



GOV. MSG. NO. 1301

EXECUTIVE CHAMBERS  
HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

July 7, 2011

The Honorable Shan Tsutsui, President  
and Members of the Senate  
Twenty-Sixth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

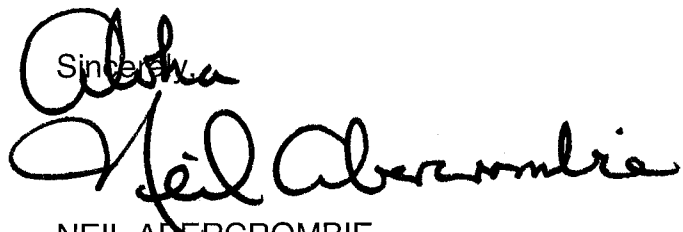
The Honorable Calvin Say, Speaker  
and Members of the House  
Twenty-Sixth State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on July 7, 2011, the following bill was signed into law:

HB1566 HD1 SD1 CD1

RELATING TO SMALL BOAT HARBORS.  
Act 197 (11)

*Sincerely,*  


NEIL ABERCROMBIE  
Governor, State of Hawaii

Approved by the Governor

JUL 7 2011

on \_\_\_\_\_

HOUSE OF REPRESENTATIVES  
TWENTY-SIXTH LEGISLATURE, 2011  
STATE OF HAWAII

ACT 197  
H.B. NO. 1566  
H.D. 1  
S.D. 1  
C.D. 1

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# A BILL FOR AN ACT

RELATING TO SMALL BOAT HARBORS.

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

1 SECTION 1. The department of land and natural resources,  
2 through its division of boating and ocean recreation, operates  
3 and manages twenty-one harbors, fifty boat ramps, two thousand  
4 one hundred twenty-two moorings and berths, and nineteen piers  
5 spread throughout the various counties of the State. The  
6 legislature further finds that these ocean recreation facilities  
7 are in short supply and in many cases are in dire need of long  
8 overdue repair and maintenance. Some facilities are in such  
9 disrepair that they cannot be safely used.

10 One of these facilities, the Ala Wai boat harbor, has been  
11 a recent recipient of some badly needed repair and replacement  
12 of floating docks; however, the need for further maintenance at  
13 Ala Wai and other boat harbors remains unfulfilled. In spite of  
14 its needs, the Ala Wai boat harbor includes certain assets  
15 within its facilities that are underused and if properly  
16 developed could potentially generate revenues that would enable  
17 not only its own continued improvement and maintenance but the  
18 improvement and maintenance of the rest of the facilities now



1 operated by the division of boating and ocean recreation of the  
2 department of land and natural resources.

3 In these times of economic malaise and with the State  
4 facing a massive budget deficit over the next biennium, a  
5 further decline in the State's small boat harbors would be a  
6 huge loss that the State cannot allow.

7 The purpose of this Act is to:

- 8 (1) Allow the limited issuance of commercial use permits  
9 for vessels with assigned moorings in Ala Wai and  
10 Keehi boat harbors;
- 11 (2) Provide for future moorage fees to be established by  
12 appraisal by a state-licensed appraiser and assigned a  
13 schedule B rate, while existing mooring holders remain  
14 in a schedule A class that shall equal schedule B  
15 rates over a three-year period; and
- 16 (3) Direct the department of land and natural resources to  
17 use the request for proposals process to enter into a  
18 public-private partnership for the development of  
19 portions of Ala Wai boat harbor facilities that are  
20 presently underused to maximize the revenue potential  
21 from its facilities.



1 SECTION 2. Chapter 200, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 "§200- Ala Wai boat harbor; leases. The fast lands and  
5 submerged lands of the Ala Wai boat harbor that may be leased  
6 include the following:

- 7 (1) All fast lands and submerged lands described in the  
8 request for qualifications or request for proposals  
9 issued by the division of boating and ocean recreation  
10 of the department on November 25, 2008;
- 11 (2) The fast land described as a portion of tax map key:  
12 (1) 2-3-37-12, composed of approximately 112,580  
13 square feet, presently used for harbor offices and  
14 permitted vehicular parking; and
- 15 (3) The fast land described as a portion of tax map key:  
16 (1) 2-3-37-12, which is a triangular area located  
17 Diamond Head of Mole B, presently used for permitted  
18 vehicular parking."

