STAND. COM. REP. NO.

2668

Honolulu, Hawaii

MAR 0 2 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:

- Simplifying the legislative findings; (1)
- (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;
- Establishing a new offense of criminal property damage (3) 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
- 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

The Senate Twenty-Ninth Legislature State of Hawai'i

Record of Votes Committee on Judiciary JDC

Bill / Resolution No.:*	Committee Referral:			Date:	
SB 2863, SDI	HWN, JOC			2/27/2018	
The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to:					
The Recommendation is:					
Pass, unamended Pass, with amendments Hold Recommit 2312 2311 2310 2313					
Members		Aye	Aye (WR)	Nay	Excused
TANIGUCHI, Brian T. (C)		/			
RHOADS, Karl (VC)		/			
GABBARD, Mike		·			
KIM, Donna Mercado					
THIELEN, Laura H.					
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TOTAL		4	1	0	0
Recommendation: Adopted Not Adopted					
Chair's or Designee's Signature:					
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy					

*Only one measure per Record of Votes