

**SB-2953-SD-1**

Submitted on: 2/24/2020 4:03:08 PM

Testimony for JDC on 2/27/2020 10:30:00 AM

| <b>Submitted By</b> | <b>Organization</b>                       | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---|---------------------------|---------------------------|
| Louis Erteschik     | Testifying for Waikiki Neighborhood Board | Support                   | No                        |

Comments:

I am the Vice Chair of the Waikiki Neighborhood Board and at our last meeting we voted unanimously to support this bill. SB2953 would deter individuals from abandoning their vessels in public harbors. We have seen eyesores in the harbor and we want to ensure there is strong enforcement to tackle this issue. We would also like to see abandoned vessels removed in a more timely manner as it can be an involved process to impound a vessel that has begun to deteriorate in the harbor. We appreciate the efforts of Senator Moriwaki to help clean up the harbor with this measure and we are glad to see that it has the support of DLNR.

**SB-2953-SD-1**

Submitted on: 2/24/2020 7:13:40 PM

Testimony for JDC on 2/27/2020 10:30:00 AM

| <b>Submitted By</b>          | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|------------------------------|---------------------|---------------------------|---------------------------|
| Benton Kealii Pang,<br>Ph.D. | Individual          | Support                   | No                        |

Comments:

DAVID Y. IGE  
GOVERNOR OF HAWAII



**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of**  
**SUZANNE D. CASE**  
**Chairperson**

**Before the Senate Committee on**  
**JUDICIARY**

**Thursday, February 27, 2020**  
**10:30 AM**  
**State Capitol, Conference Room 016**

**In consideration of**  
**SENATE BILL 2953, SENATE DRAFT 1**  
**RELATING TO VESSELS**

Senate Bill 2953, Senate Draft (SD) 1 proposes to amend various sections within Chapter 200, Hawaii Revised Statutes, regarding impoundment and disposal of unauthorized and abandoned vessels on state property and in waters of the State. **The Department of Land and Natural Resources (Department) strongly supports this measure and offers the following amendments.**

This measure would allow the Department to respond quicker and more effectively to unauthorized, abandoned, grounded, and derelict vessels under its jurisdiction. Current statutes require the Department to provide seventy-two-hour notice of intent to impound a vessel before being able to take control of the vessel. However, in some instances the condition of a vessel rapidly deteriorates within this time period, leading to increased costs on the Department for impounding and disposing of the vessel. A vessel may break into multiple pieces, requiring additional work for impounding the vessel and creating an increased risk to public safety as well as to our State's natural resources. A vessel may also drift from its initial position and end up in a situation that increases the difficulty in retrieving it.

Based on feedback received on this measure, the Department recommends that this Committee adopt the attached DLNR Proposed SD2. The DLNR Proposed SD2 reverts the notification period back to 72 hours, except for emergency situations where the notification period would be 24 hours; specifies that impound storage fees would be equal to the rate of mooring without a permit; and specifies that any excess fee collections would be deposited into the general fund.

Thank you for the opportunity to comment on this measure.

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

**ROBERT K. MASUDA**  
FIRST DEPUTY

**M. KALEO MANUEL**  
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

RELATING TO VESSELS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

SECTION 1. The legislature finds that vessel ownership and operation come with many responsibilities and that vessels likewise pose significant threats to natural resources and to public health and safety if abandoned, neglected, or left in disrepair. The legislature recognizes that unauthorized, abandoned, grounded, and derelict vessels on state property and in waters of the State must be removed as soon as possible to minimize the hazards they pose to the public while balancing the vessel owner's right to due process.

Since 2002, the department of land and natural resources, division of boating and ocean recreation has expended in excess of \$2,340,000 from the boating special fund to address vessels unauthorized, abandoned, grounded, and derelict vessel on state property or in the waters of the State. However, under existing law, in many instances, by the time the department of land and natural resources can begin removing an unauthorized, abandoned, grounded, or derelict vessel, the condition of the vessel has deteriorated, further complicating removal efforts and increasing

the potential to create health, safety, and natural resource threats.

The purpose of this Act is to amend provisions regarding designation, impoundment, and disposal of unauthorized, abandoned, grounded, and derelict vessels on state property or in the waters of the State to facilitate faster responses for these types of incidents.

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

~~"§200-16 [Mooring of unauthorized vessel in state small boat harbors and offshore mooring areas;]~~ Unauthorized vessels; impoundment and disposal proceedings. (a) ~~[No person shall moor a vessel in a state small boat harbor or offshore mooring area without obtaining a use permit; nor shall a person continue to moor a vessel in any state small boat harbor or offshore mooring area if the use permit authorizing the vessel to moor has expired or otherwise been terminated]~~ A vessel moored without a valid use permit ~~[or]~~, moored with a use permit that has expired or been terminated ~~[is]~~, or moored, anchored, or stored in waters of the State in violation of any law or rule of the department, shall be deemed an unauthorized vessel [and is subject to] in violation of this section[-] and shall be subject to impoundment and disposal.

(b) The department shall ~~[cause to be placed]~~ place upon, or as near to ~~[the]~~ an unauthorized vessel as possible, a notice to

remove the vessel, which shall, at a minimum, indicate that the vessel is in violation of this section, the date and time the notice was posted, and that the vessel must be removed within seventy-two hours from the time the notice was posted; provided that if the vessel is in imminent danger of breaking up or poses a hazard to public health or safety, the notice shall indicate that the vessel must be removed within twenty-four hours from the time the notice was posted.

(c) An unauthorized vessel may be impounded by the department at the sole risk and expense of the owner of the vessel, if the vessel is not removed after the [~~seventy two hour~~] period [~~or~~] specified in subsection (b). Calculation of the time period shall not restart if, during that period, the vessel is [removed and removed in the harbor or mooring or anchorage area or any other state harbor or mooring or anchorage area without a use permit.] moved anywhere in the waters of the State or to any public property and remains in violation of this section. The owner of the vessel shall be solely responsible for all costs of the impoundment and the disposal of the unauthorized vessel. All owners of unauthorized vessels that are impounded by the department shall be responsible for paying impound storage fees to the department while the vessel remains impounded and until such time that the vessel is returned to the custody of a person entitled to possession. Impound storage fees shall be equal to the rate set

by the department for vessels moored without a valid permit. Any proceeds [~~resulting from~~] collected by the department in relation to the impoundment and the disposal of the unauthorized vessel shall be used first to pay for the costs of impoundment and disposal [~~and~~], then to pay for any additional costs related to the impoundment and disposal, then to pay for any outstanding mooring fees due[-] to the department by the owner, then to the general fund. If the proceeds resulting from the impoundment and the disposal are inadequate to pay for all costs and mooring fees due, the owner of the unauthorized vessel shall remain liable for [~~the~~] paying the department any and all outstanding costs and mooring fees[-] due.

(d) Custody of an unauthorized vessel shall be returned to the person entitled to possession only upon payment [~~to the department~~] in full of all fees and costs due[-] to the department and any and all fines levied by the department or a court[-] of competent jurisdiction. In addition, the department, within seventy-two hours of impoundment, shall send by certified mail, return receipt requested, a notice of impoundment to the registered or documented owner or any lien holder or operator of the impounded vessel on record with the department or the United States Coast Guard. The owner, lien holder, or operator of the impounded vessel shall have [~~ten~~] five working days after receipt of notice of impoundment of the vessel to request [~~in writing~~] an administrative

hearing. ~~[This]~~ A request for administrative hearing ~~[is]~~ shall be made in writing to the department, shall not be deemed delivered until the time that the department received the written request, and shall be solely for the purpose of allowing the owner, lien holder, or operator of an impounded vessel to contest the basis given by the department for the impoundment of the vessel. The administrative hearing must be held within ~~[five]~~ ten working days of ~~[the department's receipt]~~ delivery of the written request. The department ~~[shall]~~ may adopt rules pursuant to chapter 91 to implement the requirement for this post-seizure administrative hearing process.

