

S.B. NO. 2877

JAN 23 2014

A BILL FOR AN ACT

RELATING TO USE PERMITS FOR SMALL BOAT HARBOR FACILITIES.

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

1 SECTION 1. Section 200-10, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§200-10 Permits and fees for state small boat harbors.**

4 (a) No person shall moor a vessel in a state small boat harbor
5 without:

6 (1) First obtaining a use permit from the department; and

7 (2) Being the owner of the vessel.

8 (b) No use permit may be transferred unless specifically
9 provided by law. For purposes of this section, the term
10 "transfer" includes any change in control, by whatever means, of
11 any entity that owns or controls, directly or indirectly, a use
12 permit.

13 [~~(b)~~] (c) In order to obtain a permit or a permit renewal,
14 the owner of a vessel shall provide, at the owner's own expense:

15 (1) A marine surveyor's inspection no more than two years
16 old, certifying that the surveyor has inspected the
17 vessel and considers it to fulfill the requirements
18 set by the department; and

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1 (2) Documentation that the person is the owner of the
2 vessel. The documentation shall meet requirements
3 established by the department.

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

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

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

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- 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 (3) An application fee shall be collected when applying
16 for moorage in state small boat harbors and shall
17 thereafter be collected annually when the application
18 is renewed. The application fee shall be:
- 19 (A) Set by the department; and
20 (B) Not less than \$100 for nonresidents;
- 21 (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 July 1
11 of each year;

12 (5) If a vessel is used for commercial purposes from its
13 permitted mooring, the permittee shall pay, in lieu of
14 the moorage and liveaboard fee, a fee based on three
15 per cent of the gross revenues derived from the use of
16 the vessel or two times the moorage fee assessed for a
17 recreational vessel of the same size, whichever is
18 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 [~~(d)~~] (e) The department shall not renew or issue a permit
2 to a person who is not the owner of the vessel which is moored
3 or which the person desires to moor in a state small boat
4 harbor. Any individual who is an owner of a vessel used for
5 commercial purposes, including commercial fishing as a principal
6 means of livelihood, and possesses a valid mooring permit or
7 commercial permit, or both, in accordance with the rules adopted
8 by the chairperson pursuant to chapter 91, may transfer
9 ownership of the vessel from personal ownership to corporate or
10 other business ownership without terminating the right to moor
11 or operate the vessel under the permit or permits. The existing
12 permit or permits shall be reissued in the name of the
13 transferee corporation or other business entity.

14 For the purposes of this section, "person" means any
15 individual, firm, partnership, corporation, trust, association,
16 joint venture, organization, institution, or any other legal
17 entity, and "owner" includes the legal owner of a vessel where
18 there is no security interest held by anyone on the vessel, a
19 buyer under a purchase money security interest, a debtor under
20 any security interest, a demise charterer of a vessel, or a
21 lessee or charterer of a vessel under a lease or charter which
22 provides the lessee or charterer with exclusive right to

1 possession of the vessel to the exclusion of the lessor or the
2 person from whom the vessel is chartered. No permittee shall be
3 allowed to moor a leased vessel in a berth unless the terms of
4 the lease are set at fair market value. A "legal owner"
5 includes a person who holds unencumbered title to a vessel or is
6 a secured party under a security interest in the vessel. An
7 owner who is issued a permit to moor a vessel in a state small
8 boat harbor shall notify the department in writing of a transfer
9 of interest or possession in the vessel within seven days of
10 transfer.

11 Any person owning an interest in a corporation or other
12 business entity possessing a valid commercial permit issued by
13 the department, in accordance with rules adopted by the
14 chairperson pursuant to chapter 91, may transfer any or all
15 stock or other interest to another person without terminating
16 the right of the corporation or business entity to retain or
17 renew its commercial permit or any other permit issued to it by
18 the department; provided that:

19 (1) The corporation or business entity has been engaged in
20 the same commercial vessel activity, as defined in
21 section 200-9, for a minimum of one year; and

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1 (2) The seller shall pay the department a business
2 transfer fee based on the passenger-carrying capacity
3 of the vessels owned or operated by the corporation or
4 business entity as provided by rules adopted by the
5 chairperson pursuant to chapter 91.

6 Any person possessing a commercial permit shall be required to
7 meet minimum revenue standards, as a condition of retaining or
8 renewing the commercial permit.

9 ~~(e)~~ (f) The department may designate moorage space within
10 state small boat harbors to accommodate commercial fishing
11 vessels and transient vessels.

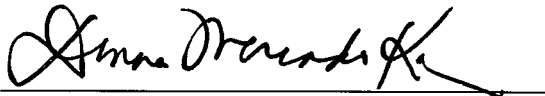
12 ~~(f)~~ (g) All revenues from the foregoing operations shall
13 be deposited in the boating special fund."

14 SECTION 2. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY: 

19

BY REQUEST

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Report Title:

Use Permits; Small Boat Harbors

Description:

Clarifies that no use permit for a state small boat harbor facility may be transferred unless specifically provided by law.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO USE PERMITS FOR SMALL BOAT HARBOR FACILITIES.

PURPOSE: To clarify that no use permit for a state small boat harbor facility may be transferred unless specifically provided by law.

MEANS: Amend section 200-10, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Section 200-10, HRS, authorizes the transfer of all use permits issued to a corporation for the use of a small boat harbor facility as long as the corporation or other business entity holds a valid commercial use permit. The statute is silent on the transfer of a regular mooring permit that is issued to a corporation or other business entity and whether the permit may be transferred upon the change in ownership of the corporation or other business entity.

This bill seeks to clarify that use permits issued to a corporation or other business entity for a state small boat harbor facility may only be transferred if the corporation or other business entity holds a valid commercial use permit. This will prevent people by-passing the waitlist for a regular mooring permit by acquiring a corporation or other business entity holding a regular mooring permit.

Impact on the public: This bill will ensure that the waitlist for a small boat harbor facility is not circumvented by a person applying for a regular mooring permit as a corporation or other business entity.

Impact on the department and other agencies:

This bill would ensure that the issuance of use permits for small boat harbor facilities are applied fairly.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: LNR 801.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.