

LATE TESTIMONY

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 Senate Committee on
JUDICIARY AND LABOR**

**Wednesday, February 20, 2013
10:00 AM
State Capitol, Conference Room 016**

**In consideration of
SENATE BILL 1169, SENATE DRAFT 1
RELATING TO THE KAHOO LAWE ISLAND RESERVE**

Senate Bill 1169, Senate Draft 1 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, SD1
RELATING TO THE KAHOO LAWE ISLAND RESERVE**

Senate Committee on Judiciary and Labor

February 20, 2013

10:00 a.m.

Room 016

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB1169, SD1, which proposes to clarify the offenses for which property is subject to forfeiture under Chapter 6K, Hawaii Revised Statutes, relating to the Kaho`olawe Island Reserve, and to clarify that property seized in accordance with section 199-7, Hawaii 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, SD1.

Mahalo for the opportunity to testify on this measure.



Ocean Tourism Coalition

The Voice for Hawaii's Ocean Tourism Industry
Century Square-1188 Bishop St., Ste. 1003
Honolulu, HI 96813-3304
(808) 537-4308 Phone (808) 533-2739 Fax
timlyons@hawaiiantel.net

LATE TESTIMONY

February 20, 2013

Testimony To: Senate Committee on Judiciary and Labor
Senator Clayton Hee, Chair

From: Tim Lyons, CAE
Executive Director

Subject: S.B. 1169, SD 1 – RELATING TO THE KAHOOLAWA ISLAND RESERVE

Chair Hee and Members of the Committee:

I am Tim Lyons, Executive Director of the Ocean Tourism Coalition and we can support S.D. 1 of this bill with a minor adjustment.

As has been noted, KIRC and OTC discussed this matter and agreed that forfeiture was not something that should happen as long as the violation occurred within one nautical mile of the two mile boundary of the Island Reserve. The Committee on Water, Land and Tourism and Hawaiian Affairs provided for an amendment that we agreed to in Section two (2), Item 6K- (a) 2) that added an additional proviso that basically reads, "provided that persons or vessels within one (1) nautical mile of the boundaries of the Island Reserve shall not be subject to this paragraph". We think that is correct however, we don't believe that it is clear that the forfeiture provision would not apply in any case and therefore, it would appear to us that that language

should be attached to Subsection 1 as opposed to Subsection 2. We believe that the idea was to have that apply for any prohibited activity.

With that minor adjustment and based as well with the language in the SSCR 330, which specifically expresses our concerns that "forfeiture is not intended to be used for inadvertent acts or emergency entries onto the Island Reserve", we can embrace the bill. We would also request to this Committee that similar language be placed in your Standing Committee Report so that it reflects our concerns.

Thank you.