

S.B. NO. 2806

JAN 24 2018

A BILL FOR AN ACT

RELATING TO THE TAKING OF NATURAL RESOURCES.

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

1 SECTION 1. Chapter 199, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§199- Exhibit upon demand; inspection. (a) Section
5 199-7 notwithstanding, any police officer or agent of the
6 department of land and natural resources upon whom the board of
7 land and natural resources has conferred police powers may, in
8 the performance of the officer's or agent's primary duties, stop
9 and temporarily detain any person whom the officer or agent
10 reasonably believes is, or recently has been, engaged in
11 fishing, hunting, gathering, or any other activity involving the
12 take of natural resources, and may inspect any license, permit,
13 stamp, tag, or other relevant documentation, as well as all
14 natural resources in possession, including the contents of any
15 bag or container of any kind used to carry natural resources,
16 and any equipment, article, instrument, aircraft, vessel,

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1 vehicle, or conveyance being used, to determine whether the
2 person is in compliance with title 12, chapters 6D, 6E, and 6K,
3 and any rules adopted thereunder, or any other statutes, rules,
4 or regulations relating to the protection and conservation of
5 natural resources. For purposes of this section, "natural
6 resources" includes any archaeological artifacts, minerals, any
7 aquatic life or wildlife or parts thereof, including their eggs,
8 and any land plants or parts thereof, including seeds.

9 (b) Any license, permit, stamp, tag, or other relevant
10 documentation, any natural resources in possession, and any
11 device or apparatus designed to be and capable of being used to
12 take natural resources, shall be exhibited upon demand to any
13 person authorized by the department of land and natural
14 resources to enforce title 12, chapters 6D, 6E, and 6K, and any
15 rules adopted thereunder, or any other statutes, rules, or
16 regulations relating to the protection and conservation of
17 natural resources."

18 SECTION 2. This Act does not affect rights and duties that
19 matured, penalties that were incurred, and proceedings that were
20 begun before its effective date.

21 SECTION 3. New statutory material is underscored.
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1 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: 

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BY REQUEST

Report Title:

Natural Resources; Inspection

Description:

Clarifies that any police officer or agent of the Department of Land and Natural Resources upon whom the Board of Land and Natural Resources has conferred police powers may, in the performance of the officer's or agent's primary duties, inspect certain items for compliance with Title 12, Chapters 6D, 6E, and 6K, Hawaii Revised Statutes, and any rules adopted thereunder, or any other statutes, rules, or regulations relating to the protection and conservation of natural resources.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

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JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO THE TAKING OF NATURAL RESOURCES.

PURPOSE: To clarify that any police officer or agent of the Department upon whom the Board of Land and Natural Resources has conferred police powers may, in the performance of their primary duties, inspect certain items for compliance with title 12 chapters 6D, 6E, and 6K, Hawaii Revised Statutes (HRS), and any rules adopted thereunder, or any other statutes, rules, or regulations relating to the protection and conservation of natural resources.

MEANS: Add a new section to chapter 199, HRS.

JUSTIFICATION: Since 2007, there have been a number of attempts in the State Legislature to give the Department's Division of Conservation and Resources Enforcement (DOCARE) Officers the authority to inspect bags or containers containing aquatic life without the need for probable cause. This legal issue has been identified as a hurdle to effectively enforcing fishing violations. In the Senate Standing Committee Report. No. 265, Senate Bill 663, Senate Draft 1, Regular Session of 2007, it was quoted, "*Hawaiian commercial and recreational marine life stocks are depleted, over-utilized, and in danger of irretrievable exhaustion. Although management tools have been enacted, fishery assessment depends on the voluntary cooperation of those who harvest these resources. While most fishers are willingly cooperative, increasing stock scarcity has led to conspicuous instances of obstruction of the efforts by the Division of Conservation and Resources Enforcement Officers to inspect catch. Your Committee finds that the current probable cause*

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provision under section 187A-15, Hawaii Revised Statutes, does provide a degree of constitutional protection while at the same instance, may unduly hinder enforcement officers by preventing them from inspecting containers that may be used to transport fish and other aquatic life. Thus, this greatly weakens the effect of fisheries management measures, such as bag and size limits. While your Committee recognizes the seriousness of repealing the probable cause requirement from section 187A-15, Hawaii Revised Statutes, establishing an administrative inspection scheme will enable Division of Conservation and Resources Enforcement officers to better inspect and enforce the State's fishing laws."

For comparison, and until recently, this particular enforcement challenge did not exist for hunting violations, because game mammal and bird hunting licenses require a hunter to consent to these kind of searches as a condition of receiving the hunting license. Under section 13-123-22(1)(D) Hawaii Administrative Rules, consent to inspections is a condition of applying for game mammal hunting in public hunting areas. Senate Bill 663, Senate Draft 1, Regular Session of 2007, went so far as to reinforce this notion, "*No probable cause is required because the consent to a search occurs when a hunting license is issued.*".

Since no similar license exists for non-commercial marine fishing, legislative efforts have attempted to address the consent to search issue for all aquatics violations by statute. Those legislative attempts have been unsuccessful.

Currently, DOCARE Officers are attempting to gain voluntary compliance for an inspection. In cases involving hunting and commercial fishing, if a lawful demand to exhibit is unsuccessful, then a limited and narrow inspection may be executed, by virtue of

individuals holding licenses for these activities. DOCARE Officers are operating under the assumption that their limited authority does NOT extend to saltwater recreational activities.

However, recent legal analysis has suggested that these assumptions regarding the inspections that the DOCARE Officers currently conduct for hunting and commercial fishing may also be flawed and that the probable cause standard should be employed at all times.

Therefore, with clear statutory language outlining a limited inspection authority coupled with the need to exhibit upon a lawful demand, the proposed legislation will allow DOCARE Officers to have valid authority for a limited inspection while in the field and fulfill the need to adequately protect the natural and cultural resources of Hawaii.

Impact on the public: The proposed amendments would provide the Department with adequate authority to conduct field inspections for compliance with rules and regulations concerning the take of natural and cultural resources. Limited inspections are already occurring and the proposed amendments would clarify the general conditions under which the inspections would occur.

Impact on the department and other agencies: The proposed amendments would provide the Department with adequate authority and lessen confusion on when and where inspections can occur.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION:

LNR 405.

OTHER AFFECTED
AGENCIES:

None.

EFFECTIVE DATE:

Upon approval.