



GOV. MSG. NO. 902

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 8, 2008

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith HB2704 HD2 SD1 CD1, without my approval, and with the statement of objections relating to the measure.

HB2704 HD2 SD1 CD1

A BILL FOR AN ACT RELATING TO HA'IKU
VALLEY.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Lingle".

LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

July 8, 2008

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 2704

Honorable Members
Twenty-Fourth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 2704, entitled "A Bill for an Act Relating to Ha`iku Valley."

The purpose of this bill is to establish a 9-member Ha`iku Valley Commission to establish policy and management oversight of an area referred to as the Ha`iku Valley Preserve.

This Administration supports cultural preservation of the valley and the many unique sites and artifacts that currently are located in this area. We understand and appreciate the concerns of the community in ensuring these sites are properly protected.

However, this bill is objectionable for several reasons. First, the measure fails to define the boundaries of the preserve. The bill proposes to purchase lands in the preserve area in fee simple, but fails to provide appropriations or other funding mechanisms to make purchases. It should be noted that most of the lands are privately held. The balance of the lands are held by the Department of Hawaiian Home Lands on behalf of their beneficiaries.

Further, it is unclear what would be gained from the fee simple purchase by the State of said lands. It should be noted that much of the mauka portion of the valley is already classified as conservation land. There are a number of laws already in place that control what can be done on conservation

STATEMENT OF OBJECTIONS
HOUSE BILL NO. 2704
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land, including fines and penalties against those who improperly use or trespass on these lands. The fines proposed in this bill appear to be unduly punitive.

This Administration believes that it is possible to address many of the issues raised by persons within the Hawaiian community and others who want to ensure that this unique area is properly maintained. I have already asked my Departments of Hawaiian Home Lands and Land and Natural Resources and Transportation to work with community members and federal officials to develop a long term approach that avoids the need for legislation and ensures access for all, while preserving the beauty and cultural significance of the valley.

For the foregoing reasons, I am returning House Bill No. 2704 without my approval.

Respectfully,



LINDA LINGLE
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO HA'IKU VALLEY.

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

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

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

14 The purpose of this Act is to establish the Ha'iku Valley
15 cultural preserve commission, which shall have policy and
16 management oversight of the Ha'iku Valley cultural preserve.
17 The establishment of the commission will provide a system that
18 recognizes the valley's unique challenges and preserves in



1 perpetuity its cultural and historic resources for the people of
2 Hawai'i.

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

6 "CHAPTER

7 HA'IKU VALLEY CULTURAL PRESERVE

8 § -1 Administration of chapter. The Ha'iku valley
9 cultural preserve commission and the department of land and
10 natural resources shall administer this chapter.

11 § -2 Definitions. As used in this chapter, unless the
12 context otherwise requires:

13 "Commission" means the Ha'iku valley cultural preserve
14 commission.

15 "Department" means the department of land and natural
16 resources.

17 "Valley cultural preserve" means the area designated as
18 Ha'iku valley.

19 § -3 Reservation of uses. (a) The Ha'iku valley
20 cultural preserve shall be used solely and exclusively for the
21 following purposes:



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

4 (2) Preservation and protection of the area's cultural,
5 archaeological, historical, and environmental
6 resources;

7 (3) Rehabilitation, revegetation, habitat restoration, and
8 preservation;

9 (4) Education; and

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

11 (b) The valley cultural preserve shall be reserved in
12 perpetuity for the uses enumerated in this section. Commercial
13 uses shall be strictly prohibited.

14 § -4 Powers and duties of the department. The
15 department and other departments and agencies of the State shall
16 be subject to the oversight of the commission with regard to the
17 control and management of the valley cultural preserve. Subject
18 to section -6, the department shall:

19 (1) Implement controls and permitted uses for the valley
20 cultural preserve;

21 (2) Enforce this chapter;

22 (3) Provide administrative support to the commission; and



1 (4) Authorize those of its employees as it deems
2 reasonable and necessary to serve and execute warrants
3 and arrest offenders or issue citations in all matters
4 relating to enforcement of the laws and rules
5 applicable to the valley cultural preserve.

6 § -5 Commission. (a) There is established the Ha'iku
7 valley cultural preserve commission to be placed within the
8 department for administrative purposes as provided in section
9 26-35. The commission shall consist of nine members to be
10 appointed in the manner and to serve for the terms provided in
11 section 26-34; provided that:

12 (1) One member shall be a member of the Ko'olau
13 Foundation;

14 (2) Two members shall be appointed by the governor from a
15 list provided by the Ko'olaupoko Hawaiian Civic Club;

16 (3) One member shall be a representative of the office of
17 Hawaiian affairs;

18 (4) One member shall be an official of the city and county
19 of Honolulu appointed by the governor from a list of
20 nominees provided by the mayor of the city and county
21 of Honolulu;



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

3 (6) One member shall be appointed by the governor from a
4 list provided by native Hawaiian organizations; and

5 (7) Two members shall be appointed by the governor from a
6 list provided by the kupa'aina families living on the
7 kuleana lands in the valley cultural preserve.

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

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

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

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

19 § -6 Powers and duties of the commission. The general
20 administration of the valley cultural preserve shall rest with
21 the commission. The commission:



- 1 (1) Shall establish criteria, policies, and controls for
- 2 permissible uses within the valley cultural preserve;
- 3 (2) Shall approve all contracts for services and rules
- 4 pertaining to the valley cultural preserve;
- 5 (3) Shall provide advice to the office of Hawaiian
- 6 affairs, the governor, the department, and other
- 7 departments and agencies on any matter relating to the
- 8 valley cultural preserve;
- 9 (4) Shall provide advice to the office of planning and the
- 10 department of the attorney general on any matter
- 11 relating to the conveyance of the valley cultural
- 12 preserve to the department;
- 13 (5) May enter into curator or stewardship agreements with
- 14 appropriate Hawaiian cultural and spiritual community
- 15 organizations for the perpetuation of native Hawaiian
- 16 cultural, religious, and subsistence customs, beliefs,
- 17 and practices;
- 18 (6) Shall have those powers and duties concerning the
- 19 valley cultural preserve otherwise conferred upon the
- 20 city and county of Honolulu by chapter 205A;

- 1 (7) Shall adopt rules in accordance with chapter 91 that
2 are necessary to administer this chapter and shall
3 maintain a record of its proceedings and actions;
- 4 (8) May delegate to any executive director or employees of
5 the commission, by formal commission action, such
6 power and authority vested in the commission by this
7 chapter as the commission deems reasonable and proper
8 for the effective administration of this chapter; and
- 9 (9) May solicit and accept grants, donations, and
10 contributions for deposit into the Ha'iku valley
11 cultural preserve trust fund to support the purposes
12 of this chapter.

13 § -7 **Farming.** Notwithstanding section -3, the
14 commission shall adopt rules pursuant to chapter 91 to permit
15 farming activities in the valley cultural preserve that are
16 consistent with the purposes of this chapter and that take into
17 consideration the health and safety of the general public.

18 § -8 **Penalty.** Any person who violates any of the laws
19 or rules applicable to the valley cultural preserve shall be
20 guilty of a petty misdemeanor and shall be fined not more than
21 \$1,000, imprisoned not more than thirty days, or both, for each



1 offense. Each day of each violation shall be deemed a separate
2 offense.

3 § -9 General administrative penalties. (a) Except as
4 otherwise provided by law, the commission is authorized to set,
5 charge, and collect administrative fines, or bring legal action
6 to recover administrative costs of the commission or the
7 department, or collect payment for damages or for the cost of
8 correcting damages resulting from a violation of this chapter or
9 any rule adopted hereunder. The administrative fines shall be
10 as follows:

- 11 (1) For a first violation, a fine of not more than
12 \$10,000;
- 13 (2) For a second violation within five years of a previous
14 violation, a fine of not more than \$15,000; and
- 15 (3) For a third or subsequent violation within five years
16 of the last violation, a fine of not more than
17 \$25,000.

18 (b) In addition, an administrative fine of up to \$5,000
19 may be levied for each specimen of natural resource or any
20 historic property taken, killed, injured, broken, or damaged in
21 violation of any rule adopted under this chapter.



1 (c) The remedies or penalties provided by this chapter are
2 cumulative to each other and to the remedies and penalties
3 provided by any other law.

4 (d) In any judicial proceeding to recover an
5 administrative penalty imposed, the commission need only show
6 that:

7 (1) Notice was given;

8 (2) A hearing was held or the time granted for requesting
9 a hearing has run without such a request;

10 (3) An administrative penalty was imposed; and

11 (4) The administrative penalty remains unpaid.

12 (e) For purposes of this section:

13 "Historic property" means any building, structure, object,
14 district, landscape, area, or site, including a heiau and an
15 underwater site, that is over fifty years old.

16 "Natural resource" includes any archaeological artifacts,
17 minerals, any aquatic life or wildlife or parts thereof,
18 including their eggs, and any land plants or parts thereof,
19 including seeds.

20 § -10 **Transfer.** Upon the conveyance of the valley
21 cultural preserve to the department, all terms, conditions,



1 agreements, and laws affecting the preserve shall remain in
2 effect unless expressly terminated.

3 § -11 Ha'iku valley cultural preserve trust fund. (a)

4 There is created in the state treasury a trust fund to be
5 designated as the Ha'iku valley cultural preserve trust fund to
6 be administered by the department with the prior approval of the
7 commission. Subject to this chapter:

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

10 (2) Any moneys appropriated by the legislature to the
11 trust fund;

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

14 (4) The interest or return on investments earned from
15 moneys in the trust fund,

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

18 (b) The commission may use moneys in the trust fund to
19 carry out the purposes of this chapter, including hiring
20 employees, specialists, and consultants necessary to complete
21 projects related to the purposes of this chapter.



1 (c) Moneys deposited into or appropriated to the trust
2 fund shall remain available until they are obligated or until
3 the trust fund is terminated.

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

9 (e) The commission shall submit an annual report on the
10 status of the Ha'iku valley cultural preserve trust fund to the
11 legislature no later than twenty days prior to the convening of
12 each regular session of the legislature. The annual report
13 shall include the total number of and amount of grants,
14 donations, and contributions received and balances remaining on
15 June 30 of each year.

16 § -12 **Severability.** If any provision of this chapter or
17 the application thereof to any person or circumstance is held
18 invalid, the invalidity shall not affect other provisions or
19 applications of this chapter that can be given effect without
20 the invalid provision or application, and to this end the
21 provisions of this chapter are severable."



1 SECTION 3. The office of planning and the department of
2 the attorney general, after consulting with the Ha'iku valley
3 cultural preserve commission, are authorized to initiate the
4 acquisition in fee simple of all lands in the Ha'iku valley
5 cultural preserve that are not state lands; provided that before
6 the Ha'iku valley cultural preserve is acquired, agreements
7 shall be executed with respect to liability, monetary resources,
8 and removal of hazardous wastes. The acquired lands in the
9 Ha'iku valley cultural preserve shall be managed as public lands
10 subject to chapter 171, Hawaii Revised Statutes.

11 SECTION 4. This Act shall take effect upon its approval.

