A BILL FOR AN ACT

RELATING TO AGRICULTURE.

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

PART I

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to title 11 to be appropriately designated and to read as follows:

"CHAPTER

AGRICULTURAL THEFT ENFORCEMENT PROGRAM

§ 1 Board of agriculture; powers and duties. The board of agriculture shall establish within the department of agriculture an agricultural theft enforcement program and shall employ or appoint, and remove, the following persons, subject to chapter 76 and section 78-1, who shall be provided with suitable badges or insignia of office by the department of agriculture:

(1) An enforcement chief of the department of agriculture, who shall be the head of the agricultural theft enforcement program and shall have charge, direction, and control, subject to the direction and control of the board of agriculture, of all matters relating to
the enforcement of the offense of theft of an agricultural product or commodity, pursuant to sections 708-830, 708-830.5, 708-831, 708-832, 708-833, or 708-835.5, and any other matters as determined by the board of agriculture. The enforcement chief shall be an administrator experienced in addressing agricultural theft; and

(2) Personnel and enforcement officers of the agricultural theft enforcement program, including but not limited to enforcement officers on a voluntary basis and without pay.

§ -2 Agricultural theft enforcement special fund; established. (a) There is hereby established in the state treasury a special fund known as the agricultural theft enforcement special fund, which shall be administered by the department of agriculture.

(b) The following shall be deposited into the agricultural theft enforcement special fund:

(1) Grants, awards, donations, gifts, transfers, or moneys derived from public or private sources for the purposes of enforcing the offense of theft of an
agricultural product or commodity pursuant to sections 708-830, 708-830.5, 708-831, 708-832, 708-833, or 708-835.5, or any other matters as determined by the board of agriculture;

(2) Fees, reimbursements, administrative charges, and penalties collected for activities related to the enforcement of laws and rules protecting agricultural products or commodities, except as otherwise provided by law that provides for deposits into other special funds administered by the department of agriculture;

(3) Moneys derived from interest, dividends, or other income from the above-mentioned sources; and

(4) Appropriations by the legislature to the special fund.

(c) The agricultural theft enforcement special fund shall be used for expenditures, including but not limited to:

(1) Training;

(2) Research;

(3) Equipment;

(4) Preparation and dissemination of information to the public;

(5) Data collection and development;
(6) Information technology;
(7) Safety;
(8) Wireless communication;
(9) Management;
(10) Travel;
(11) Equipment rental;
(12) Repairs;
(13) Planning;
(14) Information;
(15) Education;
(16) Operations;
(17) Maintenance functions authorized and deemed necessary by the department of agriculture;
(18) Funding for consultants or contractual hires related to the enforcement of the offense of theft of an agricultural product or commodity pursuant to sections 708-830, 708-830.5, 708-831, 708-832, 708-833, or 708-835.5, or any other matters as determined by the board of agriculture; and
(19) Work performed in cooperation with enforcement authorities of the State, the counties, and the federal government.

(d) The fund shall be held separate and apart from all other moneys, funds, and accounts in the department of agriculture, except that any moneys received from the federal government or from private contributions shall be deposited and accounted for in accordance with conditions established by the department of agriculture and agencies or persons from whom the moneys are received. Any balance remaining in the fund at the end of any fiscal year shall be carried forward in the fund for the next fiscal year.

§ 3 Board of agriculture, delegation of authority. The board of agriculture may delegate to enforcement officers within the agricultural theft enforcement program any authority as may be required for enforcement of the offense of theft of an agricultural product or commodity pursuant to sections 708-830, 708-830.5, 708-831, 708-832, 708-833, or 708-835.5, or any other matters as determined by the board of agriculture.
§ 4 Agricultural theft enforcement officers, duties; other law enforcement officers. (a) The agricultural theft officers shall:

1. Enforce the offense of theft of an agricultural product or commodity pursuant to sections 708-830, 708-830.5, 708-831, 708-832, 708-833, or 708-835.5;

2. Investigate complaints, gather evidence, conduct investigations, and conduct field observations and inspections as required or assigned;

3. Cooperate with enforcement authorities of the State, counties, and federal government in development of programs and mutual aid agreements for agricultural theft enforcement activities within the State; and

4. Carry out other duties and responsibilities as determined by the board of agriculture.

(b) Every state and county officer charged with the enforcement of laws and ordinances shall enforce and assist in the enforcement of the offense of theft of an agricultural product or commodity pursuant to sections 708-830, 708-830.5, 708-831, 708-832, 708-833, or 708-835.5, and any other matters as determined by the board of agriculture.
(c) The department of agriculture shall enter into memoranda of agreement with the division of conservation and resource enforcement of the department of land and natural resources, the sheriff division of the department of public safety, and each county police department as necessary to effectuate the purposes of this section.

