

JAN 23 2020

A BILL FOR AN ACT

RELATING TO VESSELS.

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

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

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



1 complicating removal efforts and increasing the potential to
2 create health, safety, and natural resource threats.

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

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

10 "§200-16 ~~[Mooring of unauthorized vessel in state small~~
11 ~~boat harbors and offshore mooring areas,]~~ Unauthorized vessels;
12 impoundment and disposal proceedings. (a) ~~[No person shall~~
13 ~~moor a vessel in a state small boat harbor or offshore mooring~~
14 ~~area without obtaining a use permit; nor shall a person~~
15 ~~continue to moor a vessel in any state small boat harbor or~~
16 ~~offshore mooring area if the use permit authorizing the vessel~~
17 ~~to moor has expired or otherwise been terminated]~~ A vessel
18 moored without a valid use permit ~~[or]~~, moored with a use permit
19 that has expired or been terminated ~~[is]~~, or moored, anchored,
20 or stored in waters of the State in violation of any law or rule
21 of the department , shall be deemed an unauthorized vessel [and



1 ~~is subject to~~ in violation of this section[-] and shall be
2 subject to impoundment and disposal.

3 (b) The department shall ~~[cause to be placed]~~ place upon,
4 or as near to ~~[the]~~ an unauthorized vessel as possible, a notice
5 to remove the vessel, which shall, at a minimum, indicate that
6 the vessel is in violation of this section, the date and time
7 the notice was posted, and that the vessel must be removed
8 within ~~[seventy-two]~~ twenty-four hours from the time the notice
9 was posted.

10 (c) An unauthorized vessel may be impounded by the
11 department at the sole risk and expense of the owner of the
12 vessel, if the vessel is not removed after the ~~[seventy-two-~~
13 ~~hour]~~ period [or] specified in subsection (b). Calculation of
14 the time period shall not restart if, during that period, the
15 vessel is ~~[removed and remoored in the harbor or mooring or~~
16 ~~anchorage area or any other state harbor or mooring or anchorage~~
17 ~~area without a use permit.]~~ moved anywhere in the waters of the
18 State or to any public property and remains in violation of this
19 section. The owner of the vessel shall be solely responsible
20 for all costs of the impoundment and the disposal of the
21 unauthorized vessel. All owners of unauthorized vessels that



1 are impounded by the department shall be responsible for paying
2 impound storage fees to the department while the vessel remains
3 impounded and until the time that the vessel is returned to the
4 custody of a person entitled to possession. Any proceeds
5 ~~[resulting from]~~ collected by the department in relation to the
6 impoundment and the disposal of the unauthorized vessel shall be
7 used first to pay for the costs of impoundment and disposal
8 ~~[and]~~, then to pay for any additional costs related to the
9 impoundment and disposal, then to pay for any outstanding
10 mooring fees due[-] to the department by the owner. If the
11 proceeds resulting from the impoundment and the disposal are
12 inadequate to pay for all costs and mooring fees due, the owner
13 of the unauthorized vessel shall remain liable for ~~[the]~~ paying
14 the department any and all outstanding costs and mooring fees[-]
15 due.

16 (d) Custody of an unauthorized vessel shall be returned to
17 the person entitled to possession only upon payment ~~[to the~~
18 ~~department]~~ in full of all fees and costs due[-] to the
19 department and any and all fines levied by the department or a
20 court[-] of competent jurisdiction. In addition, the
21 department, within seventy-two hours of impoundment, shall send



1 by certified mail, return receipt requested, a notice of
2 impoundment to the registered or documented owner or any lien
3 holder or operator of the impounded vessel on record with the
4 department or the United States Coast Guard. The owner, lien
5 holder, or operator of the impounded vessel shall have [~~ten~~
6 five working days after receipt of notice of impoundment of the
7 vessel to request [~~in writing~~] an administrative hearing.
8 [~~This~~] A request for administrative hearing [is] shall be made
9 in writing to the department, shall not be deemed delivered
10 until the time that the department received the written request,
11 and shall be solely for the purpose of allowing the owner, lien
12 holder, or operator of an impounded vessel to contest the basis
13 given by the department for the impoundment of the vessel. The
14 administrative hearing must be held within [~~five~~] ten working
15 days of [~~the department's receipt~~] delivery of the written
16 request. The department [~~shall~~] may adopt rules pursuant to
17 chapter 91 to implement the requirement for this post-seizure
18 administrative hearing process.

