
A BILL FOR AN ACT

RELATING TO BIOLOGICAL DIVERSITY.

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

1 PART I

2 SECTION 1. The legislature finds that Hawaii's biological
3 diversity and biological resources are assets of the public land
4 trust that are culturally, spiritually, medicinally, and
5 otherwise significant to native Hawaiians and the general
6 public. Further, Hawaii is experiencing a tremendous loss of
7 biodiversity due to the conversion of natural habitat for
8 development, environmental degradation, and non-sustainable
9 consumptive practices while the State, because of it's trust
10 obligation, is obligated to ensure the preservation, sustainable
11 use, and equitable sharing of benefits of Hawaii's biological
12 resources.

13 The purpose of this part of the Act is to protect Hawaii's
14 valuable biodiversity by developing a public policy to regulate
15 bioprospecting, to define biodiversity within the public land
16 trust, to ensure that the rights of indigenous knowledge holders
17 are protected, and that benefits are shared fairly.



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

4 "CHAPTER

5 PROTECTION OF HAWAII'S BIOLOGICAL DIVERSITY

6 § -1 **Definitions.** As used in this chapter, unless the
7 context clearly requires otherwise:

8 "Biological diversity" means the variability among living
9 organisms from all sources including terrestrial, marine and
10 other aquatic ecosystems and the ecological complexes of which
11 they are part, including diversity within species, between
12 species, and of ecosystems.

13 "Bioprospecting" means the collection, removal, or use of
14 biological and genetic resources of any organism, mineral, or
15 other organic substance found within the ceded land trust for
16 scientific research or commercial development.

17 "Biotechnology" means any technological application that
18 uses biological systems, living organisms, or their derivatives,
19 to make or modify products or processes for specific use.

20 "Commission" means the temporary advisory commission on
21 biological diversity established by this Act.



1 "Public lands" means public lands as defined in section
2 171-2 and includes lands to which the University of Hawaii and
3 Hawaii housing and finance development administration hold
4 title, and biological diversity or organisms, microbe or
5 microbial genomes, genes, genetic material, or similar terms
6 together found on the lands that have been given the status of
7 public lands in this chapter.

8 "Sustainable use" means the use of components of biological
9 diversity in a way and at a rate that does not lead to the long-
10 term decline of biological diversity, thereby maintaining its
11 potential to meet the needs and aspirations of present and
12 future generations.

13 § -2 **Prior informed consent.** Access to genetic
14 resources or biological diversity from public lands shall be
15 subject to the obtaining of prior informed consent:

16 (1) From the general public, through the public comment
17 process on affected islands by the department of land
18 and natural resources; and

19 (2) From native Hawaiians by the office of Hawaiian
20 affairs.



1 The temporary advisory commission on biological diversity shall
2 adopt rules in accordance with chapter 91 to implement this
3 section.

4 § -3 **Equitable benefit sharing.** There shall be a system
5 of fair and equitable sharing of benefits arising out of the use
6 of genetic resources, including by appropriate access to genetic
7 resources and by appropriate transfer of relevant technologies,
8 taking into account all rights over those resources and to those
9 technologies. With regard to the system of equitable benefit
10 sharing:

11 (1) The department of land and natural resources shall
12 consult with the general public through public
13 hearings; and

14 (2) The office of Hawaiian affairs shall consult with
15 native Hawaiians.

16 § -4 **Temporary advisory commission on biological**
17 **diversity.** (a) There is established the temporary advisory
18 commission on biological diversity, to be placed within the
19 department of land and natural resources for administrative
20 purposes only, to assist in the creation of a regulatory
21 framework to implement policies and make relevant
22 recommendations to the legislature regarding access to genetic



1 resources and biological diversity. The commission shall be
2 composed of eleven members as follows:

- 3 (1) The chairperson of the board of trustees of the office
4 of Hawaiian affairs or the chairperson's designee;
- 5 (2) The president of the University of Hawaii or the
6 president's designee;
- 7 (3) The chairperson of the board of regents of the
8 University of Hawaii or the chairperson's designee;
- 9 (4) The director of business, economic development, and
10 tourism or the director's designee;
- 11 (5) The chairperson of the board of land and natural
12 resources or the chairperson's designee;
- 13 (6) Five members representing native Hawaiians, residing
14 in the State of Hawaii, who have a demonstrated
15 background in traditional and customary use of
16 biological or genetic resources, indigenous and
17 traditional technologies, or scientific or legal
18 procedures in connection with the protection or
19 commercialization of biological and genetic resources
20 and who shall be appointed by the governor from lists
21 of nominees submitted by the president of the senate,



1 the speaker of the house of representatives, and
2 Hawaiian organizations; and

3 (7) A representative of the biotechnology industry whose
4 principal place of business is in the State of Hawaii
5 who shall be appointed by the governor from lists of
6 nominees submitted by the president of the senate, the
7 speaker of the house of representatives, and members
8 of the biotechnology industry based in Hawaii.

