AN ACT

To establish the “Nautical Tourism Act of 2009,” amend subsections (d) through (5), (i) and (k) of Act No. 109 of June 28, 1962, as amended, better known as the “Puerto Rico Public Service Act,” amend clauses (a), (b), and (g) and add a new clause (h) to subsection (7) of Section 9 of Act No. 430 of December 21, 2000, as amended, better known as the “Puerto Rico Navigation and Aquatic Safety Act,” amend Section 3 and subsections (a) and (d) of Section 6 of Act No. 194 of August 7, 2008, in order to foster and regulate activities related to nautical tourism and the operation of activities related to yachts and mega yachts for tourism purposes; to transfer certain functions related to nautical tourism activities to the Tourism Company; to clarify provisions that apply to yachts and mega yachts for tourism purposes; and to expand the “Mooring Buoy Adoption Program of the Department of Natural and Environmental Resources.”

STATEMENT OF MOTIVES

Nautical tourism is an essential component of the tourist industry in the Caribbean. The natural features of the region render it an ideal location for the enjoyment of tourist watercraft activities, which can be as diverse as visiting the different islands in the region, fishing, scuba diving, or engaging in aquatic competitions and the exploration and appreciation of the marine scenery, among others. As the easternmost of the Greater Antilles and therefore, the nearest one to the Lesser Antilles, Puerto Rico is an idyllic destination for nautical tourism. Puerto Rico’s current combination of air travel access, infrastructure, attractions, and nearness to countless attractive destinations for seafarers add to the Island’s potential for the development of nautical tourism that surpasses that of many destinations.
Although recreational nautical activities, such as sports fishing, have experienced a boom in Puerto Rico during the past few decades, the Island is still lagging in the development of a solid nautical tourism industry, when compared to other destinations in the Caribbean. This underdevelopment is due to a combination of factors, such as high costs, the duplication of efforts, the lack of coordination among government entities that have historically regulated navigation activities in Puerto Rico—namely, leisure and tour vessels known as charters—the absence of incentives for the development of nautical activities, and the lack of a strategic plan and an adequate regulatory framework to promote the growth of nautical tourism to its full potential, among others.

This legislation intends to address regulatory aspects that affect nautical tourism, in seeking to ensure that this industry’s activities are regulated by government entities that are knowledgeable in the industry and are sensible to its needs and development potential. For this reason, the Public Service Commission created under Act No. 109 of June 28, 1962, as amended, is hereby relieved from its regulatory duties on all matters relative to watercraft or water transportation enterprises, and the Puerto Rico Tourism Company is hereby conferred competent authority to certify enterprises that engage in Nautical Tourism Activities and Tourist Marinas. Nautical tourism shall certainly boost Puerto Rico’s economy and the creation of jobs. It is therefore that this legislation seeks to provide, together with the new Tourism Development Act, a major stimulus to achieve such objectives.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:**

Article 1.—An Act is hereby created, to be known as the “Nautical Tourism Act of 2009.”
Section 1.—Public Policy.—

It is hereby set forth as the public policy of the Government of Puerto Rico that nautical tourism shall be fostered as a vehicle for the development of the economy and the tourist industry of Puerto Rico.

Section 2.—Definitions.—

(a) “Nautical Tourism Activities”.—Means the ensemble of services to be rendered making water contact to nautical tourists, which include, but are not limited to:

(1) Leasing or chartering Nautical Tourism Vessels to tourists for leisure, recreation, or for educational purposes, including tours;

(2) Leasing small vessels, jet skis, kayaks, sailboats or other similar watercraft, whether motorized or non-motorized, to tourists, as the Company may establish by regulation; and

(3) Operating an integrated watercraft leasing program.

(b) “Certification”.—Shall mean the certification issued by the Puerto Rico Tourism Company to enterprises engaged in Nautical Tourism Activities or operators of Tourist Marinas that meet the requirements provided in this Act and by the Company through regulation.

(c) “Commission”.—Means the Public Service Commission of Puerto Rico, created under Act No. 109 of June 28, 1962, as amended.

(d) “Company”.—Means the Puerto Rico Tourism Company.

(e) “Concession”.—Shall mean the decree issued by the Company under the Tourism Development Act, as defined in said Act.

