



SB470 SD1
RELATING TO THE KAHOOLAWE ISLAND RESERVE
Senate Committee on Judiciary and Labor

February 24, 2015

9:15 a.m.

Room 016

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB470 SD1, which restores asset forfeiture liability for offenses arising under Hawai'i Revised Statutes Chapter 6K and regulations adopted thereunder, in order to facilitate the enforcement of laws protecting the culturally treasured and historically storied island of Kaho'olawe.

Kaho'olawe, a kinolau of Kanaloa, remains a piko of Hawaiian culture, yet still retains visible scars from decades of previous mismanagement. Kaho'olawe was critical to the Hawaiian cultural renaissance, and continues to serve as an integral education center for traditional navigation, hula, natural resource management, and other cultural traditions and disciplines.

While numerous laws and regulations have been adopted to respect, restore, and protect Kaho'olawe and its natural and cultural resources, the relative isolation of the island substantially inhibits their enforcement. Asset forfeiture, as a civil enforcement mechanism not subject to the high burdens of proof of criminal prosecution, may therefore be a critical tool to address and deter violations of these important laws and regulations.

As a housekeeping matter, this committee may want to amend SB470 SD1 to specify the Kaho'olawe Island Reserve Commission (KIRC), rather than the Department of Land and Natural Resources, as the decisionmaking body authorized to adopt administrative rules under this measure. This would ensure consistency and mitigate potential confusion regarding rulemaking authority over the reserve, as KIRC is the current body tasked with promulgating regulations for Kaho'olawe and its surrounding waters. See HRS Section 6K-6(9).

In light of the above, OHA urges the Committee to **PASS** SB470 SD1.

Mahalo for the opportunity to testify on this important measure.

From: mailinglist@capitol.hawaii.gov
To: [JDL Testimony](#)
Cc: mnahoopii@kirc.hawaii.gov
Subject: *Submitted testimony for SB470 on Feb 24, 2015 09:15AM*
Date: Monday, February 23, 2015 1:17:42 AM

SB470

Submitted on: 2/23/2015

Testimony for JDL on Feb 24, 2015 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Nahoopii	KIRC	Support	Yes

Comments:

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Activities & Attractions Association of Hawaii
PO Box 598, Makawao, Hawaii 96768
(808)871-7947 Main (808)877-3104 Fax

**Testimony to the Senate Committee on Judicial and Labor
Tuesday, February 24, 2015, 9:15 am
Conference Room 016**

RE: OPPOSES SB470 RELATING TO KAHO'OLAWE

Chair Senator Keith-Agaran, Vice Chair Senator Shimabukuro & Members of the committee;

Mahalo for this opportunity to testify, my name is Toni Marie Davis. For the last 17 years it has been my honor to serve the activity & attraction industry of Hawaii through my position as the Executive Director of the Activities & Attractions Association of Hawaii (A3H). A3H represents over 200 businesses statewide. Our members range in size from very large (over 300 employees) to very small (1-2 employees). **A3H OPPOSES SB470 as written.**

KIRC has introduced 6 funding Bills this session. They need money, despite the \$44 million since the US Military rightfully returned the island to the Native Hawaiian community. We trust that accountability measures are now in place with this unique, extraordinary and admirable project. The state, local Maui community and our association support the mission of KIRC, whole heartedly.

A3H is opposes SB470, due to its unfettered discretion to seize property regardless of circumstance, similar to the civil forfeiture process. This is extreme, over reaching and without consideration of circumstance.

Admin Rules MAY set the degrees of consequence for violations should this law pass. To pass, without recognizing "acts of God" or unintended occurrences would be irresponsible. Currently if a Matson barge which breaks loose or a small recreational boat a drift with engine trouble, both may become property of KIRC once within 1 mile. Depending "who" the individual is "may" make all the difference in the world. That's not Pono.

Please add to the Bill the word "intentionally" or whatever word would be legally appropriate to remove this adversarial black hole with unfettered discretion. Fund raising should not be based on others "bad luck". For example: (a) Any person who INTENTIONALLY violates any of the laws or rules applicable to the island reserve shall be guilty.....

Sincerely,

Toni Marie Davis
Executive Director



Kahikolu Ltd., d/b/a Quicksilver
150 Lahainaluna Rd
Lahaina, HI 96761
(808) 667-0990 Office
(808) 667-6707 Fax

Opposition Testimony To: **Senate Committee on Judiciary and Labor
Gilbert S.C. Keith-Agaran, Chair**

From: **Zachary LaPrade
General Counsel, Quicksilver Charters**

Date/Time of Hearing: **February 24, 2015, 9:00 AM**

Measure No. and Title: **SB470**

Chair Keith-Agaran and Members of the Committee:

I am General Counsel for Quicksilver Charters, Frogman Charters and their affiliates (the “Companies”). We have a very real stake in this Bill. The Companies employ close to 100 people in Hawaii’s boating and tourism industries. We oppose this bill as written.