§ 5 Board of agriculture, police powers. (a) The board of agriculture shall have police powers and may appoint and commission enforcement officers within the agricultural theft enforcement program. Persons appointed and commissioned under this section shall have and may exercise all of the powers and authority of a police officer, including the power of arrest, and in addition to enforcing the offense of theft of an agricultural product or commodity pursuant to sections 708-830, 708-830.5, 708-831, 708-832, 708-833, or 708-835.5, and any other matters as determined by the board of agriculture, may enforce all other state laws and rules and county ordinances within all lands and waters of the State; provided that these powers shall remain in force and effect only while in actual performance of their duties, which shall include off-duty employment when that employment is for other state departments
or agencies. These enforcement officers shall consist of personnel whose primary duty is the enforcement of the offense of theft of an agricultural product or commodity pursuant to sections 708-830, 708-830.5, 708-831, 708-832, 708-833, or 708-835.5, and any other matters as determined by the board of agriculture.

(b) An enforcement officer, upon arresting any person for violation of the offense of theft of an agricultural product or commodity pursuant to sections 708-830, 708-830.5, 708-831, 708-832, 708-833, or 708-835.5, or other matters as determined by the board of agriculture, may immediately take the person arrested to a police station or before a district judge, or take the name and address of the person, and note the violation of the law or rule by the person, and issue the person a summons or citation, printed in the form described in section §-6, warning the person to appear and to answer to the charge against the person at a certain place and time within seven days after the arrest. Any person failing to obey a summons issued pursuant to this section shall be subject to section §-7.

§ -6 Summons or citation. There shall be a form of summons or citation for use in citing violators of the offense
of theft of an agricultural product or commodity pursuant to sections 708-830, 708-830.5, 708-831, 708-832, 708-833, or 708-835.5, or other matters as determined by the board of agriculture that does not mandate the physical arrest of the violators. The summons or citation shall be printed in a form commensurate with the form of other summons or citation used in modern methods of arrest and shall be so designed to include all necessary information to make it valid and legal within the laws and rules of the State. The form and content of the summons or citation shall be adopted or prescribed by the district courts.

In every case where a summons or citation is issued, the original of the same shall be given to the violator; provided that the district courts may prescribe the issuance to the violator of a copy of the summons or citation and provide for the disposition of the original and any other copies. Every summons or citation shall be consecutively numbered, and each copy shall bear the number of its respective original.

§ 7 Failure to obey a summons. Any person who fails to appear at the place and within the time specified in the summons or citation issued by the officers or their agents or subordinates, upon that person's arrest for violation of the
offense of theft of an agricultural product or commodity pursuant to sections 708-830, 708-830.5, 708-831, 708-832, 708-833, or 708-835.5, or any other matters as determined by the board of agriculture, shall be guilty of a petty misdemeanor and, upon conviction, shall be fined not more than $500 or be imprisoned not more than thirty days, or both.

If any person fails to comply with a summons or citation issued, or if any person fails or refuses to deposit bail as required and within the time permitted, the officers shall cause a complaint to be entered against the person and secure the issuance of a warrant for the person's arrest.

When a complaint is made to any prosecuting officer of the violation of the offense of theft of an agricultural product or commodity pursuant to sections 708-830, 708-830.5, 708-831, 708-832, 708-833, or 708-835.5, or any other matters as determined by the board of agriculture, the officer who issued the summons or citation shall subscribe to it under oath administered by another official or officials of the department of agriculture whose names have been submitted to the prosecuting officer and who have been designated by the chairperson of the board of agriculture to administer the same.
§ -8 Search and seizure; forfeiture of property.  

(a) Any police officer or agent of the department of agriculture upon whom the board of agriculture has conferred powers of police officers shall have the authority to conduct searches on probable cause as provided by law and to seize any equipment, article, instrument, aircraft, vehicle, vessel, business records, or agricultural product or commodity used or taken in violation of the provisions contained in sections 708-830, 708-830.5, 708-831, 708-832, 708-833, or 708-835.5, or any other matters as determined by the board of agriculture.

(b) Any equipment, article, instrument, aircraft, vehicle, vessel, business records, or agricultural product or commodity seized is subject to forfeiture pursuant to chapter 712A. Unless otherwise directed by the court pursuant to chapter 712A, any item, other than an agricultural product or commodity, seized shall be ordered forfeited to the State for disposition as determined by the department of agriculture, or may be destroyed, or may be kept and retained and utilized by the department of agriculture or any other state agency. If not needed or required by the department of agriculture or other state agency, the forfeited items shall be disposed of as
provided by chapter 712A. Notwithstanding any other law to the contrary, any live agricultural product or commodity, including livestock, seized may be immediately returned to its owner or may be disposed of as determined by the department of agriculture; provided that if the agricultural product or commodity disposed of was unlawfully seized, the department of agriculture shall be liable to the owner for the fair market value of the items disposed of.

