

SB 1228

kim2 - Arline

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 26, 2009 3:39 PM
To: WAM Testimony
Cc: geoffkona@hawaii.rr.com
Subject: Testimony for SB1228 on 2/27/2009 9:00:00 AM

Testimony for WAM 2/27/2009 9:00:00 AM SB1228

Conference room: 211
Testifier position: support
Testifier will be present: No
Submitted by: Geoffrey Walker
Organization: Individual
Address: 75-5870 Walua Rd. Kailua Kona
Phone: 8089609116
E-mail: geoffkona@hawaii.rr.com
Submitted on: 2/26/2009

Comments:

I support this bill. I am a commercial fisherman and sold my slip as a corperation. Commercial fishermen are becomming an endangered specie in Hawaii and this measure will go a long way to make sure we are not squeezed out by other interests. I hope there is a provision in here that will not allow a sport or charter fisherman acquire a slip designated as a commercial fishing slip. Geoffrey Walker Kona, Hawaii

Testimony

SB 1228 adds language to our existing statute to confirm that it was and is the intent of the referenced statute to not only allow commercial fishermen to "incorporate" their fishing business but to then in the future transfer ownership of their business without losing their DLNR-DOBOR mooring or berthing permits which is often the only way they can end up selling their businesses when they get to old to fish or become disabled, etc.

Over the last 10 years or more as an attorney in Kona I have processed the transfer of ownership of commercial fishing corporations that held mooring permits at Honokohau Harbor on the Big Island and had ALWAYS received the approval of the local harbor master, including the current harbor master, and have had clients purchase those commercial fishing corporations sometimes paying substantial money for the business in reliance that when the time came they would be able to likewise transfer ownership of their business on to a buyer. No problem, but then about a year ago or so the new DLNR-DOBOR administrator, unilaterally and out of the blue, with no prior notice to the boating community or hearings (due process) simply decided that he would no longer allow those transfers to be made, leaving all the people who had purchased commercial fishing businesses hanging out to dry. The new DLNR-DOBOR department head's new interpretation of the existing law, which had for 10+ years been interpreted as allowing such transfers by all of the new department head's predecessors and by local harbor masters who have had to deal with those transactions "in the field", is simply not supported by a common sense reading of the existing law nor by 10 years of administrative practice. But we are all stuck until the current DLNR-DOBOR department head is compelled to follow the law as it was previously interpreted and intended to be interpreted by the legislature that originally adopted the law.

So, in order to rectify matters it appears that we need to add language to the existing statute which makes it crystal clear that the last 10 + years of administrative practice and interpretation is what the legislature had originally intended and still intends to be the law and thereby come to the aid of the taxpayers of this state who have been left high and dry by this new interpretation of existing law.

If SB 1228 is not passed the only recourse that taxpayers who have been allowed in the past to purchase a fishing corporation and allowed to keep their mooring permits will be to file lawsuits against the State of Hawaii if they want to recoup their investments, which is not something the average fisherman can afford to do or that maybe anyone can really afford to do in the current economic climate much less should they even have to consider doing.

Long standing administrative practice relative to a department's interpretation of a statute is something people begin with the lapse of time, such as 10 years, to rely upon as being the law, they make investment decisions based on such interpretations of law as being correct especially when those interpretations remain the same over the course of a decade and the law has not been changed. The people of this state deserve to be able to rely on a decade long interpretation of law and not have the rug pulled out from under them without due process of law. So, please adopt this bill and thereby set matters straight for those people.

Respectfully submitted-Wally Gallup

kim2 - Arline

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 25, 2009 10:55 AM
To: WAM Testimony
Cc: captjohn@pacificboatsales.com
Subject: Testimony for SB1228 on 2/27/2009 9:00:00 AM

Testimony for WAM 2/27/2009 9:00:00 AM SB1228

Conference room: 211
Testifier position: support
Testifier will be present: No
Submitted by: John Jordan
Organization: Individual
Address: 73-4345 Wai Nana Pl. Kailua-Kona Hawaii
Phone: 808-936-1405
E-mail: captjohn@pacificboatsales.com
Submitted on: 2/25/2009

Comments:

It is hard to believe that a process that has been going on for 10+ years could be brought to a halt by one individual, causing much aggravation, personal and financial hardship on some many businesses. I fully support the continued transfer of commercial fishing corporations in Hawaii.

kim4 - Elizabeth

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 25, 2009 10:32 AM
To: WAM Testimony
Cc: rick.pacific@gmail.com
Subject: Testimony for SB1228 on 2/27/2009 9:00:00 AM

Testimony for WAM 2/27/2009 9:00:00 AM SB1228

Conference room: 211
Testifier position: support
Testifier will be present: No
Submitted by: Rick Gaffney
Organization: Individual
Address: Kona, Hawaii
Phone:
E-mail: rick.pacific@gmail.com
Submitted on: 2/25/2009

Comments:

SB 1228 SD 1 is important to Hawaii's commercial fishermen, especially in these tough economic times. The bill simply seeks to reaffirm the original intent of the Legislature.

