

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

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

SECTION 1. In 1994, the United States enacted a law requiring the conveyance of the island of Kaho'olawe to the State, the removal of unexploded ordnance, and environmental restoration of the island. Kaho'olawe was placed under federal receivership to clear the ordnance, and the legislature consequently formed the Kaho'olawe island reserve commission to manage the island and its surrounding waters on behalf of the State. The Kaho'olawe island reserve commission entered into an agreement with the United States Navy regarding the terms and scope of the unexploded ordnance removal and environmental restoration project. However, the United States Navy has informed the State that the unexploded ordnance removal and environmental restoration project will not be completed to previously agreed-upon standards before the congressionally-mandated project sunsets in November 2003, when control of access to the island is transferred to the State.

Kaho'olawe and its surrounding waters still contain hazards from residual unexploded ordnance. Persons accessing Kaho'olawe and its surrounding waters will be exposed to these hazardous conditions. The legislature finds that in advance of the 2003 transfer, it is necessary to put measures in place that establish a balance between public access and use of Kaho'olawe, and the government's interest in, and responsibility for public safety.

The purpose of this Act is to establish a process by which the State provides meaningful warnings to the public regarding the ordnance hazards of Kaho'olawe. Under this process, the State is protected from liability if it has provided the public with adequate warning of the ordnance on and around the island through the design and placement of warning signs or devices. The legislature believes this Act will allow a warning system to be developed for Kaho'olawe and its surrounding waters that will increase public safety and reduce the potential for unexploded ordnance-related accidents.

SECTION 2. Chapter 662, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§662- Conclusive presumptions; unexploded ordnance on Kaho'olawe and in the ocean adjacent to Kaho'olawe.** (a) The State shall have a duty to warn persons who enter the Kaho'olawe island reserve specifically of the dangers posed by unexploded ordnance on the island or in the adjacent ocean.

(b) A sign, signs, or other device warning of the dangers posed by unexploded ordnance on the island or in the adjacent ocean shall be conclusively presumed to be legally adequate to warn of those dangers if:

- (1) The State posts the sign, signs, or other device on the island; and
- (2) The design and placement of the sign, signs, or other device is approved by the Kaho'olawe island reserve commission.

(c) Prior to approving the design and placement of a warning sign, signs, or device under this section, the Kaho'olawe island reserve commission shall:

- (1) Consider the needs of the public to be warned of the dangers posed by unexploded ordnances on the island and in its adjacent ocean; and
- (2) Consult the task force on warning signs and devices for the Kaho'olawe island reserve.

The Kaho'olawe island reserve commission may seek the advice of the United States Navy or other agency of the United States of America with respect to the appropriate

design of warning signs or devices and their placement. The Kaho'olawe island reserve commission may require warning signs or devices in addition to the signage before approving the design and placement of a warning sign or device.

(d) Approval of the design and placement of a warning sign or device under this section shall be a discretionary function under section 662-15(1).

(e) If a warning sign or device posted or established in accordance with this section is vandalized, otherwise removed, or made illegible, the conclusive presumption provided by subsection (b) shall continue for a period of ten days from the date that the vandalism, removal, or illegibility is discovered by the State. The Kaho'olawe island reserve commission shall maintain a record regarding each report of vandalism, removal, or illegibility that results in the replacement of a warning sign or device on the island of Kaho'olawe. The record shall include the date and time of the report and of the replacement of the warning sign or device.

(f) Chapter 91 shall not apply to any action taken, or any procedure followed by the Kaho'olawe island reserve commission pursuant to this section."

SECTION 3. There is established a task force on warning signs and devices for the Kaho'olawe island reserve, to be administratively attached to the Kaho'olawe island reserve commission. The task force shall provide consultation to the Kaho'olawe island reserve commission regarding the design and placement of warning signs and devices on the island and in the adjacent ocean. The task force shall consist of the following members, who shall serve without compensation:

- (1) The chairperson of the Kaho'olawe island reserve commission, or the chairperson's designated representative;
- (2) The chairperson of the board of land and natural resources, or the chairperson's designated representative; and
- (3) Four persons appointed by the chairperson of the board of land and natural resources knowledgeable in public safety issues pertaining to the dangers existing on the island of Kaho'olawe.

The task force shall be chaired by the chairperson of the Kaho'olawe island reserve commission.

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

SECTION 5. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 6. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect upon its approval; provided that section 2 of this Act shall take effect upon transfer of control of access to Kaho'olawe from the United States Navy to the State of Hawaii.

(Approved June 28, 2002.)

#### Note

1. Edited pursuant to HRS §23G-16.5.