

JAN 26 2009

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# A BILL FOR AN ACT

RELATING TO MAKUA.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by adding a  
2 new chapter to be appropriately designated and to read as  
3 follows:

4 "CHAPTER

5 MAKUA VALLEY RESERVE

6 § -1 Administration of chapter. The Makua valley  
7 reserve commission and the department of land and natural  
8 resources shall administer this chapter.

9 § -2 Definitions. As used in this chapter, unless the  
10 context otherwise requires:

11 "Commission" means the Makua valley reserve commission.

12 "Department" means the department of land and natural  
13 resources.

14 "Valley reserve" means the area designated on the island of  
15 Oahu as Makua valley, including the three ahupua`a of  
16 Kahanahaiki, Makua, and Koi`ahi.

17 § -3 Reservation of uses. (a) The Makua valley reserve  
18 shall be used solely and exclusively for the following purposes:

SB LRB 09-1434.doc



- 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 its archaeological,
- 5                   historical, and environmental resources;
- 6           (3) Rehabilitation, revegetation, habitat restoration, and
- 7                   preservation; and
- 8           (4) Education.

9           (b) The Makua valley shall be reserved in perpetuity for  
10 the uses enumerated in subsection (a). Commercial uses shall be  
11 strictly prohibited.

12           §   -4   **Powers and duties.** The department and other  
13 departments and agencies of the State shall be subject to the  
14 oversight of the commission with regard to the control and  
15 management of the valley reserve. Subject to section -6, the  
16 department shall:

- 17           (1) Implement controls and permitted uses for the valley
- 18                   reserve;
- 19           (2) Enforce this chapter;
- 20           (3) Provide administrative support to the commission; and
- 21           (4) Authorize those of its employees as it deems
- 22                   reasonable and necessary to serve and execute warrants



1 and arrest offenders or issue citations in all matters  
2 relating to enforcement of the laws and rules  
3 applicable to the valley reserve.

4 § -5 **Commission.** (a) There is established the Makua  
5 valley reserve commission to be placed within the department of  
6 land and natural resources for administrative purposes as  
7 provided in section 26-35. The commission shall consist of ten  
8 members to be appointed in the manner and to serve for the terms  
9 provided in section 26-34; provided that:

- 10 (1) One member shall be a member of Malama Makua;
- 11 (2) One member shall be a member of Hui Malama O Makua;
- 12 (3) One member shall be a member of Koa Mana;
- 13 (4) One member shall be a representative of families that  
14 were evicted from Makua valley or whose lands in Makua  
15 valley were condemned by the federal government;
- 16 (5) One member shall be appointed by the governor from a  
17 list provided by the Waianae coast community;
- 18 (6) One member shall be a trustee or representative of the  
19 office of Hawaiian affairs;
- 20 (7) One member shall be the commanding officer of the  
21 United States Army in the Pacific, or the commanding  
22 officer's designee;



1 (8) One member shall be the adjutant general of the State  
2 of Hawaii, or the adjutant general's designee;

3 (9) One member shall be the chairperson of the board of  
4 land and natural resources; and

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

7 (b) The governor shall appoint the chairperson from among  
8 the members of the commission.

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

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

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

18 § -6 **Responsibilities and duties of the commission.** The  
19 general administration of the valley reserve shall rest with the  
20 commission. In carrying out its duties and responsibilities,  
21 the commission:



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



1           approvals pertaining to the valley reserve are  
2           transferred to the commission;

3           (7) Shall adopt rules in accordance with chapter 91 that  
4           are necessary for the purposes of this chapter and  
5           shall maintain a record of its proceedings and  
6           actions; and

7           (8) May delegate to the executive director or employees of  
8           the commission, by formal commission action, such  
9           power and authority vested in the commission by this  
10          chapter as the commission deems reasonable and proper  
11          for the effective administration of this chapter.

