

## ACT 340

H.B. NO. 2015

A Bill for an Act Relating to the Island of Kaho'olawe.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the island of Kaho'olawe is of significant cultural and historic importance to the native people of Hawaii. The island had been used as a military target range since 1941. In 1990, the bombing and shelling of the island was halted by Congress and the President of the United States. A federal commission, known as the Kaho'olawe Island Conveyance Commission, was created by Congress to determine the terms of conveyance of the island to the State of Hawaii.

The legislature further finds, because of extensive erosion and other ecological problems, the presence of unexploded ordnance, archaeological and other cultural and historic sites, and the presence of native and endangered flora and fauna, that federal resources, as well as a new management regime are needed to effectively meet the unique challenges of restoring, preserving, and determining the appropriate use of Kaho'olawe.

The legislature recognizes the continuing stewardship role of the Protect Kaho'olawe Ohana.

The purpose of this Act is to establish the Kaho'olawe island reserve commission which shall have policy and management oversight of the Kaho'olawe

island reserve. The establishment of the commission will provide a system that recognizes the island's unique challenges and preserves in perpetuity the island's cultural and historic resources for the people of Hawaii.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
KAHO‘OLAWE ISLAND RESERVE**

§ -1 **Administration of chapter.** The Kaho‘olawe island reserve commission and the department of land and natural resources shall administer this chapter.

§ -2 **Definitions.** As used in this chapter, unless the context otherwise requires:

“Commission” means the Kaho‘olawe island reserve commission.

“Department” means the department of land and natural resources.

“Island reserve” means the area designated as the island of Kaho‘olawe and the submerged lands and waters extending seaward two miles from its shoreline.

“Waters” means the area extending seaward two miles from the shoreline.

§ -3 **Reservation of uses.** (a) The Kaho‘olawe island reserve shall be used solely and exclusively for the following purposes:

- (1) Preservation and practice of all rights customarily and traditionally exercised by native Hawaiians for cultural, spiritual, and subsistence purposes;
- (2) Preservation and protection of its archaeological, historical, and environmental resources;
- (3) Rehabilitation, revegetation, habitat restoration, and preservation; and
- (4) Education.

(b) The island shall be reserved in perpetuity for the uses enumerated in subsection (a). Commercial uses shall be strictly prohibited.

§ -4 **Powers and duties.** The department and other departments and agencies of the State shall be subject to the oversight of the commission with regard to the control and management of the island reserve. Subject to section -6, the department shall:

- (1) Adopt rules pursuant to chapter 91 after the commission has approved the rules;
- (2) Implement controls and permitted uses for the island reserve;
- (3) Enforce this chapter;
- (4) Provide administrative support to the commission; and
- (5) Authorize such of its employees as it deems reasonable and necessary to serve and execute warrants and arrest offenders or issue citations in all matters relating to enforcement of the laws and rules applicable to the island reserve.

§ -5 **Commission.** (a) There is established the Kaho‘olawe island reserve commission to be placed within the department of land and natural resources for administrative purposes as provided in section 26-35. The commission shall consist of seven members to be appointed in the manner and to serve for the terms provided in section 26-34; provided that:

- (1) One member shall be a member of the Protect Kaho'olawe Ohana;
  - (2) Two members shall be appointed by the governor from a list provided by the Protect Kaho'olawe Ohana;
  - (3) One member shall be a trustee or representative of the office of Hawaiian affairs;
  - (4) One member shall be a county official appointed by the governor from a list provided by the mayor of the county of Maui;
  - (5) One member shall be the chairperson of the board of land and natural resources; and
  - (6) One member shall be appointed by the governor from a list provided by native Hawaiian organizations.
- (b) The governor shall appoint the chairperson from among the members of the commission.
- (c) The members of the commission shall serve without pay but shall be reimbursed for their actual and necessary expenses, including travel expenses, incurred in carrying out their duties.
- (d) Any action taken by the commission shall be approved by a simple majority of its members. Four members shall constitute a quorum to do business.
- (e) The commission may hire employees necessary to perform its duties, including administrative personnel, as provided in section 26-35.
- (f) The commission shall adopt rules in accordance with chapter 91 to guide its conduct and shall maintain a record of its proceedings and actions.

**§ -6 Responsibilities and duties of the commission.** The commission shall:

- (1) Establish criteria, policies, and controls for permissible uses within the island reserve;
- (2) Approve all contracts for services and rules pertaining to the island reserve;
- (3) Provide advice to the governor, the department, and other departments and agencies on any matter relating to the island reserve;
- (4) Provide advice to the office of state planning and the department of the attorney general on any matter relating to the federal conveyance of Kaho'olawe;
- (5) Enter into curator or stewardship agreements with appropriate Hawaiian cultural and spiritual community organizations for the perpetuation of native Hawaiian cultural, religious, and subsistence customs, beliefs, and practices for the purposes stated in section -3;
- (6) Carry out those powers and duties otherwise conferred upon the board of land and natural resources and the land use commission with regard to land dispositions and land use approvals pertaining to the island reserve. All powers and duties of the board of land and natural resources and the land use commission concerning land dispositions and land use approvals pertaining to the island reserve are transferred to the commission; and
- (7) Carry out those powers and duties concerning the island reserve otherwise conferred upon the county of Maui by chapter 205A. The powers and duties of the county of Maui and its agencies concerning coastal zone disposition and approvals pertaining to the island reserve are transferred to the commission.

**§ -7 Fishing.** Section -3 of this chapter notwithstanding, the commission shall adopt rules pursuant to chapter 91 to permit fishing in the waters around

## ACT 340

Kaho'olawe that are consistent with the purpose of this chapter and that take into consideration the health and safety of the general public.

§ -8 **Penalty.** Any person who violates any of the laws or rules applicable to the island reserve shall be guilty of a misdemeanor and shall be fined not more than \$1,000 or imprisoned not more than one year, or both, for each offense. Each day of each violation shall be deemed a separate offense.

§ -9 **Transfer.** Upon its return to the State, the resources and waters of Kaho'olawe shall be held in trust as part of the public land trust; provided that the State shall transfer management and control of the island and its waters to the sovereign native Hawaiian entity upon its recognition by the United States and the State of Hawaii.

All terms, conditions, agreements, and laws affecting the island, including any ongoing obligations relating to the clean-up of the island and its waters, shall remain in effect unless expressly terminated.

§ -10 **Severability.** If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

SECTION 3. The office of state planning and the department of the attorney general, after consulting with the Kaho'olawe island reserve commission, are authorized to initiate the conveyance of Kaho'olawe to the State; provided that, before the island of Kaho'olawe is conveyed to the State, agreements shall be executed with regard to liability, monetary resources, rehabilitation, and removal of ordnance and other hazardous wastes.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$137,500, or so much thereof as may be necessary for fiscal year 1993-1994, to carry out the purposes of this Act.

The sum appropriated shall be expended by the department of land and natural resources.

SECTION 5. This Act shall take effect upon its approval; except that section 4 shall take effect on July 1, 1993.

(Approved June 30, 1993.)