(c) The department of agriculture shall compile a list of all equipment, articles, instruments, aircraft, vehicles, vessels, or any agricultural products or commodities forfeited as provided in this section and shall publish the list in its annual report.

(d) Notwithstanding any other law to the contrary, the department of agriculture may sell or take actions to cause the sale of any perishable agricultural product or commodity that is seized to prevent the waste of the agricultural product or commodity and to ensure the economic value of the agricultural product or commodity. The department of agriculture may require the person or persons who took the agricultural product or commodity to sell the seized agricultural product or commodity
at fair market value. The department of agriculture may require
any person purchasing any seized agricultural product or
commodity to deliver the proceeds of the sale to the department
of agriculture or its authorized representative. Any person who
refuses to sell the seized agricultural product or commodity at
fair market value or any person who fails to deliver the
proceeds of the sale, as directed by the department of
agriculture, shall be in violation of this subsection and
punishable as provided by law.

The department of agriculture shall deposit and keep the
proceeds of the sale in an interest bearing account until the
suspected violation is settled between the person or persons who
took the agricultural product or commodity, consignee or
consignees, if any, and the department of agriculture. Should a
settlement not be reached, the department of agriculture shall
submit the proceeds of the sale to the court. The proceeds of
the sale, after deducting any reasonable costs of the sale
incurred by the department of agriculture, shall be subject to
any administrative or judicial proceedings in the same manner as
the seized agricultural product or commodity would have been,
including an action in rem for the forfeiture of the proceeds.
Seizure and sale of an agricultural product or commodity is
without prejudice to any other remedy or sanction authorized by
law."

SECTION 2. Section 28-151, Hawaii Revised Statutes, is
amended by amending the definition of "law enforcement officer"
to read as follows:

"Law enforcement officer" means a sheriff, deputy sheriff,
police officer, enforcement officer within the department of
land and natural resources conservation and resources
enforcement program, enforcement officer within the department
of agriculture agricultural theft enforcement program,
enforcement officer within the department of transportation
harbors division, and any other employee of a state or county
public body who carries a badge and firearm and has powers of
arrest."

SECTION 3. Section 134-16, Hawaii Revised Statutes, is
amended to read as follows:

"§134-16 Restriction on possession, sale, gift, or
delivery of electric guns. (a) It shall be unlawful for any
person, including a licensed manufacturer, licensed importer, or
licensed dealer, to possess, offer for sale, hold for sale,
sell, give, lend, or deliver any electric gun.

(b) Any electric gun possessed, offered for sale, held for
sale, sold, given, lent, or delivered in violation of subsection
(a) shall be confiscated and disposed of by the chief of police.

(c) This section shall not apply to:

(1) Law enforcement officers of county police departments;
(2) Law enforcement officers of the department of public
safety;
(3) Conservation and resources enforcement officers of the
department of land and natural resources;
(4) Members of the Army or Air National Guard when
assisting civil authorities in disaster relief,
emergency management, or law enforcement functions,
subject to the requirements of section 121-34.5;
(5) Law enforcement officers appointed by the director of
transportation pursuant to section 266-24; [and]
(6) Vendors providing electric guns to the individuals
described in paragraphs (1) through (5); and
(7) Agricultural theft enforcement officers of the
department of agriculture;
provided that electric guns shall at all times remain in the
custody and control of the law enforcement officers of the
county police departments, the law enforcement officers of the
department of public safety, the conservation and resources
enforcement officers of the department of land and natural
resources, the members of the Army or Air National Guard, [ex]
law enforcement officers appointed by the director of
transportation[•], or the agricultural theft enforcement
officers of the department of agriculture.

(d) The county police departments of this State, [the]
department of public safety, [the] department of land and
natural resources, [the] army and air national guard, [and the]
department of transportation, and department of agriculture
shall maintain records regarding every electric gun in their
custody and control. The records shall report every instance of
usage of the electric guns; in particular, records shall be
maintained in a similar manner as for those of discharging of
firearms. The county police departments, [the] department of
public safety, [the] department of land and natural resources,
[the] army and air national guard, [and the] department of
transportation, and department of agriculture shall annually
report to the legislature regarding these records no later than twenty days before the beginning of each regular session of the legislature.