(f) “DNER”.—Means the Department of Natural and Environmental Resources.
(g) “Nautical Tourism Watercraft”.—Means motor or sail boats with capacity for six (6) or more people, operated by tour enterprises or available for rental, to be used in nautical tourism activities, when the Company deems it pertinent, without it being construed as a limitation of this definition.

(h) “Marina”.—Means a facility that offers water slips, including mooring buoys, for 10 or more vessels, restrooms with showers, and trash receptacles. As part of its operations, it includes dry slips.

(i) “Tourist Marina”.—Means a marina that provides areas, services, and slips for: (i) leasing or chartering Nautical Tourism Watercraft, (ii) vessels under a foreign flag owned and held by a nonresident of Puerto Rico, or (iii) any other nautical tourism activity, as the Tourism Company establishes through regulation.

(j) “Tourist Mega Yachts”.—Means nautical tourism watercraft, whether motor or sail boats, with a length of eighty (80) feet, which are devoted to leisure or recreational activities, or for educational purposes that cater to tourists in exchange for compensation, which activities are carried out in waters in and outside of Puerto Rico.

Section 3.—Transitory Provisions.—

The Company is hereby empowered to regulate, promote, and intervene in all matters relative to the quality and development of the services that are offered or could be offered to tourists by persons or juridical entities that operate Nautical Tourism Watercraft and/or engage in Nautical Tourism Activities, including Tourist Marinas.

Section 4.—Nautical Tourism Activity Certification.—

(A) All persons or juridical entities engaged in Nautical Tourism Activities shall obtain from the Company a Certification to operate as such. The Company may establish the promotion and marketing programs in which persons...
or entities engaged in Nautical Tourism Activities may participate after having obtained their Certification.

(B) Any Certification application shall pay the fees prescribed by the Company through regulation and shall be effective for two (2) years, to be renewed through the procedure prescribed by the Company through regulation.

(C) Upon filling out the Certification application as per the requirements prescribed by regulation, the Company shall have a maximum term of thirty (30) working days to evaluate such application.

Section 5.—Prohibition.—

Once the regulations of the Company are prescribed, no person may engage in rendering Nautical Tourism Activity services without having previously applied for and obtained the pertinent Certification from the Company. The Department of Natural and Environmental Resources (DNER) shall use its resources to enforce this Act, without being limited to imposing fines or penalties pursuant to the powers conferred thereto under Act No. 23 of June 20, 1972, as amended, better known as the “Department of Natural and Environmental Resources of Puerto Rico Organic Act,” and Act No. 430 of December 21, 2000, as amended, better known as the “Puerto Rico Navigation and Aquatic Safety Act.”

Section 6.—Tourist Marina.—

(A) Any Tourist Marinas devoted to Nautical Tourism Activities that provide areas, services, and slips for the leasing or chartering of Nautical Tourism Watercraft or any nautical tourism activity, without it being construed as a limitation, shall obtain a Certification from the Company to such effect. The Company shall prescribe by regulation the requirements to obtain such Certification. The Company may also establish the promotion and marketing programs in which Tourist Marinas may participate after having obtained their Certification.
(B) Any Marina operating under a Company concession under Act No. 78 of October 10, 1993, as amended, better known as the “Tourism Development Act of 1993,” shall be exempt from applying for the Tourist Marina Certification. The concession shall not be affected if the Marina fails to comply with the Certification provided herein; however, at the time of renewing or applying for a new concession, such concession shall be contingent upon obtaining a Tourist Marina Certification from the Company, as provided in this Act and its regulations.

(C) Any Certification applications shall pay the fees prescribed by the Company through regulation and be effective for five (5) years, to be renewed through the procedure prescribed through regulation by the Company.

(D) Upon filling out the Tourist Marina Certification application as per the requirements prescribed by regulation, the Company shall have a maximum term of sixty (60) working days to evaluate such application.

Section 7.—Powers of the Tourism Company.—

(A) To draft regulations that shall govern Nautical Tourism Activities and activities relative to Tourist Marinas.

(B) To keep a public register of enterprises engaged in Nautical Tourism Activities and Tourist Marinas.