9 The members shall elect from among themselves one person to
10 serve as chairperson of the commission.

11 (b) The members of the commission shall serve without
12 compensation but shall be reimbursed for expenses, including
13 travel expenses, necessary for the performance of their duties.

14 (c) The temporary advisory commission on biological
15 diversity shall adopt rules in accordance with chapter 91 to
16 implement this section.

17 (d) The commission shall submit an interim report of its
18 findings and recommendations to the legislature and the governor
19 no later than twenty days prior to the convening of the regular
20 session of 2007. The commission shall submit a final report of
21 its findings and recommendations to the legislature and the



1 governor no later than twenty days before the convening of the
2 regular session of 2008.

3 (e) The commission shall cease to exist on June 30, 2008."

4 SECTION 3. There is appropriated out of the general
5 revenues of the State of Hawaii the sum of \$ or so
6 much thereof as may be necessary for fiscal year 2006-2007 to
7 enable the temporary advisory commission on biological diversity
8 to fulfill its mandate pursuant to this part of the Act.

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

11 PART II

12 SECTION 4. The legislature finds that article XII, section
13 4, of the State Constitution provides that lands granted to the
14 State by section 5(b) of the Admission Act and pursuant to
15 article XVI, section 7, of the State Constitution, excluding
16 "available lands" as defined by section 203 of the Hawaiian
17 Homes Commission Act, 1920, as amended, shall be held by the
18 State as a public trust for native Hawaiians and the general
19 public who are co-beneficiaries of the public trust. Hawaii's
20 unique biological diversity and biological resources are assets
21 of a public trust established in article XI, section 1, of the
22 State Constitution and they are culturally, spiritually,

1 medicinally, and otherwise significant to native Hawaiians and
2 the general public. Moreover, native Hawaiians are traditional,
3 indigenous knowledge holders with rights, including those
4 recognized in article XII, section 7, of the State Constitution
5 and sections 1-1 and 7-1, Hawaii Revised Statutes.

6 The legislature also finds that the biological diversity
7 and biological resources on public lands are of great potential
8 economic benefit in the areas of medicine, scientific research,
9 biotechnology, and commercial development for native Hawaiians
10 and the general public. The potential economic benefit of these
11 biological resources may create market-driven incentives and
12 generate financial resources for the conservation and
13 sustainable development of Hawaii's biological resources.

14 Under the department of land and natural resources' current
15 permit process, the State of Hawaii has no opportunity to
16 participate or benefit from discoveries that may be made using
17 materials lawfully collected from public lands and waters. The
18 residents of Hawaii, as well as the research community and
19 growing biotechnology industry, will benefit from the
20 development and implementation of policy and legislation
21 codifying a statutory framework for the use of Hawaii'
22 biological resources for research and commercial development.



1 There is a need to develop policy and legislation that will
2 allow the State and native Hawaiians to participate in the
3 conservation and sustainable development of Hawaii's biological
4 resources and derive benefits from research and
5 commercialization of those resources. By ensuring best
6 practices and bio-safety protocols, an environment can be
7 created that will maximize the educational, research, and career
8 opportunities for the residents of Hawaii.

9 The purpose of this part of the Act is to provide the
10 statutory framework within which the State can actively
11 participate in the sustainable development and use of biological
12 resources found in Hawaii.

13 SECTION 5. The Hawaii Revised Statutes is amended by
14 adding a new chapter to be appropriately designated and to read
15 as follows:

16 **"CHAPTER**

17 **USE OF BIOLOGICAL RESOURCES**

18 § -1 **Definitions.** As used in this chapter, unless the
19 context clearly otherwise requires:

20 "Benefit sharing" means all forms of compensation for the
21 use of genetic resources, whether monetary or non-monetary, and
22 includes, in particular, the participation in scientific



1 research and development on genetic resources and the making
2 available of the results of such scientific research and
3 development.

4 "Biodiversity" means all living organisms in the state.

5 "Biological resources" means all biodiversity in the state,
6 including their genetic material or progeny, and any derivatives
7 of living organisms.

8 "Bioprospecting" means the exploration for commercially
9 valuable biological resources.

