

JAN 22 2010

A BILL FOR AN ACT

RELATING TO THE KAHO'OLAWA REHABILITATION TRUST FUND.

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

1 SECTION 1. The Kaho'olawe island reserve consists of the
2 island of Kaho'olawe plus the waters extending two nautical miles
3 seaward from the coastline. The island is situated
4 approximately six miles southwest of Maui and approximately four
5 and a half miles west of Molokini. The forty-five square mile
6 island of Kaho'olawe and its ninety square miles of waters are
7 managed and controlled by the Kaho'olawe island reserve
8 commission, which is responsible for environmental protection
9 and conservation, revegetation, habitat restoration, the
10 preservation of archaeological and historical resources, and the
11 promotion of traditional and cultural practices.

12 The island was once inhabited by native Hawaiian
13 subsistence farmers and fisherman. After the arrival of
14 Europeans, Kaho'olawe was used as a penal colony and ranch. From
15 1947 to 1990, the United States Navy used Kaho'olawe for military
16 training and bombing exercises. In 1994, the federal government
17 appropriated \$400 million for the clean-up of unexploded



1 ordnance. The same federal appropriation provided \$45 million
2 to the State for long-term planning and environmental
3 restoration; these funds were deposited in the State's Kaho'olawe
4 rehabilitation trust fund in annual increments over several
5 years. However, the trust fund principal was never substantial
6 enough to be a sustainable endowment where the Kaho'olawe island
7 reserve commission could operate solely from its interest.

8 Today, the trust fund balance is approximately \$15 million,
9 which is the only statutory source of revenue for the
10 administration and operation of the Kaho'olawe island reserve
11 commission and its personnel and program activities.

12 The waters of the Kaho'olawe island reserve are off-limits
13 except to boaters who register with the Kaho'olawe island reserve
14 commission and who are then permitted to troll on two published
15 weekends each month in waters thirty fathoms deep or greater.
16 This regulation is due to the presence of unexploded ordnance in
17 the reserve waters, as well as to allow the reserve waters to
18 function as a sanctuary and nursery for all marine species
19 managed by the Kaho'olawe island reserve commission.

20 The reserve waters support a variety of listed marine
21 species, including the green sea turtle, Hawaiian monk seal, and



1 humpback whale, as well as some of the healthiest fish
2 populations in the main Hawaiian islands.

3 The purpose of this Act is to provide a permanent statutory
4 revenue source for the management of the Kaho'olawe island
5 reserve.

6 SECTION 2. Chapter 6K, Hawaii Revised Statutes, is amended
7 by adding a new section to be appropriately designated and to
8 read as follows:

9 "§6K- Molokini shoal marine life conservation district
10 user fee. (a) Each permit holder shall collect a user fee of
11 \$5 from each customer for each activity tour provided to the
12 customer.

13 (b) Each permit holder may retain two per cent of the
14 amount of user fees collected to offset administrative expenses
15 associated with collecting the user fee.

16 (c) The permit holder shall remit to the Kaho'olawe
17 rehabilitation trust fund, established pursuant to section
18 6K-9.5, within sixty days after the end of the calendar month in
19 which the user fee is collected, an amount that represents the
20 total user fees collected during the calendar month less amounts
21 retained for administrative expenses incurred by the permit
22 holder, as provided in subsection (b).



1 (d) The user fees collected by the permit holder pursuant
2 to this section shall not be subject to any tax, fee, or
3 assessment, and shall not be considered revenue of the permit
4 holder.

5 (e) Each customer who is subject to this section shall be
6 liable to the State for the user fee until the user fee has been
7 paid to the permit holder. A permit holder shall have no
8 obligation to take any legal action to enforce the collection of
9 the user fee for which any customer is billed. However, the
10 department may initiate a collection action against the
11 customer. If the department prevails in a collection action,
12 reasonable attorney's fees and costs shall be awarded.

13 (f) For the purposes of this section, "permit holder"
14 means any person who operates any commercial enterprise or
15 establishment, including sole proprietorships, joint ventures,
16 partnerships and corporations, or any other legally cognizable
17 entity, whether for profit or not for profit, which holds a
18 permit issued by the department to operate commercial activities
19 within the Molokini shoal marine life conservation district."

20 SECTION 3. Section 6K-9.5, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:



1 "(a) There is created in the state treasury a trust fund
2 to be designated as the Kaho'olawe rehabilitation trust fund to
3 be administered by the department with the prior approval of the
4 commission. Subject to Public Law 103-139, and this chapter:

5 (1) All moneys received from the federal government for
6 the rehabilitation and environmental restoration of
7 the island of Kaho'olawe or other purposes consistent
8 with this chapter;

9 (2) Any moneys appropriated by the legislature to the
10 trust fund;

11 (3) Any moneys received from grants, donations, or the
12 proceeds from contributions; [~~and~~]

13 (4) The interest or return on investments earned from
14 moneys in the trust fund[~~7~~]; and

15 (5) Any moneys collected pursuant to section 6K- ,
16 shall be deposited in the trust fund and shall be used to
17 fulfill the purposes of this chapter."

18 SECTION 4. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

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1 SECTION 5. This Act shall take effect on July 1, 2010.

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Report Title:

Molokini; Kaho'olawe Rehabilitation Trust Fund; User Fee

Description:

Imposes a user fee on permit holders who operate commercial activities in the Molokini shoal marine life conservation district to be deposited in the Kaho'olawe rehabilitation trust fund.

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