

JAN 25 2006

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# A BILL FOR AN ACT

RELATING TO BIOLOGICAL DIVERSITY.

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

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

12           The purpose of this Act is to protect Hawaii's valuable  
13 biodiversity by developing a public policy to regulate  
14 bioprospecting, to define biodiversity within the public land  
15 trust, to ensure that the rights of indigenous knowledge holders  
16 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, inter alia, terrestrial,  
10 marine and other aquatic ecosystems and the ecological complexes  
11 of which they are part, including diversity within species,  
12 between 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 "Public Lands" has the same meaning as used in section  
21 171-2, and includes, but is not limited to, biological diversity  
22 or organisms, microbe or microbial genomes, genes, genetic



1 material, or similar terms together found on the lands that have  
2 been given the status of public lands;

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

8 "Commission" means the temporary advisory commission on  
9 biological diversity established by this Act.

10 § -2 **Prior informed consent.** Access to genetic  
11 resources or biological diversity from public lands shall be  
12 subject to the obtaining of prior informed consent:

13 (1) From the general public, through the public comment  
14 process on affected islands by the department of land  
15 and natural resources; and

16 (2) From native Hawaiians by the office of Hawaiian  
17 affairs.

18 The temporary advisory commission on biological diversity shall  
19 adopt rules in accordance with chapter 91 to implement this  
20 section.

21 § -3 **Equitable benefit sharing.** There shall be a system  
22 of fair and equitable sharing of benefits arising out of the



1 utilization of genetic resources, including by appropriate  
2 access to genetic resources and by appropriate transfer of  
3 relevant technologies, taking into account all rights over those  
4 resources and to those technologies. With regard to the system  
5 of equitable benefit sharing:

6 (1) The department of land and natural resources shall  
7 consult with the general public through public  
8 hearings; and

9 (2) The office of Hawaiian affairs shall consult with  
10 native Hawaiians.

11 The temporary advisory commission on biological diversity shall  
12 adopt rules in accordance with chapter 91 to implement this  
13 section.

14 § -4 **Temporary advisory commission on biological**  
15 **diversity.** (a) There is established the temporary advisory  
16 commission on biological diversity, to be placed within the  
17 department of land and natural resources for administrative  
18 purposes only, to assist in the creation of a regulatory  
19 framework to implement policies and make relevant  
20 recommendations to the legislature regarding access to genetic  
21 resources and biological diversity. The commission shall be  
22 composed of ten members as follows:



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



1           nominees submitted by the president of the senate, the  
2           speaker of the house of representatives, and members  
3           of the biotechnology industry based in Hawaii.

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

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

9           (c)   The commission shall submit an interim report of its  
10   findings and recommendations to the legislature and the governor  
11   no later than twenty days before the convening of the regular  
12   session of 2007.   The commission shall submit a final report of  
13   its findings and recommendations to the legislature and the  
14   governor no later than twenty days before the convening of the  
15   regular session of 2008.

16           (d)   The commission shall cease to exist on June 30, 2008."

17           SECTION 3.   There is appropriated out of the general  
18   revenues of the State of Hawaii the sum of \$                   , or so  
19   much thereof as may be necessary for fiscal year 2006-2007, to  
20   enable the temporary advisory commission on biological diversity  
21   to fulfill its mandate pursuant to this Act.

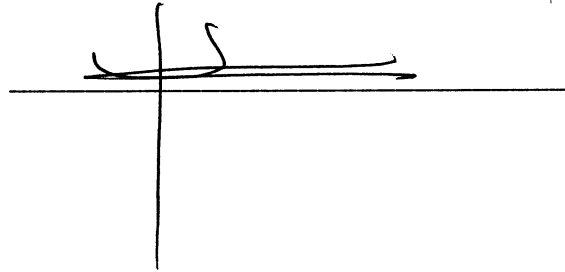


1           The sum appropriated shall be expended by the department of  
2 land and natural resources for the purposes of this Act.

3           SECTION 4. This Act shall take effect upon its approval  
4 and shall be repealed on June 30, 2008; except that section 3  
5 shall take effect on July 1, 2006.

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INTRODUCED BY:

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**Report Title:**

Biological Diversity; Genetic Access; Commission

**SB. NO. 2942**

**Description:**

Creates temporary commission on biological diversity 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. Repealed 6/30/2008.

