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GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the House Committee on
JUDICIARY**

**Tuesday, March 29, 2011
3:30 P.M.**

State Capitol, Conference Room 325

**In consideration of
SENATE BILL 815, SENATE DRAFT 1
RELATING TO ASSET FORFEITURE**

Senate Bill 815, Senate Draft 1 would establish provisions to allow for the seizure and forfeiture of any equipment, article, instrument, aircraft, vehicle, vessel, business record, or natural resource used or taken in violation of the rules applicable to the Kaho'olawe Island Reserve (Reserve). The Department of Land and Natural Resources (Department) supports this bill measure with the exception of its effective date (July 1, 2050). The Department respectfully asks that the effective date of this measure be restored back to "upon its approval".

In Fiscal Year 2009, the Kaho'olawe Island Reserve Commission implemented a vessel permit and registration process that has raised the awareness of permitted activities within the Reserve. The addition of forfeiture provisions to Section 6K-8, Hawaii Revised Statutes, would greatly increase the penalties for violators, thus strengthening the Department's enforcement capabilities and allowing for greater protection of the Reserve's resources.

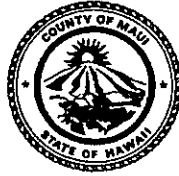
WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
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CONSERVATION AND COASTAL LANDS
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
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TESTIMONY OF THE
DEPARTMENT OF THE PROSECUTING ATTORNEY
COUNTY OF MAUI
ON
SB 815, SD 1 - RELATING TO ASSET FORFEITURE
MARCH 29, 2011
3:30 P.M.

The Honorable Gilbert S.C. Keith-Agaran
Chair
The Honorable Karl Rhoads
Vice Chair
and Members
House Committee on Judiciary

Chair Keith-Agaran, Vice Chair Rhoads and Members of the committee:

The Department of the Prosecuting Attorney, County of Maui supports SB. 815, SD 1, which provides for asset forfeiture of any equipment, article, instrument, aircraft, vehicle, vessel, business record, or natural resource used or taken in violation of laws or rules applicable to the Kaho`olawe Island Reserve.

Our office is responsible to pursue asset forfeiture proceedings involving the Kaho`olawe Island Reserve. In 2008, we started forfeiture proceedings for a helicopter that was used to land illegally on Kaho`olawe with passengers. Unfortunately, the Carlisle v. One (1) Boat and Tran case was subsequently issued, and the helicopter had to be returned. In addition to the helicopter incident, we consistently receive reports of illegal fishing and other activities on and around Kaho`olawe. This bill will help correct this situation, and serve as an additional deterrent to protect Kaho`olawe's fragile ecology, as well as protect members of the public who may be ignorant of the dangers of unexploded ordinance on and around the island.

The Department of the Prosecuting Attorney requests that this measure be PASSED WITH AN AMENDMENT, with the amendment being a change of the effective date to "upon approval" or July 1, 2011. Thank you very much for the opportunity to testify.



SB815, SD 1, RELATING TO ASSET FORFEITURE
House Committee on Judiciary

March 29, 2011

3:30 p.m.

Room: 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB815, SD1, which would specify that forfeiture laws apply to violations of conservation and resources statutes and rules to protect the Kaho'olawe Island Reserve.

The Hawai'i Supreme Court found, in Carlisle v. One (1) Boat, 119 Hawaii 245, 195 P.3d 117 (2008), any authorized enforcement of natural and cultural resource protections cannot include forfeiture of related assets unless forfeiture is specifically and clearly allowed in applicable statutes. This bill's language would meet that intent for the Kaho'olawe Island Reserve Commission's (KIRC's) laws and rules.