(e) Any unauthorized vessel impounded under this section, which remains unclaimed for more than ~~[thirty]~~ ten working days by the registered or documented owner, a lien holder, or operator of record, may be sold by the department at public auction. If the department does not or is unable to sell the vessel at public auction, ~~[or if its appraised value is less than \$5,000 as determined by an independent appraiser with at least one year of experience in the sale and purchase of vessels,]~~ the department, after giving public notice of intended disposition, if that notice was not previously included in a public auction notice, may sell the vessel by negotiation, retain and use the vessel, donate it to any other government agency, or dispose of it as junk."



SECTION 3. Section 200-41, Hawaii Revised Statutes, is amended to read as follows:

**"§200-41 [~~Disposition of certain abandoned~~] Abandonment of vessels.** (a) No person shall abandon any vessel upon the waters of the State or upon any property, other than the property of the vessel owner, without the consent of the property owner.

~~[(a) Any]~~ (b) A vessel [~~may be deemed~~] shall be presumed abandoned if [~~the~~] :

(1) The vessel has been moored, anchored, or otherwise left in the waters of the State or on public property [~~contrary to law or rules having the force and effect of law, or left~~] unattended for more than seventy-two hours;

(2) The vessel has been left unattended on private property without authorization of the owner or occupant of the property [~~if:~~

~~(1) The vessel's registration certificate or marine document has expired and the registered owner no longer resides at the address listed in the vessel registration or marine document records of the department or the United States Coast Guard;~~ for more than seventy-two hours;

~~[(2)]~~ (3) The last registered owner of record disclaims ownership and the current owner's name or address cannot be determined;

~~[(3) The vessel identification numbers and other means of identification have been removed so as to hinder or nullify efforts to locate or identify the owner;~~

~~(4) The vessel registration records of the department of land and natural resources and the marine document records of the United States Coast Guard contain no record that the vessel has ever been registered or documented and the owner's name or address cannot be determined; or]~~

(4) The vessel does not have a valid registration certificate or United States Coast Guard documentation and has been moored, anchored, or otherwise left in the waters of the State or in public property unattended for more than seventy-two hours; or

(5) The requirements of section 200-52 are met.

~~[(b)]~~ (c) The determination whether a vessel is abandoned on public property may be made by:

(1) The chairperson, or their authorized representative, with regard to public property under the jurisdiction of the department of land and natural resources; or

(2) Any other state department or agency through its director, with regard to public property within the department or agency's respective jurisdiction; or

(3) Any county through its mayor or the mayor's designee, or chief of police, with regard to public property within the respective county's jurisdiction; provided that the department shall provide to the respective county access to the department's vessel registration and marine document records or those of the United States Coast Guard for the purposes of this section.

Once a vessel is deemed abandoned~~[,]~~ on waters of the State or on public property, the appropriate official under this subsection may direct and cause the vessel to be taken into custody and disposed of pursuant to and in the manner provided in this ~~[chapter.]~~ part. All owners of abandoned vessels that are impounded by the department shall be responsible for paying impound storage fees to the department while the vessel remains impounded and until such time that the vessel is returned to the custody of a person entitled to possession. Impound storage fees shall be equal to the rate set by the department for vessels moored without a valid permit.

~~[(e)]~~ (d) All vessels abandoned on private property shall be the responsibility of the private property owner.

(e) Any person who abandons a vessel on waters of the State or on public property shall be guilty of a petty misdemeanor and shall be fined not more than \$1,000 or imprisoned not more than thirty days, or both, for each offense. Each day of each violation

shall be deemed a separate offense. All criminal fines collected pursuant to this subsection shall be deposited in the general fund in accordance with section 706-643. It shall be an affirmative defense to prosecution that a vessel was abandoned during a national emergency declared by the president of the United States or Congress, or a state of emergency declared by the governor, or as otherwise approved in writing by the chairperson; provided that the defense shall be valid only for the duration of the declared emergency of written approval."

