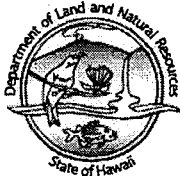


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LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**Testimony of
LAURA H. THIELEN
Chairperson**

**Before the Senate Committee on
WAYS AND MEANS**

**Wednesday, March 24, 2010
9:30 a.m.
State Capitol, Conference Room 211**

**In consideration of
HOUSE BILL 2583, SENATE DRAFT 1
RELATING TO IMPOUNDED VESSELS**

House Bill 2583, Senate Draft 1 proposes to: 1) Establishes civil penalties for shark feeding, including seizure and forfeiture of any commercial marine license, vessel, and fishing equipment, and administrative fines; and 2) Authorize the Department of Land and Natural Resources (Department) to hold the vessel owner responsible for absorbing the costs and expenses related to the disposition of impounded unauthorized vessels within state small boat harbors and offshore mooring areas and for all mooring fees incurred prior to impoundment. The Department strongly supports SECTION 2 of this measure addressing impounded vessels, which originated as an Administration proposal.

Currently, Section 200-16, Hawaii Revised Statutes, as interpreted by *Brown v. Thompson*, 91 Haw. 1, 979 P.2d 586 (1999), places the burden, along with the costs and expenses of disposal of all impounded unauthorized vessels, on the Department when the vessel owner does not repossess the impounded vessel prior to disposition. The process is both costly and time-consuming for the Department. Under *Brown v. Thompson*, 91 Haw. 1, 979 P.2d 586 (1999), the State is also not entitled to recover mooring fees incurred by the vessel owner prior to impoundment. The Department believes that in the case of a vessel owner who is in violation of mooring within a state small boat harbor or offshore mooring area without a valid use permit, the vessel owner should have a continuing obligation to pay for all fees incurred.

This bill clarifies that the vessel owner shall be responsible for absorbing the costs and expenses related to the disposition of impounded unauthorized vessels within state small boat harbors and offshore mooring areas and for all mooring fees incurred prior to impoundment.

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
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ENGINEERING
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

With regard to SECTION 1 of the bill dealing with civil penalties for shark feeding, while the Department has found that the forfeiture of a vessel serves as a serious deterrent to criminal violations. Accordingly, the Department strongly supports the forfeiture provision. The Department however has reservations with the monetary fine of "not less than \$5,000, and not more than \$15,000" proposed since the measure already includes forfeiture of commercial marine license, vessel, and fishing equipment, all of which are expensive. The Department recommends instead a more reasonable amount of "not more than \$5,000".

Lastly, the Department has recently been informed by the Department of the Attorney General that the title of this bill may not fully embrace all of the amendments being proposed in SECTION 1. The Department respectfully suggests adding the following severance clause in the event this portion of the bill is struck down, the remainder relating to impoundment will continue.

"If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision of application, and to this end the provisions of this Act are severable."