19 (e) Any unauthorized vessel impounded under this section,
20 which remains unclaimed for more than [~~thirty~~] ten working days
21 by the registered or documented owner, a lien holder, or



1 operator of record, may be sold by the department at public
 2 auction. If the department does not or is unable to sell the
 3 vessel at public auction, [~~or if its appraised value is less~~
 4 ~~than \$5,000 as determined by an independent appraiser with at~~
 5 ~~least one year of experience in the sale and purchase of~~
 6 ~~vessels,~~] the department, after giving public notice of intended
 7 disposition, if that notice was not previously included in a
 8 public auction notice, may sell the vessel by negotiation,
 9 retain and use the vessel, donate it to any other government
 10 agency, or dispose of it as junk."

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

13 "§200-41 [~~Disposition of certain abandoned~~] Abandonment of
 14 vessels. (a) No person shall abandon any vessel upon the
 15 waters of the State or upon any property, other than the
 16 property of the vessel owner, without the consent of the
 17 property owner.

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

20 (1) The vessel has been moored, anchored, or otherwise
 21 left in the waters of the State or on public property



1 ~~[contrary to law or rules having the force and effect~~
2 ~~of law, or left]~~ unattended for more than twenty-four
3 hours;

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

7 ~~(1) The vessel's registration certificate or marine~~
8 ~~document has expired and the registered owner no~~
9 ~~longer resides at the address listed in the vessel~~
10 ~~registration or marine document records of the~~
11 ~~department or the United States Coast Guard;]~~ for more
12 than twenty-four hours;

13 ~~[(2)]~~ (3) The last registered owner of record disclaims
14 ownership and the current owner's name or address
15 cannot be determined;

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

19 ~~(4) The vessel registration records of the department of~~
20 ~~land and natural resources and the marine document~~
21 ~~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 twenty-four 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



1 county access to the department's vessel registration
2 and marine document records or those of the United
3 States Coast Guard for the purposes of this section.
4 Once a vessel is deemed abandoned~~[7]~~ on waters of the State or
5 on public property, the appropriate official under this
6 subsection may direct and cause the vessel to be taken into
7 custody and disposed of pursuant to and in the manner provided
8 in this ~~[chapter.]~~ part. All owners of abandoned vessels that
9 are impounded by the department shall be responsible for paying
10 impound fees to the department while the vessel remains
11 impounded and until such time that the vessel is returned to the
12 custody of a person entitled to possession.

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

15 (e) Any person who abandons a vessel on waters of the
16 State or on public property shall be guilty of a petty
17 misdemeanor and shall be fined not more than \$1,000 or
18 imprisoned not more than thirty days, or both, for each offense.
19 Each day of each violation shall be deemed a separate offense.
20 It shall be an affirmative defense to prosecution that a vessel
21 was abandoned during a national emergency declared by the



1 president of the United States or Congress, or a state of
2 emergency declared by the governor, or as otherwise approved in
3 writing by the chairperson; provided that the defense shall be
4 valid only for the duration of the declared emergency of written
5 approval."