19 SECTION 3. Section 46-80.5, Hawaii Revised Statutes, is  
20 amended by amending subsection (e) to read as follows:

21 "(e) Exemptions.



- 1 (1) Property owned by the state or county governments or  
2 entities, may be exempt from the assessment except as  
3 provided in paragraph (3);
- 4 (2) Property owned by the federal government or entities,  
5 shall be exempt from the assessment except as provided  
6 in paragraph (3);
- 7 (3) If a public body owning property, including property  
8 held in trust for any beneficiary, which is exempt  
9 from an assessment pursuant to paragraphs (1) and (2),  
10 grants a leasehold or other possessory interest in the  
11 property to a nonexempt person or entity, the  
12 assessment, notwithstanding paragraphs (1) and (2),  
13 shall be levied on the leasehold or possessory  
14 interest and shall be payable by the lessee; ~~and~~
- 15 (4) The redevelopment of the Ala Wai boat harbor shall be  
16 exempt from the assessment and any special improvement  
17 district requirements authorized by subsection (a);  
18 and
- 19 ~~[(4)]~~ (5) No other properties or owners shall be exempt  
20 from the assessment unless the properties or owners  
21 are expressly exempted in the ordinance establishing a  
22 district adopted pursuant to this section or amending



1 the rate or method of assessment of an existing  
2 district."

3 SECTION 4. Section 200-2.5, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "[+]§200-2.5[+] Disposition of state boating facility  
6 properties. (a) Notwithstanding any law to the contrary, the  
7 board may lease fast lands and submerged lands within an  
8 existing state boating facility by public auction, a request for  
9 proposals, or by direct negotiation pursuant to section 171-  
10 59[~~-~~] and chapter 190D, for private development, management, and  
11 operation[~~-~~]; provided that any lease of fast lands or submerged  
12 lands pursuant to a request for proposals shall be subject to  
13 section 200- , regardless to which state boating facility the  
14 fast or submerged lands are attached.

15 [~~For the purpose of~~] As used in this section, the term  
16 "state boating facility" means a state small boat harbor,  
17 launching ramp, offshore mooring, pier, wharf, landing, or any  
18 other area under the jurisdiction of the department pursuant to  
19 this chapter.

20 (b) The permissible uses under any lease disposed of under  
21 this section shall be consistent with the purpose for which the  
22 land was set aside by the governor pursuant to section 171-11.



1 Permissible uses may include any use that will complement or  
2 support the ocean-recreation or maritime activities of state  
3 boating facilities.

4 (c) Disposition of public lands of state boating  
5 facilities constructed, maintained, and operated in accordance  
6 with this chapter shall not exceed a maximum term of [ ~~fifty-~~  
7  ~~five~~] sixty-five years.

8 (d) All revenues due to the State derived from leases of  
9 state boating facilities shall be deposited in the boating  
10 special fund.

11 (e) The department shall adopt rules in accordance with  
12 chapter 91 to implement this section."

13 SECTION 5. Section 200-8, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "[~~+~~]§200-8[~~+~~] Boating program; payment of costs. The cost  
16 of administering a comprehensive statewide boating program,  
17 including[~~7~~] but not limited to[~~7~~] the cost of:

- 18 (1) Operating, maintaining, and managing all boating  
19 facilities under the control of the department;  
20 (2) Improving boating safety;  
21 (3) Operating a vessel registration and boating casualty  
22 investigation and reporting system; and



1           (4) Other boating program activities,  
2 shall be paid from the boating special fund[-]; provided that  
3 any fees collected within small boat harbors shall be expended  
4 only for costs related to the operation, upkeep, maintenance,  
5 and improvement of the small boat harbors. The amortization  
6 (principal and interest) of the costs of capital improvements  
7 for boating facilities appropriated after July 1, 1975,  
8 including[-] but not limited to[-] berths, slips, ramps, related  
9 accommodations, general navigation channels, breakwaters, aids  
10 to navigation, and other harbor structures, may be paid from the  
11 boating special fund or from general revenues as the legislature  
12 may authorize in each situation. Revenues provided in this  
13 chapter for the boating special fund shall be at least  
14 sufficient to pay the special fund costs established in this  
15 section."

