

JAN 23 2015

A BILL FOR AN ACT

RELATING TO KAHO'OLAWE ISLAND RESERVE.

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

1 SECTION 1. The Hawaii supreme court, in *Carlisle v. One*
2 (1) *Boat*, overturned an intermediate court of appeals decision
3 that allowed non-natural resource forfeiture in cases of natural
4 resource destruction or degradation. According to the decision,
5 the substantive offense provisions of administrative rules
6 relating to resource protection, which would include those of
7 the Kaho'olawe island reserve commission, must specifically
8 authorize forfeiture.

9 The purpose of this Act is to clarify that any equipment,
10 article, instrument, aircraft, vehicle, vessel, business record,
11 or natural resource used or taken in violation of the rules
12 applicable to the Kaho'olawe island reserve may be seized and
13 subject to forfeiture pursuant to section 199-7 and chapter
14 712A, Hawaii Revised Statutes.

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



1 "§6K- Offenses subject to forfeiture. (a) Property or
2 natural resources used or taken in violation of the provisions
3 of chapter 6K or rules adopted thereunder that establish the
4 following offenses, committed without the consent of the
5 commission or its authorized representative, shall be subject to
6 forfeiture as provided by rules adopted pursuant to section 6K-
7 6(9):

- 8 (1) Conducting any commercial activity;
- 9 (2) Taking, disturbing, injuring, killing, or possessing
10 any living natural resource;
- 11 (3) Removing, damaging, or disturbing any natural feature,
12 natural resource, or historic or prehistoric cultural
13 object, artifact, or remains, or parts thereof;
- 14 (4) Altering, defacing, or destroying any rock or other
15 geological feature;
- 16 (5) Possessing any firearm, bow and arrow, spear gun,
17 trap, snare, poison, or device designed to take,
18 capture, or kill wildlife in the reserve;
- 19 (6) Possessing any explosives or fireworks, or starting or
20 maintaining a fire;



- 1 (7) Entering any area posted with a sign warning of
- 2 danger, kapu, or restricted entry;
- 3 (8) Removing, damaging, or disturbing any notice, sign,
- 4 marker, fence, or structure;
- 5 (9) Introducing any animals, domestic or wild, or any form
- 6 of plant; or
- 7 (10) Possessing any fishing gear, device, or noxious
- 8 chemical used for taking any aquatic life or altering
- 9 any geological feature or specimen;

10 provided that the offense occurs within the fast lands of the
11 reserve or by persons or on vessels located in the area
12 extending seaward one nautical mile of the shoreline of the
13 Kaho'olawe island.

14 (b) Any property used or any natural resource taken in the
15 commission of an offense enumerated in subsection (a) may be
16 seized in accordance with section 199-7 and forfeited pursuant
17 to administrative or judicial in rem forfeiture proceedings
18 conducted pursuant to chapter 712A. In the alternative, any
19 natural resource seized pursuant to this section may be disposed
20 by the department according to procedures established in section
21 199-7."



1 SECTION 3. Section 6K-6, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§6K-6 Responsibilities and duties of the commission. The
4 general administration of the island reserve shall rest with the
5 commission. In carrying out its duties and responsibilities,
6 the commission:

- 7 (1) Shall establish criteria, policies, and controls for
8 permissible uses within the island reserve;
- 9 (2) Shall approve all contracts for services and rules
10 pertaining to the island reserve;
- 11 (3) Shall provide advice to the governor, the department,
12 and other departments and agencies on any matter
13 relating to the island reserve;
- 14 (4) Shall provide advice to the office of planning and the
15 department of the attorney general on any matter
16 relating to the federal conveyance of Kaho'olawe;
- 17 (5) May enter into curator or stewardship agreements with
18 appropriate Hawaiian cultural and spiritual community
19 organizations for the perpetuation of native Hawaiian
20 cultural, religious, and subsistence customs, beliefs,
21 and practices for the purposes stated in section 6K-3;



- 1 (6) Shall carry out those powers and duties otherwise
2 conferred upon the board of land and natural resources
3 and the land use commission with regard to
4 dispositions and approvals pertaining to the island
5 reserve. All powers and duties of the board of land
6 and natural resources and the land use commission
7 concerning dispositions and approvals pertaining to
8 the island reserve are transferred to the commission;
- 9 (7) Shall carry out those powers and duties concerning the
10 island reserve otherwise conferred upon the county of
11 Maui by chapter 205A. The powers and duties of the
12 county of Maui and its agencies concerning coastal
13 zone dispositions and approvals pertaining to the
14 island reserve are transferred to the commission;
- 15 (8) Shall carry out those powers and duties concerning the
16 island reserve otherwise conferred upon the island
17 burial councils and the department with regard to
18 proper treatment of burial sites and human skeletal
19 remains found in the island reserve;
- 20 (9) Shall adopt rules in accordance with chapter 91 that
21 are necessary for the purposes of this chapter and



S.B. NO. 470

1 [shall], as appropriate, provide for forfeiture
2 pursuant to chapter 712A for violations enumerated in
3 section 6K- ;

4 (10) Shall maintain a record of its proceedings and
5 actions;

6 ~~[(10)]~~ (11) May delegate to the executive director or
7 employees of the commission, by formal commission
8 action, such power and authority vested in the
9 commission by this chapter as the commission deems
10 reasonable and proper for the effective administration
11 of this chapter; and

12 ~~[(11)]~~ (12) May solicit and accept grants, donations, and
13 contributions for deposit into the Kaho'olawe
14 rehabilitation trust fund to support the purposes of
15 this chapter."

16 SECTION 4. This Act does not affect rights and duties that
17 matured, penalties that were incurred, and proceedings that were
18 begun before its effective date.

19 SECTION 5. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.



S.B. NO. 470

1 SECTION 6. This Act shall take effect upon its approval.

2

INTRODUCED BY: ~~SEN. SC. [Signature]~~
Randy H. Blum



S.B. NO. 470

Report Title:

Kaho'olawe Island Reserve; Forfeiture

Description:

Clarifies that property or natural resources used or taken in violation of laws applicable to the Kaho'olawe island reserve shall be subject to forfeiture.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