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

8 "§200-42 Notice to owner. A state or county agency, upon
9 taking custody of any vessel[~~7~~] deemed abandoned pursuant to
10 section 200-41, shall immediately post a written notice on the
11 vessel and send a duplicate original by registered or certified
12 mail, with a return receipt requested, to any owner registered
13 with the department or documented by the United States Coast
14 Guard or any lien holder or operator of the vessel on record
15 with the department or the United States Coast Guard at their
16 respective last known address on record with the department or
17 the United States Coast Guard. The notice shall contain a brief
18 description of the vessel, the location of custody, and the
19 intended disposition of the vessel if not repossessed within
20 [~~twenty~~] ten working days after the mailing of the notice.
21 [~~Such owner, lien holder, or operator, of the vessel shall have~~



1 ~~ten days after receipt of the mailed notice to request in~~
2 ~~writing an administrative hearing pursuant to chapter 91 from~~
3 ~~the state or county agency that took custody of the vessel.~~
4 ~~This administrative hearing is solely for the purpose of~~
5 ~~allowing the owner, lien holder, or operator of an impounded~~
6 ~~vessel to contest the basis given for the impoundment of the~~
7 ~~vessel. The hearing shall be held within five working days of~~
8 ~~the state or county agency's receipt of the written request.]~~
9 The owner, lien holder, or operator of the vessel shall have
10 five working days after receipt of notice of impoundment of the
11 vessel to request administrative hearing from the state or
12 county agency that took custody of the vessel. A request for
13 administrative hearing shall be made in writing to the state or
14 county agency that took custody of the vessel, shall not be
15 deemed delivered until the time that the agency receives the
16 written request, and shall be solely for the purpose of allowing
17 the owner, lien holder, or operator of an impounded vessel to
18 contest the basis given by the agency for the impoundment of the
19 vessel. The administrative hearing shall be held within ten
20 working days of delivery of the written request."



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

3 "§200-43 Public auction~~[-]~~; disposition of abandoned
4 vessels. [~~If the vessel is not repossessed within twenty days~~
5 ~~after the mailing of the notice, the vessel shall be disposed of~~
6 ~~by public auction, through oral tenders, or by sealed bids,~~
7 ~~after public notice has been given at least once, provided that~~
8 ~~the public auction shall not be held less than five days after~~
9 ~~the notice is given. Where no bid is received, the vessel may~~
10 ~~be sold by negotiation, disposed of as junk, or donated to any~~
11 ~~governmental agency.] Any abandoned vessel impounded under this
12 part, which remains unclaimed by the registered or documented
13 owner, lien holder, or operator of record, for more than ten
14 working days after mailing of the notice required by section
15 200-42 may be sold at public auction by the state or county
16 agency that took custody of the vessel. If the agency does not
17 or is unable to sell the vessel at public auction, the agency,
18 after giving public notice of intended disposition, if the
19 notice was not previously included in a public auction notice,
20 may sell the vessel by negotiation, retain and use the vessel,~~



,

1 donate the vessel to any other government agency, or dispose of
2 the vessel as junk."

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

6 "(b) Solely for the purposes of removal and with no
7 liability to the department, the department may immediately
8 assume control of any vessel that is grounded on state submerged
9 land, a shoreline, or a coral reef or in imminent danger of
10 breaking up and cannot be removed by the owner within twenty-
11 four hours from the time the vessel is grounded; provided that
12 this subsection shall not apply if the owner or owner's
13 representative has received notice from the department and has
14 commenced effective salvage operations.

15 (c) [Vessels] Except during a national emergency declared
16 by the president of the United States or Congress, or a state of
17 emergency declared by the governor, or as otherwise approved in
18 writing by the chairperson, vessels grounded on a sand beach,
19 sandbar, or mudflat [~~and not in imminent danger of breaking up~~]
20 shall be removed by the owner or operator within [~~seventy-two~~]



1 twenty-four hours [~~7~~, ~~unless otherwise agreed to by the~~
2 department].

3 (d) Solely for the purposes of removal and with no
4 liability to the department, the department may [~~immediately~~]
5 assume control of any vessel grounded on a sand beach, sandbar,
6 or mudflat [~~and not in imminent danger of breaking up~~] that is
7 not removed by the owner in a manner that is reasonably safe, as
8 determined by the department, within [~~seventy-two~~] twenty-four
9 hours of notification to the vessel owner or the owner's
10 representative; provided that this subsection shall not apply if
11 the owner or owner's representative has received notice from the
12 department and has commenced effective salvage operations.