16           SECTION 6. Section 200-9, Hawaii Revised Statutes, is  
17 amended to read as follows:

18           "§200-9 Purpose and use of state small boat harbors. (a)

19 State small boat harbors are constructed, maintained, and  
20 operated for the purposes of:

21           (1) Recreational boating activities;

22           (2) Landing of fish; and





1 (3) Commercial vessel activities.

2 For the purpose of this section, "recreational boating  
3 activities" means the ~~[utilization]~~ use of watercraft for  
4 sports, hobbies, or pleasure, and "commercial vessel activities"  
5 means the ~~[utilization]~~ use of vessels for activities or  
6 services provided on a fee basis. To implement these purposes,  
7 only vessels in good material and operating condition that are  
8 regularly navigated beyond the confines of the small boat  
9 harbor~~[,]~~ and ~~[which]~~ that are used for recreational activities,  
10 the landing of fish, or commercial vessel activities shall be  
11 permitted to moor, anchor, or berth at ~~[such]~~ a state small boat  
12 harbor or use any of its facilities.

13 (b) Vessels used for purposes of recreational boating  
14 activities ~~[which]~~ that are also the principal habitation of the  
15 owners shall occupy no more than one hundred twenty-nine berths  
16 at Ala Wai boat harbor and thirty-five berths at Keehi boat  
17 harbor, which is equal to fifteen per cent of the respective  
18 total moorage space that was available as of July 1, 1976, at  
19 the Ala Wai and Keehi boat harbors. ~~[Notwithstanding the~~  
20 ~~purposes of small boat harbors, moorage for commercial vessels~~  
21 ~~and commercial vessel activities is not permitted in the Ala Wai~~  
22 ~~and Keehi boat harbors, provided that commercial catamarans, for~~



1 ~~which valid permits or registration certificates have been~~  
2 ~~issued by the department which allow the catamarans to operate~~  
3 ~~upon Waikiki shore waters for hire, may be permitted to moor in~~  
4 ~~Ala Wai boat harbor at facilities leased for commercial~~  
5 ~~purposes.]~~

6 (c) The total number of valid commercial use permits that  
7 may be issued for vessels assigned mooring in Ala Wai boat  
8 harbor shall not exceed fifteen per cent of the total number of  
9 berths and shall not exceed thirty-five per cent of the total  
10 number of berths at the Keehi boat harbor; provided that at the  
11 Ala Wai boat harbor, vessels issued commercial use permits  
12 shall:

- 13 (1) Not exceed sixty-five feet in length;  
14 (2) Occupy not more than fifty-six berths located along  
15 the row of berths furthestmost mauka or adjacent to  
16 Holomoana street, with the remainder located  
17 throughout the Ala Wai boat harbor, with priority  
18 assigned to row five hundred, row seven hundred, and  
19 row eight hundred;  
20 (3) Be phased-in in a manner that does not displace any  
21 existing recreational boater or existing catamaran  
22 operator; and



1       (4) Include commercial catamarans, for which valid  
2       commercial use permits or existing registration  
3       certificates have been issued by the department that  
4       allow the catamarans to operate upon Waikiki shore  
5       waters for hire.

6       The department shall allow a sole proprietor of a catamaran  
7       operating with a valid commercial use permit or existing  
8       registration certificate, issued by the department, for a  
9       commercial catamaran to land its commercial catamaran on Waikiki  
10      beach [and], to operate upon Waikiki shore waters for hire, and  
11      to transfer the ownership of the vessel from personal ownership  
12      to corporate or other business ownership without terminating the  
13      right to operate under the commercial use permit or existing  
14      registration certificate. The existing commercial use permit or  
15      existing registration certificate shall be reissued in a timely  
16      manner in the name of the transferee corporation or other  
17      business entity. No valid commercial use permit or existing  
18      registration certificate issued to an owner of a commercial  
19      catamaran operating in the Waikiki area shall be denied or  
20      revoked without a prior hearing held in accordance with chapter  
21      91.



