
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 legislature finds that the department of
2 land and natural resources (department) division of boating and
3 ocean recreation is responsible for ocean recreation management
4 in state ocean waters, among other responsibilities. Public
5 safety and marine natural resources can be affected by a variety
6 of environmental factors and emerging ocean recreation
7 technologies, some of which may change rapidly and frequently.
8 This Act is part of a comprehensive ocean recreation management
9 package put forth by the department to ensure effective natural
10 resource protection by providing better management and
11 enforcement tools.

12 The legislature further finds that the department is also
13 not adequately funded to proactively address impacts of rules-
14 based commercial activity, such as overcrowding and marine
15 ecosystem damage, forcing a more reactionary approach that does
16 little to address issues.



1 Therefore, the purpose of this Act is to revise fee and
2 permitting provisions applicable to commercial ocean operators.

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

5 "~~§~~200-10 **Permits and fees for state small boat harbors**~~[+]~~,
6 coastal areas, and ocean waters; permit transfers. (a) No

7 person shall moor a vessel in a state small boat harbor without:

8 (1) First obtaining [~~a use permit~~] written authorization
9 from the department; [~~and~~]

10 (2) Being the owner of the vessel~~[+]~~; and

11 (3) Paying appropriate fees set by subsection (c).

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

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

19 (2) Documentation that the person is the owner of the
20 vessel. The documentation shall meet requirements
21 established by the department; and



1 (3) Satisfactory proof that the person has attained the
2 age of eighteen years prior to obtaining [a] any use
3 permit or being placed on the waitlist for [a] any use
4 permit.

5 (c) [The] A permittee shall pay [~~moorage~~] fees to the
6 department for [~~the~~] a use permit that shall be based on but not
7 limited to the [~~use of the vessel, the vessel's effect on the~~
8 ~~harbor, use of facilities, and the cost of administering the~~
9 ~~mooring program;~~] impact of the permitted activity on natural
10 resources, impact of the activity on public access to and use of
11 state boating facilities and waters of the State, and the cost
12 of administering the small boat harbor and coastal areas
13 programs; provided that:

14 (1) Except for commercial maritime activities in which a
15 tariff is established by the department of
16 transportation, moorage fees shall be established by
17 appraisal by a state-licensed appraiser approved by
18 the department;

19 (2) For commercial maritime activities in which a tariff
20 is established by the harbors division of the
21 department of transportation, the department may adopt



1 the published tariff of the harbors division of the
2 department of transportation or establish the moorage
3 fee by appraisal by a state-licensed appraiser
4 approved by the department;

5 (3) An application fee shall be collected when applying
6 for [~~moorage in state small boat harbors~~] any use
7 permit and shall thereafter be collected annually when
8 the application is renewed; provided that the
9 application fee shall be set by the department;

10 (4) If a recreational vessel is used as a place of
11 principal habitation, the permittee shall pay, in lieu
12 of the moorage fee required by paragraph (1), a
13 monthly liveaboard fee that shall be two times the
14 moorage fee that would otherwise be assessed for a
15 vessel of the same size;

16 (5) If [~~a vessel is used for commercial purposes from the~~
17 ~~vessel's permitted mooring,~~] the permittee is carrying
18 passengers for hire, the permittee shall pay[~~, in lieu~~
19 ~~of the moorage fee required by paragraph (1),~~] a
20 monthly fee that shall be the greater of:



- 1 (A) Three per cent of the gross revenues derived from
2 the use of the vessel;
- 3 (B) \$1.50 per passenger carried for hire; or
- 4 (C) Two times the moorage fee that would otherwise be
5 assessed for a recreational vessel of the same
6 size;
- 7 provided further that if a permittee is using a vessel
8 for commercial purposes from the vessel's permitted
9 mooring, the fee required by this paragraph shall be
10 in lieu of the moorage fee required by paragraph (1)
11 for that vessel;
- 12 (6) The department is authorized to assess and collect
13 utility fees, including but not limited to electrical
14 and water charges, and common-area maintenance fees in
15 state small boat harbors; and
- 16 (7) All fees established by appraisal pursuant to this
17 subsection shall be set at fair market value.
- 18 (d) The department shall not renew or issue [a] any use
19 permit to a person who is not the owner of the vessel [~~which~~]
20 that is moored or [~~which~~] that the person desires to moor in a
21 state small boat harbor. No use permit may be transferred



1 unless specifically provided by law. Any individual who is an
2 owner of a vessel used for commercial purposes, including
3 commercial fishing as a principal means of livelihood, and who
4 possesses a valid [~~mooring~~] commercial use permit [~~or commercial~~
5 ~~permit, or both,~~] in accordance with the rules adopted by the
6 chairperson pursuant to chapter 91, may transfer ownership of
7 the vessel from personal ownership to corporate or other
8 business ownership without terminating the right to moor or
9 operate the vessel under the commercial use permit [~~or permits~~].
10 [~~The~~] Any existing use permit or permits held by the
11 transferring individual shall be reissued in the name of the
12 transferee corporation or other business entity.

