

JAN 18 2008

A BILL FOR AN ACT

RELATING TO HA`IKU VALLEY.

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

1

2 SECTION 1. The legislature finds that Ha`iku valley on
3 Oahu is of significant cultural and historic importance to the
4 native people of Hawai`i. Ha`iku valley is renowned for its
5 archaeological and other cultural and historic sites, including
6 lo`i, sacred sites, and burial sites, and for the presence of
7 native and endangered flora and fauna. Preserving the valley's
8 cultural and historic resources and educating the public about
9 these resources are of paramount importance.

10 The legislature further finds that ownership of the valley
11 is segmented among several entities. The valley's segmented
12 ownership and limited stewardship have placed its cultural and
13 historic resources at high risk. Adequate management of the
14 valley, and appropriate access to the valley, have proven
15 elusive.

16 The purpose of this Act is to establish the Ha`iku Valley
17 cultural preserve commission, which shall have policy and
18 management oversight of the Ha`iku Valley cultural preserve.



1 The establishment of the commission will provide a system that
2 recognizes the valley's unique challenges and preserves in
3 perpetuity its cultural and historic resources for the people of
4 Hawai`i.

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

8 "CHAPTER

9 HA`IKU VALLEY CULTURAL PRESERVE

10 § -1 Administration of chapter. The Ha`iku valley
11 cultural preserve commission and the office of Hawaiian affairs
12 shall administer this chapter.

13 § -2 Definitions. As used in this chapter, unless the
14 context otherwise requires:

15 "Commission" means the Ha`iku valley cultural preserve
16 commission.

17 "Department" means the department of land and natural
18 resources.

19 "Office" means the office of Hawaiian affairs.

20 "Valley cultural preserve" means the area designated as
21 Ha`iku valley.



1 **§ -3 Reservation of uses.** (a) The Ha'iku valley
2 cultural preserve shall be used solely and exclusively for the
3 following purposes:

4 (1) Preservation and practice of all rights customarily
5 and traditionally exercised by native Hawaiians for
6 cultural, spiritual, and subsistence purposes;

7 (2) Preservation and protection of the area's cultural,
8 archaeological, historical, and environmental
9 resources;

10 (3) Rehabilitation, revegetation, habitat restoration, and
11 preservation;

12 (4) Education; and

13 (5) Other purposes as determined by the commission.

14 (b) The valley shall be reserved in perpetuity for the
15 uses enumerated in this section. Commercial uses shall be
16 strictly prohibited.

17 **§ -4 Powers and duties.** The office and other
18 departments and agencies of the State shall be subject to the
19 oversight of the commission with regard to the control and
20 management of the valley cultural preserve. Subject to section
21 -6, the office shall:



- 1 (1) Implement controls and permitted uses for the valley
- 2 cultural preserve;
- 3 (2) Enforce this chapter;
- 4 (3) Provide administrative support to the commission; and
- 5 (4) Authorize those of its employees as it deems
- 6 reasonable and necessary to serve and execute warrants
- 7 and arrest offenders or issue citations in all matters
- 8 relating to enforcement of the laws and rules
- 9 applicable to the valley cultural preserve.

10 **§ -5 Commission.** (a) There is established the Ha`iku
11 valley cultural preserve commission to be placed within the
12 office of Hawaiian affairs for administrative purposes as
13 provided in section 26-35. The commission shall consist of
14 seven members to be appointed in the manner and to serve for the
15 terms provided in section 26-34; provided that:

- 16 (1) One member shall be a member of the Ko`olau
- 17 Foundation;
- 18 (2) Two members shall be appointed by the governor from a
- 19 list provided by the Ko`olaupoko Hawaiian Civic Club;
- 20 (3) One member shall be a representative of the office of
- 21 Hawaiian affairs;

1 (4) One member shall be an official of the city and county
2 of Honolulu appointed by the governor from a list of
3 nominees provided by the mayor of the city and county
4 of Honolulu;

5 (5) One member shall be a representative of the board of
6 land and natural resources; and

7 (6) One member shall be appointed by the governor from a
8 list provided by native Hawaiian organizations.

9 (b) The chairperson shall be elected from among the
10 members of the commission and by the members of the commission.

