
A BILL FOR AN ACT

RELATING TO BIOPROSPECTING.

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

1 SECTION 1. The legislature finds that House Concurrent
2 Resolution No. 193, H.D. 1 (2006), declared that Hawaii's
3 biological resources are assets of the public land trust that are
4 culturally, spiritually, medicinally, and otherwise significant
5 to Hawaiians and the general public. The resolution also
6 declared that Hawaii runs the risk of losing its biological
7 resources as the State's natural habitats are developed, the
8 natural environment is degraded, and non-sustainable consumptive
9 practices are perpetuated.

10 The resolution further stated that Hawaii's unique
11 biological resources are assets of a public trust established in
12 Article XI, section 1, of the Hawaii State Constitution, which
13 states:

14 "For the benefit of present and future
15 generations, the State and its political subdivisions
16 shall conserve and protect Hawaii's natural beauty and
17 all natural resources, including land, water, air,
18 minerals and energy sources, and shall promote the



1 development and utilization of these resources in a
2 manner consistent with their conservation and in
3 furtherance of the self-sufficiency of the State.

4 All public natural resources are held in trust by
5 the State for the benefit of the people."

6 The resolution also stated that Hawaii's biological
7 resources are of great potential economic benefit in the areas
8 of medicine, scientific research, biotechnology, and commercial
9 development. The resolution identified a need to develop public
10 policy to balance development and commercialization with
11 scientific research and conservation of Hawaii's fragile bio-
12 resources, and fair and equitable benefit-sharing with the
13 general public and Hawaiians, who are the beneficiaries of the
14 public land trust.

15 The legislature also finds that the adoption of regulations
16 governing bioprospecting would assist researchers in
17 understanding the rules and the procedures for bioprospecting in
18 Hawaii, thereby making it easier for researchers to understand
19 all the aspects of pursuing such a venture. Furthermore, the
20 absence of such regulations may be depriving the State of what
21 could potentially be large monetary returns or other benefits
22 from the use of its resources. The resolution asked the



1 governor to establish a temporary advisory commission on
2 bioprospecting, placed it within the office of Hawaiian affairs
3 for administrative purposes, and tasked it with making
4 recommendations for policy development in the areas of:

- 5 (1) Prior informed consent;
- 6 (2) Equitable benefit sharing;
- 7 (3) Bio-safety protocols;
- 8 (4) A permitting and licensing process; and
- 9 (5) Cultural rights for the use of Hawaii's biodiversity.

10 The governor completed making appointments to the temporary
11 advisory commission in January 2007, and the commission held its
12 first meeting on March 16, 2007.

13 On February 5, 2008, the commission issued a report
14 containing recommendations for legislation concerning
15 bioprospecting. The purpose of this Act is to implement those
16 recommendations by:

- 17 (1) Establishing ownership of biological resources;
- 18 (2) Defining bioprospecting;
- 19 (3) Establishing a permanently funded commission on
20 prospecting; and
- 21 (4) Requiring the department of land and natural resources
22 to adopt rules pursuant to chapter 91 establishing



1 requirements for obtaining a permit to conduct
2 bioprospecting activities in the State.

3 SECTION 2. Chapter 171, Hawaii Revised Statutes, is
4 amended by adding a new part to be appropriately designated and
5 to read as follows:

6 **"PART . BIODIVERSITY AND BIOPROSPECTING**

7 § -1 **Definitions.** As used in this part, unless the
8 context otherwise requires:

9 "Access to genetic resources" or "access" means to the
10 obtaining of samples of biological or genetic materials within
11 the State's jurisdiction for purposes of research on conservation,
12 management, commercial application, or industrial use.

13 "Benefit sharing" means equitable sharing of benefits with
14 the providers of the material, on agreed terms, arising from the
15 use of biological or genetic materials.

16 "Biodiversity" means the total variety of life on earth,
17 including genes, species, and ecosystems and the complex
18 interactions among them.

19 "Bioprospecting" means any activity undertaken to harvest or
20 exploit for any purpose any sample or derivative in situ (in its
21 original location or natural environment) or ex situ (removed
22 from its original location or natural environment) of genetic or



1 biochemical resources from plants, animals, or microorganisms;
2 provided that "bioprospecting" does not include the taking of any
3 biological:

4 (1) Resources from an area of land or water by Hawaiians
5 and other peoples who have traditionally used the area
6 of land or water in accordance with traditional
7 customary practices;

8 (2) Material of living human origin;

9 (3) Samples that are part of usual practices in crop
10 cultivation, animal husbandry, or aquaculture; and

11 (4) Resources for any commercial or related noncommercial
12 activity, such as fishing for commerce or recreation,
13 collecting of broodstock, and harvesting of trees,
14 plants, and flowers.

15 "Commercial use" means any use of biodiversity or genetic
16 resources, their products, or their derivatives for monetary
17 gain that includes selling in the market.

