

JAN 24 2024

A BILL FOR AN ACT

RELATING TO OCEAN RECREATION EQUIPMENT.

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
3 (division) is responsible for ocean recreation management in
4 state ocean waters, among other responsibilities. Public safety
5 and marine natural resources can be impacted by a variety of
6 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 administrative rule-making process prescribed by
13 chapter 91, Hawaii Revised Statutes, serves the important
14 function of providing opportunity for public review and input.
15 However, chapter 91, Hawaii Revised Statutes, is not designed
16 for implementation of adaptive management measures in response
17 to rapidly changing conditions. To ensure public safety, reduce
18 user conflicts, and effectively manage marine natural resources,

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1 the division needs the flexibility to quickly and efficiently
2 implement temporary adaptive management measures that can
3 address rapidly changing ocean conditions and emerging ocean
4 recreation technologies that might not otherwise be eligible for
5 regulation pursuant to existing emergency rulemaking measures
6 provided for in chapter 91, Hawaii Revised Statutes. An
7 alternative process with fewer procedural steps and a lower
8 threshold would enable the department to quickly implement
9 certain temporary adaptive management measures, while also
10 providing opportunity for public review and input.

11 The purpose of this Act is to authorize the board of land
12 and natural resources to issue interim administrative rules to
13 quickly regulate the use of ocean recreation equipment in state
14 ocean waters in response to rapidly changing conditions.

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

17 "§200-4 Rules. (a) The chairperson may adopt rules
18 necessary:

19 (1) To regulate the manner in which all vessels may enter
20 the ocean waters and navigable streams of the State
21 and moor, anchor, or dock at small boat harbors,

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- 1 launching ramps, and other boating facilities owned or
2 controlled by the State;
- 3 (2) To regulate the embarking and disembarking of
4 passengers at small boat harbors, launching ramps,
5 other boating facilities, and public beaches;
- 6 (3) For the safety of small boat harbors, launching ramps,
7 and other boating facilities, and the vessels anchored
8 or moored therein;
- 9 (4) For the conduct of the public using small boat
10 harbors, launching ramps, and other boating facilities
11 owned or controlled by the State;
- 12 (5) To regulate and control recreational and commercial
13 use of small boat harbors, launching ramps, and other
14 boating facilities owned or controlled by the State
15 and the ocean waters and navigable streams of the
16 State;
- 17 (6) To prevent the discharge or throwing into small boat
18 harbors, launching ramps, other boating facilities,
19 ocean waters, and navigable streams, of rubbish,
20 refuse, garbage, or other substances likely to affect
21 the quality of the water or that contribute to making
22 the small boat harbors, launching ramps, other boating

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1 facilities, ocean waters, and streams unsightly,
2 unhealthful, or unclean, or that are liable to fill
3 up, shoal, or shallow the waters in, near, or
4 affecting small boat harbors, launching ramps, and
5 other boating facilities and the ocean waters and
6 navigable streams of the State, and likewise to
7 prevent the escape of fuel or other oils or substances
8 into the waters in, near, or affecting small boat
9 harbors, launching ramps, or other boating facilities
10 and the ocean waters and navigable streams of the
11 State from any source point, including but not limited
12 to any vessel or from pipes or storage tanks upon
13 land, including:

14 (A) Requirements for permits and fees for:

15 (i) The mooring, docking, or anchoring of
16 recreational and commercial vessels or the
17 launching of recreational or commercial
18 vessels at small boat harbors, launching
19 ramps, and other boating facilities; or

20 (ii) Other uses of these facilities;

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- 1 (B) Requirements for permits and fees for use of a
2 vessel as a principal place of habitation while
3 moored at a state small boat harbor;
- 4 (C) Requirements governing:
- 5 (i) The transfer of any state commercial,
6 mooring, launching, or any other type of use
7 or other permit, directly or indirectly,
8 including but not limited to the imposition
9 or assessment of a business transfer fee
10 upon transfer of ownership of vessels
11 operating commercially from, within or in
12 any way related to the state small boat
13 harbors; and
- 14 (ii) The use of state small boat harbors,
15 launching ramps, or other boating facilities
16 belonging to or controlled by the State,
17 including but not limited to the
18 establishment of minimum amounts of annual
19 gross receipts required to renew a
20 commercial use permit, and conditions under
21 which a state commercial, mooring,
22 launching, or any other type of use or other

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1 permit may be terminated, canceled, or
2 forfeited; and

3 (D) Any other rule necessary to implement this
4 chapter pertaining to small boat harbors,
5 launching ramps, and other boating facilities
6 belonging to or controlled by the State;