13 (e) [~~For the purposes of this section, "person" means any~~
14 ~~individual, firm, partnership, corporation, trust, association,~~
15 ~~joint venture, organization, institution, or any other legal~~
16 ~~entity, and "owner" includes the legal owner of a vessel where~~
17 ~~there is no security interest held by anyone on the vessel, a~~
18 ~~buyer under a purchase money security interest, a debtor under~~
19 ~~any security interest, a demise charterer of a vessel, or a~~
20 ~~lessee or charterer of a vessel under a lease or charter which~~
21 ~~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. "Controlled group"~~
3 ~~means parent subsidiary corporations, brother-sister~~
4 ~~corporations, or constructive owner. "Transfer" includes any~~
5 ~~change in control, by whatever means, of any entity that owns or~~
6 ~~controls, directly or indirectly, a use permit.] No permittee~~
7 shall be allowed to moor a leased vessel in a berth unless the
8 terms of the lease are set at fair market value. [A ~~"legal~~
9 ~~owner" includes a person who holds unencumbered title to a~~
10 ~~vessel or is a secured party under a security interest in the~~
11 ~~vessel.] An owner who is issued a mooring permit [~~to moor a~~
12 ~~vessel in a state small boat harbor]~~ shall notify the department
13 in writing of a transfer of interest or possession in the vessel
14 within seven days of transfer.~~

15 (f) Any person who owns an interest in a corporation or
16 other business entity or is part of a controlled group
17 possessing a valid commercial use permit issued by the
18 department, in accordance with rules adopted by the chairperson
19 pursuant to chapter 91, may transfer any or all stock or other
20 interest to another person without terminating the right of the
21 corporation or business entity to retain or renew its commercial



1 use permit or any other use permit issued to it by the
2 department; provided that:

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

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

14 (3) In the case of a controlled group, the transferee
15 shall retain eighty per cent control of the
16 transferor.

17 Any person possessing a commercial use permit shall be
18 required to meet minimum revenue standards, as set forth in
19 rules adopted by the department pursuant to chapter 91, as a
20 condition of retaining or renewing the commercial use permit.



1 When an application for renewal of a commercial use permit
2 is made at least sixty days [~~prior to~~] before the expiration of
3 the commercial use permit, the department shall review the
4 application and, within thirty days of receipt of the
5 application, shall renew the commercial use permit or notify the
6 applicant that the application is incomplete or cannot be
7 renewed and explain any reasons for nonrenewal. Within thirty
8 days of receipt of the applicant's amended application, the
9 department shall [~~either~~] renew the commercial use permit or
10 notify the applicant that the commercial use permit will not be
11 renewed.

12 If the holder of a commercial use permit fails to timely
13 [~~obtain renewal of a~~] renew a commercial use permit, the holder
14 [~~of the permit shall automatically be granted a~~] may make a
15 written request to the department for a one-time thirty-day
16 extension from the date of the existing commercial use permit's
17 expiration to obtain a commercial use permit renewal. Any
18 extension request shall be received by the department no later
19 than the expiration date of the commercial use permit.



1 (g) The department may designate moorage space within
2 state small boat harbors to accommodate commercial fishing
3 vessels and transient vessels.

4 (h) All revenues from the foregoing operations shall be
5 deposited in the boating special fund.

6 (i) As used in this section:

7 "Controlled group" means parent-subsidiary corporations,
8 brother-sister corporations, or constructive owner.

9 "Legal owner" includes a person who holds unencumbered
10 title to a vessel or is a secured party under a security
11 interest in the vessel.

12 "Owner" includes the legal owner of a vessel where there is
13 no security interest held by anyone on the vessel, a buyer under
14 a purchase money security interest, a debtor under any security
15 interest, a demise charterer of a vessel, or a lessee or
16 charterer of a vessel under a lease or charter which provides
17 the lessee or charterer with exclusive right to possession of
18 the vessel to the exclusion of the lessor or the person from
19 whom the vessel is chartered.



1 "Person" means any individual, firm, partnership,
2 corporation, trust, association, joint venture, organization,
3 institution, or any other legal entity.

4 "Transfer" includes any change in control, by whatever
5 means, of any entity that owns or controls, directly or
6 indirectly, a use permit."

7 SECTION 3. This Act does not affect rights and duties that
8 matured, penalties that were incurred, and proceedings that were
9 begun before its effective date.

10 SECTION 4. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 5. This Act shall take effect upon its approval.



Report Title:

Department of Land and Natural Resources; Division of Boating and Ocean Recreation; State Small Boat Harbors; Permits; Fees

Description:

Revises provisions relating to state small boat harbors fees and permits. (CD1)

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