

JAN 25 2012

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# A BILL FOR AN ACT

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RELATING TO VESSELS.

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

SECTION 1. Section 200-41, Hawaii Revised Statutes, is amended to read as follows:

"~~[f]~~ §200-41 ~~[f]~~ **Disposition** ~~[by chairperson]~~ of certain abandoned vessels. (a) Any vessel ~~[which:~~

~~(1) Has been left unattended for a continuous period of more than thirty days; and~~

~~(2) Is within the waters of the State or on public property, or is on private property without authorization of the owner or occupant of the property,~~

~~may be caused by the chairperson to be taken into custody and disposed of pursuant to this part.]~~ may be deemed abandoned if the vessel has been moored 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 the vessel has been left on private property without authorization of the owner or occupant of the property and if:

1     (1) The vessel's registration certificate or marine  
2         document has expired and the registered owner no  
3         longer resides at the address listed in the vessel  
4         registration or marine document records of the  
5         department or the United States Coast Guard;

6     (2) The last registered owner of record disclaims  
7         ownership and the current owner's name or address  
8         cannot be determined;

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

12    (4) The vessel registration records of the department and  
13        the marine document records of the United States Coast  
14        Guard contain no record that the vessel has ever been  
15        registered or documented and the owner's name or  
16        address cannot be determined; or

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

18    (b) The decision whether a vessel is abandoned may be made

19   by:

20    (1) The chairperson with regard to public property under  
21        the jurisdiction of the department; or

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(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 chief of police with regard to public property within the respective county's jurisdiction.

Once a vessel is deemed abandoned, the respective official under subsection (b) may direct and cause the vessel to be taken into custody and disposed of pursuant to and in the manner provided in this chapter.

(c) All vessels abandoned on private property shall be the responsibility of the private property owner."

SECTION 2. Section 200-42, Hawaii Revised Statutes, is amended to read as follows:

**"§200-42 Notice to owner.** Upon taking custody of any vessel~~[7]~~ by a state or county agency, a written notice shall immediately be posted on the vessel and a duplicate original sent by registered or certified mail, with a return receipt requested, to ~~[the]~~ 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.

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1 The notice shall contain a brief description of the vessel, the  
2 location of custody, and the intended disposition of the vessel  
3 if not repossessed within twenty days after the mailing of the  
4 notice. Such owner, lien holder, or operator, of the vessel  
5 shall have ten days after receipt of the mailed notice to  
6 request in writing an administrative hearing~~[-]~~ from the state  
7 or county agency that took custody of the vessel. This  
8 administrative hearing is solely for the purpose of allowing the  
9 owner, lien holder, or operator of an impounded vessel to  
10 contest the basis given ~~[by the department]~~ for the impoundment  
11 of the vessel. The hearing must be held within five working  
12 days of the ~~[department's]~~ state or county agency's receipt of  
13 the written request."

14 SECTION 3. Section 200-44, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 **"§200-44 Possession by interested party.** Any person  
17 having an interest in the vessel taken into custody may take  
18 possession of the vessel prior to the date of public auction  
19 upon payment to the ~~[department]~~ state or county agency that  
20 took custody of the vessel of all use fees, towing, handling and  
21 storage charges, appraisal and advertising expenses, and any  
22 other expenses incurred by ~~[the department]~~ that state or county  
23 agency in connection with the vessel. If the person taking

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1 possession of the vessel is not the registered or documented  
2 owner, the person, prior to taking possession of the vessel,  
3 shall pay the foregoing expenses and post security satisfactory  
4 to the ~~[department]~~ state or county agency, which shall not  
5 exceed the value of the vessel. The security, if not forfeited,  
6 shall be returned to the person posting it within two years  
7 after receipt."

8 SECTION 4. Section 200-45, Hawaii Revised Statutes, is  
9 amended to read as follows:

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

19 SECTION 5. Section 200-46, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 **"[+]§200-46[+] Effect of sale.** The transfer of interest  
22 by sale hereunder shall be evidenced by a bill of sale from the  
23 department, other state agency, or county, shall be considered a

1 transfer by operation of law, and shall be governed by  
2 provisions applicable thereto."

3 SECTION 6. Section 200-47, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 **"§200-47 Disposition of proceeds.** The department, other  
6 state agency, or county shall deposit that portion of the  
7 proceeds of the sale of a vessel that represents the mooring or  
8 other fees and charges due the department, other state agency,  
9 or county, the expenses of the auction, and any other expense  
10 incurred by the department, other state agency, or county, in  
11 taking into custody and disposing of an abandoned vessel,  
12 derelict vessel, or vessel impounded under section 200-16, into  
13 the boating special fund or other state or county fund, as  
14 appropriate, from which the expenses incurred in connection with  
15 the vessel were paid. The balance, if any, shall be deposited  
16 into the general fund of the State. The owner may recover any  
17 balance of the proceeds from the State only if the owner files a  
18 claim therefor with the department of budget and finance within  
19 one year after the execution of the bill of sale. If no claim  
20 is made within the year allowed, the money shall become a state  
21 realization. A lien holder shall receive priority in payment  
22 from the balance of the proceeds to the extent of the lien  
23 holder's lien on the vessel. If the proceeds of the sale are

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1 insufficient to cover the mooring and other fees and charges,  
2 the expenses of the auction and the other expenses incurred by  
3 the department, other state agency, or county in taking into  
4 custody and disposing of the vessel, the department, other state  
5 agency, or county may bring an action for the deficiency in a  
6 court of appropriate jurisdiction against the registered or  
7 documented owner or any person who had an interest in the vessel  
8 when custody was taken by the department~~[-]~~, other state agency,  
9 or county."

10 SECTION 7. Chapter 200, Hawaii Revised Statutes, is  
11 amended by amending the title of part IV to read as follows:

12 "PART IV. VESSELS ABANDONED ON ~~[BUSINESS]~~ PREMISES  
13 OF PERSONS ENGAGED IN REPAIR BUSINESS,  
14 OF PRIVATE MARINAS, [AND] OF YACHT CLUBS,  
15 OR OF OTHER PRIVATE PROPERTY OWNERS"

16 SECTION 8. Section 200-51, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "\$200-51 Disposition of vessels ~~[by persons in]~~ abandoned  
19 on premises of vessel repair business, private marinas, [or]  
20 yacht clubs~~[-]~~, or other private property. When any person  
21 abandons a vessel upon the premises of a vessel repair business,  
22 a private marina, ~~[or]~~ a yacht club, or other private property,  
23 the owner of the vessel repair business or private marina, or

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1 the owner's representative, or the designated representative of  
2 the yacht club, or the owner of other private property, may sell  
3 or dispose of the vessel in accord with this part."

4 SECTION 9. Section 200-52, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "§200-52 When vessel deemed abandoned[+] on the premises  
7 of a vessel repair business, private marina, or yacht club. A  
8 vessel shall be deemed to be abandoned upon satisfaction of all  
9 the following conditions:

10 (1) The service requested or required by a person whose  
11 vessel is navigated, towed, or brought to a vessel  
12 repair business, private marina, or yacht club, such  
13 as mooring, storage, towing, and rendering estimates  
14 of the cost of repairs, has been performed;

15 (2) No authorization is given to perform any further  
16 service respecting the vessel, or to allow mooring, or  
17 storage, but the vessel is left on the repair  
18 business, private marina, or yacht club premises;

19 (3) The owner of the repair business or private marina, or  
20 the owner's authorized representative, or the  
21 designated representative of the yacht club, has given  
22 notice by registered or certified mail, to the  
23 registered owner of the vessel at the address on



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1 record at the vessel repair business, private marina,  
2 or yacht club, and the address on record at the  
3 department or United States Coast Guard, and to any  
4 person with a recorded interest in the vessel stating  
5 that, if the vessel is not repossessed within thirty  
6 days after the mailing of the notice, it will be sold  
7 or disposed of. The notice also shall contain a  
8 description of the vessel and its location. The  
9 notice need not be sent to an owner or any person with  
10 an unrecorded interest in the vessel whose name or  
11 address cannot be determined and, absent evidence to  
12 the contrary, a notice shall be deemed received by the  
13 legal or registered owner five calendar days after the  
14 mailing; and

15 (4) The vessel is not repossessed within the thirty-day  
16 period."

17 SECTION 10. Section 200-53, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 **"§200-53 Sale or disposition of vessel.** When a vessel is  
20 abandoned, the owner of the vessel repair business, or private  
21 marina, or the owner's authorized representative, or the  
22 designated representative of the yacht club, or the owner of  
23 other private property, after one public advertisement in a

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1 newspaper of general circulation in the State, may negotiate a  
2 sale of the vessel or dispose of it; provided that the vessel  
3 shall not be sold or disposed of less than five calendar days  
4 after the publication of the advertisement. Upon the sale or  
5 disposal of the vessel under this part, the owner of the vessel  
6 repair business, or private marina, or the owner's authorized  
7 representative, or the designated representative of the yacht  
8 club, or the owner of other private property, shall file an  
9 affidavit with the department stating to whom the vessel was  
10 sold or, if the vessel was not sold, the manner in which the  
11 vessel was disposed of pursuant to this part."

12 SECTION 11. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 12. This Act shall take effect upon its approval.

15  
16 INTRODUCED BY: 

17 BY REQUEST  
18

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**Report Title:**

Vessels; Custody and Disposition

**Description:**

Clarifies responsibility for disposing of vessels and amends the description of an abandoned vessel.

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

JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO VESSELS.

PURPOSE: To clarify responsibility for disposing of abandoned vessels within the State and amend the description of an abandoned vessel.

MEANS: Amend sections 200-41, 200-42, 200-44, 200-45, 200-46, and 200-47; the title of part IV of chapter 200; and sections 200-51, 200-52, and 200-53, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Generally, current statutes place the burden of disposal of all abandoned vessels on the Department, regardless of whether the vessels lie abandoned on public lands under another agency's jurisdiction or on private lands. The Department has the ability to take boats off reefs, but has no equipment or expertise to remove abandoned boats on public streets or other fast lands. The disposition is both costly and time-consuming for the Department. This bill clarifies that the Department shall only be responsible for the disposition of vessels abandoned on lands and waters under its jurisdiction.

Section 200-51, HRS, specifically provides that when any person abandons a vessel upon the premises of a vessel repair business, a private marina, or a yacht club, the owner of the business or private marina, or the owner's representative, or the designated representative of the yacht club, may sell or dispose of the vessel in accordance with part IV. This bill proposes to expand the authority to sell or dispose of a vessel abandoned on other private property to the owners of the other private property.

Impact on the public: All private property owners will be responsible for disposal of abandoned vessels on their property.

Impact on the department and other agencies: This bill would release the Department from having to pay for the disposing of abandoned vessels on lands and waters not under its jurisdiction.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	LNR 801.
OTHER AFFECTED AGENCIES:	State and county agencies.
EFFECTIVE DATE:	Upon approval.