(e) The department of agriculture, department of land and natural resources, [the] department of public safety, and [the] department of transportation shall ensure that each of its conservation and resources enforcement officers and law enforcement officers who is authorized to use an electric gun and related equipment shall first receive training from the manufacturer or from a manufacturer-approved training program, as well as by manufacturer-certified or approved instructors in the use of electric guns prior to deployment of the electric guns and related equipment in public. Training for agricultural theft enforcement officers of the department of agriculture, conservation and resources enforcement officers of the department of land and natural resources, law enforcement officers of the department of public safety, and law enforcement officers of the department of transportation may be done concurrently to ensure cost savings.

(f) No later than June 30, 2018, the conservation and resources enforcement program of the department of land and...
natural resources shall meet the law enforcement accreditation or recognition standards of the Commission on Accreditation for Law Enforcement Agencies, Inc., in the use of electric guns.

(g) No later than June 30, 2024, the law enforcement officers appointed by the director of transportation shall meet the law enforcement accreditation or recognition standards of the Commission on Accreditation for Law Enforcement Agencies, Inc., in the use of electric guns.

(h) No later than _________, the agricultural theft enforcement program of the department of agriculture shall meet the law enforcement accreditation or recognition standards of the Commission on Accreditation for Law Enforcement Agencies, Inc., in the use of electric guns."
(3) An employee of the department of transportation, department of land and natural resources, department of taxation, [etc.] department of the attorney general, or department of agriculture who is conferred by law with general police powers."

SECTION 5. Section 139-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No person shall be appointed or employed as a law enforcement officer by any county police department, the department of public safety, the department of transportation, the department of land and natural resources, the department of taxation, [etc.] the department of the attorney general, or the department of agriculture, unless the person possesses a valid certification issued by the board pursuant to section 139-6(b)."

SECTION 6. Section 291-31.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No person shall knowingly operate, affix or cause to be affixed, display, or possess any lamp, reflector, or illumination device that appears to be the color blue, or colors blue and red, upon any motor vehicle, motorcycle, motor scooter, bicycle, or moped except for:
(1) County law enforcement vehicles authorized and approved by the chief of police of the county in which the vehicle is operated;

(2) Department of public safety law enforcement vehicles with blue and red lamps, reflectors, or illumination devices authorized and approved by the director of public safety;

(3) Department of land and natural resources division of conservation and resources enforcement vehicles with blue and red lamps, reflectors, or illumination devices authorized and approved by the chairperson of the board of land and natural resources; [¶]

(4) Department of transportation division of harbors law enforcement vehicles with blue and red lamps, reflectors, or illumination devices authorized and approved by the director of transportation[¶]; or

(5) Department of agriculture agricultural theft enforcement vehicles with blue and red lamps, reflectors, or illumination devices authorized and approved by the chairperson of the board of agriculture.
This prohibition shall not apply to factory-installed instrument illumination."

SECTION 7. Section 291C-27, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) As used in this section, "emergency vehicle" means a police or fire department vehicle, ocean safety vehicle, emergency medical services vehicle, freeway service patrol vehicle, sheriff division vehicle, Hawaii emergency management agency vehicle, county emergency management vehicle, civil defense vehicle, department of transportation harbors division vehicle, department of land and natural resources division of conservation and resources enforcement vehicle, department of agriculture agricultural theft enforcement vehicle, or a tow truck."

SECTION 8. Section 386-181, Hawaii Revised Statutes, is amended to read as follows:

"C. Public Board Members, Reserve Police Officers, Police Chaplains, Volunteer Agricultural Theft Enforcement Officers, Volunteer Firefighters, Volunteer Boating Enforcement Officers, and Volunteer Conservation and Resources Enforcement Officers"
§386-181 Generally. (a) As used in this section:

"Police chaplain" means a member of an authorized chaplaincy program of a county police department who performs services in a voluntary and unpaid capacity under the authorized direction of an officer of the department.

"Public board" means a governmental body, regardless of its designation, duly created under authority vested by law for the purposes of performing quasi-judicial, administrative, or advisory functions.

"Reserve police officer" means a member of an authorized reserve force of a county police department who performs services in a voluntary and unpaid capacity under the authorized direction of an officer of the department.

"Sheriffs' chaplain" means a member of an authorized chaplaincy program of the department of public safety who performs functions similar to a police chaplain in a voluntary and unpaid capacity for the sheriff division.

"Volunteer agricultural theft enforcement officer" means a person who performs services for the department of agriculture in the agricultural theft enforcement program in a voluntary and
unpaid capacity under the authorized direction of an officer of the department of agriculture.

