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# A BILL FOR AN ACT

RELATING TO COMMERCIAL OCEAN RECREATION OPERATIONS.

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

1           SECTION 1. The department of land and natural resources  
2 (department) division of boating and ocean recreation is  
3 responsible for ocean recreation management in state ocean  
4 waters, among other responsibilities. Public safety and marine  
5 natural resources can be affected by a variety of environmental  
6 factors and emerging ocean recreation technologies, some of  
7 which may change rapidly and frequently. This Act is part of a  
8 comprehensive ocean recreation management package put forth by  
9 the department to ensure effective natural resource protection  
10 by providing better management and enforcement tools.

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

15           Therefore, the purpose of this Act is to:

- 16           (1) Revise the way fees applicable to commercial ocean  
17           operators are assessed; and



1 (2) Allow the department to issue certain new commercial  
2 use permits by public auction.

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 that if a permittee is using a vessel  
8 for commercial purposes from the vessel's  
9 permitted mooring, the fee required by this  
10 paragraph shall be in lieu of the moorage fee  
11 required by paragraph (1) 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~~] As used in this section,  
14 "person" means any individual, firm, partnership, corporation,  
15 trust, association, joint venture, organization, institution, or  
16 any other legal entity, and "owner" includes the legal owner of  
17 a vessel where there is no security interest held by anyone on  
18 the vessel, a buyer under a purchase money security interest, a  
19 debtor under any security interest, a demise charterer of a  
20 vessel, or a lessee or charterer of a vessel under a lease or  
21 charter which provides the lessee or charterer with exclusive



1 right to possession of the vessel to the exclusion of the lessor  
2 or the person from whom the vessel is chartered. "Controlled  
3 group" means parent-subsidary 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 expiration of the  
3 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 such  
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) Except as provided in section 200-37(1), all new  
5 commercial use permits issued for commercial ocean recreation  
6 activity occurring in an ocean recreation management area, as  
7 defined by law or rule, that are not renewals or reissuances of  
8 commercial use permits shall be issued by public auction.

9 [~~h~~] (i) All revenues from the foregoing operations shall  
10 be deposited in the boating special fund."

11 SECTION 3. This Act does not affect rights and duties that  
12 matured, penalties that were incurred, and proceedings that were  
13 begun before its effective date.

14 SECTION 4. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 5. This Act shall take effect on July 1, 3000.



**Report Title:**

Ocean Recreation Commercial Use Permits; ORMA; Public Auction

**Description:**

Specifies that the Department of Land and Natural Resources shall issue all new commercial use permits for commercial ocean recreation activity in an ORMA that are not renewals or reissuances by public auction. Revises provisions relating to boating and ocean recreation fees and permits. Effective 7/1/3000. (HD1)

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