SECTION 4. Section 200-42, Hawaii Revised Statutes, is amended to read as follows:

**"§200-42 Notice to owner.** A state or county agency, upon taking custody of any vessel[~~7~~] deemed abandoned pursuant to section 200-41, shall immediately post a written notice on the vessel and send a duplicate original by registered or certified mail, with a return receipt requested, to any owner registered with the department or documented by the United States Coast Guard or any lien holder or operator of the vessel on record with the department or the United States Coast Guard at their respective last known address on record with the department or the United States Coast Guard. The notice shall contain a brief description of the vessel, the location of custody, and the intended disposition of the vessel if not repossessed within [~~twenty~~] ten working days after the mailing of the notice. [~~Such owner, lien~~

~~holder, or operator, of the vessel shall have ten days after receipt of the mailed notice to request in writing an administrative hearing pursuant to chapter 91 from the state or county agency that took custody of the vessel. This administrative hearing is solely for the purpose of allowing the owner, lien holder, or operator of an impounded vessel to contest the basis given for the impoundment of the vessel. The hearing shall be held within five working days of the state or county agency's receipt of the written request.]~~ The owner, lien holder, or operator of the vessel shall have five working days after receipt of notice of impoundment of the vessel to request administrative hearing from the state or county agency that took custody of the vessel. A request for administrative hearing shall be made in writing to the state or county agency that took custody of the vessel, shall not be deemed delivered until the time that the agency receives the written request, and shall be solely for the purpose of allowing the owner, lien holder, or operator of an impounded vessel to contest the basis given by the agency for the impoundment of the vessel. The administrative hearing shall be held within ten working days of delivery of the written request."

SECTION 5. Section 200-43, Hawaii Revised Statutes, is amended to read as follows:

**"§200-43 Public auction[-]; disposition of abandoned vessels.** ~~[If the vessel is not repossessed within twenty days~~

~~after the mailing of the notice, the vessel shall be disposed of by public auction, through oral tenders, or by sealed bids, after public notice has been given at least once; provided that the public auction shall not be held less than five days after the notice is given. Where no bid is received, the vessel may be sold by negotiation, disposed of as junk, or donated to any governmental agency.]~~ Any abandoned vessel impounded under this part, which remains unclaimed by the registered or documented owner, lien holder, or operator of record, for more than ten working days after mailing of the notice required by section 200-42 may be sold at public auction by the state or county agency that took custody of the vessel. If the agency does not or is unable to sell the vessel at public auction, the agency, after giving public notice of intended disposition, if the notice was not previously included in a public auction notice, may sell the vessel by negotiation, retain and use the vessel, donate the vessel to any other government agency, or dispose of the vessel as junk."

SECTION 6. Section 200-47.5, Hawaii Revised Statutes, is amended by amending subsections (b), (d), (e), (f), and (g) to read as follows:

"(b) Solely for the purposes of removal and with no liability to the department, the department may immediately assume control of any vessel that is grounded on state submerged land, a shoreline, or a coral reef [~~or~~] which is in imminent danger of

breaking up and cannot be removed by the owner within twenty-four hours from the time the vessel is grounded; provided that this subsection shall not apply [~~if~~] :

- (1) During a national emergency declared by the president of the United States or Congress;
- (2) During a state of emergency declared by the governor;
- (3) If the owner or owner's representative has received notice from the department and has commenced effective salvage operations; or
- (4) If otherwise approved in writing by the chairperson.

(d) Solely for the purposes of removal and with no liability to the department, the department may immediately assume control of any vessel grounded on a sand beach, sandbar, or mudflat and not in imminent danger of breaking up that is not removed by the owner in a manner that is reasonably safe, as determined by the department, within seventy-two hours of notification to the vessel owner or the owner's representative; provided that this subsection shall not apply [~~if~~] :

- (1) During a national emergency declared by the president of the United States or Congress;
- (2) During a state of emergency declared by the governor;
- (3) If the owner or owner's representative has received notice from the department and has commenced effective salvage operations; or

(4) If otherwise approved in writing by the chairperson.

