



## TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-EIGHTH LEGISLATURE, 2015

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 470, RELATING TO KAHO'OLAWA ISLAND RESERVE.

**BEFORE THE:**

SENATE COMMITTEES ON HAWAIIAN AFFAIRS AND ON WATER AND LAND

**DATE:** Monday, February 9, 2015

**TIME:** 1:50 p.m.

**LOCATION:** State Capitol, Room 224

**TESTIFIER(S):** Russell A. Suzuki, Attorney General, or  
Daniel A. Morris, Deputy Attorney General

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Chairs Shimabukuro and Thielen and Members of the Committee:

The Department of the Attorney General supports the intent of this bill and provides the following comments and recommendations to amend the wording of the bill.

This bill clarifies that property or natural resources used or taken in violation of the laws applicable to the Kahoolawe island reserve shall be subject to forfeiture.

While the Department of the Attorney General supports the intent of this bill, we recommend changes to the wording of the bill to address issues raised by the Hawaii Supreme Court in Carlisle v. One (1) Boat, 119 Haw. 245, 195 P.3d 1177 (2008). Carlisle v. One (1) Boat held that penalty provisions for violations of laws or administrative rules relating to resource protection must specifically authorize forfeiture. The laws and administrative rules pertaining to the Kaho'olawe island reserve are similar to those addressed in Carlisle v. One (1) Boat, and this bill does not adequately address the guidance from the Hawaii Supreme Court. Accordingly, the Department of the Attorney General recommends that the wording of the bill be changed to amend the title of section 6K-8 by adding the phrase "offenses subject to forfeiture" to the existing title of "Penalty", and including a new subsection in section 6K-8 to read as follows: "Property or natural resources used or taken in violation of this chapter or rules adopted by the department or the commission shall be subject to seizure, disposal, and forfeiture in accordance with section 199-7 and the procedures under chapter 712A; provided that the offense occurs within the fast lands of the reserve or by persons or on vessels located in the area extending seaward one nautical mile of the shoreline of Kaho'olawe island."

We respectfully ask the Committees to pass this bill with the recommended amendments.