12          §   -7   **Interim activities of the commission.** Prior to the  
13          return of Makua valley from the United States Army to the State,  
14          the commission may enter into discussions with the Army to  
15          facilitate the expedient return of Makua valley upon the  
16          expiration of the Army's lease.

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



1           § -9 **General administrative penalties.** (a) Except as  
2 otherwise provided by law, the commission may set, charge, and  
3 collect administrative fines, or bring legal action to recover  
4 administrative costs of the commission or the department, or  
5 payment for damages, or for the cost to correct damages  
6 resulting from a violation of this chapter or any rule adopted  
7 thereunder. The administrative fines shall be as follows:

8           (1) For a first violation, by a fine of not more than  
9           \$10,000;

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

12          (3) For a third or subsequent violation within five years  
13          of the last violation, by a fine of not more than  
14          \$25,000.

15          (b) In addition, an administrative fine of up to \$5,000  
16 may be levied for each specimen of natural resource or any  
17 historic property taken, killed, injured, broken, or damaged in  
18 violation of any rule adopted under this chapter. For purposes  
19 of this section, "natural resource" includes any archaeological  
20 artifacts, minerals, any aquatic or terrestrial life or wildlife  
21 or parts thereof, including their eggs, and any land plants or  
22 parts thereof, including seeds. For purposes of this section,



1 "historic property" means any building, structure, object,  
2 districts, area, or site, including heiau and underwater site  
3 that is over fifty years old.

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

12 (d) In any judicial proceeding to recover an  
13 administrative penalty imposed, the commission need only show  
14 that:

- 15 (1) Notice was given;
- 16 (2) A hearing was held or the time granted for requesting  
17 a hearing has run without a request for a hearing;
- 18 (3) An administrative penalty was imposed; and
- 19 (4) The administrative penalty remains unpaid.

20 § -10 **Transfer.** Upon its return to the State, the  
21 resources of Makua valley shall be held in trust as part of the  
22 public land trust; provided that the State shall transfer





1 management and control of the valley to the sovereign native  
2 Hawaiian entity upon its recognition by the United States and  
3 the State of Hawaii.

4 All terms, conditions, agreements, and laws affecting Makua  
5 valley, including any ongoing obligations relating to the clean-  
6 up of the valley, shall remain in effect unless expressly  
7 terminated.

8 § -11 **Makua valley rehabilitation trust fund.** (a)

9 There is created in the state treasury a trust fund to be  
10 designated as the Makua valley rehabilitation trust fund to be  
11 administered by the department with the prior approval of the  
12 commission. Subject to this chapter:

13 (1) All moneys received from the federal government for  
14 the rehabilitation and environmental restoration of  
15 Makua valley;

16 (2) Any moneys appropriated by the legislature to the  
17 trust fund;

18 (3) Any proceeds from administrative fines imposed and  
19 collected under this chapter; 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 repealed.

10 (d) The trust fund shall be repealed on July 1, 2045. The  
11 commission shall transfer to the credit of the state general  
12 fund, all unexpended or unencumbered balances remaining in the  
13 trust fund prior to June 30, 2045; provided that all unexpended  
14 or unencumbered balances of federal moneys shall be disbursed in  
15 accordance with applicable federal law.

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



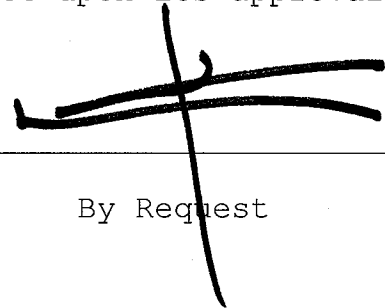
# S.B. NO. 1000

1           SECTION 2. It is the express intent of the legislature and  
2 this Act to not obstruct, deny, or revoke any rights or  
3 privileges heretofore exercised by the United States Army in its  
4 use of Makua valley throughout the term of its lease.

5           SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY: \_\_\_\_\_

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By Request



**Report Title:**

Makua Valley

**Description:**

Establishes the Makua valley reserve commission to be responsible for the general administration of the Makua valley reserve.

