

JAN 24 2024

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 impacted 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 In a relatively quick timeframe over recent years,
12 commercial ocean activity has substantially increased such that
13 there is over-commercialization in many areas around the State,
14 to the detriment of ocean users and marine natural resources.
15 Overcrowding as a result of over-commercialization often causes
16 conflict between recreational users and commercial operators.
17 While the department has attempted to reduce commercial use
18 permit counts by attrition, permittees' current ability to sell

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1 a company that holds a permit without causing the permit to
2 terminate effectively precludes any reduction of permit numbers
3 by attrition. The department is also not adequately funded to
4 proactively address impacts of rules-based commercial activity,
5 such as overcrowding and marine ecosystem damage, forcing a more
6 reactionary approach that does little to address issues.

7 Therefore, the purposes of this Act are to (1) revise the
8 fees applicable to commercial ocean operators and the way some
9 of these fees are assessed; (2) prevent commercial use permits
10 from being transferred upon the change in legal ownership of a
11 permitted business entity, except for transfers to spouses and
12 first-generation lineal descendants; (3) allow the department to
13 issue new commercial use permits by public auction; and (4)
14 allow the department to use the public auction process to reduce
15 commercial use permit counts in ocean recreation management
16 areas or state boating facilities where an applicable permit
17 limit is exceeded.

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

20 "§200-10 Permits and fees for state small boat harbors[+],
21 coastal areas, and ocean waters; permit transfers. (a) No
22 person shall moor a vessel in a state small boat harbor without:

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

3 (2) Being the owner of the vessel [~~-~~]; and

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

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

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

12 (2) Documentation that the person is the owner of the
13 vessel. The documentation shall meet requirements
14 established by the department; and

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

19 (c) [~~The~~] A permittee shall pay [~~moorage~~] fees to the
20 department for [~~the~~] a use permit that shall be based on but not
21 limited to the [~~use of the vessel, the vessel's effect on the~~
22 harbor, use of facilities, and the cost of administering the

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1 ~~mooring program;~~ impact of the permitted activity on natural
2 resources, impact of the activity on public access to and use of
3 state boating facilities and waters of the State, and the cost
4 of administering the small boat harbor and coastal areas
5 programs; provided that:

6 (1) Except for commercial maritime activities in which a
7 tariff is established by the department of
8 transportation, moorage fees shall be established by
9 appraisal by a state-licensed appraiser approved by
10 the department;

11 (2) For commercial maritime activities in which a tariff
12 is established by the harbors division of the
13 department of transportation, the department may adopt
14 the published tariff of the harbors division of the
15 department of transportation or establish the moorage
16 fee by appraisal by a state-licensed appraiser
17 approved by the department;

18 (3) An application fee shall be collected when applying
19 for [~~moorage in state small boat harbors~~] any use
20 permit and shall thereafter be collected annually when
21 the application is renewed; provided that the
22 application fee shall be set by the department;

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

7 (5) If [~~a vessel is used for commercial purposes from the~~
8 ~~vessel's permitted mooring,~~] the permittee is engaging
9 in commercial activity, the permittee shall pay[~~, in~~
10 ~~lieu of the moorage fee required by paragraph (1),~~] a
11 monthly fee that shall be the greater of:

12 (A) [~~Three~~] Six per cent of the gross revenues
13 derived from [~~the use of the vessel,~~] the
14 permitted activity; or

15 (B) [~~\$1.50~~] For vessel-based commercial activity:
16 (i) Six per cent of the gross revenues derived
17 from the use of the vessel; and
18 (ii) \$3.00 per passenger carried for hire; or

19 (C) [~~Two times the moorage fee that would~~
20 ~~otherwise be assessed for a recreational vessel~~
21 ~~of the same size,~~] \$2,000;

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1 If a permittee is using a vessel for commercial
2 purposes from the vessel's permitted mooring, the fee
3 required by this paragraph shall be in lieu of the fee
4 required by paragraph (1) for that vessel;

5 (6) The department is authorized to assess and collect
6 utility fees, including, but not limited to,
7 electrical and water charges, and common-area
8 maintenance fees in state small boat harbors; and

9 (7) All fees established by appraisal pursuant to this
10 subsection shall be set at fair market value.