The Penalties are Too Onerous:

Forfeiture of a vessel is an excessive punishment, especially since there is no “state of mind” requirement in the proposed measure. At the very least, a violation that could result in a forfeiture must be done "intentionally.”

DLNR Officers Should Not Determine Probable Cause:

Currently, Section 712A-6 (which is incorporated into SB470) allows a law enforcement officer to seize property *without court involvement* if they can make a determination of probable cause of a violation. Given the severity of the consequences, forfeiture should only be allowed after a hearing, rather than a “on the spot” judgment of probable cause. Probable cause is a complex standard and will require very intense training to avoid costly litigation for the State. The State should be concerned about the inevitable "loss of profits" claims that will ensue if there is an untrained officer that seizes a boat without meeting the proper probable cause standard. Highway patrol and police officers go through intense training to understand probable cause.

Conclusion:

We ask that the Committee take a closer look at crafting a statute to create penalties that are commensurate with the violation; for instance, a graduated set of fines that may ultimately result in confiscation of the vessel for some egregious violation



COMMITTEE ON JUDICIARY AND LABOR

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

DATE: Tuesday, February 24, 2015

TIME: 9:15 am

Conference Room 016

RE: SB 470, SD1 RELATING TO KAHO'OLAWE ISLAND RESERVE.

Testimony of James E. Coon, President OTC

Speaking in Strong Opposition to SB 470 SD1

Senator Gilbert Keith-Agaran, Chair; Senator Maile Shimabukuro, Vice Chair; Members of the Committee on Judiciary and Labor:

Aloha,

My name is Jim Coon. I am the President of the Ocean Tourism Coalition, representing the Charter Boat industry across the state, **speaking in Strong Opposition to SB 470, SD 1 as written.**

The primary objection we have to this bill is that the penalty could far outweigh the crime. Many of our vessels cost well over \$1,000,000 to replace. Often, this is the only source of revenue and employment for these boating companies. It seems unreasonable to give a Law Enforcement Officer the ability to make a determination without a court hearing. We would ask first of all that this forfeiture provision be stricken from SB 470. If not, then at least a court hearing to determine the validity of seizing this amount of property for an infraction of the KIRK rules. (with language that would protect this written into the bill.)

We would recommend a graduated system of fines as is found in violations of the Hawaiian Islands Humpback Whale National Marine Sanctuary which are very severe, but do not forfeit the vessel. Also, this would be a much more equitable method of assessing a fine in that it would be commensurate with the offence and not penalize the expensive vessel over the inexpensive one.

As the law is proposed, it seems that an individual with a very inexpensive vessel committing the same infraction as an owner of an expensive vessel would both just forfeit the vessel when there could be massive differences in the cost of that vessel. Monetary fines would take that out of play.

We humbly ask you to consider our recommendations and either defer SB 470 SD 1 or amend it to be more reasonable.

Sincerely,

James E. Coon, President
Ocean Tourism Coalition

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: *Submitted testimony for SB470 on Feb 24, 2015 09:15AM*
Date: Sunday, February 22, 2015 6:43:03 PM

SB470

Submitted on: 2/22/2015

Testimony for JDL on Feb 24, 2015 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Amy Brinker	Individual	Support	No

Comments:

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SB470

Submitted on: 2/20/2015

Testimony for JDL on Feb 24, 2015 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Anela Evans	Individual	Support	No

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SB470

Submitted on: 2/23/2015

Testimony for JDL on Feb 24, 2015 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Carol-Marie K. Lee	Individual	Support	No

Comments: Because HAR 13-261 is not severe enough to deter violators, violations continue to happen. This will add strength to the enforcement arm of the Reserve.

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I support KIRC Bill SB470.

This measure could help the KIRC not only in its efforts to conserve the unique resources of the Reserve but also help educate the public in the importance of its mission.

...

Please support this important measure to provide financial support and stability of the restoration and protection of the Kaho'olawe Island Reserve, which will benefit all of Hawai'i's people for generations to come.

...

As the only Island Reserve set up entirely in trust for a Native Hawaiian Sovereign Entity, the KIRC is well poised to change the economic landscape and life quality of Native Hawaiians and the communities in which they reside by means of a truly unique experience on the island of Kaho'olawe. The State must maintain the responsibility of supporting the Kaho'olawe Rehabilitation Trust Fund.

...

As the only island listed on the National Register of Historic Places in its entirety, containing nearly 3,000 archaeological sites and features, it is imperative that the State preserves this important resource for current and future generations through this financial support system.

...

