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LEGISLATIVE REFERENCE BUREAU
State of Hawaii
State Capitol, Room 446
415 S. Beretania Street
Honolulu, Hawaii 96813

Written Comments

HB1997, HD1 RELATING TO VESSELS

Charlotte A. Carter-Yamauchi, Director
Legislative Reference Bureau

Presented to the House Committee on Finance

Wednesday, February 28, 2018, 12:00 p.m.
Conference Room 308

Chair Luke and Members of the Committee:

Good afternoon Chair Luke and members of the Committee, my name is Charlotte Carter-Yamauchi and I am the Director of the Legislative Reference Bureau. Thank you for providing the opportunity to submit written comments on H.B. No. 1997, H.D. 1, Relating to Vessels.

The purpose of this measure is to require the Legislative Reference Bureau to conduct a study on the process that the Department of Land and Natural Resources uses to remove stranded vessels in nearshore waters. In conducting the study, the Bureau would be required to:

- (1) Review the department's process for the removal of vessels stranded in nearshore waters;
- (2) Identify the environmental impacts on the State's nearshore resources that are caused by stranded vessels;
- (3) Consider ways to minimize environmental impacts through the removal of stranded vessels;

- (4) Examine the events that transpired during the Pacific Paradise vessel stranding;
- (5) Make recommendations on measures to prevent similar vessel strandings in the future; and
- (6) Provide an assessment of the extent of environmental and economic damages caused by the Pacific Paradise stranding.

The measure also requires the Department of Land and Natural Resources to provide the Legislative Reference Bureau with any information in its possession that is relevant to the study, and requires the Bureau to submit a report of its findings and recommendations, including any proposed legislation, to the Legislature no later than twenty days prior to the convening of the 2019 Regular Session.

The Bureau takes no position on the merits of this measure, but submits the following comments for your consideration.

As a general matter, we would like to note that the Bureau does not retain subject matter experts in assessing, mitigating, or preventing environmental impacts; extrapolating economic impacts of identified or proposed events; or maritime engineering or transit issues. Consequently, any study conducted by the Bureau pursuant to the requirements of the measure would most probably be extremely elementary.

Accordingly, we have some concerns with how the measure is currently drafted with respect to the work requested of the Bureau. If the intent of the measure is to provide for an in depth review of the above-listed issues, then the Bureau recommends that experts in each field conduct the requested research in the form of a task force or working group. We note that there currently exist state agencies whose purpose and expertise encompass the measure's subject matter. These agencies are:

- (1) For environmental research – the Office of Environmental Quality Control, Environmental Center, and Environmental Council, established pursuant to section 341-3; Hawaii Revised Statutes (HRS), and whose duties are established pursuant to sections 341-4 and 304A-1551, HRS;
- (2) For economic modeling – The University of Hawaii Economic Research Organization; and
- (3) For maritime engineering or transit issues – the Department of Transportation, Harbors Division, and the Department of Land and Natural Resources, Divisions of Boating and Ocean Recreation and Conservation and Resource Enforcement.

We specifically note the duties of the powers and duties of the Director of Environmental Quality Control as established pursuant to section 341-4(b), HRS:

"(b) To further the objective of subsection (a), ***the director shall:***

- (1) Direct the attention of the university community and the residents of the State in general to ecological and environmental problems through the center and the council, respectively, and through public education programs;
- (2) ***Conduct research or arrange for the conduct of research through contractual relations with the center, state agencies, or other persons with competence in the field of ecology and environmental quality;***
- (3) ***Encourage public acceptance of proposed legislative and administrative actions concerning ecology and environmental quality, and receive notice of any private or public complaints concerning ecology and environmental quality through the council;***
- (4) ***Recommend programs for long-range implementation of environmental quality control;***
- (5) ***Submit direct to the governor and to the legislature such legislative bills and administrative policies, objectives, and actions, as are necessary to preserve and enhance the environmental quality of the State;***
- (6) ***Conduct public educational programs; and***
- (7) ***Offer advice and assistance to private industry, governmental agencies, or other persons upon request."***

(emphasis added)

It seems that, with regard to the environmental review aspect, the Director of Environmental Quality Control is statutorily charged with the authority to conduct an assessment envisioned under the measure. In addition, the University of Hawaii Economic Research Organization may be able to model and project potential economic impacts of future vessel groundings, and the identified divisions of the Departments of Transportation and Land and Natural Resources have inherent expertise in maritime-related issues and commercial and recreational ocean-going vessels and their practices.