11 (d) The department shall not renew or issue [a] any use
12 permit to a person who is not the owner of the vessel [~~which~~]
13 that is moored or [~~which~~] that the person desires to moor in a
14 state small boat harbor. No use permit may be transferred
15 unless specifically provided by law. Any individual who is an
16 owner of a vessel used for commercial purposes, including
17 commercial fishing as a principal means of livelihood, and who
18 possesses a valid [~~mooring~~] commercial use permit [~~or commercial~~
19 ~~permit, or both,~~] in accordance with the rules adopted by the
20 chairperson pursuant to chapter 91, may transfer ownership of
21 the vessel from personal ownership to corporate or other
22 business ownership without terminating the right to moor or

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1 operate the vessel under the commercial use permit [~~or permits~~].
2 [The] Any existing use permit or permits held by the
3 transferring individual shall be reissued in the name of the
4 transferee corporation or other business entity.

5 (e) For the purposes of this section, "person" means any
6 individual, firm, partnership, corporation, trust, association,
7 joint venture, organization, institution, or any other legal
8 entity, and "owner" includes the legal owner of a vessel where
9 there is no security interest held by anyone on the vessel, a
10 buyer under a purchase money security interest, a debtor under
11 any security interest, a demise charterer of a vessel, or a
12 lessee or charterer of a vessel under a lease or charter which
13 provides the lessee or charterer with exclusive right to
14 possession of the vessel to the exclusion of the lessor or the
15 person from whom the vessel is chartered. "Controlled group"
16 means parent-subsidary corporations, brother-sister
17 corporations, or constructive owner. "Transfer" includes any
18 change in control, by whatever means, of any entity that owns or
19 controls, directly or indirectly, a use permit. No permittee
20 shall be allowed to moor a leased vessel in a berth unless the
21 terms of the lease are set at fair market value. A "legal
22 owner" includes a person who holds unencumbered title to a

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1 vessel or is a secured party under a security interest in the
2 vessel. An owner who is issued a mooring permit [~~to moor a~~
3 ~~vessel in a state small boat harbor~~] shall notify the department
4 in writing of a transfer of interest or possession in the vessel
5 within seven days of transfer.

6 (f) [~~Any person who owns an interest in a corporation or~~
7 ~~other business entity or is part of a controlled group~~
8 ~~possessing a valid~~] No commercial use permit issued by the
9 department [~~, in accordance with rules adopted by the chairperson~~
10 ~~pursuant to chapter 91, may transfer any or all stock or other~~
11 ~~interest to another person without terminating the right of the~~
12 ~~corporation or business entity to retain or renew its commercial~~
13 ~~permit or any other permit issued to it by the department;~~
14 ~~provided that:~~] shall be transferable, such that whenever a
15 permittee transfers any interest in the commercial use permit,
16 or whenever any person who owns an interest in a business entity
17 or who is part of a controlled group possessing a valid
18 commercial use permit transfers any interest to another person,
19 the commercial use permit shall automatically terminate, and
20 both the transferor and transferee shall have no right to use
21 the commercial use permit; provided that any person who owns an
22 interest in a business entity or who is part of a controlled

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1 group possessing a valid commercial use permit may transfer the
2 person's interest only to a spouse or first-generation lineal
3 descendant without automatically terminating the commercial use
4 permit; provided further that

5 [~~1~~] ~~The corporation or~~ the business entity has been
6 engaged in the same commercial vessel activity, as
7 defined in section 200-9, for a minimum of one year [~~7~~

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

16 ~~(3) In the case of a controlled group, the transferee~~
17 ~~shall retain eighty per cent control of the~~
18 ~~transferor].~~

19 Any person possessing a commercial use permit shall be
20 required to meet minimum revenue standards [~~7~~] as set forth in
21 rules adopted by the department pursuant to chapter 91, as a
22 condition of retaining or renewing the commercial use permit.

SB. NO. 3/66

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

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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 of commercial use
8 permits shall be issued by unsealed public auction.