(e) Once the department assumes control [~~over the~~] of a vessel[~~]~~ pursuant to this section, the vessel shall be removed by conventional salvage methods if possible, and if not possible then by any means necessary[~~]~~ to minimize damage to the natural resources and not become a hazard to navigation.

(f) All costs and expenses [~~of~~] related to removing the vessel and damage to state or private property shall be the sole responsibility of the vessel's owner or operator. The department may take legal action to collect any costs or expenses incurred by the department for any removal under this section. All moneys collected shall be deposited in the boating special fund.

(g) Any person who renders assistance to the department when it acts pursuant to subsection (b) or (c) and any person who, in good faith and without remuneration or expectation of remuneration, renders assistance at the scene of a vessel:

- (1) Grounded on state submerged land, a shoreline, or a coral reef;
- (2) In imminent danger of breaking up; or
- (3) Grounded on a sand beach, sandbar, or mudflat [~~and not in imminent danger of breaking up~~],

shall not be liable for any civil damages resulting from the person's acts or omissions in providing or arranging towage or



other assistance, except for damages caused by the person's gross negligence or wanton acts or omissions."

SECTION 7. Section 200-49, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) The owner, lien holder, or operator of the vessel shall have ~~[ten]~~ five working days after the date of the public notice or receipt of the mailed notice, whichever occurs later, to request ~~[in writing]~~ an administrative hearing. ~~[This]~~ A request for administrative hearing [is] shall be made in writing to the department, shall not be deemed delivered until the time that the department received the written request, and shall be solely for the purpose of allowing the owner, lien holder, or operator of [an] the impounded vessel to contest the basis given by the department for the impoundment of the vessel. The administrative hearing must be held within [five] ten working days of [the department's receipt] delivery of the written request.

(c) If the vessel is not repossessed within ~~[twenty]~~ ten working days after the date of the public notice or mailing of the notice, whichever occurs later, the vessel may be disposed of by negotiated sale except that, when two or more purchasers indicate an interest in purchasing the vessel, the vessel will be sold at public auction to the highest bidder~~[, unless the vessel is exempt from public auction under section 200-45]~~. If no purchaser

expresses a desire to purchase the vessel, the vessel may be destroyed or donated to any governmental agency."

SECTION 8. Section 200-45, Hawaii Revised Statutes, is repealed.

~~["§200-45 When public auction not required. Public auction shall not be required when the appraised value of any vessel is less than \$5,000, as determined by an independent appraiser who has at least one year of experience in the sale or purchase of vessels. Upon that determination, after public notice of intended disposition has been given at least once, the state or county agency that took custody of the vessel may sell the vessel by negotiation, dispose of it as junk, or donate the vessel to any governmental agency." ]~~

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.



February 27, 2020

Testimony To: Senate Committee on Judiciary

Presented By: Tim Lyons, CAE  
Executive Director

Jim Coon  
President

Subject: S.B. 2953, SD 1 – RELATING TO VESSELS.

Chair Rhoads and Members of the Committee:

We are Tim Lyons, Executive Director and James E. Coon, President of the Ocean Tourism Coalition and we oppose this bill.

The OTC represents over 300 small ocean tourism businesses state wide. All of them operate from State Boating Facilities managed by DLNR/DOBOR. Most of these are family businesses which are locally owned and operated. Many of them have been in business for several decades and are an important and valued part of their respective communities.

While we support the intent of DOBOR to clean out derelict vessels, we believe this proposal is an overreach or taking on the part of DOBOR. It has many serious flaws some of which we will highlight:

**Unauthorized vessels:** Any Vessel moored without a current use permit, or moored, anchored, in waters of the State in violation of ANY Law or Rule of the Department shall be deemed an unauthorized vessel and shall be subject to impoundment and disposal with only 24 hours' notice (the former 72 hour notice was more reasonable). The Owner has only five working days to request an Administrative Hearing to contest the basis why the vessel was impounded. Then it is 10 working days until the Administrative Hearing (this could be as simple as misunderstanding over rules). The vessel can be sold or disposed after 10 working days. A vessel at anchor for more than 24 hours without someone aboard shall be presumed abandoned (this would impact most moored vessels statewide).

