



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SEVENTH LEGISLATURE, 2013**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 1169, S.D. 2, RELATING TO THE KAHOO LAWE ISLAND RESERVE.

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY

**LATE**

**DATE:** Tuesday, March 19, 2013

**TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** David M. Louie, Attorney General, or  
Colin J. Lau, Deputy Attorney General

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Chair Rhoads and Members of the Committee:

The Department of the Attorney General supports this bill, but recommends set forth below.

This bill allows the forfeiture of property and natural resources seized in relation with violations of administrative rules adopted for the Kaho`olawe Island Reserve under chapter 6K.

To allow for forfeiture, the Supreme Court in *Carlisle v. One (1) Boat*, 119 Haw. 245, 257, 195 P.3d 1177, 1189 (2008), has interpreted the statutory scheme in chapter 712A, Hawai'i Revised Statutes (HRS), to require that covered offenses be enumerated in section 712A-4 under paragraph (b), (c), or (d), or that the described offense specifically authorize forfeiture (i.e., expressly stated in the body of the substantive offense or the applicable penalty section to the offense) as per paragraph (a).

To clarify which administrative rule offenses for the reserve will allow forfeiture proceedings under chapter 712A for property or natural resources seized in connection with violation circumstances, we recommend amending section 2 ("offenses subject to forfeiture") to list the specific offenses. We also recommend that the nature of forfeiture proceedings be stated as administrative or judicial *in rem* to avoid characterization as a criminal punishment that could cause double jeopardy to attach.

Given the preference to provide an exception for persons or vessels within one nautical mile from the reserve boundary, we suggest the following:

**"§6K- Offenses subject to forfeiture.** (a) Offenses that may be subject to forfeiture are those prohibited activities committed while in the reserve and without the authority of the

commission or its authorized representative, as designated by rules adopted pursuant to the authority of section 6K-6 and in accordance with chapter 91 rulemaking, prohibiting:

- (1) Conducting any commercial activity;
- (2) Taking, disturbing, injuring, killing, or possessing any living natural resource;
- (3) Removing, damaging, or disturbing any natural feature or natural resource, historic or prehistoric cultural object, artifacts, or remains or parts thereof;
- (4) Altering, defacing, or destroying any rock or other geological feature;
- (5) Possessing any firearm, bow and arrow, spear gun, trap, snare, poison, or device designed to take, capture, or kill wildlife in the reserve;
- (6) Possessing any explosives or fireworks, or starting or maintaining a fire;
- (7) Entering any area posted with a sign warning of danger, kapu, or restricted entry;
- (8) Removing, damaging, or disturbing any notice, sign, marker, fence, or structure;
- (9) Introducing any animals, domestic or wild, or any form of plant; or
- (10) Possessing any fishing gear, device, or noxious chemical used for taking any aquatic life or altering any geological feature or specimen.

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

(b) Forfeitures of property apply only to offenses occurring within the fast lands of the reserve or by persons or on vessels located in the area extending seaward one nautical mile of

the shoreline of Kaho‘olawe island. "

We respectfully request that this bill be passed.

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

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

**Before the House Committee on**  
**JUDICIARY**

**Tuesday, March 19, 2013**  
**2:30 PM**  
**State Capitol, Conference Room 325**

**In consideration of**  
**SENATE BILL 1169, SENATE DRAFT 2**  
**RELATING TO THE KAHOO LAWE ISLAND RESERVE**

Senate Bill 1169, Senate Draft 2 proposes 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), except in the case of persons or vessels within one nautical mile of the boundaries of the Island Reserve. **The Department of Land and Natural Resources (Department) strongly supports this Administration measure.**

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.

The adoption of an *in rem* forfeiture provision within Chapter 6K, Hawaii Revised Statutes, 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.

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

**ESTHER KIAAINA**  
FIRST DEPUTY

**WILLIAM M. TAM**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS



**SB1169 SD2**  
**RELATING TO THE KAHOOLAWE ISLAND RESERVE**  
House Committee on Judiciary

March 19, 2013

2:00 p.m.

Room 325

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The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB1169 SD2, which proposes to clarify the offenses for which property is subject to forfeiture under Chapter 6K, Hawai'i Revised Statutes, relating to the Kaho'olawe Island Reserve, and to clarify that property seized in accordance with section 199-7, Hawai'i Revised Statutes, may be forfeited and disposed of as provided by law.

This bill would provide a critical tool in protecting this relatively isolated and extremely degraded part of Hawai'i.

In light of the above, OHA urges the committee to **PASS** SB1169 SD2.

Mahalo for the opportunity to testify on this measure.



*KŪKULU KE EA A KANALOA*

## **KAHO‘OLAWE ISLAND RESERVE COMMISSION**

811 Kolu Street, Suite 201, Wailuku, HI 96793  
Telephone (808) 243-5020 Fax (808) 243-5885  
Website: <http://kahoolawe.hawaii.gov>

COMMISSION MEMBERS

MICHELE MCLEAN  
*Chairperson*  
AMBER NĀMAKA WHITEHEAD  
*Vice-Chair*

WILLIAM J. AILA, Jr.  
N. EMMETT ALULI, M.D.  
C. KALIKO BAKER, PhD.  
COLETTE Y. MACHADO

Michael K. Nāho‘opi‘i  
*Executive Director*

**Testimony of  
MICHAEL K. NAHO‘OPI‘I  
Executive Director**

**Before the House Committee on  
Judiciary**

**Monday, March 19, 2013  
2:00 PM  
State Capitol, Conference Room 325**

**In consideration of  
SENATE BILL 1169 SD2  
RELATING TO THE KAHO‘OLAWE ISLAND RESERVE**

Senate Bill 1169 SD2 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 Kaho‘olawe Island Reserve (Reserve) may be seized and subject to forfeiture pursuant to section 199-7 and chapter 712A, Hawaii Revised Statutes (HRS). The Kaho‘olawe Island Reserve Commission (KIRC) supports this measure with the SD2 amendment, for it would strengthen our enforcement ability and provide the KIRC with another tool to manage the Reserve.

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 as well as protecting members of the public who disregard the dangers of unexploded ordnance on and around the Island.

**SB1169**

Submitted on: 3/17/2013

Testimony for JUD on Mar 19, 2013 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Cleon Bailey	Individual	Oppose	No

Comments:

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