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S.B. NO. 2524

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# A BILL FOR AN ACT

RELATING TO HAIKU VALLEY.

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

1           SECTION 1. The legislature finds that Haiku valley on Oahu  
2 is of significant cultural and historic importance to the native  
3 people of Hawaii. Haiku valley is renowned for its  
4 archaeological and other cultural and historic sites, including  
5 loi, 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 divided among several entities. The valley's fragmented  
11 ownership and limited stewardship have placed its cultural and  
12 historic resources at high risk. Ensuring adequate management  
13 of, and appropriate access to, the valley has proven elusive.  
14 This Act will address these problems by establishing a  
15 commission to provide a system that recognizes the valley's  
16 unique challenges and preserves in perpetuity its cultural and  
17 historic resources for the people of Hawaii.



1 The purpose of this Act is to establish the Haiku valley  
2 cultural preserve commission that will have policy and  
3 management oversight of the Haiku valley cultural preserve.

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

7 "CHAPTER

8 HAIKU VALLEY CULTURAL PRESERVE

9 § -1 Administration of chapter. The Haiku valley  
10 cultural preserve commission and the department of land and  
11 natural resources shall administer this chapter.

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

14 "Board" means the board of land and natural resources.

15 "Commission" means the Haiku valley cultural preserve  
16 commission.

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

19 "Valley cultural preserve" means the area designated as  
20 Haiku valley on the island of Oahu.

21 § -3 Cultural preserve established; reservation of uses.

22 (a) There is established the Haiku valley cultural preserve



1 which shall operate solely and exclusively for the following  
2 purposes:

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

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

9 (3) Rehabilitation, re-vegetation, habitat restoration,  
10 and preservation;

11 (4) Education; and

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

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

16 § -4 Powers and duties. The department and other  
17 departments and agencies of the State shall be subject to the  
18 oversight of the commission with regard to the control and  
19 management of the valley cultural preserve. Subject to section  
20 -6, the department shall:

21 (1) Implement controls and permitted uses for the valley  
22 cultural preserve;



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

8 § -5 Commission. (a) There is established the Haiku  
9 valley cultural preserve commission to be placed within the  
10 department of land and natural resources for administrative  
11 purposes as provided in section 26-35. The commission shall  
12 consist of seven members to be appointed in the manner and to  
13 serve for the terms provided in section 26-34; provided that:

- 14 (1) One member shall be a member of the Koolau Foundation;
- 15 (2) Two members shall be appointed by the governor from a
- 16 list provided by the Koolaupoko Hawaiian Civic Club;
- 17 (3) One member shall be a representative of the office of
- 18 Hawaiian affairs;
- 19 (4) One member shall be an official of the city and county
- 20 of Honolulu appointed by the governor from a list of
- 21 nominees provided by the mayor of the city and county
- 22 of Honolulu;



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

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

5 (b) The chairperson shall be elected by the commission  
6 from among the members of the commission.

7 (c) The members of the commission shall serve without pay  
8 but shall be reimbursed for their actual and necessary expenses,  
9 including travel expenses, incurred in discharging their duties.

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

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

15 § -6 Responsibilities and duties of the commission. The  
16 general administration of the valley cultural preserve shall  
17 rest with the commission. In discharging its duties and  
18 responsibilities, the commission:

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

21 (2) Shall approve all contracts for services and adopt  
22 rules pertaining to the valley cultural preserve;



- 1           (3) Shall provide advice to the governor, the department,  
2                   and other departments and agencies on any matter  
3                   relating to the valley cultural preserve;
- 4           (4) Shall provide advice to the office of planning and the  
5                   department of the attorney general on any matter  
6                   relating to the conveyance of Haiku valley to the  
7                   department;
- 8           (5) May enter into curator or stewardship agreements with  
9                   appropriate Hawaiian cultural and spiritual community  
10                  organizations for the perpetuation of native Hawaiian  
11                  cultural, religious, and subsistence customs, beliefs,  
12                  and practices for the purposes stated in section  
13                  -3;
- 14          (6) Shall carry out those powers and duties otherwise  
15                  conferred upon the board of land and natural resources  
16                  and the land use commission with regard to  
17                  dispositions and approvals pertaining to the valley  
18                  cultural preserve. All powers and duties of the board  
19                  of land and natural resources and the land use  
20                  commission concerning dispositions and approvals  
21                  pertaining to the valley cultural preserve shall be  
22                  transferred to the commission;



- 1           (7) Shall carry out those powers and duties concerning the  
2           valley cultural preserve otherwise conferred upon the  
3           city and county of Honolulu by chapter 205A;
- 4           (8) Shall carry out those powers and duties concerning the  
5           valley cultural preserve otherwise conferred upon the  
6           island burial councils and the department of land and  
7           natural resources with regard to proper treatment of  
8           burial sites and human skeletal remains found in the  
9           valley preserve;
- 10          (9) Shall adopt rules in accordance with chapter 91 that  
11          are necessary for the purposes of this chapter and  
12          shall maintain a record of its proceedings and  
13          actions;
- 14          (10) May delegate to the executive director or employees of  
15          the commission, by formal commission action, such  
16          power and authority vested in the commission by this  
17          chapter as the commission deems reasonable and proper  
18          for the effective administration of this chapter; and
- 19          (11) May solicit and accept grants, donations, and  
20          contributions for deposit into the Haiku valley  
21          cultural preserve trust fund to support the purposes  
22          of this chapter.