After 10+ years of DOBOR administrative practice allowing transfers of commercial fishing corporations in our Small Boat Harbors, based on Hawaii Revised Statutes (HRS 200), the new DOBOR Administrator stopped allowing the practice. Many of us believe he is wrong, and we are looking for the Legislature to confirm that, and reaffirm that all the previous administrators had correctly interpreted HRS 200, allowing the transfers. It is our feeling that the statute clearly does not prohibit transfers of commercial fishing corporations.

We believe that the language included in the statute about allowing transfers of ownership of corporations that have commercial operators (charter) permits was inserted because such corporations were considered to be of a higher order of privilege, and thus the new language was needed so that there could be a specific mechanism of imposing a transfer fee.

Since the legislature did not see a need to impose a transfer fee on commercial fishing corporations, there was no specific language included about them not being able to transfer ownership unless they pay a fee. The fact that earlier in the statute commercial fishermen are specifically allowed to incorporate, supports the conclusion that the original legislative intent in allowing them to incorporate was to give them a way of transferring ownership of their commercial fishing business and mooring permits, otherwise why would the legislature have even allowed them to incorporate in the first place?

SB1228 is intended to reaffirm legislative intent, so it is very important that it be heard and passed.

Mahalo for your assistance on this, let me know if you have any questions.

Rick Gaffney

kim2 - Arline

From: RawcoHI@cs.com
Sent: Wednesday, February 25, 2009 8:51 PM
To: WAM Testimony
Subject: Testimony requesting a change in SB 1228, SD 1

TESTIMONY IN REGARD TO SB 1228, SB 1
WITH A MUCH NEEDED CHANGE SUGGESTED

SENATE COMMITTEE ON WAYS AND MEANS

Friday, 27 February 2009 in room 211 at 0900

Chair Mercado Kim and respected members of the committee,

My name is Reg White. I work in the commercial boating industry of our state and have been involved with operations from Kewalo Basin for the past thirty five years. I am also a recreational boater and am a tenant and resident of Ala Wai Boat Harbor.

This bill, SB 1228, SB 1, seeks to make a separate and privileged class of commercial operator out of commercial fishing vessels. There is already the opportunity for any commercial vessel to apply for and receive a commercial permit to operate from the state's harbors where commercial operations are permitted. All this act needs to do is make it clear that commercial fishing vessels are commercial vessels within the existing HRS 200 rules governing the permitting of commercial vessels in the harbors of the state.

In this manner the commercial fishing vessels will be able to pay the same fees and be subject to the same rules as the other commercial operators of the state. The rules require a minimum annual income be generated by the vessel to show that it truly is actively engaged in trade and the rules provide for the transfer of ownership of the stock of a corporation that is the owner of a permitted boat by paying the transfer fee for the size vessel in question. Partial transfers of ownership result in a like partial collection of the transfer fee. There should not be multiple classes of commercial permits nor vessels in the state, all should abide by the same rules and pay the same fees.

Please simplify this bill to make all commercial vessels play by the same rules. Simply make a statement that "commercial fishing vessels are commercial vessels within the meaning of these rules, HRS 200".

Respectfully,

Reg White
1540 S. King St.
Honolulu, HI 96826-1919
(808) 222-9794
RawcoHI@cs.com

testimony.txt

SB 1228 SD 1 is important to Hawaii's commercial fishermen, especially in these tough economic times. The bill simply seeks to reaffirm the original intent of the Legislature.

After 10+ years of DOBOR administrative practice allowing transfers of commercial fishing corporations in our Small Boat Harbors, based on Hawaii Revised Statutes (HRS 200), the new DOBOR Administrator stopped allowing the practice. Many of us believe he is wrong, and we are looking for the Legislature to confirm that, and reaffirm that all the previous administrators had correctly interpreted HRS 200, allowing the transfers. It is our feeling that the statute clearly does not prohibit transfers of commercial fishing corporations.

