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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:**

1           SECTION 1. The legislature finds that Ha'iku valley on  
2 Oahu has significant cultural and historic importance to the  
3 native people of Hawai'i. Ha'iku valley is renowned for its  
4 archaeological and other cultural and historic sites, including  
5 lo'i, 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 segmented among several entities. The valley's segmented  
11 ownership and limited stewardship have placed its cultural and  
12 historic resources at high risk. Adequate management and  
13 appropriate access to the valley have proven elusive.

14           The purpose of this Act is to establish the Ha'iku Valley  
15 cultural preserve commission, which shall have policy and  
16 management oversight of the Ha'iku Valley cultural preserve.  
17 The establishment of the commission will provide a system that  
18 recognizes the valley's unique challenges and preserves in



1 perpetuity its cultural and historic resources for the people of  
2 Hawai'i.

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

6 "CHAPTER

7 HA'IKU VALLEY CULTURAL PRESERVE

8 § -1 Administration of chapter. The Ha'iku valley  
9 cultural preserve commission and the office of Hawaiian affairs  
10 shall administer this chapter.

11 § -2 Definitions. As used in this chapter, unless the  
12 context otherwise requires:

13 "Commission" means the Ha'iku valley cultural preserve  
14 commission.

15 "Office" means the office of Hawaiian affairs.

16 "Valley cultural preserve" means the area designated as  
17 Ha'iku valley.

18 § -3 Reservation of uses. (a) The Ha'iku valley  
19 cultural preserve shall be used solely and exclusively for the  
20 following purposes:



- 1 (1) Preservation and practice of all rights customarily  
2 and traditionally exercised by native Hawaiians for  
3 cultural, spiritual, and subsistence purposes;
- 4 (2) Preservation and protection of the area's cultural,  
5 archaeological, historical, and environmental  
6 resources;
- 7 (3) Rehabilitation, revegetation, habitat restoration, and  
8 preservation;
- 9 (4) Education; and
- 10 (5) Other purposes as determined by the commission.
- 11 (b) The valley shall be reserved in perpetuity for the  
12 uses enumerated in this section. Commercial uses shall be  
13 strictly prohibited.

14 **§ -4 Powers and duties of the office.** The office and  
15 other departments and agencies of the State shall be subject to  
16 the oversight of the commission with regard to the control and  
17 management of the valley cultural preserve. Subject to section  
18 -6, the office shall:

- 19 (1) Implement controls and permitted uses for the valley  
20 cultural preserve;
- 21 (2) Enforce this chapter;
- 22 (3) Provide administrative support to the commission; and



1           (4) Authorize those of its employees as it deems  
2           reasonable and necessary to serve and execute warrants  
3           and arrest offenders or issue citations in all matters  
4           relating to enforcement of the laws and rules  
5           applicable to the valley cultural preserve.

6           **§ -5 Commission.** (a) There is established the Ha'iku  
7 valley cultural preserve commission to be placed within the  
8 office of Hawaiian affairs for administrative purposes as  
9 provided in section 26-35. The commission shall consist of nine  
10 members to be appointed in the manner and to serve for the terms  
11 provided in section 26-34; provided that:

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



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

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

5 (7) Two members shall be appointed by the governor from a  
6 list provided by the kupa'aina families living on the  
7 kuleana lands in the valley cultural preserve.

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

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

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

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

19 **§ -6 Powers and duties of the commission.** The general  
20 administration of the valley cultural preserve shall rest with  
21 the commission. The commission:



- 1           (1) Shall establish criteria, policies, and controls for  
2           permissible uses within the valley cultural preserve;
- 3           (2) Shall approve all contracts for services and rules  
4           pertaining to the valley cultural preserve;
- 5           (3) Shall provide advice to the office, the governor, the  
6           department of land and natural resources, and other  
7           departments and agencies on any matter relating to the  
8           valley cultural preserve;
- 9           (4) Shall provide advice to the office of planning and the  
10          department of the attorney general on any matter  
11          relating to the conveyance of the valley cultural  
12          preserve to the office;
- 13          (5) May enter into curator or stewardship agreements with  
14          appropriate Hawaiian cultural and spiritual community  
15          organizations for the perpetuation of native Hawaiian  
16          cultural, religious, and subsistence customs, beliefs,  
17          and practices;
- 18          (6) Shall have those powers and duties concerning the  
19          valley cultural preserve otherwise conferred upon the  
20          city and county of Honolulu by chapter 205A;



- 1           (7) Shall adopt rules in accordance with chapter 91 that  
2           are necessary to administer this chapter and shall  
3           maintain a record of its proceedings and actions;
- 4           (8) May delegate to any executive director or employees of  
5           the commission, by formal commission action, such  
6           power and authority vested in the commission by this  
7           chapter as the commission deems reasonable and proper  
8           for the effective administration of this chapter; and
- 9           (9) May solicit and accept grants, donations, and  
10          contributions for deposit into the Ha'iku valley  
11          cultural preserve trust fund to support the purposes  
12          of this chapter.

13          §   -7   **Farming.** Notwithstanding section       -3, the  
14          commission shall adopt rules pursuant to chapter 91 to permit  
15          farming activities in the valley cultural preserve that are  
16          consistent with the purposes of this chapter and that take into  
17          consideration the health and safety of the general public.

