
A BILL FOR AN ACT

RELATING TO THE KAHO'OLAWE REHABILITATION TRUST FUND.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Kaho'olawe island reserve consists of the
2 island of Kaho'olawe plus the waters extending two nautical miles
3 seaward from the coastline. The island is situated
4 approximately six miles southwest of Maui and approximately four
5 and a half miles west of Molokini. The forty-five square mile
6 island of Kaho'olawe and its ninety square miles of waters are
7 managed and controlled by the Kaho'olawe island reserve
8 commission, which is responsible for environmental protection
9 and conservation, revegetation, habitat restoration, the
10 preservation of archaeological and historical resources, and the
11 promotion of traditional and cultural practices.

12 The island was once inhabited by native Hawaiian
13 subsistence farmers and fisherman. After the arrival of
14 Europeans, Kaho'olawe was used as a penal colony and ranch. From
15 1947 to 1990, the United States Navy used Kaho'olawe for military
16 training and bombing exercises. In 1994, the federal government
17 appropriated \$400 million for the clean-up of unexploded



1 ordnance. The same federal appropriation provided \$45 million
2 to the State for long-term planning and environmental
3 restoration; these funds were deposited in the State's Kaho'olawe
4 rehabilitation trust fund in annual increments over several
5 years. However, the trust fund principal was never substantial
6 enough to be a sustainable endowment where the Kaho'olawe island
7 reserve commission could operate solely from its interest.

8 Today, the trust fund balance is approximately \$15 million,
9 which is the only statutory source of revenue for the
10 administration and operation of the Kaho'olawe island reserve
11 commission and its personnel and program activities.

12 The waters of the Kaho'olawe island reserve are off-limits
13 except to boaters who register with the Kaho'olawe island reserve
14 commission and who are then permitted to troll on two published
15 weekends each month in waters thirty fathoms deep or greater.
16 This regulation is due to the presence of unexploded ordnance in
17 the reserve waters, as well as to allow the reserve waters to
18 function as a sanctuary and nursery for all marine species
19 managed by the Kaho'olawe island reserve commission.

20 The reserve waters support a variety of listed marine
21 species, including the green sea turtle, Hawaiian monk seal, and



1 humpback whale, as well as some of the healthiest fish
2 populations in the main Hawaiian islands.

3 The purpose of this Act is to provide a permanent statutory
4 revenue source for the management of the Kaho'olawe island
5 reserve.

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

9 "§6K-A Molokini shoal marine life conservation district;
10 authority; permits for commercial use. (a) Notwithstanding any
11 other law to the contrary, the commission shall exercise sole
12 authority over the Molokini shoal marine life conservation
13 district and its waters. The commission may issue permits for
14 the commercial use of the Molokini shoal marine life
15 conservation district and its waters, subject to any conditions
16 deemed appropriate by the commission, including collecting fees
17 and a percentage of gross receipts.

18 (b) The commission may adopt rules pursuant to chapter 91
19 for the management and maintenance of the Molokini shoal marine
20 life conservation district and its waters.

21 §6K-B Molokini shoal marine life conservation district;
22 user fee. (a) Each permit holder shall collect a user fee of



1 \$ _____ from each customer for each activity tour provided
2 to the customer.

3 (b) Each permit holder may retain two per cent of the
4 amount of user fees collected to offset administrative expenses
5 associated with collecting the user fee.

6 (c) The permit holder shall remit to the Kaho'olawe
7 rehabilitation trust fund sub-account, established pursuant to
8 section 6K-9.5(b), within sixty days after the end of the
9 calendar month in which the user fee is collected, an amount
10 that represents the total user fees collected during the
11 calendar month less amounts retained for administrative expenses
12 incurred by the permit holder, as provided in subsection (b).

13 (d) The user fees collected by the permit holder pursuant
14 to this section shall not be subject to any tax, fee, or
15 assessment, and shall not be considered revenue of the permit
16 holder.

17 (e) Each customer who is subject to this section shall be
18 liable to the State for the user fee until the user fee has been
19 paid to the permit holder. A permit holder shall have no
20 obligation to take any legal action to enforce the collection of
21 the user fee for which any customer is billed. However, the
22 commission may initiate a collection action against the



1 customer. If the commission prevails in a collection action,
2 reasonable attorney's fees and costs shall be awarded.

3 (f) For the purposes of this section, "permit holder"
4 means any person who operates any commercial enterprise or
5 establishment, including sole proprietorships, joint ventures,
6 partnerships and corporations, or any other legally cognizable
7 entity, whether for profit or not for profit, which holds a
8 permit issued by the commission to operate commercial activities
9 within the Molokini shoal marine life conservation district."

10 SECTION 3. Chapter 10, Hawaii Revised Statutes, is amended
11 by adding a new section to be appropriately designated and to
12 read as follows:

13 "§10- Kaho'olawe rehabilitation trust fund; Molokini
14 shoal marine life conservation district fees and gross receipts;
15 matching funds. The Kaho'olawe island reserve commission shall
16 submit quarterly reports including the total amount of revenues
17 derived from fees and the percentage of gross receipts collected
18 pursuant to sections 6K-A and 6K-B from the Molokini shoal
19 marine life conservation district to the office of Hawaiian
20 affairs. The office of Hawaiian affairs shall deposit no less
21 than a matching amount to the Kaho'olawe rehabilitation trust
22 fund, established pursuant to section 6K-9.5."



1 SECTION 4. Section 6K-2, Hawaii Revised Statutes, is
2 amended by amending the definition of "island reserve" to read
3 as follows:

4 ""Island reserve" or "Kaho'olawe" or "island" means the area
5 designated as the island of Kaho'olawe and the submerged lands
6 and waters extending seaward two miles from its shoreline[-],
7 and the Molokini shoal marine life conservation district and the
8 waters extending seaward two miles from its boundaries."

