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## A BILL FOR AN ACT

RELATING TO HA`IKU VALLEY.

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

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

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

16           The purpose of this Act is to establish the Ha`iku Valley  
17 cultural preserve commission, which shall have policy and  
18 management oversight of the Ha`iku Valley cultural preserve.



1 The establishment of the commission will provide a system that  
2 recognizes the valley's unique challenges and preserves in  
3 perpetuity its cultural and historic resources for the people of  
4 Hawai`i.

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

8 "CHAPTER

9 HA`IKU VALLEY CULTURAL PRESERVE

10 § -1 **Administration of chapter.** The Ha`iku valley  
11 cultural preserve commission and the office of Hawaiian affairs  
12 shall administer this chapter.

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

15 "Commission" means the Ha`iku valley cultural preserve  
16 commission.

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

19 "Office" means the office of Hawaiian affairs.

20 "Valley cultural preserve" means the area designated as  
21 Ha`iku valley.



1           **§ -3 Reservation of uses.** (a) The Ha`iku valley  
2 cultural preserve shall be used solely and exclusively for the  
3 following purposes:

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

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

10          (3) Rehabilitation, revegetation, habitat restoration, and  
11 preservation;

12          (4) Education; and

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

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

17           **§ -4 Powers and duties.** The office and other  
18 departments and agencies of the State shall be subject to the  
19 oversight of the commission with regard to the control and  
20 management of the valley cultural preserve. Subject to section  
21 -6, the office shall:



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

10 **§ -5 Commission.** (a) There is established the Ha`iku  
11 valley cultural preserve commission to be placed within the  
12 office of Hawaiian affairs for administrative purposes as  
13 provided in section 26-35. The commission shall consist of  
14 seven members to be appointed in the manner and to serve for the  
15 terms provided in section 26-34; provided that:

- 16 (1) One member shall be a member of the Ko`olau
- 17 Foundation;
- 18 (2) Two members shall be appointed by the governor from a
- 19 list provided by the Ko`olaupoko Hawaiian Civic Club;
- 20 (3) One member shall be a representative of the office of
- 21 Hawaiian affairs;



1           (4) One member shall be an official of the city and county  
2           of Honolulu appointed by the governor from a list of  
3           nominees provided by the mayor of the city and county  
4           of Honolulu;

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

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

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

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

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

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

20          **§ -6 Responsibilities and duties of the commission.** The  
21          general administration of the valley cultural preserve shall



1 rest with the commission. In carrying out its duties and  
2 responsibilities, the commission:

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



1 cultural preserve. All powers and duties of the board  
2 of land and natural resources and the land use  
3 commission concerning dispositions and approvals  
4 pertaining to the valley cultural preserve shall be  
5 transferred to the commission;

6 (7) Shall carry out those powers and duties concerning the  
7 valley cultural preserve otherwise conferred upon the  
8 city and county of Honolulu by chapter 205A;

9 (8) Shall carry out those powers and duties concerning the  
10 valley cultural preserve otherwise conferred upon the  
11 island burial councils and the department of land and  
12 natural resources with regard to proper treatment of  
13 burial sites and human skeletal remains found in the  
14 valley preserve;

15 (9) Shall adopt rules in accordance with chapter 91 that  
16 are necessary for the purposes of this chapter and  
17 shall maintain a record of its proceedings and  
18 actions;

19 (10) May delegate to the executive director or employees of  
20 the commission, by formal commission action, such  
21 power and authority vested in the commission by this



1 chapter as the commission deems reasonable and proper  
2 for the effective administration of this chapter; and  
3 (11) May solicit and accept grants, donations, and  
4 contributions for deposit into the Ha`iku valley  
5 cultural preserve trust fund to support the purposes  
6 of this chapter.

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

12 **§ -8 Penalty.** Any person who violates any of the laws  
13 or rules applicable to the valley cultural preserve shall be  
14 guilty of a petty misdemeanor and shall be fined not more than  
15 \$1,000 imprisoned not more than thirty days, or both, for each  
16 offense. Each day of each violation shall be deemed a separate  
17 offense.

18 **§ -9 General administrative penalties.** (a) Except as  
19 otherwise provided by law, the commission is authorized to set,  
20 charge, and collect administrative fines, or bring legal action  
21 to recover administrative costs of the commission or the  
22 department, or payment for damages, or for the cost to correct





1 damages resulting from a violation of this chapter or any rule  
2 adopted hereunder. The administrative fines shall be as  
3 follows:

4 (1) For a first violation, a fine of not more than  
5 \$10,000;

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

8 (3) For a third or subsequent violation within five years  
9 of the last violation, by a fine of not more than  
10 \$25,000.

11 (b) In addition, an administrative fine of up to \$5,000  
12 may be levied for each specimen of natural resource or any  
13 historic property taken, killed, injured, broken, or damaged in  
14 violation of any rule adopted under this chapter. For purposes  
15 of this section, "natural resource" includes any archaeological  
16 artifacts, minerals, any aquatic life or wildlife or parts  
17 thereof, including their eggs, and any land plants or parts  
18 thereof, including seeds. Also for purposes of this section,  
19 "historic property" means any building, structure, object,  
20 districts, landscapes, area, or site, including heiau and  
21 underwater sites, that is over fifty years old.



1 (c) Any criminal penalty for any violation of this  
2 chapter or any rule adopted under this chapter shall not be  
3 deemed to preclude the commission from bringing a civil legal  
4 action to recover additional administrative fines and costs.  
5 Any civil legal action against a person to recover  
6 administrative fines and costs for any violation of this chapter  
7 or any rule adopted under this chapter shall not be deemed the  
8 State from pursuing any criminal action against that person.

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

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



1           **§ -11 Transfer.** Upon its conveyance to the office, the  
2 resources and waters of the valley cultural preserve shall be  
3 held in trust by the office as part of the public land trust;  
4 provided that the office shall transfer management and control  
5 of the valley cultural preserve to the sovereign native Hawaiian  
6 entity upon its recognition by the United States and the State.

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

9           **§ -12 Ha`iku valley cultural preserve trust fund.** (a)  
10 There is created in the state treasury a trust fund to be  
11 designated as the Ha`iku valley cultural preserve trust fund to  
12 be administered by the office with the prior approval of the  
13 commission. Subject to this chapter:

- 14           (1) All moneys received from the federal government for  
15           purposes consistent with this chapter;
- 16           (2) Any moneys appropriated by the legislature to the  
17           trust fund;
- 18           (3) Any moneys received from grants, donations, or the  
19           proceeds from contributions; and
- 20           (4) The interest or return on investments earned from  
21           moneys in the trust fund;



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

3 (b) The commission may use moneys in the trust fund to  
4 carry out the purposes of this chapter, including hiring  
5 employees, specialists, and consultants necessary to complete  
6 projects related to the purposes of this chapter.

7 (c) Moneys deposited into or appropriated to the trust  
8 fund shall remain available until they are obligated or until  
9 the trust fund is terminated.

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

15 (e) The commission shall submit an annual report on the  
16 status of the Ha`iku valley cultural preserve trust fund to the  
17 legislature, no later than twenty days prior to the convening of  
18 each regular session of the legislature. The annual report  
19 shall include the total number of and amount of grants,  
20 donations, and contributions received and balances remaining on  
21 June 30 of each year.



1           **§ -13 Severability.** If any provision of this chapter or  
2 the application thereof to any person or circumstance is held  
3 invalid, the invalidity shall not affect other provisions or  
4 applications of this chapter that can be given effect without  
5 the invalid provision or application, and to this end the  
6 provisions of this chapter are severable."

7           SECTION 3. The office of state planning and the department  
8 of the attorney general, after consulting with the Ha`iku valley  
9 cultural preserve commission, are authorized to initiate the  
10 conveyance of all of Ha`iku valley in fee simple to the office  
11 of Hawaiian affairs; provided that before the valley is conveyed  
12 to the office, agreements shall be executed with respect to  
13 liability, monetary resources, and removal of hazardous wastes.

14           SECTION 4. There is appropriated out of the general  
15 revenues of the State of Hawaii the sum of \$                    or so  
16 much thereof as may be necessary for fiscal year 2008-2009 for  
17 the purposes of this Act, including but not limited to the  
18 acquisition of Ha`iku valley by the office of Hawaiian affairs.

19           The sum appropriated shall be expended by the office of  
20 Hawaiian affairs for the purposes of this Act.



# H.B. NO. 2704

1 SECTION 5. This Act shall take effect upon its approval;  
2 except that section 4 shall take effect on July 1, 2008.

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INTRODUCED BY:

*Calvin K. Ray*

By Request

JAN 08 2008



**Report Title:**

Ha'iku Valley

**Description:**

Establishes the Ha'iku Valley cultural preserve commission to have policy and management oversight of the Ha'iku Valley cultural preserve.

