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S.B. NO. 175

A Bill for an Act Relating to the Environment.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that responsible commercial propagation and use of selected threatened and endangered plant species can be of tremendous benefit in not only bolstering and stabilizing the populations of those species, but in serving as a means for enhancing public perception of and active participation in ecological preservation.

The legislature also finds that as the commercial and private propagation, and the subsequent increased availability of selected threatened and endangered species becomes a common practice, the destruction of such species through takings in the wild should correspondingly lessen.

The legislature further finds that ensuring the successful application of programs and proposals such as this will require the regulatory agency to encourage compliance with the law by not adopting rules and regulations that are unduly onerous and would discourage public participation.

The purpose of this Act is to require the department of land and natural resources to adopt rules authorizing the sale of selected threatened and endangered plant species grown from nursery stock and not collected from the wild. It is the intent of the legislature that the rules not be overly burdensome on those who either

purchase or privately propagate such plant species, lest the purpose of this Act be negated.

SECTION 2. Section 195D-4, Hawaii Revised Statutes, is amended to read as follows:

“§195D-4 Endangered species and threatened species. (a) Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the Endangered Species Act shall be deemed to be an endangered species under [the provisions of] this chapter and any indigenous species of aquatic life, wildlife, or land plant that has been determined to be a threatened species pursuant to the Endangered Species Act shall be deemed to be a threatened species under [the provision of] this chapter. However, the department may determine, in accordance with this section, that any such threatened species is an endangered species throughout all or any portion of the range of such species within this State.

(b) In addition to the species that have been determined to be endangered or threatened pursuant to the Endangered Species Act, the department [may], by rules adopted pursuant to chapter 91, may determine any indigenous species of aquatic life, wildlife, or land plant to be an endangered species or a threatened species because of any of the following factors:

- (1) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (2) Overutilization for commercial, sporting, scientific, educational, or other purposes;
- (3) Disease or predation;
- (4) The inadequacy of existing regulatory mechanisms; or
- (5) Other natural or [manmade] artificial factors affecting its continued existence within Hawaii.

(c) Basis for determinations. The department shall make determinations required by subsection (b) [of this section] on the basis of all available scientific, commercial, and other data after consultation, as appropriate, with federal agencies, other interested state and county agencies, and interested persons and organizations.

(d) Lists.

- (1) The department shall issue rules containing a list of all species of aquatic life, wildlife, and land plants that have been determined, in accordance with subsections (a) [through] to (c) [of this section], as endangered species and a list of all such species so designated as threatened species. Each list shall include the scientific, common, and Hawaiian name or names, if any, and shall specify with respect to each such species over what portion of its range it is endangered or threatened.
- (2) Except with respect to species of aquatic life, wildlife, or land plants determined to be endangered or threatened pursuant to the Endangered Species Act, the department [shall], upon its own recommendation or upon the petition of three interested persons[,], who have presented to the department substantial evidence which warrants review, shall conduct a review of any listed or unlisted indigenous species proposed to be removed from or added to the lists published pursuant to paragraph (1) [of this subsection].

(e) Prohibited acts. With respect to any endangered species of aquatic life, wildlife, or land plant, it is unlawful, except as provided in [subsection] subsections (f) [of this section,] and (g), for any person subject to the jurisdiction of this State to:

- (1) Export any such species from this State;
- (2) Take any such species within this State;

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- (3) Possess, process, sell, offer for sale, deliver, carry, transport, or ship, by any means whatsoever, any such species;
- (4) Violate any rule pertaining to the conservation of such species or to any threatened species of aquatic life, wildlife, and land plant listed pursuant to this section and adopted by the department pursuant to authority provided by this chapter.

(f) License. The department may issue temporary licenses, under such terms and conditions as it may prescribe, to allow any act otherwise prohibited by subsection (e) [of this section], for scientific purposes or to enhance the propagation or survival of the affected species. Licenses issued pursuant to this subsection shall be revocable for due cause and shall be nonassignable. Any person whose license has been revoked shall not be eligible to apply for another license until the expiration of two years from the date of revocation.

(g) Subsection (e) and any other provision of law to the contrary notwithstanding, the department shall adopt rules in accordance with chapter 91 authorizing the propagation, possession, ownership, and sale of selected endangered and threatened land plant species grown from cultivated nursery stock and not collected or removed from the wild.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 7, 1997.)