11 (c) The members of the commission shall serve without pay
12 but shall be reimbursed for their actual and necessary expenses,
13 including travel expenses, incurred in carrying out their
14 duties.

15 (d) Any action taken by the commission shall be approved
16 by a simple majority of its members. Four members shall
17 constitute a quorum to do business.

18 (e) The commission, without regard to the requirements of
19 chapter 76, may hire employees necessary to perform its duties.

20 **§ -6 Responsibilities and duties of the commission.** The
21 general administration of the valley cultural preserve shall



1 rest with the commission. In carrying out its duties and
2 responsibilities, the commission:

3 (1) Shall establish criteria, policies, and controls for
4 permissible uses within the valley cultural preserve;

5 (2) Shall approve all contracts for services and rules
6 pertaining to the valley cultural preserve;

7 (3) Shall provide advice to the office, the governor, the
8 department, and other departments and agencies on any
9 matter relating to the valley cultural preserve;

10 (4) Shall provide advice to the office of planning and the
11 department of the attorney general on any matter
12 relating to the conveyance of Ha`iku valley to the
13 office;

14 (5) May enter into curator or stewardship agreements with
15 appropriate Hawaiian cultural and spiritual community
16 organizations for the perpetuation of native Hawaiian
17 cultural, religious, and subsistence customs, beliefs,
18 and practices for the purposes stated in section -3;

19 (6) Shall carry out those powers and duties otherwise
20 conferred upon the board of land and natural resources
21 and the land use commission with regard to
22 dispositions and approvals pertaining to the valley



1 cultural preserve. All powers and duties of the board
2 of land and natural resources and the land use
3 commission concerning dispositions and approvals
4 pertaining to the valley cultural preserve shall be
5 transferred to the commission;

6 (7) Shall carry out those powers and duties concerning the
7 valley cultural preserve otherwise conferred upon the
8 city and county of Honolulu by chapter 205A;

9 (8) Shall carry out those powers and duties concerning the
10 valley cultural preserve otherwise conferred upon the
11 island burial councils and the department of land and
12 natural resources with regard to proper treatment of
13 burial sites and human skeletal remains found in the
14 valley preserve;

15 (9) Shall adopt rules in accordance with chapter 91 that
16 are necessary for the purposes of this chapter and
17 shall maintain a record of its proceedings and
18 actions;

19 (10) May delegate to the executive director or employees of
20 the commission, by formal commission action, such
21 power and authority vested in the commission by this



1 chapter as the commission deems reasonable and proper
2 for the effective administration of this chapter; and
3 (11) May solicit and accept grants, donations, and
4 contributions for deposit into the Ha`iku valley
5 cultural preserve trust fund to support the purposes
6 of this chapter.

7 **§ -7 Farming.** Section -3 notwithstanding, the
8 commission shall adopt rules pursuant to chapter 91 to permit
9 farming activities in the valley cultural preserve that are
10 consistent with the purpose of this chapter and that take into
11 consideration the health and safety of the general public.

12 **§ -8 Penalty.** Any person who violates any of the laws
13 or rules applicable to the valley cultural preserve shall be
14 guilty of a petty misdemeanor and shall be fined not more than
15 \$1,000 imprisoned not more than thirty days, or both, for each
16 offense. Each day of each violation shall be deemed a separate
17 offense.

18 **§ -9 General administrative penalties.** (a) Except as
19 otherwise provided by law, the commission is authorized to set,
20 charge, and collect administrative fines, or bring legal action
21 to recover administrative costs of the commission or the
22 department, or payment for damages, or for the cost to correct



1 damages resulting from a violation of this chapter or any rule
2 adopted hereunder. The administrative fines shall be as
3 follows:

4 (1) For a first violation, a fine of not more than
5 \$10,000;

6 (2) For a second violation within five years of a previous
7 violation, by a fine of not more than \$15,000; and

8 (3) For a third or subsequent violation within five years
9 of the last violation, by a fine of not more than
10 \$25,000.