There are many boats moored on Maui that are owned by local residents who live upcountry and only use their vessels on weekends. Do they have to physically check their boat every day? They could come down to use their vessel only to find it confiscated by the State. What if they were sick or out of town or any number of reasons that might cause them to violate this proposed law change?

Frankly the current law gives DOBOR much power over abandoned vessels and it is hard to believe that they cannot remove derelict and abandoned vessels under the current law. Instead they propose expanding the definition of Abandoned Vessels (thereby increasing the number) while drastically reducing the time for the vessel owner to remedy whatever infraction may have occurred.

We request that this proposed bill have a very serious re-write and address the many flaws that it currently contains. Owners need more time and more opportunities to ensure that their property is not being arbitrarily confiscated.

Thank you.

**SB-2953-SD-1**

Submitted on: 2/25/2020 12:43:06 PM

Testimony for JDC on 2/27/2020 10:30:00 AM

| <b>Submitted By</b> | <b>Organization</b>              | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|----------------------------------|---------------------------|---------------------------|
| Thomas Brown        | Testifying for 'AU'AU<br>KAI INC | Oppose                    | No                        |

Comments:

The current law grants the DLNR enough authority to remove abandoned vessels, in a way that still allows citizens and boat owners time to fix any misunderstandings or problems.

Adding to the law in such an extensive way is an overreach of authority.

**SB-2953-SD-1**

Submitted on: 2/25/2020 12:46:14 PM

Testimony for JDC on 2/27/2020 10:30:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Kevin Ford          | Individual          | Oppose                    | No                        |

Comments:

**SB-2953-SD-1**

Submitted on: 2/25/2020 3:19:53 PM

Testimony for JDC on 2/27/2020 10:30:00 AM

| <b>Submitted By</b> | <b>Organization</b>             | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------------------|---------------------------|---------------------------|
| Zachary LaPrade     | Testifying for Calypso Charters | Oppose                    | No                        |

Comments:

Calypso Charters operates a commercial charter boat on Maui. We support the intent of this bill, but there are major practical problems.

Our company would immediately respond to any company vessel that is in distress and we would never abandon a boat. However, SB2953 contains language that any vessel moored in violation of ANY Law or Rule of the Department shall be subject to impoundment and disposal with only 24 hours' notice. (the former 72 hour notice was more reasonable). That is a VERY onerous penalty. A mere misunderstanding of the rules could be devastating. The Owner has only five working days to request an administrative hearing to contest the basis why the vessel was impounded. Then it is 10 working days until the Administrative hearing. (This could be as simple as a misunderstanding over rules).

Also, the bill states a vessel at anchor for more than 24 hours without someone aboard shall be presumed abandoned. Many owners leave for more than 24 hours IN FAIR WEATHER. It's a case by case basis.

We request that this proposed bill have a very serious re-write and address the many flaws that it currently contains. Owners need more time and more opportunities to ensure that their property is not being arbitrarily confiscated.



**SB-2953-SD-1**

Submitted on: 2/25/2020 9:42:09 PM

Testimony for JDC on 2/27/2020 10:30:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Donna Henders       | Individual          | Oppose                    | No                        |

Comments:

**SB-2953-SD-1**

Submitted on: 2/26/2020 5:21:31 AM

Testimony for JDC on 2/27/2020 10:30:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| alicia haynes       | Individual          | Oppose                    | No                        |

Comments:

**Testimony of Denver Saxton Coon on behalf of Trilogy Corporation, in Strong Opposition to SB2953 SD1, Relating to Vessels.**

Ke Kōmike Ho‘okolokolo  
COMMITTEE ON JUDICIARY

Kenekoa/Senator Karl Rhoads, Luna Ho‘omalua/Chair  
Kenekoa/Senator Jarrett Keohokalole, Hope Luna Ho‘omalua/Vice Chair