7 (7) To continue the ocean recreational and coastal areas
8 programs and govern the ocean waters and navigable
9 streams of the State, and beaches encumbered with
10 easements in favor of the public to protect and foster
11 public peace and tranquility and to promote public
12 safety, health, and welfare in or on the ocean waters
13 and navigable streams of the State, and on beaches
14 encumbered with easements in favor of the public,
15 including:

16 (A) Regulating the anchoring and mooring of vessels,
17 houseboats, and other contrivances outside of any
18 harbor or boating facility, including:

19 (i) The designation of offshore mooring areas;

20 (ii) The licensing and registration of vessels,
21 houseboats, and other contrivances; and the
22 issuance of permits for offshore anchoring

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1 and mooring of vessels, houseboats, and
2 other contrivances; and

3 (iii) The living aboard on vessels, houseboats, or
4 other contrivances while they are anchored
5 or moored within ocean waters or navigable
6 streams of the State.

7 The rules shall provide for consideration of
8 environmental impacts on the State's aquatic
9 resources in the issuance of any permits for
10 offshore mooring;

11 (B) Safety measures, requirements, and practices in
12 or on the ocean waters and navigable streams of
13 the State;

14 (C) The licensing and registration of persons or
15 organizations engaged in commercial activities in
16 or on the ocean waters and navigable streams of
17 the State;

18 (D) The licensing and registration of equipment
19 utilized for commercial activities in or on the
20 ocean waters and navigable streams of the State;

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1 (E) For beaches encumbered with easements in favor of
2 the public, the prohibition or denial of the
3 following uses and activities:

- 4 (i) Commercial activities;
- 5 (ii) The storage, parking, and display of any
6 personal property;
- 7 (iii) The placement of structures or obstructions;
- 8 (iv) The beaching, landing, mooring, or anchoring
9 of any vessels; and
- 10 (v) Other uses or activities that may interfere
11 with the public use and enjoyment of these
12 beaches; and

13 (F) Any other matter relating to the safety, health,
14 and welfare of the general public;

15 (8) To regulate the examination, guidance, and control of
16 harbor agents and their assistants; and

17 (9) To regulate commercial activities in state waters
18 including operations originating from private marinas;
19 provided that no new or additional permits shall be
20 required for those commercial activities regulated by
21 any other chapter.

22 For the purposes of this paragraph:

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1 "Commercial activity" means to engage in any
2 action or attempt to engage in any action for
3 compensation in any form. The action or actions may
4 include providing or attempting to provide guide
5 services, charters, tours, and transportation to and
6 from the location or locations for which such services
7 are provided.

8 "Compensation" means money, barter, trade,
9 credit, and other instruments of value, goods, and
10 other forms of payment.

11 (b) ~~[All]~~ Except as otherwise provided in this section,
12 all rules shall be adopted in accordance with chapter 91 and
13 shall have the force and effect of law.

14 (c) The board may issue interim rules regarding the
15 regulation of ocean recreation equipment in state ocean waters,
16 which shall be exempt from the public notice, public hearing,
17 and gubernatorial approval requirements of chapter 91. The
18 interim rules shall be effective for not more than eighteen
19 months."

20 SECTION 3. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

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1 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: *Ann. H.*

4

BY REQUEST

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Report Title:

Ocean Recreation Equipment; Interim Administrative Rules

Description:

Authorizes the Board of Land and Natural Resources to issue interim administrative rules to quickly regulate the use of ocean recreation equipment, especially new and emerging ocean recreation technologies, in state ocean waters until long-term administrative rules can be implemented.

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 OCEAN RECREATION EQUIPMENT.

PURPOSE: To authorize the Board of Land and Natural Resources to issue interim administrative rules to quickly regulate the use of ocean recreation equipment in state ocean waters.

MEANS: Amend section 200-4, Hawaii Revised Statutes (HRS).

JUSTIFICATION: New ocean recreation technologies are constantly being developed, but the Department has no legal mechanism to regulate or prohibit these types of equipment if they pose a threat to public and natural resource safety but might not otherwise qualify for emergency rulemaking pursuant to section 91-3(b), HRS. There also has been a rapid expansion of commercial ocean recreational activity within a relatively short period of time, leading to overuse of boating facilities, strain on natural resources, and user conflicts between recreational and commercial ocean users.

The authority provided in this bill would give the Department the ability to quickly and efficiently regulate ocean recreation equipment, especially new and emerging ocean recreation technologies, in state ocean waters in order to ensure public safety, reduce user conflicts, and effectively manage marine natural resources.

Impact on the public: This bill would help to reduce user conflicts and increase the safety of ocean users by allowing the Department to more effectively and efficiently regulate new ocean recreation technologies until long-term administrative rules can be implemented.

Impact on the department and other agencies:
This bill would provide the Department more 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.