9 SECTION 5. Section 6K-3, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "[~~§~~6K-3[~~§~~] **Reservation of uses.** (a) The [Kaho'olawe]
12 island reserve shall be used [~~solely and exclusively~~] for the
13 following purposes:

- 14 (1) Preservation and practice of all rights customarily
15 and traditionally exercised by native Hawaiians for
16 cultural, spiritual, and subsistence purposes;
- 17 (2) Preservation and protection of its archaeological,
18 historical, and environmental resources;
- 19 (3) Rehabilitation, revegetation, habitat restoration, and
20 preservation; [and]
- 21 (4) Education[-]; and
- 22 (5) Commercial uses.



1 (b) The island reserve shall be reserved in perpetuity for
2 the uses enumerated in subsection (a). [~~Commercial uses shall~~
3 ~~be strictly prohibited.~~]"

4 SECTION 6. Section 6K-9.5, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§6K-9.5 Kaho'olawe rehabilitation trust fund. (a) There
7 is created in the state treasury a trust fund to be designated
8 as the Kaho'olawe rehabilitation trust fund to be administered by
9 the department with the prior approval of the commission.

10 Subject to Public Law 103-139, and this chapter:

11 (1) All moneys received from the federal government for
12 the rehabilitation and environmental restoration of
13 the island of Kaho'olawe or other purposes consistent
14 with this chapter;

15 (2) Any moneys appropriated by the legislature to the
16 trust fund;

17 (3) Any moneys received from the office of Hawaiian
18 affairs pursuant to section 10- ;

19 (4) Any fees and percentage of gross receipts collected
20 pursuant to sections 6K-A and 6K-B determined by the
21 commission to be excess funds in accordance with
22 subsection (b);



1 (5) Any moneys received from grants, donations, or the
2 proceeds from contributions; and

3 ~~[(4)]~~ (6) The interest or return on investments earned from
4 moneys in the trust fund,

5 shall be deposited in the trust fund and shall be used to
6 fulfill the purposes of this chapter.

7 (b) There is established within the trust fund, a Molokini
8 shoal marine life conservation district sub-account, into which
9 shall be deposited all proceeds collected from user fees
10 pursuant to section 6K-B and any other fees and percentage of
11 gross receipts pursuant to section 6K-A for the use of the
12 Molokini shoal marine life conservation district and its waters.
13 The commission shall expend the moneys from the sub-account for
14 costs incurred in the management of the Molokini shoal marine
15 life conservation district and its waters. Any interest or
16 return on investments earned from the moneys in this sub-account
17 shall be deposited in the trust fund and shall be used to
18 fulfill the purposes of this chapter. If the fees deposited
19 into the sub-account exceed the annual expenditures of the
20 commission for the management of the Molokini shoal marine life
21 conservation district, the commission may deposit the excess



1 funds in the trust fund and use those funds to fulfill the
2 purposes of this chapter.

3 [~~(b)~~] (c) The commission may use moneys in the trust fund
4 to carry out the purposes of this chapter, including hiring
5 employees, specialists, and consultants necessary to complete
6 projects related to the purposes of this chapter.

7 [~~(e)~~] (d) Moneys deposited into or appropriated to the
8 trust fund shall remain available until they are obligated or
9 until the trust fund is terminated.

10 [~~(d)~~] (e) If the trust fund is terminated, all funds shall
11 be transferred to the general fund; provided that all unexpended
12 or unencumbered balances shall be disbursed in accordance with
13 any requirements set by funding sources and for purposes
14 consistent with this chapter.

15 [~~(e)~~] (f) The commission shall submit an annual report on
16 the status of the Kaho'olawe rehabilitation trust fund to the
17 legislature, no later than twenty days prior to the convening of
18 each regular session of the legislature. The annual report
19 shall include the total number of and amount of grants,
20 donations, and contributions received, including information on
21 the amount in the Molokini shoal marine life conservation



1 district sub-account, and balances remaining on June 30 of each
2 year."

3 SECTION 7. All appropriations, records, equipment,
4 machines, files, supplies, contracts, books, papers, documents,
5 maps, and other personal property heretofore made, used,
6 acquired, or held by the department of land and natural
7 resources, division of aquatic resources relating to the
8 functions transferred to the Kaho'olawe island reserve commission
9 shall be transferred with the functions to which they relate.

10 SECTION 8. In codifying the new sections added by section
11 2 of this Act, the revisor of statutes shall substitute
12 appropriate section numbers for the letters used in designating
13 the new sections in this Act.

14 SECTION 9. If any provision of this Act, or the
15 application thereof to any person or circumstance is held
16 invalid, the invalidity does not affect other provisions or
17 applications of the Act, which can be given effect without the
18 invalid provision or application, and to this end the provisions
19 of this Act are severable.

20 SECTION 10. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

22



1 SECTION 11. This Act shall take effect on July 1, 2050.

2



Report Title:

Molokini; Kaho'olawe Rehabilitation Trust Fund; User Fee

Description:

Transfers authority for the Molokini shoal marine life conservation district and its waters from DLNR to KIRC; authorizes KIRC to issue commercial permits and collect fees, including a user fee, and gross receipts for the use of Molokini shoal marine life conservation district; requires the office of Hawaiian affairs to provide no less than matching funds to KIRC for any fees collected; authorizes KIRC to engage in commercial activities; establishes a Molokini shoal marine life conservation district sub-account in the Kahoolawe rehabilitation trust fund for the management and maintenance of Molokini and its waters with the excess funds to be deposited into the trust fund; effective 7/1/50. (SD1)

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