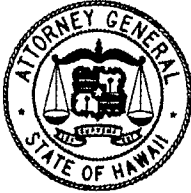


HB 2583,

SD1

Testimony



**COMMENTS OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2010**

ON THE FOLLOWING MEASURE:

H.B. NO. 2583, S.D. 1, RELATING TO IMPOUNDED VESSELS.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Wednesday, March 24, 2010 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): WRITTEN COMMENTS ONLY. For more information, call
Linda L.W. Chow, Deputy Attorney General, at 587-2992.

Chair Kim and Members of the Committee:

The Department of the Attorney General opposes this bill in its current form as it embraces more than one subject in violation of article III, section 14 of the Hawaii Constitution.

The original intent of the bill was to amend section 200-16, Hawaii Revised Statutes, to clarify that all costs and expenses associated with the impoundment and disposal of an impounded vessel are to be borne by the vessel owner. The original bill also clarified that mooring fees incurred prior to impoundment is also the responsibility of the vessel owner, regardless of whether the vessel owner repossesses the vessel.

The amendment to the bill made in S.D. 1 added an amendment to section 188-40.6, Hawaii Revised Statutes, to establish civil and administrative penalties for shark feeding, including seizure and forfeiture of any commercial marine license, vessel, and fishing equipment, and administrative fines, fees, and costs. This section does not appear to have any relationship to impounded vessels.

Article III, section 14 of the Hawaii Constitution states that "[e]ach law shall embrace but one subject, which shall be expressed in its title." Although the term "subject," as used in the Constitution, should be given "a broad and extended

meaning so as to allow the legislature full scope to include in one act all matters having a logical or natural connection" there still must be only one subject embraced by a bill. *Schwab v. Ariyoshi*, 58 Haw. 25, 33, 564 P.2d 135, 140 (1977).

An act has a duplicity of subjects if it embraces two or more dissimilar and discordant subjects that by no fair intendment can be considered as having any legitimate connection with or relation to each other. All that is necessary is that act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject.

Id., (citing *Juhnson v. Harrison*, 47 Minn. 475, 50 N.W. 923, 924 (1894)).

In *Territory v. Dondero*, 21 Haw. 19 (1912), the court set forth a test to be used to construe a provision similar to article III, section 14. The court stated,

[i]t is sufficient if the title of an ordinance fairly indicates to the ordinary mind the general subject of the act, is comprehensive enough to reasonably cover all its provisions, and is not calculated to mislead; but an act which contains provisions neither suggested by the title, nor germane to the subject expressed therein, is, to that extent void.

21 Haw. at 29.

The purpose of article III, section 14 is to give notice to the public and members of the Legislature of the contents of a bill. The subject expressed in the title of this bill is "impounded vessels." The original bill amended a provision relating to the impoundment of vessels by the Department of Land and Natural Resources. No one reading the title of the bill would be led to suspect that it contains a provision relating to

shark feeding and civil and administrative penalties in connection with the violation of the prohibition against shark feeding.

The amendment relating to penalties for shark feeding does not meet the test for construing a provision under article III, section 14. The subject matter is neither suggested by the title, "impounded vessels," nor is it germane to the subject of impounded vessels. Under the test set forth in *Dondero*, this section would be void. It would be futile to include the section relating to shark feeding penalties in the bill as it could not survive challenge.

We believe the amendment to this bill made by S.D. 1 makes this bill embrace more than the one subject expressed in the title. We ask that this bill be amended to remove the amendment to section 188-40.6 from the bill.

kim2 - Jo Ann

From: JOSEPH PAVSEK [sharktours@gmail.com]
Sent: Tuesday, March 23, 2010 5:48 AM
To: WAM Testimony
Subject: HB2583 S.D.1

We can not figure out why you folks would want to change this existing law to such harsh penalties. There has never been a citation issued to anyone know one has ever broke this law. This is way to excessive and punitive. Leave it alone!!! Don,t you guys have better this to do than to enter fear with small business that pay way to much taxes. Make Hawaii good for small business. Thank You Joe Pavsek Phone # 221-1794

TO MEMBERS OF THE SENATE WAYS AND MEANS COMMITTEE

RE: HB 2583 SD1

HEARING: MARCH 24, 2010 @ 9:30 A.M.

SENT VIA EMAIL TO: WAMTestimony@capitol.hawaii.gov

FR: KEN T. KUNIYUKI

HB2583, as amended, provides a penalty for feeding sharks out of proportion to any verifiable harm arising out of this activity. The original prohibition was passed by this body without any real evidence that shark feeding by the existing shark tours causes any harm at all. In fact, a scientific study conducted by the University of Hawaii Institute of Marine Biology concludes that these tours do not pose a threat to public safety. During the entire time that these tours have operated out of the North Shore, thousands of guests have taken part over the years without a single incident. There is absolutely no credible evidence that the sharks follow the tour boats into shore. In fact, the scientific study above, which actually tracked the sharks concludes otherwise. The existing shark tours provide jobs, support the local economy and engage in community service and education. The proposed penalties in this bill are purely punitive in nature and will have a chilling effect on otherwise legal activities. Government needs a rational basis for restricting established businesses. Passing HB2583, as amended just makes a bad law worse, compounding an error.

I urge that this Committee reject this bill.

kim2 - Jo Ann

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 23, 2010 11:08 AM
To: WAM Testimony
Cc: kent@trisland.com
Subject: Testimony for HB2583 on 3/24/2010 9:30:00 AM

Testimony for WAM 3/24/2010 9:30:00 AM HB2583

Conference room: 211
Testifier position: oppose
Testifier will be present: No
Submitted by: Kent Fonoimoana
Organization: Individual
Address: Kahuku, Hawai'i
Phone: 808-294-9991
E-mail: kent@trisland.com
Submitted on: 3/23/2010

Comments:

I support the intention of this measure in regards to disposal of abandoned/seized vessels. However, I support the North Shore shark tours currently in operation. This business was made possible because of the crab fishery that started in the 1960's. The crab fishery continues to this day. The tours are merely taking advantage of a site specific phenomenon.

In the nine years these tours have been in existence, there have been zero instances where an injury has occurred. There has been zero increase in shark/human encounters in adjacent near shore waters. However, there is an abundance of hearsay and unsupported claims made by those who lack specific knowledge of such.

This measure, if passed, may put 28+ more people out of work. The state will lose much needed tax revenues that these operations generate. Hale'iwa Town may see a decrease in the amount of visitors who spend time and money there either before or after taking the tour.

The punitive measures introduced appear to be excessive especially considering the fact that there has yet to be any citations issued.

It is my understanding that regulation of this activity may be a possibility. This would make more sense than a complete ban. A complete ban of this activity serves a particular segment of the states population who either claim spiritual ties to sharks, or claim that this specific activity poses a safety risk to ocean users. As a Polynesian, I support the belief that we are connected to natural elements around us and I promote this belief by sharing the experience. As an avid ocean user, I ask that opponents of the existing shark tours provide empirical evidence that the tours pose a threat to me or anyone else. I also question if this issue would have risen should an indigenous person were to have started such an enterprise. Some claim that it is wrong to make a profit off of their 'Aumakua. What is their position on whale watching tours? Aquariums?

Should this activity be banned based on hearsay and alarmist attitudes- what's next? A complete ban on using bait? When comparing the amount of bait introduced by the crabbers, bottom fishermen, shore casters, and others to that of the tours, the impact of the tours is minimal.

Please consider regulating and limiting the existing operations rather than punishing them for being successful.

From: MATT PINSON
To: WAM Testimony
Date: Tuesday, March 23, 2010 1:15:10 PM

Aloha,

My name is Matt Pinson from Kaneohe. I can not believe that you can be so harsh on North Shore Shark Adventures a company that has been doing business in Haleiwa for 10 years without any citations. These guy's have been giving back to the community and have been bringing lots of people to the North Shore and creating lots of revenue for Haleiwa for many years. I think you should make fishing boats go fishing without bait and if they get caught they should lose their lisences and boat if this is the way the game is going to be played.

kim5 - Deborah

From: Robert Jeremiah [onedroptravel@gmail.com]
Sent: Tuesday, March 23, 2010 12:18 PM
To: WAM Testimony
Subject: My testimony

Follow Up Flag: Follow up
Flag Status: Completed

Aloha,

My name is Robert Jeremiah from Makakilo. What are you guys thinking? Why don't you make stricter fines for Graffiti considering all of the Vandalism that North Shore Shark Adventures fixed. It doesn't make sense. After 10 years of being in business in Haleiwa. No citations whatsoever! Now all of a sudden, you threaten to take away their boats/license. You should be giving back to these guys who have playing a major role in the North Shore's economy. We need to keep Hawaii unique! Who's going to want to come to Hawaii if Hawaii was just like any other place? You guys are destroying Hawaii's future piece by piece. Let's put it back together by stopping this nonsense.

Robert Jeremiah
92-893 Palailai St.
Kapolei, HI 96707

kim2 - Jo Ann

From: ikuyogoto@aol.com
Sent: Tuesday, March 23, 2010 3:04 PM
To: WAM Testimony
Subject: Opposition testimony for bill HB 2583 sdl

To whom it may concern,

I oppose this HB 2583 bill.

As a ocean user and fisherman, this law doesn't seem right at all. I've never heard that anybody got fine by the existing shark feeding law, now you want to increase the fine to this max?! I did not get taken my car away when I got speeding ticket last time, so I do not know why you must take the marine licence and boat away by this new law?! Speeding is more dangerous than feeding the shark and speeding happens everywhere everyday. This doesn't make sense at all.

All the fishermen who put the fishing polls in the water is feeding shark some how. Please do not pass this bill with your common sense.

Ikuyo Goto
61-724 papailoa road
Haleiwa, HI 96712

kim2 - Jo Ann

From: stefanie brendl [stefaniebrendl@gmail.com]
Sent: Tuesday, March 23, 2010 3:17 PM
To: WAM Testimony
Subject: Comments/testimony for HB2583, Hearing Wed 3/24, 9:30 am

Committee on Ways and Means
Chair Sonna Mercado Kim
Vice Chair Shan S. Tsutsui

Public Decision Making
Wednesday March 24, 2010 9:30 am

From: Stefanie Brendl
Owner
Hawaii Shark Encounters

RE: HB 2583, SD1
Concerned about impoundment of vessels

I wanted to express my concern with HB2583, SD1.

The penalties, in particular with the impoundment of boats, seem extremely severe and unnecessary.

We are not worried about breaking the law, because we operate outside state waters and have always respected state laws.

What we are concerned about is the fact that with this measure, DLNR could, in its sole discretion, seize a boat and hold it solely based on a complaint. It would then be up to the owner or operator to prove the law was not violated.

This would of course result in a great deal of cost and business disruption.

To have a boat seized due to a complaint is an easy way to be harassed by people that simply don't want to see the businesses operating.

We hope that you will consider removing the impoundment provision or to at least specify that there would have to be proof beyond reasonable doubt that feeding of sharks occurred on a specific vessel in State waters before a vessel can be seized.

Furthermore, the penalty fees seem out of proportion with other commercial fishing and fish feeding regulations.

i.e. the penalties for Shark finning, which results in thousands of animals killed, is only \$5000 - \$15,000. Are both activities really at the same level?

And to look at the big picture of this measure, feeding for the purpose of killing sharks will be allowed, even if it is close to shore, while feeding for viewing is not. If the practice of feeding is a concern, then it shouldn't matter why it is done.

If it is perceived as a public Safety issue, then feeding for fishing should not be allowed either.

Thank you for your time
Stefanie Brendl