9 Within an ocean recreation management area or state boating
10 facility where the department has implemented rules setting a
11 limit on the number of commercial use permits that can be issued
12 at any one time, if the number of commercial use permits issued
13 exceeds the relevant limit, all existing permittees for the area
14 or facility shall be disallowed from renewing their commercial
15 use permits, and the department shall issue new commercial use
16 permits for the area or facility by unsealed public auction up
17 to the relevant limit; provided that only existing commercial
18 use permittees for the area or facility who are otherwise in
19 compliance with existing commercial use permit terms may
20 participate in the auction.

21 (i) The department may immediately suspend or revoke a

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1 commercial use permit without a hearing for any activity that
2 endangers or may endanger the health or safety of passengers or
3 the public, and the department may suspend or revoke a
4 commercial use permit for violation of any rules of the
5 department if, after seventy-two hours notice by the department
6 of the violation, the permittee fails to cure the violation;
7 provided that the permittee shall have five working days from
8 delivery of the notice of suspension or revocation to request in
9 writing an administrative hearing. Unless the notice of
10 suspension or revocation is returned undeliverable, it shall be
11 deemed delivered no later than five working days after mailing.
12 The administrative hearing shall be solely for the purpose of
13 allowing the permittee to contest the basis for the suspension
14 or revocation of the commercial use permit. The hearing shall
15 be held within ten working days of the department's receipt of
16 the written request. The chairperson may adopt rules pursuant
17 to chapter 91 to implement the procedures governing the
18 administrative hearing process. Within ten working days after
19 the conclusion of the hearing, the department shall either:
20 (1) Lift the suspension;

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- 1 (2) Continue the suspension of the commercial use permit
2 for up to one year from the date of conclusion of the
3 hearing; or
4 (3) Revoke the commercial use permit."

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

8 SECTION 4. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

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

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INTRODUCED BY: 

13

BY REQUEST

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Report Title:

Ocean Recreation Commercial Use Permits; Unsealed Public Auction

Description:

Specifies that the Department of Land and Natural Resources can issue new ocean recreation commercial use permits by unsealed public auction. Revises provisions relating to boating and ocean recreation fees and permits. Specifies how commercial use permits may be issued where a permit limit has been exceeded.

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 COMMERCIAL OCEAN RECREATION OPERATIONS.

PURPOSE: To specify that the Department can issue new ocean recreation commercial use permits by unsealed public auction; to close a loophole allowing transfer of a permit without limits upon sale of a business permittee; and to specify that for ocean recreation management areas or state boating facilities where a permit limit has been implemented and that limit is exceeded, the Department shall reissue commercial use permits by unsealed public auction among qualified existing permittees, until the limit is reached.

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

JUSTIFICATION: There has been a rapid expansion of commercial ocean recreational activity within a relatively short period of time, leading to overuse of state boating facilities, strain on natural resources, and user conflicts between recreational and commercial ocean users.

The Department has implemented permit limits for certain areas under its jurisdiction, but there are a number of areas where the limit is exceeded because permittees were "grandfathered" before the limit went into effect. Further, although the Department planned to have permit counts reduced by attrition, most commercial use permits are held by business entities, and owners can transfer the business along with any attendant permits, which bypasses attrition.

This bill would specify that any transfer of interest in a business entity that holds a commercial use permit would cause the permit to terminate, except for transfers to

spouses and first-generation lineal descendants, thereby closing the business transfer loophole to attrition. The Department included the exemption for spouses and first-generation lineal descendants recognizing that businesses take time to build, and owners may want to pass the business to their immediate family.

This bill would also provide a mechanism to issue new commercial use permits where a limit is in place and a method for reducing the permit count for designated ocean recreation management areas or state boating facilities with a limit that has been exceeded. The fairest method that provides the best return to the State is to auction new commercial use permits under these circumstances. For areas or facilities where a limit is exceeded, the Department intends to allow operators currently operating in the area to bid on commercial use permits up to the applicable limit.

Impact on the public: This bill would help to reduce user conflicts between recreational and commercial ocean users.

Impact on the department and other agencies: This bill would provide the Department more clarity on ocean recreation permitting regulations restrictions, as well as flexibility and options in managing, maintaining, and improving ocean recreation management.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: LNR 801.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.