18 "Commission" means the commission on bioprospecting
19 established by this part.

20 "Department" means the department of land and natural
21 resources.



1 "Hawaiians" means persons defined as "Hawaiian" in section
2 10-2.

3 "Material transfer agreement" means an agreement executed
4 between the individual who has recovered the biological resource
5 and another individual who wants access to the material for the
6 latter individual's own purposes, regardless of whether the
7 purpose may be pure research or commercial.

8 "Prior informed consent" means assent that is reached by
9 means of a set of administrative procedures for deciding on
10 whether to grant access to genetic resources on defined terms.

11 "State lands" includes all public and other lands,
12 including but not limited to submerged lands, owned or in
13 possession, use, and control of the then Territory of Hawaii or
14 the State of Hawaii, or any of its agencies.

15 § -2 **Biodiversity ownership and rights.** (a) Except as
16 provided in this part, the ownership of, and right to, any
17 biodiversity in, on, or under any lands located in the State of
18 Hawaii, regardless of whether the lands are state lands or
19 private lands, shall:

20 (1) Rest with the State; and



1 (2) Not be transferred by any lease, sale, right of entry,
2 or other agreement, the ownership of and right to
3 biodiversity being held by, and reserved to, the State.

4 (b) Disposition of biodiversity rights shall be in
5 accordance with the laws relating to the disposition of
6 biodiversity rights enacted by the legislature.

7 (c) Subject to subsection (a), all land patents, leases,
8 grants, or other conveyances of any lands located in the State
9 of Hawaii, regardless of whether the lands are state lands or
10 private lands, shall be subject to, and contain a reservation to
11 the State of, all the biodiversity.

12 § -3 **Authority and responsibility of the State.** The
13 State shall have the authority and responsibility to regulate
14 bioprospecting and the subsequent commercial use of the State's
15 biodiversity and to protect the knowledge, innovations, and
16 traditional and customary practices of Hawaiians and other
17 peoples.

18 § -4 **Establishment of the commission on**
19 **bioprospecting.** (a) There is created the commission on
20 bioprospecting to be placed within the department for
21 administrative purposes. The commission shall consist of
22 eleven members consisting of:



- 1 (1) The chairperson of the board of trustees of the
2 office of Hawaiian affairs or a designee;
- 3 (2) The president of the University of Hawaii or a
4 designee;
- 5 (3) The director of business, economic development, and
6 tourism or a designee;
- 7 (4) The chairperson of the board of land and natural
8 resources or a designee;
- 9 (5) Five members who are to be appointed by the
10 governor from candidates nominated by the president
11 of the senate, the speaker of the house of
12 representatives, and Hawaiian organizations and who
13 are from the native Hawaiian community, reside in
14 the State, and have a demonstrated background in:
- 15 (A) Traditional and customary use of biological and
16 genetic resources;
- 17 (B) Indigenous and traditional technologies;
- 18 (C) Scientific and technical use of native Hawaiian
19 practices;
- 20 (D) Legal procedures nationally and
21 internationally, in connection with the



1 protection or commercialization of biological
2 and genetic resources; and

3 (E) Native Hawaiian cultural rights as contained in
4 the Hawaii state constitution and the Hawaii
5 Revised Statutes;

6 (6) Two members who are to be appointed by the governor
7 from candidates nominated by the president of the
8 senate, the speaker of the house of
9 representatives, and members of the biotechnology
10 industry based in Hawaii and who are
11 representatives of the biotechnology industry and
12 whose principal place of business is in the State.

13 (b) The commission shall elect its chairperson from
14 among its own membership. Members shall not be compensated
15 for their services on the commission, but shall be reimbursed
16 for actual and necessary expenses incurred in the performance
17 of their duties.

18 (c) The commission may hire staff necessary for the
19 performance of its duties, including an executive officer and
20 administrative personnel. The executive officer shall be
21 appointed by the commission and shall be exempt from chapters
22 76 and 89. Other departments of the state government shall



1 make available to the commission data, facilities, and
2 personnel as are necessary for the commission to perform its
3 duties. The commission may receive and utilize donations and
4 any funds from federal or other governmental agencies. It
5 shall adopt rules in accordance with chapter 91 to guide its
6 conduct, maintain a record of its activities and
7 accomplishments, and make recommendations to the governor and
8 to the legislature through the governor.