(C) The DNER may not grant or renew any concession if the natural or juridical person applying therefor has not obtained a Tourism Activity or Tourist Marina Certification from the Company. The Company and the DNER may regulate and execute understanding or collaboration agreements to guarantee the implementation of this Act and the quality of the transportation, management plans or tours in zones designated as natural reserves. The Company may not establish exclusivity concessions or decrees between Nautical Tourism Watercraft, enterprises engaged in Nautical Tourism Activities, or Tourist Marinas. No provision in this Article should be construed as limiting the powers of the DNER
to establish requirements or criteria, as per the authorities conferred to the DNER by law.

(D) To conduct investigations and interventions to require any kind of information as necessary to exercise its authorities; to order or issue orders to cease and desist, impose administrative fines, revoke any concession or permit and/or petition the courts to order the ceasing of activities or acts that jeopardize the purposes stated in this Act; to impose and order the payment of fair and reasonable fees and expenses, as well as the payment of expenses for other professional and consulting services incurred for investigations, hearings, and proceedings conducted before the Company; and to order that an act be conducted to comply with the provisions of this Act.

(E) To require that enterprises engaged in Nautical Tourism Activities and Tourist Marinas present attesting evidence of the fact that they are insured or bonded. The coverage may be required to the extent deemed necessary by the Company to secure payment for any damages caused to any person or property as a result of negligent or culpable acts or omissions.

(F) The Company is hereby empowered to require any document or report it may deem necessary and pertinent to fulfill the purposes of this Act.

Section 8.—Liability.—

Compliance with this Act does not exempt any enterprise engaged in offering Nautical Tourism Activity services or Tourist Marina from liability for noncompliance with any other applicable law, including, without it being construed as a limitation, navigation, safety, and environmental protection laws.

Section 9.—Penalties.—

The Company is hereby empowered to establish fines not greater than five thousand dollars ($5,000) and to revoke or suspend the Certification of any enterprise engaged in Nautical Tourism Activities that fail to comply with its
Regulation. None of the above prevents the Company from imposing the penalty it may deem pertinent if it should find any violation of this Act or regulation thereunder.

The DNER is hereby empowered to use its resources to enforce this Act, including, but not limited to, imposing fines or penalties pursuant to its authorities as conferred under Act No. 23 of June 20, 1972, as amended, better known as the Department of Natural and Environmental Resources of Puerto Rico Organic Act.

Section 10.—Jurisdiction.—

The courts of Puerto Rico shall have exclusive jurisdiction to hear any controversy between an enterprise engaged in offering Nautical Tourism Activity services and a user or client.

Section 11.—Coordination with the Public Service Commission of Puerto Rico.—

Any concession, license, or permit of any kind issued by the Commission to water transportation enterprises shall be deemed to be in effect and there shall be no need for a Certification from the Company in order to operate until its expiration date. Once such concession, license, or permit expires, the enterprise engaged in nautical tourism activities shall apply for a Certification before the Company. The Executive Director of the Company may request additional information to the Commission in relation to such application as he/she may deem pertinent.

Article 2.—Subsections (d) through subsection 5, (i), and (k) of Section 2 of Act No. 109 of June 28, 1962, as amended, better known as the “Puerto Rico Public Service Act,” are hereby amended and renumbered pursuant to the amendment proposed herein, to read as follows:
“Section 2.—Terminology.—

For purposes of this part, unless the context clearly states otherwise:

(a) ...

...

(d) Public carrier.—Includes every:

(1) Railroad enterprise.

...

(5)

(6) ...

(7) ...

(e) ...

(f) ...

(i) ...

...

(k) Tour enterprise.—Includes any person who, as a public carrier, owns, controls, operates or manages any kind of watercraft used for the transportation of passengers or baggage incidental to the transportation of the former by air between points in Puerto Rico, for the purpose of sight-seeing interesting, picturesque or historic places, regardless of whether or not such transportation is carried out between fixed terminals or through regular or irregular routes.

(j) ...

..”

Article 3.—Clauses (a), (b), and (g) are hereby amended, and a new clause (h) is added to subsection (7) of Section 9 of Act No. 430 of December 21, 2000, as amended, to read as follows:
“Section 9.—Registration.—

(1) ... 

... 

(7) The following watercraft shall be exempt from numbering:

(a) Watercraft already covered by a number in full force and effect assigned by federal law or according to a numbering system of another state which has federal approval, provided that said watercraft has not remained in Commonwealth waters for more than sixty (60) days during the calendar year. In the case of nautical tourism watercraft, as defined by the Nautical Tourism Act of 2009 and the Regulation thereunder, that already have a number in full force and effect assigned by federal law or according to a numbering system of another jurisdiction of the United States of America, provided that said watercraft has not remained in Commonwealth waters for more than one (1) year. Except that, when said watercraft is used or owned by residents of Puerto Rico, it shall be required for such watercraft to be registered.

