

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:

S.B. NO. 2721, S.D. 2, H.D. 1, RELATING TO OCEAN RECREATION.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Wednesday, March 27, 2024 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Melissa D. Goldman, Deputy Attorney General, or
Tricia M. Nakamatsu, Deputy Attorney General

Chair Tarnas and Members of the Committee:

The Department of the Attorney General offers the following comments and suggested amendments.

The purposes of the bill are to amend and clarify the various criminal and administrative penalties applicable to chapter 200, Hawaii Revised Statutes (HRS), to facilitate more effective enforcement of the State's statutes and rules pertaining to ocean recreation and coastal areas. To this end, the bill would (1) make it a petty misdemeanor to violate any provision of chapter 200, HRS, or rule adopted by the Department of Land and Natural Resources (DLNR) relating to certain administrative offenses; (2) authorize the Environmental Court to, in addition to existing fines and penalties, deprive offenders of the privilege of operating any vessel in certain geographical areas of the waters of the State for a period of not more than 12 months; (3) allow the Board of Land and Natural Resources to, in addition to other administrative fines and penalties, deprive the offender of the privilege of registering any vessel for use in waters of the State or mooring any vessel in any state boating facility for a period of not more than 24 months; and (4) repeal inconsistent or unnecessary fines and penalties relating to boating laws.

In order to better meet the purposes of the bill and to facilitate enforcement of the provisions, the Department suggests the following amendments to the bill.

Geographical Restrictions

Amendments to section 200-14(c), HRS, found on page 3, line 16, through page 4, line 2, would: (1) clarify the Environmental Court's ability to impose geographical restrictions (when operating a vessel) as part of any criminal penalties imposed, and (2) increase the maximum restriction period from 30 days to 12 months. For consistency with criminal statutes, the Department suggests rephrasing this wording, as follows:

~~[In addition to,]~~ As a condition of probation pursuant to sections 706-623 and 706-624, or as a condition to the suspension of~~;~~ any criminal ~~[fines and]~~ penalties, the environmental court may ~~[deprive the offender of the privilege of]~~ provide that the defendant refrain from operating any vessel, including but not limited to any thrill craft or vessel engaged in parasailing or water sledding, in ~~[certain]~~ specified geographical areas of the waters of the State ~~[for a period of no more than twelve months].~~

Including the phrase "for a period of no more than twelve months" could be confusing for the courts in practice, and we recommend its deletion. Pursuant to section 706-623(1)(d), HRS, all petty misdemeanor convictions ordered to probation are already subject to a period of six months probation—unless the court enters a reason for ordering a shorter period—"provided that up to one year [probation] may be imposed upon a finding of good cause." Thus, the Environmental Court can already impose geographical restrictions, and any other conditions of probation ordered for a petty misdemeanor conviction, for up to one year, upon a finding of "good cause" to extend the probationary period for up to one year.

Water pollution

Section 2 of this bill removes any potential enforcement authority and/or penalties pertaining to water pollution from section 200-14, HRS, as such enforcement is already covered by the Department of Health (DOH), pursuant to chapter 342D, HRS. However, similar administrative authority and penalties are still found in section 3 of this bill, on page 5, lines 1-10, which amends section 200-14.5(c), HRS. We suggest that subsection (c), on page 5, lines 1-10, be deleted.

Subtitle 8 of Title 12

The current version of this bill replaces the phrase, "subtitle 8 of title 12," with the phrase, "this chapter," on page 4, line 12. Because subtitle 8 of title 12, HRS, encompasses not only chapter 200, but also chapters 200A and 200D, the Department suggests amending this wording to state, "this chapter, chapter 200A, chapter 200D, or any [~~rule~~] rules adopted thereunder."

Similarly, page 6, lines 2 and 7, should also be amended for consistency. Alternatively, if the Committee wishes to retain the phrase, "subtitle 8 of title 12," throughout the bill, that accurately encompasses all of the same chapters.

Thank you for the opportunity to provide these comments.

JON N. IKENAGA
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S.B. No. 2721, SD2, HD1: RELATING TO OCEAN RECREATION

Chair David A. Tarnas
Vice Chair Gregg Takayama
Honorable Committee Members

The Office of the Public Defender **opposes** this bill.

