

STAND. COM. REP. NO.

2668

Honolulu, Hawaii

MAR 02 2018

RE: S.B. No. 2863

S.D. 2

Honorable Ronald D. Kouchi  
President of the Senate  
Twenty-Ninth State Legislature  
Regular Session of 2018  
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred S.B. No. 2863, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO THE PENAL CODE,"

begs leave to report as follows:

The purpose and intent of this measure is to amend the offenses of property damage in the first, second, and third degrees to include damaging property holding cultural or historical significance to Native Hawaiians.

Your Committee received testimony in support of this measure from Ho‘omanapono Political Action Committee; Ho‘omana Pono, LLC; Oahu County Committee on Legislative Priorities of the Democratic Party of Hawaii; and one individual. Your Committee received testimony in opposition to this measure from the Office of the Public Defender. Your Committee received comments on this measure from the Department of the Attorney General.

Your Committee finds that the cultural and historic heritage of Native Hawaiians is among the State's important assets. A more fitting penalty is necessary for intentional damage to property that is culturally or historically significant to Native Hawaiians, such as the damage done to the ‘Iolani Palace, statue of Prince Kūhiō, and King Kamehameha statue in the County of Hawai‘i.



Your Committee expresses concerns that the definition of "property holding cultural or historical significance to Native Hawaiians" is vague and uncertain as to the specific property to which it applies. Additionally, categorizing damage to property holding cultural or historical significance to Native Hawaiians into degrees based on the monetary amount of damages is consistent with the existing offense of criminal property damage, but may not be appropriate in situations where the cultural or historical value of a piece of property is high but the pecuniary value of the property is low.

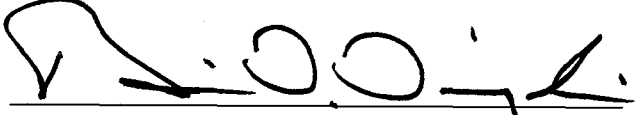
Accordingly, your Committee has amended this measure by:

- (1) Simplifying the legislative findings;
- (2) Changing the definition of "property holding cultural or historical significance to Native Hawaiians" to "property of another holding cultural or historical significance to Native Hawaiians" and making the designation of cultural or historical significance contingent on a determination of significance by experts in traditional Native Hawaiian customs and practices in the district where the property is located;
- (3) Establishing a new offense of criminal property damage to property of another holding historical significance to Native Hawaiians as a class C felony offense, instead of including it within the existing offenses of criminal property damage;
- (4) Inserting an effective date of July 1, 2050, to encourage further discussion; and
- (5) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2863, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 2863, S.D. 2.



Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary,

  
BRIAN T. TANIGUCHI, Chair