10 "Biotechnology" means any technological application that
11 uses biological systems or living organisms.

12 "Department" means the department of land and natural
13 resources.

14 "License" means a right to make, use, or sell products
15 containing biological resources.

16 "Licensing revenue" means any form of consideration paid or
17 transferred to the holder of a license in exchange for granting
18 of a license.

19 "Microbial" means microscopic life forms, including but not
20 limited to bacteria.

21 "Permittee" means a party lawfully granted a permit from
22 the department of land and natural resources.



1 "Prior informed consent" means consent of the department,
2 as appropriate, to access, sample, and develop biological
3 resources.

4 "Public lands" means public lands as defined in section
5 171-2 and includes submerged lands and lands to which the
6 University of Hawaii holds title, and ocean resources under
7 state jurisdiction.

8 "Sustainable use" means the use of components of
9 biodiversity in a way and at a rate that does not lead to the
10 long-term decline of biodiversity, thereby maintaining its
11 potential to meet the needs and aspirations of present and
12 future generations.

13 § -2 **Use of biological resources; permit system.** The
14 department shall adopt rules in accordance with chapter 91 to
15 create a permitting system for the collection and use of any
16 biological resource derived from lands and waters of the State.
17 The permit system shall provide for:

- 18 (1) A statement of the intended use of the biological
19 resource;
- 20 (2) A statement of prior informed consent issued by the
21 department on behalf of the State upon approval of the
22 permit;



- 1 (3) A statement that the biological resources collected
2 shall remain the property of the State and the
3 biological material may not be transferred to a third
4 party without the prior written approval of the
5 department;
- 6 (4) A restriction allowing the permittee to perform only
7 those activities approved by the permit;
- 8 (5) A requirement that any discovery made directly through
9 the use of the collected biological resources be
10 reported to the department within thirty days of the
11 discovery; and
- 12 (6) A requirement that commercialization of a product
13 stemming from the biological resource collected shall
14 require a license from the State.

15 § -3 **Database.** (a) The department shall implement a
16 worldwide web-enabled, electronic database for the processing
17 and tracking of collection permits and biological resources
18 collected. At a minimum, this database shall provide
19 documentation on active permits, including:

- 20 (1) A description of the materials collected under a
21 permit;



1 (2) A description of the location where the material was
2 collected;

3 (3) The name of the person or organization granted the
4 permit; and

5 (4) The location of the collected material.

6 (b) Discoveries disclosed to the department by a permittee
7 shall be recorded in the database. The department shall
8 evaluate these discoveries and contract with appropriate
9 technological and legal expertise to provide licenses for the
10 use of the State's biological resources. The department may
11 enter into agreements to grant licenses.

12 § -4 **Revenues; distribution; ceded lands.** Revenues from
13 the licensing of any biological resources collected under permit
14 in the State shall first be distributed to the department for
15 the cost of licensing and permitting expenses. Using the United
16 Nations Convention on Biodiversity as a model, the department
17 shall apply licensing revenue to efforts affecting the
18 conservation and sustainable use of the natural resources of
19 Hawaii. In addition, a portion of the revenues shall be
20 earmarked specifically for use in the geographic areas from
21 which the licensed biological resources were collected.



1 (b) Notwithstanding the distribution of revenue in
2 subsection (a), if the source of a licensed biological resource
3 is collected from ceded lands, any revenue collected after
4 reimbursement of licensing expenses to the department shall be
5 placed in a special account, the purpose of which shall be to
6 hold the monetary benefits derived directly from ceded lands
7 until such time that the distribution of that revenue is
8 determined by the legislature.

9 § -5 **Native Hawaiian rights.** Nothing in this chapter
10 shall be interpreted to prevent native Hawaiians from exercising
11 the rights conferred in article XII, section 7, of the State
12 Constitution and sections 1-1 and 7-1."

13 SECTION 6. There is appropriated out of the general
14 revenues of the State of Hawaii the sum of \$250,000 or so much
15 thereof as may be necessary for fiscal year 2006-2007 for the
16 department of land and natural resources to implement the
17 database pursuant to chapter , Hawaii Revised Statutes,
18 including funding one permanent, full-time position to oversee
19 the development and implementation of the database and to train
20 other users.



Report Title:

Biological Diversity; Genetic Access; Commission

Description:

Creates temporary commission on biological diversity until June 30, 2008 to assist in creating a regulatory framework to implement policies and make relevant recommendations to the legislature regarding access to genetic resources and biological diversity in Hawaii. Report to legislature. Appropriations. (HB3046 HD1)

HB3046 HD1 HMS 2006-1680