9 § -5 **Duties of commission.** The commission's duties
10 shall include but not be limited to the following:

11 (1) To enter into and enforce access and benefit sharing
12 agreements related to proposed bioprospecting ventures;
13 and

14 (2) As the initial task after its formation, to establish
15 procedures governing an access and benefit sharing
16 agreement process to include identification of
17 stakeholders, prior informed consent, equitable
18 benefit sharing, and biosafety encompassing the
19 following considerations:

20 (A) Priority for participation in the process shall
21 be given to the following stakeholders to be



1 engaged in the discussion of every aspect of
2 every component of the agreement:
3 (i) Landowners;
4 (ii) Hawaiians;
5 (iii) The community from which the resources are
6 sampled;
7 (iv) Researchers;
8 (v) The University of Hawaii; and
9 (vi) The biotechnology industry;
10 provided that discussion shall not necessarily be
11 limited to these priority stakeholders;
12 (B) Prior informed consent shall be given by the
13 requisite stakeholders, as determined by the
14 regulatory process, prior to the commencement of a
15 prospective bioprospecting venture;
16 (C) Benefit sharing shall provide for the
17 distribution of any monetary and nonmonetary
18 benefits that may result from the exploration
19 activities to the stakeholders under
20 subparagraph (A);
21 (D) Applicable biosafety protocols shall be addressed
22 in all access and benefit sharing agreements; and



1 (E) The knowledge, innovations, and traditional and
2 customary practices of Hawaiians and other
3 peoples shall be protected.

4 § -6 **Administrative rules.** The department, in
5 consultation with the commission, shall adopt rules pursuant to
6 chapter 91 establishing requirements for obtaining a permit to
7 conduct bioprospecting activities. The regulations shall
8 include, but not be limited to, provisions:

9 (1) Establishing a two-track system for determining
10 whether or not to approve a permit and allow a venture
11 to proceed. Under the two-track system, all permit
12 applications shall be reviewed at the outset to
13 determine whether the proposed activity:

14 (A) Involves any intent to use any sample to produce a
15 commercial product or process; or

16 (B) Is for the purpose of conducting academic or
17 scientific research that does not infringe on
18 the knowledge, innovations, and traditional
19 or customary practices of Hawaiians.

20 Applications under subparagraph (A) shall be referred
21 to the commission for review and recommendation prior
22 to the department's decision on issuing a permit.



1 Applications under subparagraph (B) shall be placed on
2 a fast track to the department for a decision.

3 (2) Requiring the permit holder to submit all
4 proposed material transfer agreements to the
5 commission to ensure that all legal requirements are
6 being observed;

7 (3) Requiring the owners of ex situ collections to refer
8 any requests for transfer of the specimens in their
9 possession or control to the commission;

10 (4) Requiring all bioprospecting permits to require the
11 permit holder to periodically report the use and
12 location of any samples collected under the authority
13 of the permit;

14 (5) Requiring all permit holders to obtain the commission's
15 permission before transferring any samples to another
16 party, for any reason;

17 (6) Establishing an efficient tracking system relating to
18 the samples;

19 (7) Requiring all permit holders to inform the department
20 and the commission when a discovery is made so that the
21 commission may negotiate terms of any licensing
22 agreements that might follow;



- 1 (8) Requiring a permit applicant to meet with all parties
2 in the community who are interested in the project to
3 attempt to arrive at an agreement that will allow the
4 project to proceed;
- 5 (9) Protecting proprietary information that an applicant
6 might be requested to reveal during the access and
7 benefit sharing agreement proceedings;
- 8 (10) Requiring the commission to establish advisory groups to
9 engage in the access and benefit sharing process;
- 10 (11) Upon the commission's determination that all
11 stakeholders have agreed to an access and benefit
12 sharing agreement, requiring the permit application to
13 be referred back to the department for appropriate
14 processing; and
- 15 (12) If a subsequent discovery leads to development of a
16 commercially valuable product, requiring a permit
17 holder initially granted a permit under paragraph
18 (1)(B) to immediately resubmit an application for a
19 permit under paragraph (1)(A), which shall be referred
20 to the commission for further processing in accordance
21 with this section."



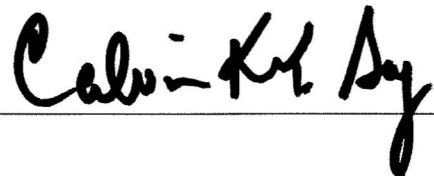
1 SECTION 3. There is appropriated out of the general
 2 revenues of the State of Hawaii the sum of \$ or so much
 3 thereof as may be necessary for fiscal year 2009-2010 and the
 4 same sum or so much thereof as may be necessary for fiscal year
 5 2010-2011 for the establishment of the commission on
 6 bioprospecting as set forth in section 2 of this Act.

7 The sums appropriated shall be expended by the department
 8 of land and natural resources for the purposes of this Act.

9 SECTION 4. This Act shall take effect upon its approval,
 10 except that section 3 shall take effect on July 1, 2009.

11

INTRODUCED BY:



BY REQUEST

JAN 26 2009



Report Title:

Bioprospecting

Description:

Vests rights to biodiversity in the State. Creates commission on bioprospecting and authorizes DLNR and commission to regulate bioprospecting and subsequent commercial use of the State's biodiversity through procedures governing access and the benefit sharing agreement process. Appropriation for FY 2009-2010.

