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:

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

"§200-10 Permits and fees for state small boat harbors[−]."

permit transfers. (a) No person shall moor a vessel in a state small boat harbor without:

(1) First obtaining a use permit from the department; and
(2) Being the owner of the vessel.

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

(1) A marine surveyor's inspection no more than two years old, certifying that the surveyor has inspected the vessel and considers it to fulfill the requirements set by the department; and
(2) Documentation that the person is the owner of the vessel. The documentation shall meet requirements established by the department.

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

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

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

(B) Schedule B shall apply to all new mooring applicants and transient slips on or after July 1, 2011; provided further that schedule A rates shall be increased by the same amount each year so that
schedule A rates equal schedule B rates by July 1, 2014;

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

(3) An application fee shall be collected when applying for moorage in state small boat harbors and shall thereafter be collected annually when the application is renewed. The application fee shall be:
(A) Set by the department; and
(B) Not less than $100 for nonresidents;

(4) If a recreational vessel is used as a place of principal habitation, the permittee shall pay, in addition to the moorage fee, a liveaboard fee that shall be calculated at a rate of:
(A) $5.20 a foot of vessel length a month if the permittee is a state resident; and
(B) $7.80 a foot of vessel length a month if the permittee is a nonresident;

provided that the liveaboard fees established by this paragraph may be increased by the department at the rate of the annual cost-of-living index, but not more than five per cent in any one year, beginning July 1 of each year;

(5) If a vessel is used for commercial purposes from its permitted mooring, the permittee shall pay, in lieu of the moorage and liveaboard fee, a fee based on three per cent of the gross revenues derived from the use of the vessel or two times the moorage fee assessed for a recreational vessel of the same size, whichever is greater; and

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

(d) The department shall not renew or issue a permit to a person who is not the owner of the vessel which is moored or which the person desires to moor in a state small boat harbor.
No use permit may be transferred unless specifically provided by law. Any individual who is an owner of a vessel used for commercial purposes, including commercial fishing as a principal means of livelihood, and possesses a valid mooring permit or commercial permit, or both, in accordance with the rules adopted by the chairperson pursuant to chapter 91, may transfer ownership of the vessel from personal ownership to corporate or other business ownership without terminating the right to moor or operate the vessel under the permit or permits. The existing permit or permits shall be reissued in the name of the transferee corporation or other business entity.

(e) For the purposes of this section, "person" means any individual, firm, partnership, corporation, trust, association, joint venture, organization, institution, or any other legal entity, and "owner" includes the legal owner of a vessel where there is no security interest held by anyone on the vessel, a buyer under a purchase money security interest, a debtor under any security interest, a demise charterer of a vessel, or a lessee or charterer of a vessel under a lease or charter which provides the lessee or charterer with exclusive right to possession of the vessel to the exclusion of the lessor or the
person from whom the vessel is chartered. "Controlled group" means parent-subsidiary corporations, brother-sister corporations, or constructive owner. "Transfer" includes any change in control, by whatever means, of any entity that owns or controls, directly or indirectly, a use permit. No permittee shall be allowed to moor a leased vessel in a berth unless the terms of the lease are set at fair market value. A "legal owner" includes a person who holds unencumbered title to a vessel or is a secured party under a security interest in the vessel. An owner who is issued a permit to moor a vessel in a state small boat harbor shall notify the department in writing of a transfer of interest or possession in the vessel within seven days of transfer.

(f) Any person owning an interest in a corporation or other business entity or is part of a controlled group possessing a valid commercial permit issued by the department, in accordance with rules adopted by the chairperson pursuant to chapter 91, may transfer any or all stock or other interest to another person without terminating the right of the corporation or business entity to retain or renew its commercial permit or any other permit issued to it by the department; provided that:
(1) The corporation or business entity has been engaged in
the same commercial vessel activity, as defined in
section 200-9, for a minimum of one year; [and]

(2) The seller shall pay the department a business
transfer fee based on the passenger-carrying capacity
of the vessels owned or operated by the corporation or
business entity as provided by rules adopted by the
chairperson pursuant to chapter 91[-], except for
transfers of stock or interest in a corporation or
other business entity between spouses or first
generation lineal descendants; and

(3) In the case of a controlled group, the transferee must
retain eighty per cent control of the transferor.

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

[g] The department may designate moorage space
within state small boat harbors to accommodate commercial
fishing vessels and transient vessels.

[h] All revenues from the foregoing operations shall
be deposited in the boating special fund."
SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2014.
Report Title:
Use Permits; Small Boat Harbors

Description:
Prohibits transfer of use permit for a state small boat harbor facility unless specifically provided by law. Allows certain changes in control by parent-subsidiary, brother-sister, or constructive owner possessing permit without loss of right to retain or renew permit. Exempts seller who transfers interest between spouses and children for estate planning from paying Department of Land and Natural Resources passenger-carrying capacity business transfer fee. (CD1)

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