(b) Foreign flag ships operating temporarily in Commonwealth waters. In the case of foreign flag nautical tourism watercraft, as defined by the Nautical Tourism Act of 2009 and the Regulation approved thereunder, they may remain exempt from numbering for one (1) year.

(c) ... 

...

(g) ... 

(8) ... 

...”

Article 4.—Section 3 of Act No. 194 of August 7, 2008, better known as the “Mooring Buoy Adoption Program Act,” is hereby amended to read as follows:
“Section 3.—Concessions, Donations, Assistance, and Benefits.—

The Secretary of the DNER is hereby directed to establish a special concession program to install and maintain mooring buoys and to authorize natural or juridical persons to install and provide maintenance to mooring buoys in exchange for charging mooring fees or any other means to generate income that, in the judgment of the DNER, is beneficial for and accessible to the general public and stimulates the use of mooring buoys. The Secretary of the DNER is hereby empowered to receive donations, assistance or benefits from public agencies of the Commonwealth of Puerto Rico or of the Government of the United States of America, municipalities, educational institutions, and nonprofit or for-profit private companies or organizations that wish to contribute with funds, equipment, and materials for the development and implementation of the Program and for the DNER to exclusively carry out the cleaning and maintenance of mooring buoy systems.”

Article 5.—Subsections (a) and (d) of Section 6 of Act No. 194 of August 7, 2008, better known as the “Mooring Buoy Adoption Program Act,” are hereby amended to read as follows:

“Section 6.—Powers and Functions of the Coordinator.—

(a) To prepare and implement, in coordination with and with the approval of the Secretary, the norms, procedures, rules and regulations that shall govern the “Mooring Buoy Adoption Program,” including a work plan, which shall include such guidelines as deemed pertinent to implement special concession mechanisms for the maintenance and installation of buoys and donations to the Special Fund, emphasizing on zones of high ecological value, high watercraft traffic, and tourist interest. In order to achieve theses purposes, the DNER shall work in coordination with the Puerto Rico Tourism Company and/or enterprises engaged in nautical tourism activities certified by the Tourism Company.
To manage special concessions, as well as any appropriations and donations received, and keep a register thereof for faithful compliance with the provisions of this Act. He/she shall also coordinate with the participants of the program as to the kind of resources to be offered and the availability of mooring buoys to be adopted or selected as part of a concession for their maintenance. In addition, he/she shall establish an educational program, in coordination with the Puerto Rico Tourism Company, to foster the good use of mooring buoys and to raise awareness of their ecological value.

...”

Article 6.—Severability of the Provisions in this Act.—

In the event that a competent court rules any provision set forth herein invalid, null, or inefficient for being unconstitutional, the remaining provisions of this Act shall continue to have full force of law.

Article 7.—Effectiveness.—

This Act shall take effect thirty (30) days after its approval.
CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 179-2009 (H. B. 2013) of the 2nd Session of the 16th Legislature of Puerto Rico:

AN ACT to establish the “Nautical Tourism Act of 2009,” amend subsections (d) through (5), (i) and (k) of Act No. 109 of June 28, 1962, as amended, better known as the “Puerto Rico Public Service Act,” amend clauses (a), (b), and (g) and add a new clause (h) to subsection (7) of Section 9 of Act No. 430 of December 21, 2000, as amended, better known as the “Puerto Rico Navigation and Aquatic Safety Act,” amend Section 3 and subsections (a) and (d) of Section 6 of Act No. 194 of August 7, 2008, in order to foster and regulate activities related to nautical tourism and the operation of activities related to yachts and mega yachts for tourism purposes; to transfer certain functions related to nautical tourism activities to the Tourism Company; to clarify provisions that apply to yachts and mega yachts for tourism purposes; and to expand the “Mooring Buoy Adoption Program of the Department of Natural and Environmental Resources.”

has been translated from Spanish to English and that the English version is correct. In San Juan, Puerto Rico, on the 28th day of September, 2012.

María del Mar Ortiz Rivera