Without the KIRC's ongoing protection of Kaho'olawe's coastal ecosystem, including the adjacent nearshore environment and coral reefs that can be covered with, and choked by, derelict fishing gear, nets, a huge variety of plastics and other debris items, species including the endangered Hawaiian monk seal, threatened green sea turtle, endangered hawksbill sea turtle, endangered humpback whale, endangered Hawaiian dark-rumped petrel, and endangered Newell's shearwater will be put at risk. It is imperative that a trust fund be stabilized to continue this work.

...

Kaho'olawe is a unique ecosystem preserving immensely valuable cultural and biological resources. It is surrounded by the richest marine ecosystems remaining in the Main Hawaiian islands and providing replenishment of fish and invertebrates to other islands' waters. The KIRC's massive restoration program designed to revitalize the ecology and cultural history of the island will benefit all of Hawai'i's people for generations to come. Please support this bill.

Sincerely,

Dr. Chandy Lopes, ND

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: *Submitted testimony for SB470 on Feb 24, 2015 09:15AM*
Date: Saturday, February 21, 2015 12:42:35 PM

SB470

Submitted on: 2/21/2015

Testimony for JDL on Feb 24, 2015 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Dean Tokishi	Individual	Support	No

Comments:

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SB470

Submitted on: 2/23/2015

Testimony for JDL on Feb 24, 2015 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
James Bruch	Individual	Support	No

Comments:

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SB470

Submitted on: 2/22/2015

Testimony for JDL on Feb 24, 2015 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Kelly McHugh	Individual	Support	No

Comments:

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Subject: Submitted testimony for SB470 on Feb 24, 2015 09:15AM
Date: Friday, February 20, 2015 10:50:47 AM

SB470

Submitted on: 2/20/2015

Testimony for JDL on Feb 24, 2015 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Mei Mailou-Santos	Individual	Support	No

Comments: I, Mei Mailou-Santos, support KIRC bill SB 470 ... This measure could help the KIRC not only in its efforts to conserve the unique resources of the Reserve but also help educate the public in the importance of its mission. ... Please support this important measure to provide financial support and stability of the restoration and protection of the Kaho'olawe Island Reserve, which will benefit all of Hawai'i's people for generations to come. ... As the only Island Reserve set up entirely in trust for a Native Hawaiian Sovereign Entity, the KIRC is well poised to change the economic landscape and life quality of Native Hawaiians and the communities in which they reside by means of a truly unique experience on the island of Kaho'olawe. The State must maintain the responsibility of supporting the Kaho'olawe Rehabilitation Trust Fund. ... As the only island listed on the National Register of Historic Places in its entirety, containing nearly 3,000 archaeological sites and features, it is imperative that the State preserves this important resource for current and future generations through this financial support system. ... Without the KIRC's ongoing protection of Kaho'olawe's coastal ecosystem, including the adjacent nearshore environment and coral reefs that can be covered with, and choked by, derelict fishing gear, nets, a huge variety of plastics and other debris items, species including the endangered Hawaiian monk seal, threatened green sea turtle, endangered hawksbill sea turtle, endangered humpback whale, endangered Hawaiian dark-rumped petrel, and endangered Newell's shearwater will be put at risk. It is imperative that a trust fund be stabilized to continue this work. ... Kaho'olawe is a unique ecosystem preserving immensely valuable cultural and biological resources. It is surrounded by the richest marine ecosystems remaining in the Main Hawaiian islands and providing replenishment of fish and invertebrates to other islands' waters. The KIRC's massive restoration program designed to revitalize the ecology and cultural history of the island will benefit all of Hawai'i's people for generations to come. Please support this bill.

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Subject: Submitted testimony for SB470 on Feb 24, 2015 09:15AM
Date: Friday, February 20, 2015 7:54:29 AM

SB470

Submitted on: 2/20/2015

Testimony for JDL on Feb 24, 2015 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Morris Haole Jr.	Individual	Support	No

Comments: This measure will help protect Kahoolawe's natural resources and make it clear to the public that it is against the law to remove material from the island.

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I, Terri Gavagan, support KIRC bill SB470.

...
Please support this important measure to assist the Kaho'olawe Island Reserve Commission (KIRC) in its mission to protect the natural resources in the Reserve. This measure could help the KIRC not only in its efforts to conserve the unique resources of the Reserve but also help educate the public in the importance of its mission.

...
Without the KIRC's ongoing protection of Kaho'olawe's coastal ecosystem, including the adjacent nearshore environment and coral reefs that can be covered with, and choked by, derelict fishing gear, nets, a huge variety of plastics and other debris items, species including the endangered Hawaiian monk seal, threatened green sea turtle, endangered hawksbill sea turtle, endangered humpback whale, endangered Hawaiian dark-rumped petrel, and endangered Newell's shearwater will be put at risk.

...
Kaho'olawe is a unique ecosystem preserving immensely valuable cultural and biological resources. It is surrounded by the richest marine ecosystems remaining in the Main Hawaiian islands and providing replenishment of fish and invertebrates to other islands' waters. Please support this bill.