We believe that the language included in the statute about allowing transfers of ownership of corporations that have commercial operators (charter) permits was inserted because such corporations were considered to be of a higher order of privilege, and thus the new language was needed so that there could be a specific mechanism of imposing a transfer fee.

Since the legislature did not see a need to impose a transfer fee on commercial fishing corporations, there was no specific language included about them not being able to transfer ownership unless they pay a fee. The fact that earlier in the statute commercial fishermen are specifically allowed to incorporate, supports the conclusion that the original legislative intent in allowing them to incorporate was to give them a way of transferring ownership of their commercial fishing business and mooring permits, otherwise why would the legislature have even allowed them to incorporate in the first place?

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Mahalo.

kim2 - Arline

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 26, 2009 9:03 AM
To: WAM Testimony
Cc: dennis@konaboatdiving.com
Subject: Testimony for SB1228 on 2/27/2009 9:00:00 AM

Testimony for WAM 2/27/2009 9:00:00 AM SB1228

Conference room: 211
Testifier position: support
Testifier will be present: No
Submitted by: Dennis McCrea
Organization: Individual
Address: 83-1027 Kumuku Pl Captain Cook, HI
Phone: 808-328-8858
E-mail: dennis@konaboatdiving.com
Submitted on: 2/26/2009

Comments:

I was verbally approved for a Commercial Fishing Corporation transfer in March of 2007 by the Harbormaster at Honokohou on the Big Island as long as I provided additional documentation. I provided the asked for documents a few days later and was told they were being forwarded to Honolulu as there were "new rules" being implemented. It took almost a year - but I was then turned down by Ed Underwood - as there was a "new ruling" by The Attorney Generals' Office. I asked for a copy of this ruling and was turned down, as it was a supposed "client Attorney privilege";

I then appealed this to the Office of Information Practice - Here is the follow up correspondence ---

Ms Thielen and Mr Bennett, and Office of Information Practices,

I am requesting the documentation on an "Attorney General Ruling", as Mr Underwood has indicated there is a formal ruling by the Attorney General's office on 4/4/2008. He has now indicated that there is an (Attorney - client relationship) on this ruling. I am asking this information to be released under the Hawaii's Open Records Law - Uniform Information Practices Act (UIPA) - Chapter 92F, Hawaii Revised Statutes ("UIPA").

PART II. FREEDOM OF INFORMATION

[§92F-11] Affirmative agency disclosure responsibilities. (a) All government records are open to public inspection unless access is restricted or closed by law.

(b) Except as provided in section 92F-13, each agency upon request by any person shall make government records available for inspection and copying during regular business hours.

(c) Unless the information is readily retrievable by the agency in the form in which it is requested, an agency shall not be required to prepare a compilation or summary of its records.

(d) Each agency shall assure reasonable access to facilities for duplicating records and for making memoranda or abstracts.

(e) Each agency may adopt rules, pursuant to chapter 91, to protect its records from theft, loss, defacement, alteration, or deterioration and to prevent manifestly excessive interference with the discharge of its other lawful responsibilities and functions. [L 1988, c 262, pt of §1]

§92F-12 Disclosure required. (a) Any other provision in this chapter to the contrary notwithstanding, each agency shall make available for public inspection and duplication during regular business hours:

- (1) Rules of procedure, substantive rules of general applicability, statements of general policy, and interpretations of general applicability adopted by the agency;
- (2) Final opinions, including concurring and dissenting opinions, as well as orders made in the adjudication of cases, except to the extent protected by section 92F-13(1);

I am requesting this information, there is a 10 day limit to your response. If you can not provide me the information requested, please explain why.
You can e-mail the response, but I would prefer to have a signed document as originally requested

I filed all the necessary paperwork and have made follow up calls, and dozens of emails. I was originally told by the OIP that it wasn't a difficult case and shouldn't take too long. That was over 8 months ago!

Here is the latest response I received from OIP

Dear Mr. McCrea,

Your appeal request remains pending; OIP has not upheld the AG's denial or otherwise made a determination. Unfortunately, the length of time your request has remained pending is a reflection of OIP's backlog. Thus, it does not represent an unusual delay nor preferential treatment for the Attorney General as the agency involved. Nonetheless, I do appreciate your anxiousness to have a determination in this matter. Thank you for letting me know about your proposed legislation, and please feel free to e-mail or call with additional questions you may have.

Aloha,
Jennifer Brooks
Office of Information Practices
State of Hawaii
No. 1 Capitol District Building
250 S. Hotel St., Suite 107
Honolulu, Hawaii 96813
Tel.: 808-586-1400
Fax: 808-586-1412
E-mail: oip@hawaii.gov
Web site: www.hawaii.gov/oip

-
Debbie & Dennis
02/06/2009 06:09 PM

To

oip@hawaii.gov, Mark.J.Bennett@hawaii.gov, Laura.Thielen@hawaii.gov,
governor.lingle@hawaii.gov, senkokubun@capitol.hawaii.gov

cc

senhanabusa@Capitol.hawaii.gov, Sen.ClaytonHee@capitol.hawaii.gov

Subject

Jennifer Brooks re:appeal 08-33

Aloha Jennifer Brooks,

Re: Appeal 08-33

I sent a request for assistance to your office (June 13, 2008) for help in obtaining a "copy of a ruling" by the Attorney General's Office regarding an arbitrary decision by Ed Underwood / DLNR to suspend the transfer of Commercial Fishing operators use/mooring permits. I have made 3 follow up calls to you, and have been repeatedly told by you "it doesn't appear to be complicated" - yet you are unable to provide me a yes or no answer to release the documents (if they really exist) Can you explain to me why it is now almost 8 months and there is still no action?

If there is a problem, please deny my request in writing, so that I can file for immediate review by the District Court. Does this mean your office is giving preferential treatment to the Attorney General's Office?

Your timely response would be appreciated.

Mahalo,

Dennis McCrea

I have 2 years of letters and emails showing the complete lack of response from DLNR and The Attorney general's Office regarding this request. I also am concerned that the Lt. Governor's office has turned a blind eye to the oversight of the Office of Information Practice as it would reflect poorly on Mark Bennett and Laura Thielen as public servants.

Mahalo for your support,

Dennis McCrea

kim2 - Arline

From: Sen. Donna Mercado Kim
Sent: Thursday, February 26, 2009 2:36 PM
To: WAM Testimony
Subject: Testimony for SB1228 on 2/27/2009 9:00:00 AM

From: Dennis McCrea [mailto:dennis@konaboatdiving.com]
Sent: Thursday, February 26, 2009 9:44 AM
To: Sen. Donna Mercado Kim
Cc: Sen. Russell Kokubun; Sen. Clayton Hee; Sen. Colleen Hanabusa; Sen. Mike Gabbard
Subject: Testimony for SB1228 on 2/27/2009 9:00:00 AM

Testimony for WAM 2/27/2009 9:00:00 AM SB1228

Conference room: 211
Testifier position: support
Testifier will be present: No
Submitted by: Dennis McCrea
Organization: Individual
Address: 83-1027 Kumuku Pl Captain Cook, HI
Phone: 808-328-8858
E-mail: dennis@konaboatdiving.com
Submitted on: 2/26/2009

Comments:

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(d) Each agency shall assure reasonable access to facilities for duplicating records and for making memoranda or abstracts.

(e) Each agency may adopt rules, pursuant to chapter 91, to protect its records from theft, loss, defacement, alteration, or deterioration and to prevent manifestly excessive interference with the discharge of its other lawful responsibilities and functions. [L 1988, c 262, pt of §167;1]

§167;92F-12 Disclosure required. (a) Any other provision in this chapter to the contrary notwithstanding, each agency shall make available for public inspection and duplication during regular business hours:

(1) Rules of procedure, substantive rules of general applicability, statements of general policy, and interpretations of general applicability adopted by the agency;

(2) Final opinions, including concurring and dissenting opinions, as well as orders made in the adjudication of cases, except to the extent protected by section 92F-13(1);

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Aloha,

Jennifer Brooks

Office of Information Practices

State of Hawaii

No. 1 Capitol District Building

250 S. Hotel St., Suite 107

Honolulu, Hawaii 96813

Tel.: 808-586-1400

Fax: 808-586-1412

E-mail: oir@hawaii.gov

Web site: www.hawaii.gov/oir

Debbie & Dennis

02/06/2009 06:09 PM

To

oip@hawaii.gov, Mark.J.Bennett@hawaii.gov, Laura.Thielen@hawaii.gov,
governor.lingle@hawaii.gov, senkokubun@capitol.hawaii.gov

cc

senhanabusa@Capitol.hawaii.gov, Sen.ClaytonHee@capitol.hawaii.gov

Subject

Jennifer Brooks re:appeal 08-33

Aloha Jennifer Brooks,

Re: Appeal 08-33

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Your timely response would be appreciated.

Mahalo,

Dennis McCrea

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Mahalo for your support,

Dennis McCrea

LINDA LINGLE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
LAURA H. THIELEN
Chairperson**

**Before the Senate Committee on
WAYS AND MEANS**

**Friday, February 27, 2009
9:00 AM
State Capitol, Conference Room 211**

**In consideration of
SENATE BILL 1228, SENATE DRAFT 1
RELATING TO SMALL BOAT HARBORS**

Senate Bill 1228, Senate Draft 1 proposes to clarify that commercial fishing corporations can transfer ownership without losing necessary permits. The Department of Land and Natural Resources (Department) remains neutral on this measure but offers the following concerns and recommendations.

Section 200-10, Hawaii Revised Statutes, allows a corporation to transfer any or all stock or other interest to another person without terminating the right of the corporation or business entity to retain or renew its commercial use permit issued to it by the Department. The Department notes that fishing corporations are not issued commercial use permits and a recent Attorney General's opinion confirms that permits issued to these types of corporations are not transferable.

Section 13-231-13, Hawaii Administrative Rules (HAR), states in part, "the department may permit a one-time change in ownership of the permittee's vessel from personal ownership to corporate or other business ownership, provided that the permittee holds a valid commercial permit or is engaged in commercial fishing as a primary means of livelihood and notifies the department in writing of an intended change in ownership." This transfer is also limited to the permittee, any co-owners of the vessel, and the members of the immediate families of the permittee and co-owners.

What has been the practice on some of the neighbor islands is that permittees that have been issued a regular mooring permit who claim to be fishing as their primary means of livelihood and form a fishing corporation. Once the corporation is formed, they sell the corporation as a means of transferring the mooring permit. The Department believes that a law permitting corporate transfers of moorings without limits results in by-passing the waitlist of recreational boaters and/or commercial boaters and creates higher-priced entrance for any new mooring permit.

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
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

Accordingly, should the Legislature decide to allow for use permits issued to fishing corporations to be transferred, the Department recommends the following minimum standards be met prior to authorizing the transfer of any fishing corporations:

- Define "Primary means of livelihood" to mean 51% or more of the yearly income of the stock holders is derived from the sale of fish as shown on corporate tax returns;
- Fishing corporations must meet the same requirements as commercial businesses and vessels as stated in Chapter 13, HAR;
- Fishing corporations shall pay the same transfer fee as defined for all other commercial vessels in Chapter 13, HAR;
- Commercial fishing corporation vessels moored in small boat harbors must be in compliance with the Federal Code of Regulations as they apply to commercial fishing vessels;
- Hold a commercial fishing license and submit monthly catch reports as required by the Department.

kim4 - Elizabeth

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 25, 2009 11:08 AM
To: WAM Testimony
Cc: Cindy@PacificRimFishing.com
Subject: Testimony for SB1228 on 2/27/2009 9:00:00 AM

Testimony for WAM 2/27/2009 9:00:00 AM SB1228

Conference room: 211
Testifier position: support
Testifier will be present: No
Submitted by: Cindy Barnett
Organization: Individual
Address: 75-304 Malulani Dr Kailua-Kona, HI
Phone: 808-345-4606
E-mail: Cindy@PacificRimFishing.com
Submitted on: 2/25/2009

Comments:

SB 1228 SD 1 is important to Hawaii's commercial fishermen, especially in these tough economic times. The bill simply seeks to reaffirm the original intent of the Legislature. After 10+ years of DOBOR administrative practice allowing transfers of commercial fishing corporations in our Small Boat Harbors, based on Hawaii Revised Statutes (HRS 200), the new DOBOR Administrator stopped allowing the practice. I believe he is wrong, and am looking for the Legislature to confirm this, and reaffirm that all the previous administrators had correctly interpreted HRS 200, allowing the transfers. It is my feeling that the statute clearly does not prohibit transfers of commercial fishing corporations. I believe that the language included in the statute about allowing transfers of ownership of corporations that have commercial operators (charter) permits was inserted because such corporations were considered to be of a higher order of privilege, and thus the new language was needed so that there could be a specific mechanism of imposing a transfer fee. Since the legislature did not see a need to impose a transfer fee on commercial fishing corporations, there was no specific language included about them not being able to transfer ownership unless they pay a fee. The fact that earlier in the statute commercial fishermen are specifically allowed to incorporate, supports the conclusion that the original legislative intent in allowing them to incorporate was to give them a way of transferring ownership of their commercial fishing business and mooring permits, otherwise why would the legislature have even allowed them to incorporate in the first place? SB1228 is intended to reaffirm legislative intent, so it is very important that it be heard and passed.
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