13 (e) Once the department assumes control [~~over the~~] of a
14 vessel [~~7~~] pursuant to this section, the vessel shall be removed
15 by conventional salvage methods if possible, and if not possible
16 then by any means necessary [~~7~~] to minimize damage to the natural
17 resources and not become a hazard to navigation.

18 (f) All costs and expenses [~~of~~] related to removing the
19 vessel and damage to state or private property shall be the sole
20 responsibility of the vessel's owner or operator. The
21 department may take legal action to collect any costs or



1 expenses incurred by the department for any removal under this
2 section. All moneys collected shall be deposited in the boating
3 special fund.

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

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

13 shall not be liable for any civil damages resulting from the
14 person's acts or omissions in providing or arranging towage or
15 other assistance, except for damages caused by the person's
16 gross negligence or wanton acts or omissions."

17 SECTION 7. Section 200-49, Hawaii Revised Statutes, is
18 amended by amending subsection (c) to read as follows:

19 "(c) If the vessel is not repossessed within twenty days
20 after the date of the public notice or mailing of the notice,
21 whichever occurs later, the vessel may be disposed of by



1 negotiated sale except that, when two or more purchasers
 2 indicate an interest in purchasing the vessel, the vessel will
 3 be sold at public auction to the highest bidder [~~unless the~~
 4 ~~vessel is exempt from public auction under section 200-45~~]. If
 5 no purchaser expresses a desire to purchase the vessel, the
 6 vessel may be destroyed or donated to any governmental agency."

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

9 [~~"§200-45 When public auction not required. Public~~
 10 ~~auction shall not be required when the appraised value of any~~
 11 ~~vessel is less than \$5,000, as determined by an independent~~
 12 ~~appraiser who has at least one year of experience in the sale or~~
 13 ~~purchase of vessels. Upon that determination, after public~~
 14 ~~notice of intended disposition has been given at least once, the~~
 15 ~~state or county agency that took custody of the vessel may sell~~
 16 ~~the vessel by negotiation, dispose of it as junk, or donate the~~
 17 ~~vessel to any governmental agency."]~~

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

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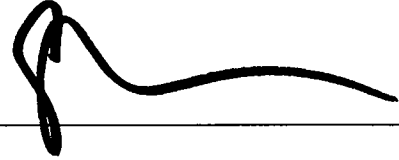


S.B. NO. 2953

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

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INTRODUCED BY: _____



Amulya H. Bhat



Jasvinder Singh
Michelle N. Sclani

Amna Muneer Khan

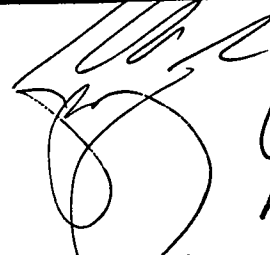
Neil R. Puri

Pravina R. Prange

Kurt Favella

Breanna Hunt

Alana Tuck



Yee Hwang

Daniel D. [Signature]



S.B. NO. 2953

Report Title:

Unauthorized Vessels; Grounded Vessels; Abandoned Vessels; Derelict Vessels; Vessel Impoundment; Vessel Auctions; Vessel Disposal; DLNR

Description:

Makes clarifications regarding removal of unauthorized vessels on state property. Makes clarifications regarding the definition of an abandoned vessel. Changes the time limit to claim an unauthorized vessel that is impounded by the department of land and natural resources from thirty days to ten working days. Changes the time limit to claim an abandoned vessel that is impounded by a state or county agency from twenty days to ten working days. Makes abandonment of a vessel on waters of the State or public property a petty misdemeanor. Makes clarifications to auction requirements regarding abandoned vessels. Sets the time limit for a vessel owner or operator to remove unauthorized, abandoned, and grounded vessels at twenty-four hours. Allows DLNR to charge an impound storage fee.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