1           [~~(e)~~] (d) Notwithstanding any limitations on commercial  
2 permits for Maui county small boat facilities, vessels engaging  
3 in inter-island ferry service within Maui county shall be  
4 afforded preferential consideration for ferry landings,  
5 including the issuance of a commercial operating permit and the  
6 waiver of any applicable fees, at Maui county small boat  
7 facilities; provided that:

- 8           (1) The vessel operator has been issued a certificate of  
9 public convenience and necessity for the purpose of  
10 engaging in inter-island ferry service that includes a  
11 route within Maui county;
- 12           (2) The design and performance characteristics of the  
13 vessel will permit safe navigation within the harbor  
14 entrance channel and safe docking within Maui county  
15 small boat facilities;
- 16           (3) The vessel operations will not result in unreasonable  
17 interference with the use of Maui county small boat  
18 facilities by other vessels; and
- 19           (4) All preferential consideration and waivers, including  
20 any commercial permits issued under this section,  
21 shall cease upon the vessel operator's termination of  
22 inter-island ferry service within Maui county.



1       ~~[(d)]~~ (e) The chairperson may adopt rules pursuant to  
2 chapter 91 to further implement this section."

3       SECTION 7. Section 200-10, Hawaii Revised Statutes, is  
4 amended by amending subsection (c) to read as follows:

5       "(c) The permittee shall pay moorage fees to the  
6 department for the use permit that shall be based on~~[-]~~ but not  
7 limited to~~[-]~~ the use of the vessel, its effect on the harbor,  
8 use of facilities, and the cost of administering this mooring  
9 program; and, furthermore:

10       (1) ~~[Moorage]~~ Except for commercial maritime activities  
11 where there is a tariff established by the department  
12 of transportation, moorage fees shall be established  
13 by appraisal by a state-licensed appraiser approved by  
14 the department and shall be higher for nonresidents~~[-]~~  
15 than for residents. The moorage fees shall be set by  
16 appraisal categories schedule A and schedule B, to be  
17 determined by the department, and may be increased  
18 annually by the department, to reflect a cost-of-  
19 living index increase; provided that:

20       (A) Schedule A shall include existing mooring  
21 permittees; and



1           (B) Schedule B shall apply to all new mooring  
2           applicants and transient slips on or after  
3           July 1, 2011;

4           provided further that schedule A rates shall be  
5           increased by the same amount each year so that  
6           schedule A rates equal schedule B rates by July 1,  
7           2014;

8           (2) For commercial maritime activities where there is a  
9           tariff established by the harbors division of the  
10           department of transportation, the department may adopt  
11           the published tariff of the harbors division of the  
12           department of transportation or establish the fee by  
13           appraisal by a state-licensed appraiser approved by  
14           the department;

15           ~~[(2)]~~ (3) An application fee shall be collected when  
16           applying for moorage in state small boat harbors and  
17           shall thereafter be collected annually when the  
18           application is renewed. The application fee shall be:

19           (A) Set by the department; and

20           (B) Not less than \$100 for nonresidents;

21           ~~[(3)]~~ (4) If a recreational vessel is used as a place of  
22           principal habitation, the permittee shall pay, in



1 addition to the moorage fee, a liveaboard fee that  
2 shall be calculated at a rate of:

3 (A) \$5.20 a foot of vessel length a month if the  
4 permittee is a state resident; and

5 (B) \$7.80 a foot of vessel length a month if the  
6 permittee is a nonresident;

7 provided that the liveaboard fees established by this  
8 paragraph may be increased by the department at the  
9 rate of the annual cost-of-living index, but not more  
10 than five per cent in any one year, beginning  
11 ~~[January]~~ July 1 of each year; ~~[and~~

12 ~~(4)]~~ (5) If a vessel is used for commercial purposes from  
13 its permitted mooring, the permittee shall pay, in  
14 lieu of the moorage and liveaboard fee, a fee based on  
15 three per cent of the gross revenues derived from the  
16 use of the vessel or two times the moorage fee  
17 assessed for a recreational vessel of the same size,  
18 whichever is greater ~~[-]~~; and

19 (6) The department is authorized to assess and collect  
20 utility fees, including electrical and water charges,  
21 and common-area maintenance fees in small boat  
22 harbors."