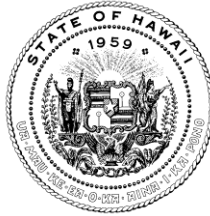
If the Committee decides to recommend the passage of this measure and desires to keep the Bureau involved, we respectfully request that the Bureau's role in this project be limited to assisting any identified experts, task force, or working group with finalizing the drafting of proposed legislation. We would also request that it be specified that the draft of

proposed legislation be submitted to the Bureau no later than October 1, 2018, so that work on the proposed legislation would not adversely impact our ability to provide our core services to the Legislature for the upcoming Regular Session.

If the measure is amended to address the concerns noted above, the Bureau believes that the services requested under the measure would be manageable and that the Bureau will be able to provide the services in the time allotted; provided that the Bureau's interim workload is not adversely impacted by too many other studies or additional responsibilities, such as conducting, writing, or finalizing other reports, drafting legislation, or both, for other state agencies, task forces, or working groups that may be requested or required under other legislative measures.

Thank you again for your consideration.

DAVID Y. IGE
GOVERNOR OF
HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of
SUZANNE D. CASE
Chairperson

Before the House Committee on
FINANCE

Wednesday, February 28, 2018
12:00 PM
State Capitol, Conference Room 308

In consideration of
HOUSE BILL 1997, HOUSE DRAFT 1
RELATING TO VESSELS

House Bill 1997, House Draft 1 proposes to require the Legislative Reference Bureau to review the process that the Department of Land and Natural Resources (Department) uses to respond to vessels stranded in nearshore waters and report to the Legislature on its findings. **The Department appreciates the intent of this measure and offers the following comments.**

The Department's Division of Boating and Ocean Recreation (DOBOR) and Division of Aquatic Resources (DAR) are among the first entities to respond to a grounded or sunken vessel in waters of the State. DOBOR and DAR work closely with the owner of the vessel, the insurance company if there is insurance on the vessel, the United States Coast Guard (USCG), and the State Department of Health to address the grounding or sinking as quickly as possible. Within the last five years, DOBOR, in coordination with all other governmental agencies, has removed 47 of 170 known grounded or sunken vessels from waters of the State at a cost of \$1.16 million.

In 2016, DOBOR and DAR worked closely with all marine salvage companies, marine surveyors, and hazardous material (HAZMAT) removal companies to create procedures for contractors when removing vessels. Each vessel grounding is unique and must be handled on a case-by-case basis, depending on proximity to high-use areas; whether the vessel is aground on live rock, coral, or sand; ocean and weather conditions; whether or not the owner has proper insurance to remove the vessel; and a host of other factors.

The owner of the grounded vessel is ultimately responsible for safely removing the vessel. If the owner has insurance coverage, the owner must work with the insurance company to hire a qualified marine salvage company. Once a qualified marine salvage company is hired, DOBOR and DAR work directly with the salvage company to reduce or prevent further damage to our natural resources.

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
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

In some cases, there may be HAZMAT onboard a grounded or sunken vessel, such as gasoline, diesel, motor oil, or batteries. If this is the case and the owner of the vessel cannot remove any HAZMAT safely, USCG can step in to federalize the vessel and handle removal of HAZMAT. USCG has the advantage of access to a federal fund that can be used to immediately hire contractors to remove HAZMAT from grounded or sunken vessels, which was the case with the commercial fishing vessel (Pacific Paradise) that ran aground off the beaches of Waikīkī on October 10, 2017. This grounding was a unique situation with multiple state and federal agencies involved. A combination of unfortunate mitigating factors led to the delays in removing the vessel, and the Department will continue to work with all involved state and federal agencies to ensure the most efficient and expedient removal of grounded and sunken vessels.

In 2009, DOBOR instituted mandatory insurance for all vessels housed in its facilities and has been seeking a way to require across-the-board insurance (with hull removal coverage) for all recreational vessels, even those launched from trailers. In some cases, the owner of a grounded or sunken vessel may not have insurance coverage, in which case DOBOR can use the authority given under Section 200-47.5, Hawaii Revised Statutes (HRS), to remove the grounded or sunken vessel within 24 or 72 hours, depending on the circumstances. When operating pursuant to Section 200-47.5, HRS, DOBOR will handle procurement of bids from qualified marine salvage companies to safely remove and dispose of the vessel.