It is imperative that the state do everything in its power to protect Hawai'i's treasured natural and cultural resources. The ability to apply forfeiture penalties to such violations within the Kaho'olawe Island Reserve would serve as a critical tool to preserve the resources of this relatively isolated and extremely degraded part of Hawai'i. The possibility of asset forfeiture would also provide a major deterrent to those who seek to harm or pillage Kaho'olawe's environment and cultural resources. The marine and terrestrial components of the Kaho'olawe Island Reserve are beginning to heal from decades of extreme damage, and the KIRC has made such progress in part through the ability of isolation. Isolation can be both a benefit and a detriment to resource protection and conservation, however, if enforcement is not regular, swift and punishing.

This bill provides further clarity to enforcement officers that they have the authority to take away personal property that is being used by perpetrators of Hawai'i's appropriately stringent laws protecting and conserving our natural and cultural resources within the Kaho'olawe Island Reserve.

OHA respectfully urges the committee to PASS SB815, SD1, and we thank the committee for the opportunity to testify.



KŪKULU KE EA A KANALOA
KAHO'OLAWA ISLAND RESERVE COMMISSION

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Michael K. Nāho'opi'i
Executive Director

Testimony of
MICHAEL K. NĀHO'OPI'I
Executive Director

Before the House Committee on
JUDICIARY

Tuesday, March 29, 2011
3:30 PM
State Capitol, Conference Room 325

In consideration of
SENATE BILL 815 SD 1
RELATING TO ASSET FORFEITURE

Senate Bill 815 SD 1, provides for the seizure and forfeiture of a variety of equipment and instruments used or taken in violation of the laws or rules applicable to the island Reserve. The Kahoolawe Island Reserve Commission (KIRC) supports this measure for it would strengthen our enforcement ability and provide the KIRC with another tool to manage the Kahoolawe Island Reserve (Reserve).

The Hawai'i Supreme Court, in *Carlisle v. One (1) Boat and Tran* (Nov 17, 2008), overturned an Intermediate Court of Appeals decision that allowed asset forfeiture in cases of natural resource destruction – ultimately taking the teeth out of any enforcement rules in place. According to the decision, the penalty sections of DLNR (and, therefore, KIRC) rules must specifically authorize forfeiture.

The KIRC seeks the addition of the forfeiture clause to HRS 6K-8 to increase the penalties for violators, thus strengthening our enforcement capabilities and our protection of the Reserve's resources.

The amendment Senate Draft 1 was added to address public concerns regarding the application of this measure to the proposed inclusion of Molokini to the Kahoolawe Island Reserve. So far the action to include Molokini to the Island Reserve has not moved forward and the KIRC is requesting that the effective date of this measure revert to upon approval.



Ocean Tourism Coalition

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March 29, 2011

Testimony To: House Committee on Judiciary
Representative Gilbert S.C. Keith-Agaran, Chair

Presented By: Tim Lyons, CAE
Executive Director

Subject: S.B. 815, SD 1 – RELATING TO ASSET FORFEITURE.

Chair Keith-Agaran and Members of the Committee:

I am Tim Lyons, Executive Director of the Ocean Tourism Coalition and we have extreme concerns about this bill.

First and foremost we believe that forfeiture and seizure powers are unnecessary. If you look at Chapter 6K-8, for the most part it is talking about petty misdemeanors where there may be a fine imposed not more than \$1000 or imprisonment of not more than thirty (30) days.

Forfeiture of a vessel, it seems to us, is extreme and out of place.

This bill also references Chapter 712A regarding property which could be subject to forfeiture and we note that the types of offenses which typically are committed when forfeiture is allowed

include murder, kidnapping, gambling, bribery, extortion, drug trafficking, child abuse and other such offenses. It would appear to us however that if a commercial tourism vessel inadvertently crosses the line into the Kaho'olawe Reserve perhaps even unknowingly, they could be subject to seizure and forfeiture of their vessel. It should be noted that in most cases this vessel could be their only means of producing incoming for an entire small business.

We do not deny that KIRC needs to have its own sort of authority in order to police their interests however, we think that vessel seizure and forfeiture are extreme.

Based on the above, we do not support this bill.

Thank you.