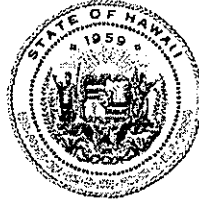
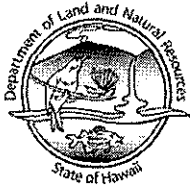


NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
WILLIAM J. AILA, JR.  
Chairperson**

**Before the Senate Committee on  
WATER, LAND, AND HOUSING**

**Thursday, February 03, 2011  
1:15 PM  
State Capitol, Conference Room 225**

**In consideration of  
SENATE BILL 717  
RELATING TO ABANDONED VESSELS**

Senate Bill 717 clarifies the responsibility for disposing of an abandoned vessel. The Department of Land and Natural Resources (Department) strongly supports this measure.

In the last seven years the Department has had to pay in excess of \$750,000 to remove grounded or abandoned vessels from our nearshore waters alone.

The current statute places the burden of disposal of all abandoned vessels on the Department, regardless if the vessels lie abandoned on public lands under another agencies' jurisdiction or on private lands. The disposition is both costly and time-consuming for the Department. This bill clarifies that the Department shall only be responsible for the disposition of vessels abandoned on lands and water under its jurisdiction. All other land owners will be responsible for the disposition of abandoned vessels from their property.

WILLIAM J. AILA, JR.  
INTERIM CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI  
FIRST DEPUTY

WILLIAM M. TAM  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

DEPARTMENT OF THE CORPORATION COUNSEL  
**CITY AND COUNTY OF HONOLULU**

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PETER B. CARLISLE  
MAYOR

CARRIE K.S. OKINAGA  
ACTING CORPORATION COUNSEL  
  
KATHLEEN A. KELLY  
FIRST DEPUTY CORPORATION COUNSEL

February 2, 2011

The Honorable Donovan M. Dela Cruz, Chair  
The Honorable Malama Solomon, Vice Chair  
and Committee Members  
Committee on Water, Land and Housing  
The Senate  
State of Hawaii  
State Capitol, Room 225  
Honolulu, Hawaii 96813

Dear Chair Dela Cruz and Committee Members:

Re: S. B. No. 717, Relating to Abandoned Vessels

The City and County of Honolulu ("City") strongly opposes S.B. No. 717 which transfers the State Department of Land and Natural Resources' ("DLNR") statutory obligation over the removal of abandoned vessels found on non-State property to the counties and private property owners. The City requests that S.B. No. 717 be filed.

On its face, S. B. No. 717 is both statutorily defective and runs afoul of past legislative history, and the intent of Part IV of Hawaii Revised Statutes ("HRS") Chapter 200, which governs the removal and disposition of abandoned and derelict vessels found on public and private property.

If this Legislature now desires to change past legislative policy which specifically delegated vessel management and control to the State by transferring said duties to the counties and private property owners, we ask that **S.B. No. 717 be amended to provide funding to the counties for the assumption of these new duties as well as to provide that all proceeds from the vessel sales be retained by the counties rather than go to the State.** Furthermore, we request that S.B. No. 717 be amended to provide the counties with unrestricted access to DLNR's vessel registration information and to set forth procedures for the counties to remove, provide notice and dispose of

The Honorable Donovan M. Dela Cruz, Chair  
The Honorable Malama Solomon, Vice Chair  
February 2, 2011  
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abandoned vessels on public roads and public property, and provide procedures to allow the counties to seek reimbursement from the State for expenses incurred for the disposition of abandoned vessels.

The City and County of Honolulu has sought DLNR's assistance for the removal of abandoned vessels found on public property to no avail. DLNR's only response has been that it lacks the funds and manpower to remove the abandoned vessels notwithstanding its statutory duty. It is the City's contention that the Legislature vested exclusive jurisdiction over abandoned and derelict vessels to the State.

Prior to 1970, HRS Section 266-16 governed the removal of abandoned vessels within the shores or shore waters of the State. Pursuant to HRS Section 266-16, the State Department of Transportation ("DOT") could require a person to remove the watercraft located on or within the shore or shore waters:

**§266-16 Limitation on private use of shores or shore waters.** No person shall erect or place any structure or similar object, or sink any type of watercraft or other sizable object, or abandon any type of watercraft or other sizeable object, either sunk or unsunk, on or within the shores or shore waters of the State without a written permit from the department of transportation. The department [of transportation] may require any person violating this section to remove any structure, similar object, watercraft, or other sizeable object, within the meaning of this section, on or within the shores or shore water of the State. . . .

HRS § 266-16 (1985 Supp.).

In 1970, the State Legislature enacted Act 48 (1970), codified as HRS Section 267A-1, et seq., which established a comprehensive statutory scheme to govern the removal of abandoned vessels. Act 48 details the various procedures the State must follow for the removal and disposition of abandoned vessels, including the notice requirements, auction process, use of the proceeds, and claim rights. The legislative history of Act 48 clearly indicates that the Legislature intended to delegate the authority to remove and dispose of abandoned vessels to the DOT. The joint standing committee report of the Senate Committees on Economic Development, Tourism and Transportation and Ways and Means states:

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**The purpose of this bill is to permit the director of transportation to dispose of abandoned vessels.**

Under existing law the department may require any person to remove an abandoned vessel on the shore or shore waters of the State. It has been the experience of the department that the owners of abandoned vessels can rarely be located. This bill provides the procedure for disposition of abandoned vessels in a more expeditious manner.

Sen. Stand. Comm. Rep. No. 859-70, in 1970 Sen. Journal at 1387 (emphasis added). The committee report for the House Committee on Harbors, Airports and Transportation adopted similar language found in the Senate committee report that the legislation was for the purpose of authorizing the DOT to dispose of abandoned vessels:

The purpose of this bill is to permit the director of transportation to dispose of abandoned vessels . . .

Hse. Stand. Comm. Rep. No. 128-79, in 1970 Hse. Journal, at 795.

In 1972, the Legislature enacted Act 28 (1972) to expand the authority of the DOT to include removal of derelict vessels. In addition Act 28 granted vessel repair businesses the authority to sell or dispose of abandoned vessels left on their premises. As confirmed in its committee report, the Senate Committee on Transportation acknowledged that the power to remove and dispose of vessels within State waters, and on public and private property is vested in the State and that the purpose Act 28 was to delegate a portion of the State's authority to persons engaged in the business of repairing vessels:

This bill provides for the disposition of derelict vessels as distinguished from abandoned vessels by the State Director of Transportation and the disposition of vessels abandoned on the business premises of persons engaged in the business of repairing vessels by such persons.

Under the existing law, provisions are made for the disposition of abandoned vessels within State waters, **on public property** or private property by the State Director of Transportation. **However, there are no provisions for the disposition of derelict**

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**vessels or the disposition of abandoned vessels by a person other than the State Director of Transportation.**

Sen. Stand. Comm. Rep. No. 208-72, in 1972 Sen. Journal, at 827 (emphasis added). Likewise, at the hearing before the Senate Committee on Judiciary, the DOT testified that the existing laws provided for the DOT to dispose of abandoned vessels on public property:

The purpose of this bill is to establish procedures to expedite the disposition of derelict vessels abandoned on public and private property without authorization of the owner or occupant.

**The department of transportation testified that under the existing law, provisions are made for the disposition of abandoned vessels within state waters, on public property or private property by the state director of transportation.**

This bill provides for the disposition of derelict vessels as distinguished from abandoned vessels by the state director of transportation and the disposition of vessels abandoned on the the [sic] business premises of persons engaged in the business of repairing vessels by such persons.

Sen. Stand. Comm. Rep. No. 208-72, in 1972 Sen. Journal, at 912-13 (emphasis added).

When the bill to amend HRS Chapter 267A crossed over from the Senate to the House of Representatives and was heard by the House Committee on Judiciary, the committee members also recognized that the scope of the bill was to address a state-wide concern:

The purpose of this bill is to provide for a more expeditious disposition of derelict vessels abandoned in State waters or on public or private property.

This is not the first time the problem of abandoned vessels has been considered by this Legislature. In 1970 after some study of the problem, the Legislature in Act 48, Session Laws of Hawaii 1970 simplified and speeded up the disposition process. Experience has shown, however, that greater authority is

The Honorable Donovan M. Dela Cruz, Chair  
The Honorable Malama Solomon, Vice Chair  
February 2, 2011  
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necessary in order to accomplish the State's need in this regard. Derelict vessels are not only dangerous to navigation, but are unsightly and occupy space urgently needed for other vessels use for recreation and commercial purposes.

Hse. Stand. Comm. Rep. No. 755-72, in the 1972 Hse. Journal, at 1019.

In 1991, the Legislature enacted Act 272 (1991), codified as HRS Chapter 200. Act 272 transferred the jurisdiction, functions, powers, and duties in overseeing and administering the boating and coastal area programs of the DOT, including DOT's jurisdiction over abandoned and derelict vessels, to the DLNR.

