
A BILL FOR AN ACT

RELATING TO THE KAHOOLOWE 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 Kaho'olawe island
8 reserve commission, must specifically authorize forfeiture.

9 Accordingly, the purpose of this Act is to:

- 10 (1) Specify the offenses for which property is subject to
11 forfeiture under chapter 6K, Hawaii Revised Statutes,
12 relating to the Kaho'olawe island reserve; and
13 (2) Clarify that property seized in accordance with
14 section 199-7, Hawaii Revised Statutes, may be
15 forfeited and disposed of as provided by law.

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



- 1 "§6K- Offenses subject to forfeiture. (a) Offenses
2 that may be subject to forfeiture are those prohibited actions
3 committed while in the island reserve and without the authority
4 of the commission or its authorized representative, as
5 designated by rules adopted pursuant to the commission's
6 authority under section 6K-6 and chapter 91, as follows:
- 7 (1) Conducting any commercial activity;
8 (2) Taking, disturbing, injuring, killing, or possessing
9 any living natural resource;
10 (3) Removing, damaging, or disturbing any natural feature
11 or natural resource or historic or prehistoric
12 cultural object, artifacts, or remains or parts
13 thereof;
14 (4) Altering, defacing, or destroying any rock or other
15 geological feature;
16 (5) Possessing any firearm, bow and arrow, spear gun,
17 trap, snare, poison, or device designed to take,
18 capture, or kill wildlife in the island reserve;
19 (6) Possessing any explosives or fireworks, or starting or
20 maintaining a fire;
21 (7) Entering any area posted with a sign warning of
22 danger, kapu, or restricted entry;



- 1 (8) Removing, damaging, or disturbing any notice, sign,
2 marker, fence, or structure;
- 3 (9) Introducing any animals, domestic or wild, or any form
4 of plant into the island reserve; or
- 5 (10) Possessing any fishing gear, device, or noxious
6 chemical used for taking any aquatic life or altering
7 any geological feature or specimen.

8 Any property used or any natural resource taken in violation of
9 these enumerated offenses may be seized in accordance with
10 section 199-7 and forfeited pursuant to administrative or
11 judicial in rem forfeiture proceedings in chapter 712A. Any
12 natural resource seized according to this section may in the
13 alternative be disposed by the department according to
14 proceedings established in section 199-7.

15 (b) Forfeiture of property shall apply only to offenses
16 occurring within the area designated as the island of Kaho'olawe
17 or by persons or on vessels located in the waters extending
18 seaward one nautical mile from its shoreline."

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

21 "**§6K-6 Responsibilities and duties of the commission.** The
22 general administration of the island reserve shall rest with the



1 commission. In carrying out its duties and responsibilities,
2 the commission:

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



- 1 and natural resources and the land use commission
2 concerning dispositions and approvals pertaining to
3 the island reserve are transferred to the commission;
- 4 (7) Shall carry out those powers and duties concerning the
5 island reserve otherwise conferred upon the county of
6 Maui by chapter 205A. The powers and duties of the
7 county of Maui and its agencies concerning coastal
8 zone dispositions and approvals pertaining to the
9 island reserve are transferred to the commission;
- 10 (8) Shall carry out those powers and duties concerning the
11 island reserve otherwise conferred upon the island
12 burial councils and the department with regard to
13 proper treatment of burial sites and human skeletal
14 remains found in the island reserve;
- 15 (9) Shall adopt rules in accordance with chapter 91 that
16 are necessary for the purposes of this chapter and
17 ~~[shall]~~, as appropriate, provide for forfeiture
18 pursuant to chapter 712A for violations that are
19 subject to a penalty established under this chapter;
- 20 (10) Shall maintain a record of its proceedings and
21 actions;



1 ~~[(10)]~~ (11) May delegate to the executive director or
2 employees of the commission, by formal commission
3 action, such power and authority vested in the
4 commission by this chapter as the commission deems
5 reasonable and proper for the effective administration
6 of this chapter; and

7 ~~[(11)]~~ (12) May solicit and accept grants, donations, and
8 contributions for deposit into the Kaho'olawe
9 rehabilitation trust fund to support the purposes of
10 this chapter."

11 SECTION 4. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 5. This Act shall take effect upon its approval.



Report Title:

Kahoolawe Island Reserve; Asset Forfeiture

Description:

Clarifies the offenses relating to the Kaho'olawe Island Reserve for which property is subject to forfeiture. Clarifies that property seized in accordance with section 199-7, Hawaii Revised Statutes, relating to search and seizure and forfeiture, may be forfeited and any natural resource seized may be disposed of as provided by law. (SB1169 HD1)

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

