

MAR 14 2012

SENATE CONCURRENT RESOLUTION

URGING THE KAHO'OLAWE ISLAND RESERVE COMMISSION TO REQUIRE THE
PROTECT KAHO'OLAWE 'OHANA THROUGH ITS NON-PROFIT CORPORATION
AND FISCAL AGENT KOHEMALAMALAMA O KANALOA TO OBTAIN
LIABILITY AND PROPERTY DAMAGE INSURANCE.

1 WHEREAS, in Act 340, Session Laws of Hawaii 1993, the
2 Legislature placed the Island of Kaho'olawe, a place of
3 extraordinary cultural significance, under the control of the
4 Kaho'olawe Island Reserve Commission, with the condition that the
5 State would eventually transfer management and control of the
6 Island of Kaho'olawe, along with its resources and waters, to a
7 future sovereign native Hawaiian entity upon its recognition by
8 the United States and the State; and
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10 WHEREAS, the Kaho'olawe Island Reserve Commission
11 established policies and controls for uses of the Kaho'olawe
12 Island Reserve; coordinates the environmental restoration of the
13 Kaho'olawe Island Reserve; and provides for the perpetuation of
14 native Hawaiian customs, beliefs, and practices; and
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16 WHEREAS, on March 21, 2006, pursuant to section 6K-6(5),
17 Hawaii Revised Statutes, the Kaho'olawe Island Reserve Commission
18 entered into a three-year stewardship agreement, Palapala 'Aelike
19 Kahu'aina, with the Protect Kaho'olawe 'Ohana through its non-
20 profit corporation and fiscal agent Kohemalamalama O Kanaloa,
21 also known as the Protect Kaho'olawe Fund, to allow the Protect
22 Kaho'olawe 'Ohana and its participants to access the Kaho'olawe
23 Island Reserve to provide mutual support for activities approved
24 and sponsored by the Kaho'olawe Island Reserve Commission; and
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26 WHEREAS, on April 9, 2009, the Kaho'olawe Island Reserve
27 Commission entered into a five-year stewardship agreement,
28 Palapala 'Aelike Kahu'aina, with the Protect Kaho'olawe 'Ohana
29 through Kohemalamalama O Kanaloa to allow the Protect Kaho'olawe
30 'Ohana to access the Kaho'olawe Island Reserve to provide mutual



1 support for activities approved and sponsored by the Kaho'olawe
2 Island Reserve Commission; and

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4 WHEREAS, the Protect Kaho'olawe 'Ohana has facilitated the
5 access by more than fifteen thousand people to the Kaho'olawe
6 Island Reserve; and

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8 WHEREAS, on August 6, 2009, a Protect Kaho'olawe 'Ohana
9 access participant was seriously injured by the propeller of a
10 boat that had been contracted by the Protect Kaho'olawe 'Ohana;
11 and

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13 WHEREAS, as a result of the serious injuries sustained, the
14 Protect Kaho'olawe 'Ohana access participant filed two lawsuits
15 against the State requesting payment for general damages,
16 special damages, and attorney's fees and costs; and

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18 WHEREAS, pursuant to section 6K-6(1), Hawaii Revised
19 Statutes, the Kaho'olawe Island Reserve Commission "[s]hall
20 establish criteria, policies, and controls for permissible uses
21 within the island reserve", and thus has a responsibility to
22 protect the State from liability; now, therefore,

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24 BE IT RESOLVED by the Senate of the Twenty-sixth
25 Legislature of the State of Hawaii, Regular Session of 2012, the
26 House of Representatives concurring, that the Kaho'olawe Island
27 Reserve Commission is urged to require the Protect Kaho'olawe
28 'Ohana through its non-profit corporation and fiscal agent
29 Kohemalamalama O Kanaloa to obtain liability and property damage
30 insurance in an amount acceptable to the State and list the
31 State as an additional insured at the Protect Kaho'olawe 'Ohana's
32 own cost and expense; and

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34 BE IT FURTHER RESOLVED that the Kaho'olawe Island Reserve
35 Commission is urged to require the Protect Kaho'olawe 'Ohana
36 through Kohemalamalama O Kanaloa to indemnify and hold harmless
37 the State, its officers, employees, and agents from and against
38 all liability, loss, damage, cost, and expense, including all
39 reasonable attorney's fees, and all claims, suits, and demands
40 therefore, arising or resulting from the negligent, reckless,
41 intentional, or wrongful acts, errors, or omissions of the



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1 Protect Kaho'olawe 'Ohana and Kohemalamalama O Kanaloa or its
2 employees, officers, agents, or subcontractors; and
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4 BE IT FURTHER RESOLVED that certified copies of this
5 Concurrent Resolution be transmitted to the Governor; Mayor of
6 the County of Maui; Chairperson of the Board of Land and Natural
7 Resources; Chairperson of the Board of Trustees of the Office of
8 Hawaiian Affairs; Chairperson of the Senate Committee on
9 Hawaiian Affairs; Chairperson of the House Committee on Hawaiian
10 Affairs; Chairperson of the Kaho'olawe Island Reserve Commission;
11 Kohemalamalama O Kanaloa; and Protect Kaho'olawe 'Ohana.
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