In 1999, the case of Brown v. Thompson, 91 Hawai'i 1, 979 P.2d. 586 (1999) was heard by the Hawaii Supreme Court. In that case an owner of a derelict vessel sued the State for damages relating to the impoundment and disposition of his two vessels without a hearing. Plaintiff challenged the authority of the State to collect costs associated with the impoundment and disposition of his two vessels. Under the facts presented, the Court found that the State lacked statutory authority to assess the fees against the Plaintiff. What is significant in this decision is the Court's discussion of the laws governing derelict vessels and the Court's acknowledgment that these laws as well as the laws governing abandoned vessels are part of a comprehensive statutory scheme to regulate the disposition of abandoned vessels:

HRS §§ 200-48 and 200-49 had their genesis in the 1972 legislative session, at which point they were *added* to already-existing provisions regarding abandoned vessels. (citation omitted). The legislature enacted HRS §§ 200-48 and 200-49 to provide for "the disposition of derelict vessels as distinguished from abandoned vessels[.]" (Citation omitted). The legislative history, therefore, establishes that the legislature recognized a difference between abandoned and derelict vessels. **However, the legislature also inserted the provisions regarding derelict vessels into a comprehensive statutory scheme that expressly outlined the procedure for disposing of abandoned vessels.**

91 Haw. at 17, 979 P.2d at 602.

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Following the Thompson case, the 2003 Legislature introduced House Bill 1560 ("HB 1560"), enacted as Act 70 (2004), to require the DLNR to provide owners, operators, or lien holders of a vessel an opportunity for an administrative hearing to contest the basis for impounding an abandoned or derelict vessel prior to its disposition. The committee report of the House Committee on Water, Land Use, and Hawaiian Affairs summarizes the purpose of HB 1560:

Your Committee finds that in a recent Hawaii Supreme Court case, the Court held that a vessel and its accompanying mooring and live-aboard permits are constitutionally protected property, of which an individual may not be deprived without notice or opportunity for a hearing. This bill sets forth the procedures for requesting an administrative hearing for abandoned and derelict vessel owners and establishes notice requirements prior to disposition of a vessel.

Hse. Stand. Comm. Rep. No. 306, in the 2003 Hse. Journal, at 1252. Similarly, the report of the Senate Committee on Ways and Means further emphasizes the purpose of the legislation was to give vessel owners the opportunity for an administrative hearing, however, that hearing was to be held by the DLNR and not by the counties:

The purpose of this measure is to provide the owner of a vessel the opportunity for an administrative hearing to contest the basis for taking custody of the vessel prior to its disposition.

\* \* \*

Your Committee finds that administrative hearings are available to owners or operators of vessels impounded for unauthorized mooring, however, there is no such provision for owners of abandoned or derelict vessels.

Sen. Stand. Comm. Rep. No. 3231, in the 2004 Sen. Journal, at 1607-08. Recognizing the impact of the Thompson case upon vessel owners, the Legislature could have amended the statutes to require the counties to provide hearings, but chose not to. Thus, Act 70 further reaffirms the Legislature's intent that DLNR have the exclusive authority to remove and dispose of abandoned and derelict vessels.

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Furthermore, S.B. No. 717 is statutorily defective because it fails to provide corresponding amendments to HRS Sections 200-52, 200-53, and 200-54 applicable to non-State property owners. As currently drafted, the proposed amendment to HRS Section 200-51 is superfluous because the counties could not dispose of a vessel which is arguably "abandoned" because the vessel does not meet the criteria for abandonment set forth in HRS Section 200-52 which applies only to vessels abandoned at vessel repair businesses.

For the foregoing reasons, the City and County of Honolulu requests that S.B. No. 717 be filed.

Thank you for the opportunity to provide our comments on this bill.

Very truly yours,

  
for CARRIE K. S. OKINAGA  
Acting Corporation Counsel

CKSO:ey

LEG2011-SB71 TESTIMONY.DMS



DEPARTMENT OF PARKS AND RECREATION  
CITY AND COUNTY OF HONOLULU

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PETER B. CARLISLE  
MAYOR



GARY B. CABATO  
ACTING DIRECTOR

ALBERT TUFONO  
DEPUTY DIRECTOR

February 2, 2011

Honorable Senator Donovan M. Dela Cruz, Chair  
Committee on Water Land and Housing  
State Senate  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Dela Cruz and Committee Members

Subject: Testimony on SB 717  
Hearing – Thursday, February 3, 2011, 1:15 p.m.

The Department of Parks and Recreation; City and County of Honolulu is opposed to SB 717, which will remove the Department of Land and Natural Resources' responsibility of the disposition of derelict vessels from public and private property.

If this bill passes, there will be no statutory authority for removal of derelict vessels from public streets and private property. If the removal responsibility is transferred to the counties, the City and County of Honolulu is not funded for this new responsibility. There is no specific statutory authority for the counties to obtain vessel information that is maintained by the DLNR to declare a vessel as being derelict. Lastly, even if the counties remove the vessels, the counties do not have statutory authority to dispose of such vessels after taking custody of the vessels, as that authority remains with DLNR.

If this bill passes, we recommend that the bill be amended to provide access to DLNR's vessel registration information, specific authority for the county to remove, provide notice and dispose of derelict vessels on public roads. Since this is a new mandate that was previously the responsibility of the State, we recommend the bill be further amended with the addition of an unspecified amount for the counties to administer this new program.

Sincerely,

  
GARY B. CABATO  
Acting Director

GBC:jr

# TRANSMITTAL

Testifier's name, title and organization

Dennis Kamimura, Licensing Administrator  
Division of Motor Vehicle, Licensing and Permits  
Department of Customer Services  
City and County of Honolulu

Committee

Committee on Water, Land, and Housing

Date and Time of Hearing

Thursday, February 3, 2011, 1:15 pm

Measure Number

SB717

DEPARTMENT OF CUSTOMER SERVICES  
**CITY & COUNTY OF HONOLULU**  
DIVISION OF MOTOR VEHICLE, LICENSING AND PERMITS  
ADMINISTRATION  
P.O. BOX 30300  
HONOLULU, HAWAII 96820-0300

PETER B. CARLISLE  
MAYOR



GAIL Y. HARAGUCHI  
DIRECTOR

DENNIS A KAMIMURA  
LICENSING ADMINISTRATOR

February 1, 2011

The Honorable Donovan M. Dela Cruz, Chair  
and Committee Members  
Committee on Water, Land and Housing  
The Senate  
State of Hawaii  
State Capitol, Room 225  
Honolulu, Hawaii 96813

Dear Chair Dela Cruz and Committee Members:

Subject: S.B. No. 717, Relating to Abandoned Vessels

The City and County of Honolulu is opposed to SB No. 717 which will remove the Department of Land and Natural Resources' responsibility of towing abandoned vessels from public streets.

The counties are responsible for investigation and removal of abandoned and derelict vehicles from public roadways. Since the counties have access to the registered owner information of all such vehicles, we are able to complete the legally required notification and disposal of such towed vehicles pursuant to Chapter 290, HRS. The cost for removal and disposal of derelict vehicles are funded through the collection of the Highway Beautification fee that is collected together with the annual motor vehicle registration taxes and fees.

If the removal responsibility is transferred to the counties, the Highway Beautification fee cannot be used for removal of vessels. There is no specific statutory authority for the counties to obtain vessel information that is maintained by the DLNR to declare a vessel as being abandoned. Lastly, even if the counties removes the vessels, the counties do not have statutory authority to dispose of such vessels after taking custody of the vessels as that authority remains with DLNR. If this bill passes, we recommend that the bill be amended to provide access to DLNR's vessel registration information, specific authority for the county to remove, provide notice and dispose of derelict vessels on public roads.



# Ocean Tourism Coalition

*The Voice for Hawaii's Ocean Tourism Industry*  
1188 Bishop St., Ste. 1003  
Honolulu, HI 96813-3304  
(808) 537-4308 Phone (808) 533-2739 Fax  
timlyons@hawaiiantel.net

Testimony to the Senate WLH Committee  
Thursday, February 3, 2011; 1:15 p.m.  
Conference Room 225

Speaking in Support

RE: SB 717

Chair Senator Dela Cruz, Vice Chair Senator Solomon and Members of the  
Water, Land, Housing Committee:

My name is James E. Coon, President of the Ocean Tourism Coalition.  
The OTC represents over 300 small ocean tourism businesses state wide. We  
appreciate the efforts being made by the Legislature in addressing the need for  
a reasonable method to resolve the issue of abandoned vessels.

We believe this bill will go a long way in helping to resolve this issue.

Please pass this bill which will help provide some legal guidelines and security  
for the Division of Boating and Ocean Recreation.

Thank you for the opportunity to submit testimony. If you have any questions,  
please contact me at 808-870-9115.

Sincerely,

James E. Coon, President