

S.B. NO. 1169

JAN 24 2013

A BILL FOR AN ACT

RELATING TO THE KAHOOLAWE ISLAND RESERVE.

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

1 SECTION 1. The Hawaii supreme court, in *Carlisle v. One*
2 (1) *Boat*, 119 Hawaii 245, 195 P.3d 1177 (2008), overturned an
3 intermediate court of appeals decision that allowed non-natural
4 resource forfeiture in cases of natural resource destruction or
5 degradation. According to the decision, the substantive offense
6 provisions of administrative rules relating to resource
7 protection, which would include those of the Kahoolawe island
8 reserve commission, must specifically authorize forfeiture.

9 The purpose of this Act is to clarify that any equipment,
10 article, instrument, aircraft, vehicle, vessel, business record,
11 or natural resource used or taken in violation of the rules
12 applicable to the Kahoolawe island reserve may be seized and
13 subject to forfeiture pursuant to section 199-7 and chapter
14 712A, Hawaii Revised Statutes.

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

1 "§6K- Offenses subject to forfeiture. Offenses for
2 which property is subject to forfeiture under this chapter are:

3 (1) Any prohibited activity as designated through the
4 adoption of a rule in accordance with chapter 91; or

5 (2) Any violation of rules regulating fishing in waters
6 within the island reserve adopted pursuant to chapter
7 91.

8 Property seized in accordance with section 199-7 may be
9 forfeited under section 712A-10 or 712A-12. Any natural
10 resource seized in accordance with section 199-7 may be disposed
11 of as provided by that section."

12 SECTION 3. Section 6K-6, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§6K-6 Responsibilities and duties of the commission.** The
15 general administration of the island reserve shall rest with the
16 commission. In carrying out its duties and responsibilities,
17 the commission:

18 (1) Shall establish criteria, policies, and controls for
19 permissible uses within the island reserve;

20 (2) Shall approve all contracts for services and rules
21 pertaining to the island reserve;

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- 1 (3) Shall provide advice to the governor, the department,
2 and other departments and agencies on any matter
3 relating to the island reserve;
- 4 (4) Shall provide advice to the office of planning and the
5 department of the attorney general on any matter
6 relating to the federal conveyance of Kaho'olawe;
- 7 (5) May enter into curator or stewardship agreements with
8 appropriate Hawaiian cultural and spiritual community
9 organizations for the perpetuation of native Hawaiian
10 cultural, religious, and subsistence customs, beliefs,
11 and practices for the purposes stated in section 6K-3;
- 12 (6) Shall carry out those powers and duties otherwise
13 conferred upon the board of land and natural resources
14 and the land use commission with regard to
15 dispositions and approvals pertaining to the island
16 reserve. All powers and duties of the board of land
17 and natural resources and the land use commission
18 concerning dispositions and approvals pertaining to
19 the island reserve are transferred to the commission;
- 20 (7) Shall carry out those powers and duties concerning the
21 island reserve otherwise conferred upon the county of
22 Maui by chapter 205A. The powers and duties of the

1 county of Maui and its agencies concerning coastal
2 zone dispositions and approvals pertaining to the
3 island reserve are transferred to the commission;

4 (8) Shall carry out those powers and duties concerning the
5 island reserve otherwise conferred upon the island
6 burial councils and the department with regard to
7 proper treatment of burial sites and human skeletal
8 remains found in the island reserve;

9 (9) Shall adopt rules in accordance with chapter 91 that
10 are necessary for the purposes of this chapter and
11 ~~[shall]~~, as appropriate, provide for forfeiture
12 pursuant to chapter 712A for violations that are
13 subject to a penalty established under chapter 6K;

14 (10) Shall maintain a record of its proceedings and
15 actions;

16 ~~[(10)]~~ (11) May delegate to the executive director or
17 employees of the commission, by formal commission
18 action, such power and authority vested in the
19 commission by this chapter as the commission deems
20 reasonable and proper for the effective administration
21 of this chapter; and

Report Title:

Kahoolawe Island Reserve; Asset Forfeiture

Description:

Clarifies that any equipment, article, instrument, aircraft, vehicle, vessel, business record, or natural resource used or taken in violation of the rules applicable to the Kahoolawe Island Reserve may be seized and subject to forfeiture pursuant to section 199-7 and chapter 712A, Hawaii Revised Statutes.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO THE KAHOOLAWA ISLAND RESERVE.

PURPOSE: To clarify that any equipment, article, instrument, aircraft, vehicle, vessel, business record, or natural resource used or taken in violation of the rules applicable to the Kahoolawe Island Reserve may be seized and subject to forfeiture pursuant to section 199-7 and chapter 712A, Hawaii Revised Statutes (HRS).

MEANS: Add a new section to chapter 6K, HRS, and amend section 6K-6, HRS.

JUSTIFICATION: The Hawaii Supreme Court found, in *Carlisle v. One (1) Boat*, 119 Hawaii 245, 195 P.3d 1177 (2008), any associated enforcement of natural resource protection cannot include forfeiture of property used in furtherance of specified offenses unless forfeiture is specifically and clearly allowed in applicable statutes.

In 2008, the County of Maui Prosecuting Attorney started forfeiture proceedings for a helicopter that landed illegally on Kahoolawe with passengers. The Supreme Court decision for the *Carlisle v. One (1) Boat* was issued prior to the forfeiture hearing for the illegal landing of the helicopter, thus the helicopter had to be returned. In addition to the helicopter incident, the County of Maui's Department of the Prosecuting Attorney has reported they have been consistently receiving reports of illegal fishing and other activities on and around Kahoolawe.

The adoption of an *in rem* forfeiture provision within chapter 6K, HRS, for remedial sanctions by administrative or

civil proceedings would serve as a deterrent, thus strengthening the Department's enforcement capabilities and allowing for greater protection of the Reserve's resources and members of the public who may be unaware of the dangers of unexploded ordnance on and around the Island.

Impact on the public: This bill would increase the available options to deter criminal activity within the Kahoolawe Island Reserve.

Impact on the department and other agencies: This bill would deter violations within the Kahoolawe Island Reserve which would eventually reduce the Department's expenses to provide enforcement of the Reserve.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: LNR 906.

OTHER AFFECTED
AGENCIES: Department of the Attorney General.

EFFECTIVE DATE: Upon approval.