1           §   -7   **Farming.**   Section       -3 notwithstanding, the  
2 commission shall adopt rules pursuant to chapter 91 to permit  
3 farming activities in the valley cultural preserve that are  
4 consistent with the purpose of this chapter and that take into  
5 consideration the health and safety of the general public.

6           §   -8   **Penalty.**   Any person who violates any of the laws  
7 or rules applicable to the valley cultural preserve shall be  
8 guilty of a petty misdemeanor and shall be fined not more than  
9 \$1,000 imprisoned not more than thirty days, or both, for each  
10 offense.   Each day of each violation shall be deemed a separate  
11 offense.

12           §   -9   **General administrative penalties.**   (a)   Except as  
13 otherwise provided by law, the commission is authorized to set,  
14 charge, and collect administrative fines, or bring legal action  
15 to recover administrative costs of the commission or the  
16 department, or payment for damages, or for the cost to correct  
17 damages resulting from a violation of this chapter or any rule  
18 adopted hereunder.   The administrative fines shall be as  
19 follows:

- 20           (1)   For a first violation, a fine of not more than  
21                \$10,000;



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

3           (3) For a third or subsequent violation within five years  
4           of the last violation, by a fine of not more than  
5           \$25,000.

6           (b) In addition, an administrative fine of up to \$5,000  
7           may be levied for each specimen of natural resource or any  
8           historic property taken, killed, injured, broken, or damaged in  
9           violation of any rule adopted under this chapter. For purposes  
10          of this subsection:

11           "Historic property" means any building, structure, object,  
12          district, landscapes, area, or site, including heiau and  
13          underwater sites that is over fifty years old.

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

18           (c) Any criminal penalty for any violation of this chapter  
19          or any rule adopted under this chapter shall not be deemed to  
20          preclude the commission from bringing a civil legal action to  
21          recover additional administrative fines and costs. Any civil  
22          legal action against a person to recover administrative fines



1 and costs for any violation of this chapter or any rule adopted  
2 under this chapter shall not be deemed the State from pursuing  
3 any criminal action against that person.

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

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

17 § -11 **Transfer.** Upon its conveyance to the department,  
18 the resources and waters of the valley cultural preserve shall  
19 be held in trust by the department as part of the public land  
20 trust; provided that the department shall transfer management  
21 and control of the valley cultural preserve to the sovereign



1 native Hawaiian entity upon its recognition by the United States  
2 and the State.

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

5 § -12 Haiku valley cultural preserve trust fund. (a)

6 There is created in the state treasury the Haiku valley cultural  
7 preserve trust fund to be administered by the department with  
8 the prior approval of the commission. Subject to this chapter:

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

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

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

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

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

19 (b) The commission may use moneys in the trust fund to  
20 carry out the purposes of this chapter, including hiring  
21 employees, specialists, and consultants necessary to complete  
22 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 Haiku 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 SECTION 3. The office of planning and the department of  
17 the attorney general, after consulting with the Haiku valley  
18 cultural preserve commission, are authorized to initiate the  
19 conveyance of all of Haiku valley in fee simple to the  
20 department of land and natural resources; provided that before  
21 the valley is conveyed to the department, agreements shall be



1 executed with respect to liability, monetary resources, and  
2 removal of hazardous wastes.

3 SECTION 4. There is appropriated out of the general  
4 revenues of the State of Hawaii the sum of \$ or so  
5 much thereof as may be necessary for fiscal year 2012-2013 for  
6 the purposes of this Act, including but not limited to the  
7 acquisition of Haiku valley by the department of land and  
8 natural resources.

9 The sum appropriated shall be expended by the department of  
10 land and natural resources for the purposes of this Act.

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

17 SECTION 6. This Act shall take effect upon its approval;  
18 except that section 4 shall take effect on July 1, 2012.

19

INTRODUCED BY:





# S.B. NO. 2524

**Report Title:**

Haiku Valley

**Description:**

Establishes the Haiku Valley cultural preserve commission to provide policy and management oversight of the Haiku Valley cultural preserve. Initiates process of conveying Haiku valley in fee simple to the department of land and natural resouces.

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