11 (b) In addition, an administrative fine of up to \$5,000
12 may be levied for each specimen of natural resource or any
13 historic property taken, killed, injured, broken, or damaged in
14 violation of any rule adopted under this chapter. For purposes
15 of this section, "natural resource" includes any archaeological
16 artifacts, minerals, any aquatic life or wildlife or parts
17 thereof, including their eggs, and any land plants or parts
18 thereof, including seeds. Also for purposes of this section,
19 "historic property" means any building, structure, object,
20 districts, landscapes, area, or site, including heiau and
21 underwater sites, that is over fifty years old.



1 (c) Any criminal penalty for any violation of this
2 chapter or any rule adopted under this chapter shall not be
3 deemed to preclude the commission from bringing a civil legal
4 action to recover additional administrative fines and costs.
5 Any civil legal action against a person to recover
6 administrative fines and costs for any violation of this chapter
7 or any rule adopted under this chapter shall not be deemed the
8 State from pursuing any criminal action against that person.

9 (d) In any judicial proceeding to recover an
10 administrative penalty imposed, the commission need only show
11 that notice was given, that a hearing was held or the time
12 granted for requesting a hearing has run without such a request,
13 that an administrative penalty was imposed; and the
14 administrative penalty remains unpaid.

15 **§ -10 Administrative violation system.** With the mutual
16 consent of both the commission and the department, the
17 commission may use the civil natural resource violations system
18 of the department of land and natural resources; provided that
19 the commission shall act whenever the board is authorized to
20 act, to process violations of this chapter or any rules adopted
21 hereunder.



1 **§ -11 Transfer.** Upon its conveyance to the office, the
2 resources and waters of the valley cultural preserve shall be
3 held in trust by the office as part of the public land trust;
4 provided that the office shall transfer management and control
5 of the valley cultural preserve to the sovereign native Hawaiian
6 entity upon its recognition by the United States and the State.

7 All terms, conditions, agreements, and laws affecting the
8 valley shall remain in effect unless expressly terminated.

9 **§ -12 Ha`iku valley cultural preserve trust fund.** (a)

10 There is created in the state treasury a trust fund to be
11 designated as the Ha`iku valley cultural preserve trust fund to
12 be administered by the office with the prior approval of the
13 commission. Subject to this chapter:

14 (1) All moneys received from the federal government for
15 purposes consistent with this chapter;

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

18 (3) Any moneys received from grants, donations, or the
19 proceeds from contributions; and

20 (4) The interest or return on investments earned from
21 moneys in the trust fund;



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

3 (b) The commission may use moneys in the trust fund to
4 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 (c) Moneys deposited into or appropriated to the trust
8 fund shall remain available until they are obligated or until
9 the trust fund is terminated.

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

15 (e) The commission shall submit an annual report on the
16 status of the Ha`iku valley cultural preserve 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 and balances remaining on
21 June 30 of each year.



1 **§ -13 Severability.** If any provision of this chapter or
2 the application thereof to any person or circumstance is held
3 invalid, the invalidity shall not affect other provisions or
4 applications of this chapter that can be given effect without
5 the invalid provision or application, and to this end the
6 provisions of this chapter are severable."

7 SECTION 3. The office of state planning and the department
8 of the attorney general, after consulting with the Ha`iku valley
9 cultural preserve commission, are authorized to initiate the
10 conveyance of all of Ha`iku valley in fee simple to the office
11 of Hawaiian affairs; provided that before the valley is conveyed
12 to the office, agreements shall be executed with respect to
13 liability, monetary resources, and removal of hazardous wastes.

14 SECTION 4. There is appropriated out of the general
15 revenues of the State of Hawaii the sum of \$ or so
16 much thereof as may be necessary for fiscal year 2008-2009 for
17 the purposes of this Act, including but not limited to the
18 acquisition of Ha`iku valley by the office of Hawaiian affairs.

19 The sum appropriated shall be expended by the office of
20 Hawaiian affairs for the purposes of this Act.



S.B. NO. 2727

1 SECTION 5. This Act shall take effect upon its approval;
2 except that section 4 shall take effect on July 1, 2008.

3

INTRODUCED BY: _____

By Request

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Report Title:

Ha'iku Valley

Description:

Establishes the Ha'iku Valley cultural preserve commission to have policy and management oversight of the Ha'iku Valley cultural preserve.

