

JAN 22 2021

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



1 deteriorated, further complicating removal efforts and
2 increasing the potential to create threats to public health,
3 safety, and natural resources.

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

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

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



1 vessel ~~[and is subject to]~~ in violation of this section[-] and
2 shall be 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 hours from the time the notice was posted[-];
9 provided that if the vessel is in imminent danger of breaking up
10 on state submerged land, a shoreline, or a coral reef, the
11 notice shall indicate that the owner must commence effective
12 salvage operations within twenty-four hours from the time the
13 notice was posted.

14 (c) An unauthorized vessel may be impounded by the
15 department at the sole risk and expense of the owner of the
16 vessel[-] if the vessel is not removed after the ~~[seventy-two-~~
17 ~~hour]~~ period ~~[or]~~ specified in subsection (b). Calculation of
18 the time period shall not restart if, during that period, the
19 vessel is ~~[removed and remoored in the harbor or mooring or~~
20 ~~anchorage area or any other state harbor or mooring or anchorage~~
21 ~~area without a use permit.]~~ moved anywhere in the waters of the



1 State or to any public property and remains in violation of this
2 section. The owner of the vessel shall be solely responsible
3 for all costs of the impoundment and the disposal of the
4 unauthorized vessel. All owners of unauthorized vessels that
5 are impounded by the department shall be responsible for paying
6 impound storage fees to the department while the vessel remains
7 impounded and until the time that the vessel is returned to the
8 custody of a person entitled to possession. Impound storage
9 fees shall be equal to the rate set by the department for
10 vessels moored without a valid permit. Any proceeds [resulting
11 from] collected by the department in relation to the impoundment
12 and the disposal of the unauthorized vessel shall be used first
13 to pay for the costs of impoundment and disposal [~~and~~], then to
14 pay for any additional costs related to the impoundment and
15 disposal, then to pay for any outstanding mooring fees due[-] to
16 the department by the owner, then to the general fund. If the
17 proceeds resulting from the impoundment and the disposal are
18 inadequate to pay for all costs and mooring fees due, the owner
19 of the unauthorized vessel shall remain liable for [~~the~~] paying
20 the department any and all outstanding costs and mooring fees[-]
21 due.



1 (d) Custody of an unauthorized vessel shall be returned to
2 the person entitled to possession only upon payment [~~to the~~
3 ~~department~~] in full of all fees and costs due[~~7~~] to the
4 department and any and all fines levied by the department or a
5 court[~~-~~] of competent jurisdiction. In addition, the
6 department, within seventy-two hours of impoundment, shall send
7 by certified mail, return receipt requested, a notice of
8 impoundment to the registered or documented owner or any lien
9 holder or operator of the impounded vessel on record with the
10 department or the United States Coast Guard. The owner, lien
11 holder, or operator of the impounded vessel shall have [~~ten~~]
12 five working days after receipt of notice of impoundment of the
13 vessel to request [~~in writing~~] an administrative hearing.
14 [~~This~~] A request for an administrative hearing [~~is~~] shall be
15 made in writing to the department, shall not be deemed delivered
16 until the time that the department receives the written request,
17 and shall be solely for the purpose of allowing the owner, lien
18 holder, or operator of an impounded vessel to contest the basis
19 given by the department for the impoundment of the vessel. The
20 administrative hearing must be held within five working days of
21 [~~the department's receipt~~] delivery of the written request. The



1 department ~~[shall]~~ may adopt rules pursuant to chapter 91 to
2 implement the requirement for this post-seizure administrative
3 hearing process.

4 (e) Any unauthorized vessel impounded under this section,
5 which remains unclaimed for more than ~~[thirty]~~ ten working days
6 by the registered or documented owner, a lien holder, or
7 operator of record, may be sold by the department at public
8 auction. If the department does not or is unable to sell the
9 vessel at public auction, ~~[or if its appraised value is less~~
10 ~~than \$5,000 as determined by an independent appraiser with at~~
11 ~~least one year of experience in the sale and purchase of~~
12 ~~vessels,~~] the department, after giving public notice of intended
13 disposition, if that notice was not previously included in a
14 public auction notice, may sell the vessel by negotiation,
15 retain and use the vessel, donate it to any other government
16 agency, or dispose of it as junk."

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

19 "§200-41 ~~[Disposition of certain abandoned]~~ Abandonment of
20 vessels. (a) No person shall abandon any vessel upon the



1 waters of the State or on any property, other than the property
2 of the vessel owner, without the consent of the property owner.

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

5 (1) The vessel has been moored, anchored, or otherwise
6 left unattended in the waters of the State or on
7 public property ~~[contrary to law or rules having the~~
8 ~~force and effect of law, or left]~~ for more than
9 seventy-two hours without a valid use permit;

10 (2) The vessel has been left unattended on private
11 property without authorization of the owner or
12 occupant of the property ~~[if:~~

13 ~~(1) The vessel's registration certificate or marine~~
14 ~~document has expired and the registered owner no~~
15 ~~longer resides at the address listed in the vessel~~
16 ~~registration or marine document records of the~~
17 ~~department or the United States Coast Guard,] for more~~
18 than seventy-two hours;

19 ~~[(2)]~~ (3) The last registered owner of record disclaims
20 ownership and the current owner's name or address
21 cannot be determined;



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

4 ~~(4) The vessel registration records of the department of~~
5 ~~land and natural resources and the marine document~~
6 ~~records of the United States Coast Guard contain no~~
7 ~~record that the vessel has ever been registered or~~
8 ~~documented and the owner's name or address cannot be~~
9 ~~determined; or]~~

10 (4) The vessel does not have a valid registration
11 certificate or United States Coast Guard documentation
12 and has been moored, anchored, or otherwise left
13 unattended in the waters of the State or on public
14 property for more than seventy-two hours; or

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

16 ~~[(b)]~~ (c) The determination whether a vessel is abandoned
17 on public property may be made by:

18 (1) The chairperson, or the chairperson's authorized
19 representative, with regard to public property under
20 the jurisdiction of the department of land and natural
21 resources; ~~[or]~~



1 (2) Any other state department or agency through its
2 director, with regard to public property within the
3 department or agency's respective jurisdiction; or
4 (3) Any county through its mayor or the mayor's designee,
5 or chief of police, with regard to public property
6 within the respective county's jurisdiction; provided
7 that the department shall provide to the respective
8 county access to the department's vessel registration
9 and marine document records or those of the United
10 States Coast Guard for the purposes of this section.
11 Once a vessel is deemed abandoned[7] in the waters of the State
12 or on public property, the appropriate official under this
13 subsection may direct and cause the vessel to be taken into
14 custody and disposed of pursuant to and in the manner provided
15 in this [~~chapter-~~] part. All owners of abandoned vessels that
16 are impounded by the department shall be responsible for paying
17 impound fees to the department while the vessel remains
18 impounded and until the vessel is returned to the custody of a
19 person entitled to possession or disposed of by the department.
20 Impound storage fees shall be equal to the rate set by the
21 department for vessels moored without a valid permit.



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

3 (e) Any person who abandons a vessel in the waters of the
4 State or on public property shall be guilty of a petty
5 misdemeanor and shall be fined not more than \$1,000 or
6 imprisoned not more than thirty days, or both, for each offense.
7 Each day of each violation shall be deemed a separate offense.
8 All criminal fines collected pursuant to this subsection shall
9 be deposited in the general fund in accordance with section
10 706-643. It shall be an affirmative defense to prosecution that
11 a vessel was abandoned during a national emergency declared by
12 the President or Congress of the United States, or a state of
13 emergency declared by the governor, or as otherwise approved in
14 writing by the chairperson; provided that the defense shall be
15 valid only for the duration of the declared emergency or written
16 approval."

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

19 "§200-42 Notice to owner. A state or county agency, upon
20 taking custody of any vessel [7] deemed abandoned pursuant to
21 section 200-41, shall immediately post a written notice on the



1 vessel and send a duplicate original by registered or certified
2 mail, with a return receipt requested, to any owner registered
3 with the department or documented by the United States Coast
4 Guard or any lien holder or operator of the vessel on record
5 with the department or the United States Coast Guard at their
6 respective last known address on record with the department or
7 the United States Coast Guard. The notice shall contain a brief
8 description of the vessel, the location of custody, and the
9 intended disposition of the vessel if not repossessed within
10 ~~[twenty]~~ ten working days after the mailing of the notice.
11 ~~[Such owner, lien holder, or operator, of the vessel shall have~~
12 ~~ten days after receipt of the mailed notice to request in~~
13 ~~writing an administrative hearing pursuant to chapter 91 from~~
14 ~~the state or county agency that took custody of the vessel.~~
15 ~~This administrative hearing is solely for the purpose of~~
16 ~~allowing the owner, lien holder, or operator of an impounded~~
17 ~~vessel to contest the basis given for the impoundment of the~~
18 ~~vessel. The hearing shall be held within five working days of~~
19 ~~the state or county agency's receipt of the written request.]~~
20 The owner, lien holder, or operator of the vessel shall have
21 five working days after receipt of notice of impoundment of the



1 vessel to request an administrative hearing from the state or
2 county agency that took custody of the vessel. A request for
3 administrative hearing shall be made in writing to the state or
4 county agency that took custody of the vessel, shall not be
5 deemed delivered until the time that the agency receives the
6 written request, and shall be solely for the purpose of allowing
7 the owner, lien holder, or operator of an impounded vessel to
8 contest the basis given by the agency for the impoundment of the
9 vessel. The administrative hearing shall be held within five
10 working days of delivery of the written request."

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

13 "§200-43 Public auction[-]; **disposition of abandoned**
14 **vessels.** [~~If the vessel is not repossessed within twenty days~~
15 ~~after the mailing of the notice, the vessel shall be disposed of~~
16 ~~by public auction, through oral tenders, or by sealed bids,~~
17 ~~after public notice has been given at least once; provided that~~
18 ~~the public auction shall not be held less than five days after~~
19 ~~the notice is given. Where no bid is received, the vessel may~~
20 ~~be sold by negotiation, disposed of as junk, or donated to any~~
21 ~~governmental agency.] Any abandoned vessel impounded under this~~



1 part that remains unclaimed by the registered or documented
2 owner, lien holder, or operator of record for more than ten
3 working days after mailing of the notice required by section
4 200-42 may be sold at public auction by the state or county
5 agency that took custody of the vessel. If the agency does not
6 or is unable to sell the vessel at public auction, the agency,
7 after giving public notice of intended disposition may sell the
8 vessel by negotiation, retain and use the vessel, donate the
9 vessel to any other government agency, or dispose of the vessel
10 as junk."

11 SECTION 6. Section 200-47.5, Hawaii Revised Statutes, is
12 amended by amending subsections (b) to (g) to read as follows:

13 "(b) Solely for the purposes of removal and with no
14 liability to the department, the department may immediately
15 assume control of any vessel that is grounded on state submerged
16 land, a shoreline, or a coral reef [~~or~~] that is in imminent
17 danger of breaking up and cannot be removed by the owner within
18 twenty-four hours from the time the vessel is grounded; provided
19 that this subsection shall not apply [~~if~~]:

20 (1) During a national emergency declared by the President
21 or Congress of the United States;



1 (2) During a state of emergency declared by the governor;
2 (3) If the owner or owner's representative has received
3 notice from the department and has commenced effective
4 salvage operations~~[-]~~; or
5 (4) If otherwise approved by the chairperson.
6 (c) ~~[Vessels]~~ Except during a national emergency declared
7 by the President or Congress of the United States, or a state of
8 emergency declared by the governor, or as otherwise approved in
9 writing by the chairperson, vessels grounded on a sand beach,
10 sandbar, or mudflat ~~[and not in imminent danger of breaking up]~~
11 shall be removed by the owner or operator within seventy-two
12 hours~~[-, unless otherwise agreed to by the department]~~.
13 (d) Solely for the purposes of removal and with no
14 liability to the department, the department may immediately
15 assume control of any vessel grounded on a sand beach, sandbar,
16 or mudflat and not in imminent danger of breaking up that is not
17 removed by the owner in a manner that is reasonably safe, as
18 determined by the department, within seventy-two hours of
19 notification to the vessel owner or the owner's representative;
20 provided that this subsection shall not apply ~~[if]~~:



