

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

February 24, 2012

Board of Land and Natural Resources
State of Hawaii
Honolulu Hawaii

Permission to Contract with Colliers International Valuation & Advisory Services, LLC to Provide Professional Appraisal Services to Determine Fair Market Valuation of all Mooring Rates and Fees for the Division of Boating and Ocean Recreation and Request the Board's Authorization to Allow the Chairperson to Enter into Contracts for The Professional Services of Appraisal and Survey for DOBOR Facilities

The Division of Boating and Ocean Recreation (DOBOR) desires to engage consultants to provide professional appraisal services for the determination of fair market valuation of all mooring rates and fees pertaining to all DOBOR harbors, offshore mooring sites, and related facilities in accordance with Act 197, SLH 2011 (Exhibit A).

On July 7, 2011, Act 197 became law. The Act states on page 2:

- "(2) Provide for future moorage fees to be established by appraisal by a state-licensed appraiser and assigned a scheduled B rate, while existing mooring holders remain in a schedule A class that shall equal schedule B rates over a three-year period; and"

This statute requires DOBOR to hire a State-Licensed appraiser. The State-Licensed appraiser will be contracted to provide an up-to-date analysis of the fair market valuation for all its facilities with mooring, including offshore mooring areas. The appraiser shall be required to have expertise in maritime facilities. Colliers International Valuation & Advisory Services, LLC, was selected at a fee of \$85,000 for this project. All procurement for the professional services of appraisers will be made in accordance with the State Procurement Code, Chapter 103D; Hawaii Revised Statutes (HRS). Payment will be made from The DOBOR Special Fund.

In anticipation of the forthcoming need for appraisals and surveys at DOBOR facilities state wide in near future, DOBOR requests the Board's authorization to allow the Chairperson to enter into contracts and award the Professional Services of Appraisals and Surveys.

RECOMMENDATION:

1. That the Board of Land and Natural Resources authorize awarding contracts to Colliers International and Valuation Advisory Services, LLC to provide for Professional appraisal services to determine fair market valuation of all mooring rates and fees for the Division of Boating and Ocean Recreation and authorize the Chairperson, to sign all necessary documents pertaining to the contracts, subject to available funding, approval by the Governor (if required), and approval as to form by the Attorney General's office.
2. That the Board authorize the Chairperson, subject to review and approval by the Attorney General's office, to enter into supplemental contracts to address unforeseen project-related conditions and sign the necessary documents to implement the changes and sign all necessary documents.
3. The Board authorize and allow the Chairperson to enter into contracts for Professional Services of Appraisals and Surveys for DOBOR Facilities.

Respectfully Submitted,



Edward R. Underwood
Administrator

Attachment: Exhibit A

APPROVED FOR SUBMITTAL



William J. Aila, Jr., Chairperson



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

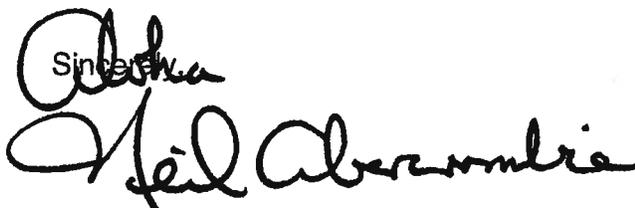
The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

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

EXHIBIT A

ORIGINAL

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

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

HB1566 CD1 HMS 2011-4057



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~~[7]~~ and chapter 190D, for private development, management, and
11 operation~~[7]~~; 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 "[~~H~~]~~§~~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 furthest 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



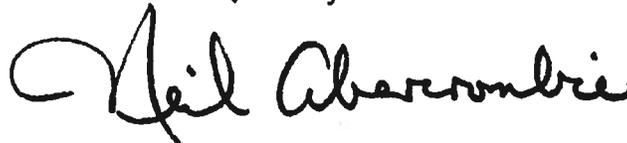
1 boat harbor shall be subject to section 200-2.5(a), Hawaii
2 Revised Statutes.

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

