ahu

Usage: Storage of canoes.

Annual Rental: \$480.00

Criteria for Rental Determination:

One of Manu O Ke Kai's purposes is to perpetuate Hawaiian culture through the promotion of Hawaiian watersports. It is a member of Hui Wa'a and eligible, under HRS 200-20, to store racing canoes on State shoreline free of charge. Since the shoreline in this area recedes and accumulates, depending on the season, it is impossible for Manu O Ke Kai to store its canoes there year-around. The permittee requested the use of State lands for the storage of canoes and for cultural practices. In addition to the statutory basis, staff believes its purpose furthers DLNR's mission to protect cultural resources and qualifies it to receive the Board's minimum allowable rent.



Hoemana Canoe Club

Location: South Kawaihae Small Boat Harbor, Hawai'i Island

Usage: Storage of canoes.

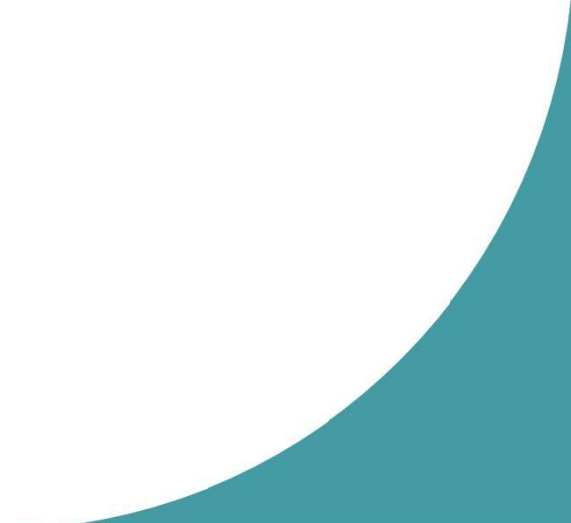
Annual Rental: \$480.00

Criteria for Rental Determination:

Member of Moku 'O Hawaii, which is a member association of the Hawaiian Canoe Racing Association. Hoemana is eligible, under HRS 200-20, to store racing canoes on State shoreline free of charge. Because there is no shoreline at Kawaihae South, the permittee requested use of fast lands at the harbor. Hoemana is dedicated to reviving Hawaiian historical perspectives and cultural protocols related to paddling and outrigger canoes and aligns with DLNR's mission to protecting cultural resources. As a result, staff recommended the Board grant the minimum allowable rent in connection with the issuance of its revocable permit.



Category 3:
Statutory Criteria
HRS 200-21



HRS 200-21

Hawaiian Outrigger Canoes On State Shoreline

Hawaiian outrigger canoe clubs registered with the Hawaiian Canoe Racing Association, Hui Wa'a Association, its affiliates, or its successor organization may keep their Hawaiian outrigger canoes at no charge on state shoreline areas; provided that:

- (1) The club shall indemnify, hold harmless, and defend the State, its officers, agents, and employees from and against any and all claims arising out of or resulting from activities carried out or undertaken under this section, and shall procure sufficient insurance to provide this indemnification if requested by the department;
- (2) The club shall coordinate the placement of canoes with the applicable state or county authority to appropriately accommodate all beach users; and
- (3) Where required, the club shall secure an annual revocable permit from the applicable state or county agency. [L 2005, c 220, §2]

Lanikai Canoe Club

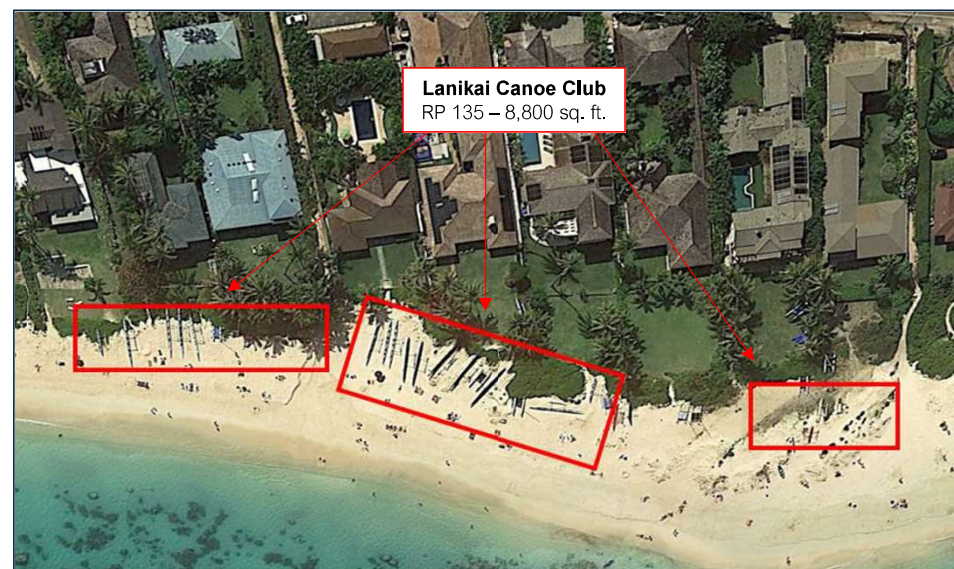
Location: Kailua, O'ahu

Usage: Storage of Hawaiian racing canoes on State shoreline.