‘Ōlelo Ho‘olaha No Ka Ho‘oholo Mana‘o ‘Ana  
**NOTICE OF DECISION MAKING**

Lā / DATE: Pō‘ahā, Pepeluali 27, 2020 / Thursday, February 27, 2020  
Hola / TIME: 10:30 a.m.  
Wahi / PLACE: Lumi ‘Aha Kūkā 016 / Conference Room 016  
Ke Kapikala Moku‘āina / State Capitol  
415 South Beretania Street

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*Dear members of the Committee on Judiciary:*

My name is Denver Saxton Coon. I am general counsel for Trilogy Corporation dba Trilogy Excursions on the island of Maui. Trilogy Excursions believes SB2953 SD1(the “Bill”) suffers from serious defects that could jeopardize the lives of both commercial and recreational boaters. In many cases, vessels are someone’s home, livelihood, life savings, or all of the above. As a result, rules that allow the department to take a vessel away should be written with great care and caution to avoid undue hardship. The following are just a few of the faults that indicate that this Bill was not drafted with the care needed to warrant its passing:

***1. Section 200-16(a) – Definition of Unauthorized Vessel***

The Bill states that a vessel will be considered an unauthorized vessel subject to impoundment if it is “...moored, anchored, or stored in waters of the State in violation of **any law or rule** of the department...” (emphasis added). This language greatly broadens the definition of an unauthorized vessel to the point where it is difficult for vessel owners to argue effectively against the department’s impoundment of a vessel for even the smallest of infractions. As a result, the Bill creates the potential for abuse at the expense of the boating community.

***2. Section 200-16(d) and (e) – Time to Request a Hearing before Sale***

The Bill requires that the department send notice of impoundment within 72-hours. From receipt of this notice, the owner of the vessel will have 5 working days to request an administrative hearing, which will not be deemed delivered until the time the State receives the request. At the same time, subsection (e) allows the department to sell the vessel 10 working days after impoundment. As a result, a vessel owner that sends in a request for a hearing on the third working day, but whose letter is not received until the sixth working day, will not be granted a hearing and the department will have the right to sell the vessel almost immediately thereafter. It is hard to imagine applying this same timeline to someone’s home or business located on land.

### 3. *Section 200-41 – Abandonment of Vessels*

The Bill states that a vessel is considered abandoned and subject to impoundment if it “...**has been moored, anchored, or otherwise left in the waters of the State or on public property unattended for more than twenty-four hours.**” In addition, the owner of a vessel determined to be abandoned is guilty of a petty misdemeanor and subject to fine, imprisonment, or both. This is absurd. First, it is unclear what “unattended” means. This sounds as though a vessel owner must be physically present on the vessel at least once every day. So, if a vessel is used on Monday but not again until Wednesday, the vessel will be presumed abandoned and the owner will have committed a petty misdemeanor if they did not step foot on the vessel on Tuesday.

Also, the department removed the language that would link abandonment to some type of violation. Instead, it is now a blanket violation to be away from a vessel for more than twenty-four hours. In other words, the department can impound a vessel after twenty-four hours even if it has been left in a harbor or on an offshore mooring under a valid mooring permit. This is the same as saying that if you are away from your vehicle for more than twenty-four hours, the department will presume it abandoned and impound it, even if it is parked legally. This may not be the department’s intent, but that is how the Bill reads.

This Bill requires substantial work and should not be passed at this time. The department may argue that the outcomes pointed out in this testimony are not the intent of the Bill, and if that is the case, the department should not have any problem rewriting the Bill to avoid such interpretations. Any rule that can deprive someone of their home, livelihood, or life savings, should be drafted with the utmost care, and SB2953 SD1 does not meet this standard.

*Mahalo,*

Denver Saxton Coon  
Trilogy Corporation  
General Counsel  
[denver.coon@sailtrilogy.com](mailto:denver.coon@sailtrilogy.com)

**LATE**

**SB-2953-SD-1**

Submitted on: 2/26/2020 10:34:50 AM

Testimony for JDC on 2/27/2020 10:30:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Rayne               | Individual          | Support                   | No                        |

Comments: