

Honolulu, Hawaii

FEB 12 2009

RE: S.B. No. 580
S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Madam:

Your Committee on Water, Land, Agriculture, and Hawaiian Affairs, to which was referred S.B. No. 580 entitled:

"A BILL FOR AN ACT RELATING TO FORFEITURE,"

begs leave to report as follows:

The purpose of this measure is to clarify that the forfeiture laws apply to violations of conservation and resources statutes and rules and to the protection of caves, historic preservation, and the Kaho'olawe Island Reserve.

Testimony in support of this measure was submitted by two state agencies, one organization, and two public citizens. One county agency submitted testimony in opposition.

The Hawaii State Supreme Court in the case of *Carlisle v. One (1) Boat, et al.* (No. 26995, November 17, 2008), held that the State's forfeiture laws, and the Department of Land and Natural Resources administrative rules, as applied to natural resource violations do not provide the requisite specificity to authorize forfeiture claims by the State.

The Department of Land and Natural Resources Division of Conservation and Resources Enforcement, working closely with county prosecutors and the Department of the Attorney General, has judiciously used forfeiture to deter those considering violating state laws and to gain compliance from those actively violating conservation and resources statutes and administrative rules.



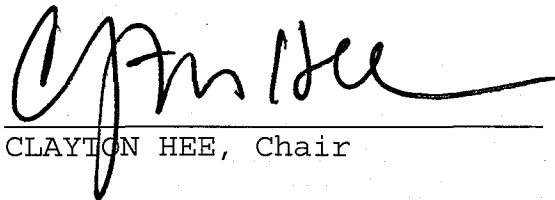
Your Committee finds that the issues addressed in *Carlisle v. One (1) Boat, et al.* can be remedied with a revision of the administrative rules governing conservation and resources violations.

In light of this finding, your Committee has amended this measure by:

- (1) Deleting the provisions of the measure that amend sections 187A-5, 188-70, 712A-4, and 712A-5, Hawaii Revised Statutes;
- (2) Adding a new section to clarify that forfeiture is a civil remedy for violations of chapter 6K, Hawaii Revised Statutes, relating to the Kaho'olawe Island Reserve; and
- (2) Requiring that the Department of Land and Natural Resources participate in the forfeiture program for the protection of caves, historic preservation, and the Kaho'olawe Island Reserve.

As affirmed by the record of votes of the members of your Committee on Water, Land, Agriculture, and Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 580, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 580, S.D. 1, and be referred to the Committee on Judiciary and Government Operations.

Respectfully submitted on
behalf of the members of the
Committee on Water, Land,
Agriculture, and Hawaiian
Affairs,

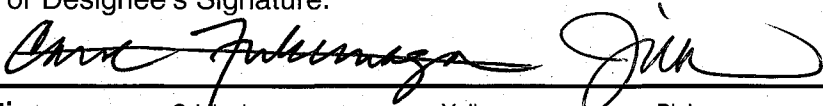


CLAYTON HEE, Chair



The Senate
Twenty-Fifth Legislature
State of Hawaii

Record of Votes
Committee on Water, Land, Agriculture and Hawaiian Affairs
WTL

Bill / Resolution No.:* SB 580	Committee Referral: WTL, JGD	Date: 2/4/09		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
TOKUDA, Jill N. (VC)	✓			
BUNDA, Robert	✓			
FUKUNAGA, Carol	✓			
KOKUBUN, Russell S.				✓
TAKAMINE, Dwight Y.				✓
HEMMINGS, Fred	✓			
TOTAL	5	0	0	2
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes