
A BILL FOR AN ACT

RELATING TO USE OF BIOLOGICAL RESOURCES COLLECTED IN HAWAII.

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

1 SECTION 1. The legislature finds that article XII, section
2 4, of the Hawaii state constitution provides that lands granted
3 to the State by section 5(b) of the Admission Act and pursuant
4 to article XVI, section 7, of the state constitution, excluding
5 "available lands" as defined by section 203 of the Hawaiian
6 Homes Commission Act, 1920, as amended, shall be held by the
7 State as a public trust for native Hawaiians and the general
8 public who are co-beneficiaries of the public trust. Hawaii's
9 unique biological diversity and biological resources are assets
10 of a public trust established in article XI, section 1, of the
11 Hawaii state constitution and they are culturally, spiritually,
12 medicinally, and otherwise significant to native Hawaiians and
13 the general public. Moreover, native Hawaiians are traditional,
14 indigenous knowledge holders with rights, including those
15 recognized in article XII, section 7, of the Hawaii state
16 constitution and sections 1-1 and 7-1, Hawaii Revised Statutes.

17 The legislature also finds that the biological diversity
18 and biological resources on public lands are of great potential



1 economic benefit in the areas of medicine, scientific research,
2 biotechnology, and commercial development for native Hawaiians
3 and the general public. The potential economic benefit of these
4 biological resources may create market-driven incentives and
5 generate financial resources for the conservation and
6 sustainable development of Hawaii's biological resources.

7 Under the department of land and natural resources' current
8 permit process, the State of Hawaii has no opportunity to
9 participate or benefit from discoveries that may be made using
10 materials lawfully collected from public lands and waters. The
11 residents of Hawaii, as well as the research community and
12 growing biotechnology industry, will benefit from the
13 development and implementation of policy and legislation
14 codifying a statutory framework for utilization of Hawaii'
15 biological resources for research and commercial development.
16 There is a need to develop policy and legislation that will
17 allow the State and native Hawaiians to participate in the
18 conservation and sustainable development of Hawaii's biological
19 resources and derive benefits from research and
20 commercialization of those resources. By ensuring best
21 practices and bio-safety protocols, an environment can be



1 created that will maximize the educational, research, and career
2 opportunities for the residents of Hawaii.

3 The purpose of this Act is to provide the statutory
4 framework within which the State can actively participate in the
5 sustainable development and use of biological resources found in
6 Hawaii.

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

10 **"CHAPTER**

11 **USE OF BIOLOGICAL RESOURCES**

12 § -1 **Definitions.** As used in this chapter, unless the
13 context clearly otherwise requires:

14 "Benefit sharing" means all forms of compensation for the
15 utilization of genetic resources, whether monetary or non-
16 monetary, and includes, in particular, the participation in
17 scientific research and development on genetic resources and the
18 making available of the results of such scientific research and
19 development.

20 "Biodiversity" means all living organisms in the State.



1 "Biological resources" means all biodiversity in the State
2 including their genetic material or progeny, and any derivatives
3 of living organisms.

4 "Bioprospecting" means the exploration for commercially
5 valuable biological resources.

6 "Biotechnology" means any technological application that
7 uses biological systems or living organisms.

8 "Department" means the department of land and natural
9 resources.

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

12 "Licensing revenue" means any form of consideration paid or
13 transferred to the holder of a license in exchange for granting
14 of a license.

15 "Microbial" means microscopic life forms including but not
16 limited to bacteria.

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

19 "Prior informed consent" means consent of the department,
20 as appropriate, to access, sample, and develop biological
21 resources.



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

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

10 § -2 **Use of biological resources; permit system.** The
11 department shall adopt rules in accordance with chapter 91 to
12 create a permitting system for the collection and use of any
13 biological resource derived from lands and waters of the State.
14 The permit system shall provide for:

- 15 (1) A statement of the intended use of the biological
16 resource;
- 17 (2) A statement of prior informed consent issued by the
18 department on behalf of the State upon approval of the
19 permit;
- 20 (3) A statement that the biological resources collected
21 shall remain the property of the State and the
22 biological material may not be transferred to a third



- 1 party without the prior written approval of the
2 department;
- 3 (4) A restriction allowing the permittee to perform only
4 those activities approved by the permit;
- 5 (5) A requirement that any discovery made directly through
6 the use of the collected biological resources be
7 reported to the department within thirty days of the
8 discovery; and
- 9 (6) A requirement that commercialization of a product
10 stemming from the biological resource collected shall
11 require a license from the State.

12 § -3 Database. (a) The department shall implement a
13 worldwide web-enabled, electronic database for the processing
14 and tracking of collection permits and biological resources
15 collected. At a minimum, this database shall provide
16 documentation on active permits, including a description of the
17 materials collected under a permit, a description of the
18 location where the material was collected, the name of the
19 person or organization granted the permit, and the location of
20 the collected material.

21 (b) Discoveries disclosed to the department by a permittee
22 shall be recorded in the database. The department shall



1 evaluate these discoveries and contract with appropriate
2 technological and legal expertise to provide licenses for the
3 use of the State's biological resources. The department may
4 enter into agreements to grant licenses.

5 § -4 **Revenues; distribution; ceded lands.** Revenues from
6 the licensing of any biological resources collected under permit
7 in the State shall first be distributed to the department for
8 the cost of licensing and permitting expenses. Using the United
9 Nations Convention on Biodiversity as a model, the department
10 shall apply licensing revenue to efforts affecting the
11 conservation and sustainable use of the natural resources of
12 Hawaii. In addition, a portion of the revenues shall be
13 earmarked specifically for use in the geographic areas from
14 which the licensed biological resources were collected.

15 (b) Notwithstanding the distribution of revenue in
16 subsection (a), if the source of a licensed biological resource
17 is collected from ceded lands, any revenue collected after
18 reimbursement of licensing expenses to the department shall be
19 placed in a special account, the purpose of which shall be to
20 hold the monetary benefits derived directly from ceded lands
21 until such time that the distribution of that revenue is
22 determined by the legislature.



1 § -5 **Native Hawaiian rights.** Nothing in this chapter
 2 shall be interpreted to prevent native Hawaiians from exercising
 3 the rights conferred in article XII, section 7, of the Hawaii
 4 State constitution and sections 1-1 and 7-1."

5 SECTION 3. There is appropriated out of the general
 6 revenues of the State of Hawaii the sum of \$250,000, or so much
 7 thereof as may be necessary for fiscal year 2006-2007, for the
 8 department of land and natural resources to implement the
 9 database pursuant to chapter , Hawaii Revised Statutes,
 10 including funding one permanent, full-time position to oversee
 11 the development and implementation of the database and to train
 12 other users.

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

15 SECTION 4. This Act shall take effect upon its approval,
 16 except that section 3 shall take effect on July 1, 2006.

17

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HB 3069

Report Title:

Use of Biological Resources; Benefit Sharing

Description:

Requires DLNR to implement permitting system for collection of biological resources from Hawaii and provides for use of revenues. Appropriates \$250,000.