This bill authorizes the Department of Land and Natural Resources to create and enforce petty misdemeanors for reckless or unauthorized operations of any vessel, unauthorized commercial activity, unauthorized camping, and other conduct.

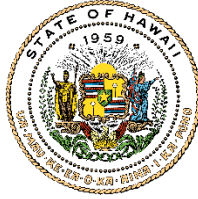
The need for this power is unclear and unnecessary. The second paragraph in Section 1 asserts that stepping up the penalties is necessary to “deter violators and repeat offenders” without providing any evidence of “repeat offenders” or how rigorous enforcement of its regulations will deter violators.

Moreover, there are constitutional concerns. Criminal penalties for unauthorized commercial activity could run afoul with protections under the First Amendment to the United States Constitution. *See Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976) (“speech does not lose its First Amendment protection because money is spent to project it, as in a paid advertisement of one form or another.”). Similarly, provisions that regulate and criminalize camping can be impermissibly overbroad and vague. *State v. Beltran*, 116 Hawai'i 146, 172 P.3d 458 (2007).

Thank you for taking these comments into consideration.

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



DAWN N.S. CHANG
CHAIRPERSON
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COMMISSION ON WATER RESOURCE
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Testimony of
DAWN N.S. CHANG
Chairperson

Before the House Committee on
JUDICIARY & HAWAIIAN AFFAIRS

Wednesday, March 27, 2024
2:00 PM

State Capitol, Conference Room 325

In consideration of
SENATE BILL 2721, SENATE DRAFT 2, HOUSE DRAFT 1
RELATING TO OCEAN RECREATION

Senate Bill 2721, Senate Draft 2, House Draft 1 proposes to make certain violations of chapter 200, Hawaii Revised Statutes (HRS), a petty misdemeanor; and to amend penalty amounts for violations of chapter 200, HRS. **The Department of Land and Natural Resources (Department) strongly supports this measure.**

This measure will help the Department's Division of Conservation and Resources Enforcement (DOCARE) with enforcement efforts related to areas and facilities under the jurisdiction of the Division of Boating and Ocean Recreation, including small boat harbors, boat launch ramp facilities, Waikīkī Beach, and Kā'anapali Beach. Without sufficient penalties to deter repeat violations, the Department has observed that the rates of illegal activities at these areas and facilities stayed the same or increased.

Mahalo for the opportunity to testify on this measure.



MAUI

CHAMBER OF COMMERCE

VOICE OF BUSINESS

HEARING BEFORE THE HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
HAWAII STATE CAPITOL, HOUSE CONFERENCE ROOM 325
Wednesday, March 27, 2024 AT 2:00 P.M.

To The Honorable David A. Tarnas, Chair
The Honorable Gregg Takayama, Vice Chair
Members of the Committee on Judiciary & Hawaiian Affairs

COMMENTS ON SB2721 SD2 HD1 RELATING TO OCEAN RECREATION

The Maui Chamber of Commerce would like to offer **COMMENTS on SB2721 SD2 HD1**.

The Chamber notes the language of section 200-14, Hawaii Revised Statutes, is not clear regarding whether criminal penalties are authorized for violations of the section, which has hindered enforcement efforts. Therefore, the purpose of this bill is to clarify that criminal penalties are authorized under section 200-14, Hawaii Revised Statutes.

We understand and agree with punishing those operating without permits, those doing egregious acts like vandalizing the property or trespassing, and repeat offenders. However, because this bill is written so broadly, we are concerned that it may impact legal, permitted operators who mistakenly break a rule that may have been modified or a new rule of which they were not aware. Departmental rules may change and be implemented without the same level of notification or public input as laws. Thus, legally permitted operators may not be informed of the changes and be subject to possibly harsh penalties. The broadness of this language may also lead to very discretionary and prejudicial actions.

We request the language regarding “individuals knowingly or intentionally violate any rule” be returned to the measure. Permittees' businesses are reliant upon the harbors. They want to protect the harbors and their private property there, so they are normally good stewards.

Mahalo for the opportunity to offer **COMMENTS on SB2721 SD2 HD1**.

Sincerely,

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.