1 (1) During a national emergency declared by the President
2 or Congress of the United States;

3 (2) During a state of emergency declared by the governor;

4 (3) If the owner or owner's representative has received
5 notice from the department and has commenced effective
6 salvage operations[-]; or

7 (4) If otherwise approved by the chairperson.

8 (e) Once the department assumes control [~~over the~~] of a
9 vessel[-] pursuant to this section, the vessel shall be removed
10 by conventional salvage methods if possible, and if not possible
11 then by any means necessary[-] to minimize damage to the natural
12 resources and not become a hazard to navigation.

13 (f) All costs and expenses [øf] related to removing the
14 vessel and damage to state or private property shall be the sole
15 responsibility of the vessel's owner or operator. The
16 department may take legal action to collect any costs or
17 expenses incurred by the department for any removal under this
18 section. All moneys collected shall be deposited in the boating
19 special fund.

20 (g) Any person who renders assistance to the department
21 when it acts pursuant to subsection (b) or (c) and any person



1 who, in good faith and without remuneration or expectation of
2 remuneration, renders assistance at the scene of a vessel:

3 (1) Grounded on state submerged land, a shoreline, or a
4 coral reef;

5 (2) In imminent danger of breaking up; or

6 (3) Grounded on a sand beach, sandbar, or mudflat [~~and not~~
7 ~~in imminent danger of breaking up~~],

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

12 SECTION 7. Section 200-49, Hawaii Revised Statutes, is
13 amended by amending subsections (b) and (c) to read as follows:

14 "(b) The owner, lien holder, or operator of the vessel
15 shall have [~~ten~~] five working days after the date of the public
16 notice or receipt of the mailed notice, whichever occurs later,
17 to request [~~in writing~~] an administrative hearing. [~~This~~] A
18 request for an administrative hearing [is] shall be made in
19 writing to the department, shall not be deemed delivered until
20 the time that the department receives the writing request, and
21 shall be solely for the purpose of allowing the owner, lien



1 holder, or operator of [~~an~~] the impounded vessel to contest the
2 basis given by the department for the impoundment of the vessel.
3 The administrative hearing must be held within five working days
4 of [~~the department's receipt~~] delivery of the written request.

5 (c) If the vessel is not repossessed within [~~twenty~~] ten
6 working days after the date of the public notice or mailing of
7 the notice, whichever occurs later, the vessel may be disposed
8 of by negotiated sale except that, when two or more purchasers
9 indicate an interest in purchasing the vessel, the vessel will
10 be sold at public auction to the highest bidder[~~, unless the~~
11 ~~vessel is exempt from public auction under section 200-45~~]. If
12 no purchaser expresses a desire to purchase the vessel, the
13 vessel may be destroyed or donated to any governmental agency."

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

16 [~~"§200-45 When public auction not required. Public~~
17 ~~auction shall not be required when the appraised value of any~~
18 ~~vessel is less than \$5,000, as determined by an independent~~
19 ~~appraiser who has at least one year of experience in the sale or~~
20 ~~purchase of vessels. Upon that determination, after public~~
21 ~~notice of intended disposition has been given at least once, the~~



S.B. NO. 791

1 ~~state or county agency that took custody of the vessel may sell~~
2 ~~the vessel by negotiation, dispose of it as junk, or donate the~~
3 ~~vessel to any governmental agency."]~~

4 SECTION 9. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

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

7

INTRODUCED BY: _____



S.B. NO. 791

Report Title:

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

Description:

Clarifies removal of unauthorized vessels on state property or in the waters of the State. Clarifies the definition of an "abandoned vessel". Reduces 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. Reduces 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. Clarifies auction requirements regarding abandoned vessels. 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.