Instead of the measure as written, the Department suggests that the Legislature create a sunken vessel and ocean safety marine debris fund of \$1 million to assist the Department in the removal of grounded and sunken vessels where the owners cannot remove the vessels safely from our nearshore waters. The sunken vessel and ocean safety marine debris fund would also be intended to provide funding for removal of ocean safety marine debris from state shorelines and waters of the State.

Thank you for the opportunity to comment on this measure.

HB-1997-HD-1

Submitted on: 2/27/2018 11:55:50 AM

Testimony for FIN on 2/28/2018 12:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	OCC Legislative Priorities Committee, Democratic Party of Hawai'i	Support	No

Comments:

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February 27, 2018

HONORABLE SYLVIA LUKE
Chair
House Committee on Finance
Room 306, State Capitol
415 S. Beretania Street
Honolulu, Hawaii 96813

Re: ***HB 1997, HD 1***
Hearing February 28, 2018 at 12:00 p.m.

Dear Chair Luke & Other Committee Members:

I submit the following testimony in opposition to HB 1997, HD 1.

I previously submitted testimony in opposition to HB 1997 on February 6, 2018. Those comments and observations are restated and incorporated by reference in opposition to the current version of HB 1997, HD 1.

I also note Suzanne Case, Chairperson of the Department of Land & Natural Resources (“DLNR”), also submitted written testimony regarding HB 1997, dated February 9, 2018. I concur with Ms. Case’s suggestion that it would be prudent for the Legislature to create a \$1.0 million, *annually funded*, sunken vessel and ocean safety marine debris fund which can be used to remove stranded vessels in cases where the owner either does not have sufficient, or any, wreck removal insurance.

Otherwise, I’m struggling to understand the actual purpose or merit of this bill. In Ms. Case’s prior testimony, she provided an excellent explanation on how and why DLNR, DOBOR and/or DAR’s response to a stranded vessel will vary from case to case, depending on existing circumstances and the federal and/or state laws applicable to those circumstances. Based on my extensive past experience working with DLNR and its agencies in connection with multiple past vessel groundings, including the stranding of the PACIFIC PARADISE, it is abundantly clear to me DLNR has appropriate expertise, administrative rules, policies and procedures in place to monitor and/or respond to the prompt and safe removal of commercial and recreational vessels that go aground in State waters.

HONORABLE SYLVIA LUKE

February 27, 2018

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With all due respect to the Representatives that introduced HB 1997 and moved it forward with modifications, having the LRB conduct the proposed study would be an unfortunate waste of LRB's time, manpower, resources and will most probably produce a report that is not likely to provide any definitive answers/conclusions on the issues designated for study other than DLNR has appropriate expertise, administrative rules, policies and procedures in place to monitor and/or respond to the prompt and safe removal of commercial and recreational vessels that go aground in State waters.

If the impetus behind this bill is concern by the Legislature with how long it took to remove the PACIFIC PARADISE, I can assure you in my capacity as the attorney for the vessel owner that my client, all salvors, U.S. Coast Guard, NOAA, DLNR and all other members of the unified command group worked diligently to get the vessel removed as quickly as possible pursuant to plans vetted and approved by all parties.¹ Ensuring the safety and welfare of the crew doing the work was paramount. Mitigating damage to natural resources and the potential release of pollutants on board was also a priority. Weather and sea conditions dictated when crews could work on the constantly moving platform. Conditions were never perfectly calm in that surf zone. Despite the amount of time it took, removing the PACIFIC PARADISE from the casualty site intact was an incredible accomplishment under very dangerous and complex circumstances.

If you have any questions, or require additional information, please do not hesitate to contact me.

Sincerely,

/s/ Bryan Y.Y. Ho

cc: Hon. Ty J.K. Cullen, Vice Chair
All Members of FIN
Susan Case, Chair DLNR (via e-mail)

¹Local salvage company, Cates Marine Services LLC, *at Cates' own expense* brought in international salvage company, Resolve Marine Group ("RMG"), to provide their expertise and consult on alternatives to remove the vessel without having to cut it up in place after initial attempts to remove the vessel were not successful. RMG was eventually hired by the owner and, working with Cates and other local vendors, was able to refloat the PACIFIC PARADISE.