Annual Rental: \$0.00

Criteria for Rental Determination:

Lanikai Canoe Club ("Lanikai") is a member of the Oahu Hawaiian Canoe Racing Association ("OHCRA"), which in turn is a member of the Hawaiian Canoe Racing Association. Lanikai is eligible, under HRS 200-20, to store racing canoes on State shoreline free of charge.



Kaneohe Cultural Foundation

Location: Kaneohe Beach Park, O'ahu

Usage: Storage of Hawaiian racing canoes on State shoreline.

Annual Rental: \$0.00

Criteria for Rental Determination:

Kaneohe Cultural Foundation is a member of Hui Wa'a and eligible, under HRS 200-20, to store racing canoes on State shoreline free of charge.



Hui Pākōlea

Location: Kailua, O‘ahu

Usage: Storage of Hawaiian racing canoes on State shoreline.

Annual Rental: \$0.00

Criteria for Rental Determination:

Hui Pākōlea is a 501(c)(3) organization whose mission is to preserve Hawaiian culture by, among other things, teaching, preserving, and supporting traditional Hawaiian events, activities, practices, and language, and to build a better community by providing opportunities for participation in and learning about traditional Hawaiian events, activities, practices and language. As an honorary member of the Hawai‘i Canoe Racing Association, Hui Pākōlea is eligible under HRS 200-20 to store its canoes on State shoreline free of charge.



Category 4:
Benefits A Specific Group



Hawai'i Big Game Fishing Club, Inc.

Location: Honokohau Small Boat Harbor, Hawai'i Island

Usage: Fishing and boating activities, public meetings, tournaments, harbor meetings and continued support of youth groups.

Annual Rental: \$14,550.00

Criteria for Rental Determination:

Hawai'i Big Game Fishing Club, Inc. is a 501(c)(3) organization formed for the preservation and conservation of marine resources through public education, research, the promotion of sportsmanship among the youth of the community & through participation in club activities. The club's funding is derived from renting out its clubhouse on a limited basis to various community organizations, collecting fees from its members and entrance fees from the several fishing tournaments it organizes each year. Staff believes that its charitable activities benefit a narrow group of individuals and not the general public. It is for this reason that staff recommends charging Hawaii Big Game Fishing Club, Inc. a market rent.



Hawai'i Island Paddlesports Association

Location: Honokohau Small Boat Harbor, Hawai'i Island

Usage: Operate and maintain a Hawaiian style hālau for permittees meetings, storage of solo or duo canoes, kayaks, general equipment, and staging area for preparation of race events.

Annual Rental: \$9,072.00

Criteria for Rental Determination:

Hawai'i Island Paddlesports Association ("HIPA") organizes and conducts all competitive OC-1 and OC-2 races as well as other paddle sport events and championships on Hawaii Island. HIPA also sponsor and administers a junior paddlers program. It uses its space at Honokohau Small Boat Harbor for club meetings, staging and preparation of race events, storage its members OC-1, OC-2 canoes, kayaks and general equipment. Staff views the permittees activities as benefiting a small segment of the public, and therefore not eligible for the Board's minimum rent.



Kona Sailing Club

Location: Honokohau Small Boat Harbor, Hawai'i Island

Usage: Trailered boat storage, sailing related equipment, storage, and boating and ocean safety education and training activities.

Annual Rental: \$20,118.00

Criteria for Rental Determination:

Kona Sailing Club is a 501(c)(3) organization established "by and for sailors who actually get out on the water." Its purpose is to host numerous sailing and social events throughout the year, and boat storage. As such staff views it as an organization existing primarily for the benefit of its members and the sailing community with no broad community benefit.



North Shore Canoe Club

Location: Haleiwa Small Boat Harbor, O'ahu

Usage: Canoe storage and trailer parking.

Current Annual Rental: \$480.00

North Shore Canoe Club ("NSCC") is a member of Hui Wa'a through its trade name, Haleiwa Outrigger Canoe Club. NSCC stores its canoes at Haleiwa Beach Park and its trailer at the harbor.

