

SB 1169

SB1169

Measure Title: RELATING TO THE KAHOOLAWE ISLAND RESERVE.

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.

Companion: [HB938](#)

Package: Gov

Current Referral: WTL/THA, JDL

Introducer(s): KIM (Introduced by request of another party)

<u>Sort by Date</u>		Status Text
1/24/2013	S	Introduced.
1/24/2013	S	Passed First Reading.
1/24/2013	S	Referred to WTL/THA, JDL.
2/7/2013	S	The committee(s) on WTL/THA has scheduled a public hearing on 02-12-13 1:20PM in conference room 225.

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 Committees on
WATER AND LAND
and
TOURISM AND HAWAIIAN AFFAIRS**

**Tuesday, February 12, 2013
1:20 PM
State Capitol, Conference Room 225**

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

Senate Bill 1169 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). **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. 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, 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



MICHELE MCLEAN
Chairperson
AMBER NĀMAKA WHITEHEAD
Vice-Chair
WILLIAM J. AILA, Jr.
N. EMMETT ALULI, M.D.
C. KALIKO BAKER, PhD.
COLETTE Y. MACHADO

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>

Michael K. Nāho`opi'i
Executive Director

**Testimony of
MICHAEL K. NAHO`OPTI
Executive Director**

**Before the Senate Committees on
Water & Land
and
Tourism & Hawaiian Affairs**

**Tuesday, February 12, 2013
1:20 PM
State Capitol, Conference Room 225**

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

Senate Bill 1169 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, for it would strengthen our enforcement ability and provide the KIRC with another tool to manage the Reserve.

The Hawai`i Supreme Court, in *Carlisle v. One (1) Boat and Tran* (Nov 17, 2008), overturned an Intermediate Court of Appeals decision that allowed asset forfeiture in cases of resource destruction – ultimately taking the teeth out of any enforcement rules in place. According to the decision, the penalty sections of DLNR (and, therefore, KIRC) rules must specifically authorize forfeiture.

In 2008, the County of Maui Prosecuting Attorney started forfeiture proceedings for a helicopter that landed illegally on Kaho`olawe with passengers. Unfortunately, the Supreme Court decision for the *Carlisle v. One (1) Boat and Tran* case was issued prior to the 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 Prosecuting Attorney has reported they have been consistently receiving reports of illegal fishing and other activities on and around Kaho`olawe; with Senate Bill 1169, such fishing vessels could become subject to forfeiture.

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 may be ignorant of the dangers of unexploded ordnance on and around the Island.

In discussions with boating community groups regarding this measure, they have voiced concerns regarding the application of this penalty for inadvertent entry into the Reserve boundaries. In an

interest to work with these community groups and to implement a phased approach to the application of asset forfeiture proceedings, we are recommending a one-mile buffer zone for the application of this measure for prohibited activities within the Reserve, but no buffer for any violation of rules regarding fishing. No portion of this recommended amendment negates or diminishes the application of any existing provision of penalty or administrative fines currently applicable to Chapter 6K, HRS.

The following is the KIRC's recommended amendment:

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

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

- (1) Any prohibited activity as designated through the adoption of a rule in accordance with chapter 91, [*provided that persons or vessels within one nautical mile of the boundaries of the Reserve shall not be subject to the provisions of this subsection*] ;
or
- (2) Any violation of rules regulating fishing in waters within the island reserve adopted pursuant to chapter 91.

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



SB1169
RELATING TO THE KAHOO LAWE ISLAND RESERVE

Senate Committee on Water and Land
Senate Committee on Tourism and Hawaiian Affairs

February 12, 2013

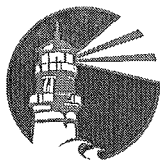
1:20 p.m.

Room 225

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB1169, which 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 Kaho`olawe Island Reserve may be seized and subjected to forfeiture pursuant to certain existing state laws.

By subjecting these items to forfeiture in such circumstances, 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 committees to **PASS** SB1169. 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@hawaiiintel.net

February 12, 2013

Testimony To: Senate Committee on Water and Land
Senator Malama Solomon, Chair

Senate Committee on Tourism and Hawaiian Affairs
Senator Brickwood Galuteria, Chair

From: Tim Lyons, CAE
Executive Director

Subject: S.B. 1169 – RELATING TO THE KAHOOLAWE ISLAND RESERVE

Chair Solomon, Chair Galuteria and Members of the Joint Committees:

I am Tim Lyons, Executive Director of the Ocean Tourism Coalition. OTC represents about 300 ocean tourism businesses from throughout the state. We are opposed to this bill as it is written.

We think the bill has a lot of problems. It basically allows KIRC to seize, forfeit and presumably sell someone else's property for a violation of any one of their rules. In order to qualify for this event, all you have to do is run counter to one of their rules; a major one or a minor one. You could steal something from the island or you could inadvertently enter into their boundaries.

We note that currently, KIRC has the authority to impose fines of up to \$1000. This bill allows for the same violation of the same rules to seize an expensive boat that is the lifetime investment of a small business. Once seized, the owner, perhaps one of the 42 legally permitted vessels running to Molokini gets to go back, lay off all of his employees for a year or two while it is all contested and cancel his contracts, exposing himself to other lawsuits for non-performance. The question is...would KIRC do that?

We think that appears to be the purpose of this bill. They did it with the helicopter that landed on the island for a lunch break. Fortunately or unfortunately, the owner happened to have very deep taxpayer pockets: the University of Hawaii. The helicopter was returned because of another court case however, had this been one of our small business members who inadvertently ran counter to one of the KIRC rules we think it would be extreme. And, in essence, would be put out of business by confiscating their prime tool to make a living.

We do agree that violations can happen and we are not objectionable to some sort of penalty structure, perhaps a tiered structure and perhaps even beyond the \$1000. However, our prime question before any of that is, how many times has a \$1000 fine been assessed on the same person and it is shown that it has not been a deterrent, thereby necessitating a stronger penalty like forfeiture or seizure.

Since the House Bill hearing, we have had some discussions with KIRC on a modified proposal. We are hopeful that the Committee will entertain that proposal and consider that none of these provisions would apply unless the vessel trespasses inside the one (1) mile of the two (2) mile boundary to the island. In those instances, we can totally understand some additional provisions. In the absence of that however, we must continue to oppose the bill.

Thank you.