18          §   -8   **Penalty.** Any person who violates any of the laws  
19          or rules applicable to the valley cultural preserve shall be  
20          guilty of a petty misdemeanor and shall be fined not more than  
21          \$1,000, imprisoned not more than thirty days, or both, for each



1 offense. Each day of each violation shall be deemed a separate  
2 offense.

3       **§ -9 General administrative penalties.** (a) Except as  
4 otherwise provided by law, the commission is authorized to set,  
5 charge, and collect administrative fines, or bring legal action  
6 to recover administrative costs of the commission or the office,  
7 or collect payment for damages or for the cost of correcting  
8 damages resulting from a violation of this chapter or any rule  
9 adopted hereunder. The administrative fines shall be as  
10 follows:

- 11       (1) For a first violation, a fine of not more than  
12             \$10,000;
- 13       (2) For a second violation within five years of a previous  
14             violation, a fine of not more than \$15,000; and
- 15       (3) For a third or subsequent violation within five years  
16             of the last violation, a fine of not more than  
17             \$25,000.

18       (b) In addition, an administrative fine of up to \$5,000  
19 may be levied for each specimen of natural resource or any  
20 historic property taken, killed, injured, broken, or damaged in  
21 violation of any rule adopted under this chapter.





1 (c) The remedies or penalties provided by this chapter are  
2 cumulative to each other and to the remedies and penalties  
3 provided by any other law.

4 (d) In any judicial proceeding to recover an  
5 administrative penalty imposed, the commission need only show  
6 that:

- 7 (1) Notice was given;
- 8 (2) A hearing was held or the time granted for requesting  
9 a hearing has run without such a request;
- 10 (3) An administrative penalty was imposed; and
- 11 (4) The administrative penalty remains unpaid.

12 (e) For purposes of this section:

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

17 "Historic property" means any building, structure, object,  
18 district, landscape, area, or site, including a heiau and an  
19 underwater site, that is over fifty years old.

20 **§ -10 Transfer.** Upon its conveyance to the office, all  
21 terms, conditions, agreements, and laws affecting the valley  
22 shall remain in effect unless expressly terminated.



1           **§ -11 Ha'iku valley cultural preserve trust fund. (a)**

2 There is created in the state treasury a trust fund to be  
3 designated as the Ha'iku valley cultural preserve trust fund to  
4 be administered by the office with the prior approval of the  
5 commission. Subject to this chapter:

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

8           (2) Any moneys appropriated by the legislature to the  
9 trust fund;

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

12           (4) The interest or return on investments earned from  
13 moneys in the trust fund,

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

16           (b) The commission may use moneys in the trust fund to  
17 carry out the purposes of this chapter, including hiring  
18 employees, specialists, and consultants necessary to complete  
19 projects related to the purposes of this chapter.

20           (c) Moneys deposited into or appropriated to the trust  
21 fund shall remain available until they are obligated or until  
22 the trust fund is terminated.



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

6 (e) The commission shall submit an annual report on the  
7 status of the Ha'iku valley cultural preserve trust fund to the  
8 legislature no later than twenty days prior to the convening of  
9 each regular session of the legislature. The annual report  
10 shall include the total number of and amount of grants,  
11 donations, and contributions received and balances remaining on  
12 June 30 of each year.

13 **§ -12 Severability.** If any provision of this chapter or  
14 the application thereof to any person or circumstance is held  
15 invalid, the invalidity shall not affect other provisions or  
16 applications of this chapter that can be given effect without  
17 the invalid provision or application, and to this end the  
18 provisions of this chapter are severable."

19 SECTION 3. The office of planning and the department of  
20 the attorney general, after consulting with the Ha'iku valley  
21 cultural preserve commission, are authorized to initiate the  
22 conveyance of all of the Ha'iku valley cultural preserve in fee



1 simple to the office of Hawaiian affairs; provided that before  
2 the Ha'iku valley cultural preserve is conveyed to the office,  
3 agreements shall be executed with respect to liability, monetary  
4 resources, and removal of hazardous wastes.

5 SECTION 4. (a) To implement this Act, the department of  
6 land and natural resources and any other department with an  
7 interest in lands within the Ha'iku valley cultural preserve,  
8 with oversight from the office of planning and the department of  
9 the attorney general pursuant to section 3 of this Act, are  
10 directed to deed to the office of Hawaiian affairs the lands  
11 within the Ha'iku valley cultural preserve.

12 (b) To further implement this Act, the governor is  
13 directed to set aside the lands within the Ha'iku valley  
14 cultural preserve.

15 SECTION 5. There is appropriated out of the general  
16 revenues of the State of Hawaii the sum of \$ or so  
17 much thereof as may be necessary for fiscal year 2008-2009 for  
18 the purposes of this Act, including but not limited to the  
19 acquisition of the Ha'iku valley cultural preserve by the office  
20 of Hawaiian affairs.

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



1           SECTION 6. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun, before its effective date.

4           SECTION 7. This Act shall take effect upon its approval;  
5 provided that section 5 shall take effect on July 1, 2008.



**Report Title:**  
Ha'iku Valley

**Description:**

Establishes the Ha'iku Valley cultural preserve commission to exercise policy and management oversight of the Ha'iku Valley cultural preserve. (HB2704 SD1)