DOBOR's Administrative Rules (HAR §13-234-12) allow harbor staff to issue a permit for trailer storage for \$100/month. Staff believes this is the more appropriate disposition and will cancel the revocable permit and instruct the harbor staff issue the trailer permit in its place.



Exhibit C



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities
P.O. Box 2508
Cincinnati, OH 45201

KONA SAILING CLUB
PO BOX 2996
KAILUA KONA, HI 96745

Date:
01/31/2022
Employer ID number:
45-3746255
Person to contact:
Name: Customer Service
ID number: 31954
Telephone: 877-829-5500
Accounting period ending:
February 28
Public charity status:
509(a)(2)
Form 990 / 990-EZ / 990-N required:
Yes
Effective date of exemption:
November 05, 2021
Contribution deductibility:
Yes
Addendum applies:
No
DLN:
26053712009341

Dear Applicant:

We're pleased to tell you we determined you're exempt from federal income tax under Internal Revenue Code (IRC) Section 501(c)(3). Donors can deduct contributions they make to you under IRC Section 170. You're also qualified to receive tax deductible bequests, devises, transfers or gifts under Section 2055, 2106, or 2522. This letter could help resolve questions on your exempt status. Please keep it for your records.

Organizations exempt under IRC Section 501(c)(3) are further classified as either public charities or private foundations. We determined you're a public charity under the IRC Section listed at the top of this letter.

If we indicated at the top of this letter that you're required to file Form 990/990-EZ/990-N, our records show you're required to file an annual information return (Form 990 or Form 990-EZ) or electronic notice (Form 990-N, the e-Postcard). If you don't file a required return or notice for three consecutive years, your exempt status will be automatically revoked.

If we indicated at the top of this letter that an addendum applies, the enclosed addendum is an integral part of this letter.

For important information about your responsibilities as a tax-exempt organization, go to www.irs.gov/charities. Enter "4221-PC" in the search bar to view Publication 4221-PC, Compliance Guide for 501(c)(3) Public Charities, which describes your recordkeeping, reporting, and disclosure requirements.

Sincerely,

A handwritten signature in cursive script that reads "Stephen A. Martin".

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

culture are in accord with the intent and purpose of H.B. No. 2573-82 and recommend that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by all members of the Committees except Representatives Blair, Kawakami and Takamine.

SCRep. 476-82 Water, Land Use, Development and Hawaiian Affairs on
H.B. No. 2971-82

The purpose of this bill is to include the Office of Hawaiian Affairs (OHA) as a state agency subject to the provisions of state policy in the use of volunteer services.

Your Committee finds that because OHA is not included in the definition of "agency" in Section 90-1, Hawaii Revised Statutes, its volunteers are not treated in the same manner as the volunteers of other state agencies--a situation which should be corrected.

Your Committee on Water, Land Use Development and Hawaiian Affairs is in accord with the intent and purpose of H.B. No. 2971-82 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

SCRep. 477-82 Water, Land Use, Development and Hawaiian Affairs on
H.B. No. 2271-82

The purpose of this bill is to permit those eleemosynary organizations which have been chartered by the United States Congress for fraternal, patriotic, historical, and educational purposes to lease public lands without recourse to public auction.

Your Committee finds that these organizations occupy public lands by virtue of revocable permits without long term tenure, and that that situation makes it virtually impossible to finance improvements on the property.

Your Committee finds that these organizations (such as the American Legion, the Veterans of Foreign Wars, the Red Cross) should be permitted to have the same kind of opportunities afforded to educational, charitable, and religious organizations.

Your Committee has made certain style changes in Section 1 of the bill after the reference to "Section 235-9(a)(2)" in line 8. The changes do not affect the substance of the bill.

Your Committee on Water, Land Use, Development and Hawaiian Affairs is in accord with the intent and purpose of H.B. No. 2271-82, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2271-82, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

SCRep. 478-82 Consumer Protection and Commerce on H.B. No. 2934-82

The purpose of this bill is to raise the allowable cumulative preferred dividend rate from six to twelve percent.

Under present law, dividend rates payable for preferred stock issued by banks are limited to six percent per annum.

Your Committee finds that although no banks within the State have yet issued preferred stock, such an issuance is a theoretical avenue for expansion of the capital base of a bank. Your Committee notes that the present maximum dividend rate is unrealistic and renders this method of capital expansion effectively useless under present conditions unless the rate is raised substantially. Your Committee therefore finds itself in agreement with the intent of this bill.

Your Committee also notes that dividend rates are a matter of business judgment on the part of the issuing bank and that adequate regulations and controls exist to prevent any abuse of the preferred stock issuance process. Your Committee has therefore amended