1 SECTION 8. (a) Pursuant to section 200-2.5, Hawaii  
2 Revised Statutes, the department of land and natural resources  
3 is directed to lease fast lands and submerged lands at the Ala  
4 Wai boat harbor using the request for proposals process for the  
5 public-private development, management, and operation of areas  
6 of Ala Wai boat harbor.

7 (b) The fast lands and submerged lands of the Ala Wai boat  
8 harbor that may be leased include the lands described in section  
9 200- , Hawaii Revised Statutes.

10 (c) The permissible uses under the lease issued pursuant  
11 to subsection (a) shall include:

12 (1) A minimum of not less than one hundred twenty berths  
13 for vessels; provided that:

14 (A) Notwithstanding section 200-9(b), Hawaii Revised  
15 Statutes, not more than forty berths shall be  
16 available for vessels used for purposes of  
17 recreational boating activities that are also the  
18 principal habitation of the owners;

19 (B) Not more than thirty berths, including those  
20 allowed pursuant to section 200-9(c), Hawaii  
21 Revised Statutes, shall be available for vessels  
22 issued commercial use permits; and





- 1 (C) All berths provided under this paragraph shall be  
2 made available to the public pursuant to rules of  
3 the department of land and natural resources,  
4 with moorage fees to be determined by the  
5 developer;
- 6 (2) Office space for use by the division of boating and  
7 ocean recreation of the department of land and natural  
8 resources;
- 9 (3) Vehicular parking, including parking stalls for use by  
10 the division of boating and ocean recreation of the  
11 department of land and natural resources and for  
12 public metered parking;
- 13 (4) Commercial uses, including but not limited to  
14 restaurants, retail stores, marine-supplies stores,  
15 and sundry stores, to be made available to the public;
- 16 (5) Hotel, residential, and timeshare uses;
- 17 (6) Training facilities for ocean recreation and support  
18 facilities for ocean recreation;
- 19 (7) Any uses described or referred to in the request for  
20 qualifications or request for proposals issued by the  
21 division of boating and ocean recreation of the



1 department of land and natural resources on November  
2 25, 2008;

3 (8) Vessel-fueling facilities;

4 (9) Vessel haul-out, storage, and repair facilities; and

5 (10) Deep seawater air-conditioning plants.

6 (d) The lease shall not exceed a maximum term of sixty-  
7 five years and shall provide for:

8 (1) A minimum lease rent that is the greater of a  
9 commercially acceptable percentage of the gross  
10 receipts of the lessee from the developed leased  
11 premises or a fair return on the fair market value of  
12 the vacant leased premises, as determined by appraisal  
13 by a state-licensed appraiser approved by the  
14 department, with reasonable periodic step-ups in the  
15 minimum lease rent over the term of the lease; and

16 (2) A three-year development period with a fixed reduced  
17 lease rent.

18 (e) Notwithstanding chapter 171 and section 190D-33,  
19 Hawaii Revised Statutes, all revenues from the lease shall be  
20 deposited in the boating special fund.

21 (f) Notwithstanding chapters 171 and 190D, Hawaii Revised  
22 Statutes, the lease of fast lands and submerged lands of Ala Wai



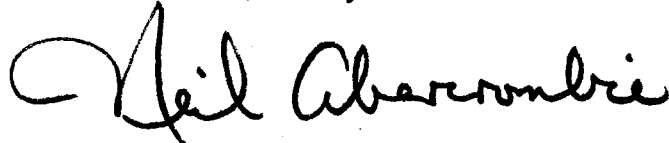
1 boat harbor shall be subject to section 200-2.5(a), Hawaii  
2 Revised Statutes.

3 (g) Notwithstanding section 171-53, Hawaii Revised  
4 Statutes, the prior authorization of the legislature by  
5 concurrent resolution shall not be required for the lease of  
6 submerged lands and lands beneath tidal waters at the Ala Wai  
7 boat harbor.

8 SECTION 9. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10 SECTION 10. This Act shall take effect on July 1, 2011.

APPROVED this 7 day of JUL , 2011



GOVERNOR OF THE STATE OF HAWAII