"Volunteer boating enforcement officer" means a member of the authorized volunteer enforcement force of the harbors division, department of transportation, who performs services in a voluntary and unpaid capacity under the authorized direction of an officer of the department.

"Volunteer conservation and resources enforcement officer" means a member of the authorized volunteer enforcement force of the division of conservation and resources enforcement, department of land and natural resources, who performs services in a voluntary and unpaid capacity under the authorized direction of an officer of the department.

"Volunteer firefighter" means a person who performs services for a county fire department in a voluntary and unpaid capacity under the authorized direction of an officer of the department.

(b) If a member of a public board, a reserve police officer, a police chaplain, sheriffs' chaplain, a volunteer agricultural theft enforcement officer, a volunteer firefighter, a volunteer boating enforcement officer, or a volunteer
conservation and resources enforcement officer is injured while performing services for the board, county police department, county fire department, department of agriculture, department of public safety, harbors division of the department of transportation, or division of conservation and resources enforcement of the department of land and natural resources, under the conditions specified in section 386-3, the person or the person's dependents shall be entitled to all compensation in the manner provided by this chapter and, for the purposes of this chapter, the person shall, in every case, be deemed to have earned wages for the services.

(c) In computing the average weekly wages of an injured public board member, reserve police officer, police chaplain, sheriffs' chaplain, volunteer agricultural theft enforcement officer, volunteer firefighter, volunteer boating enforcement officer, or volunteer conservation and resources enforcement officer:

(1) The person's income from self-employment shall be considered wages;
(2) The person shall, in no event, be considered to have earned less than the minimum hourly wage prescribed in chapter 387;

(3) Wages of other employees in comparable employment shall not be considered; and

(4) All provisions of section 386-51 not inconsistent with this section shall apply; provided that section 386-51(5) shall not apply."

PART II

SECTION 9. Section 141-10, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Subject to legislative appropriation, moneys in the special fund may be expended for the following purposes:

(1) The awarding of grants to farmers for agricultural production or processing activity;

(2) The acquisition of real property for agricultural production or processing activity;

(3) The improvement of real property, dams, reservoirs, irrigation systems, and transportation networks necessary to promote agricultural production or processing activity, including investigative studies
to identify and assess necessary improvements to dams, reservoirs, irrigation systems, and transportation networks;

(4) The purchase of equipment necessary for agricultural production or processing activity;

(5) The conduct of research on and testing of agricultural products and markets;

(6) The funding of agricultural inspector positions within the department of agriculture;

(7) The promotion and marketing of agricultural products grown or raised in the State;

(8) Water quality testing and improvement; and

(9) Any other activity intended to [increase];

(A) Increase agricultural production or processing that may lead to reduced importation of food, fodder, or feed from outside the State[\(\ldots\)]; or

(B) Otherwise protect agricultural resources."

SECTION 10. (a) There is established one full-time equivalent (1.0 FTE) chief enforcement officer position within the agricultural theft enforcement program of the department of agriculture.
(b) There is established two full-time equivalent (2.0 FTE) enforcement officer positions within the agricultural theft enforcement program of the department of agriculture, one each, for the islands of Hawaii and Oahu.

SECTION 11. There is appropriated out of the agricultural development and food security special fund the sum of $ or so much thereof as may be necessary for fiscal year 2020-2021 to be deposited into the agricultural theft enforcement special fund.

SECTION 12. There is appropriated out of the agricultural theft enforcement special fund the sum of $ or so much thereof as may be necessary for fiscal year 2020-2021 for the following:

(1) The establishment of the following positions within the agricultural theft enforcement program of the department of agriculture:

(A) One full-time equivalent (1.0 FTE) chief enforcement officer position; and

(B) Two full-time equivalent (2.0 FTE) enforcement officer positions, one each, for the islands of Hawaii and Oahu; and
(2) Other operating expenditures of the agricultural theft
  enforcement program of the department of agriculture.
  The sum appropriated shall be expended by the department of
  agriculture for the purposes of this Act.

PART III

SECTION 13. This Act does not affect rights and duties
  that matured, penalties that were incurred, and proceedings that
  were begun before its effective date.

SECTION 14. Statutory material to be repealed is bracketed
  and stricken. New statutory material is underscored.

SECTION 15. This Act shall take effect on July 1, 2020.

INTRODUCED BY:
Report Title:
HDOA; Agricultural Theft Enforcement Program; Agricultural Theft Enforcement Special Fund; Law Enforcement; Appropriation

Description:
Establishes the agricultural theft enforcement program and agricultural theft enforcement special fund within the Department of Agriculture. Authorizes the Board of Agriculture and agricultural theft enforcement officers to exercise police powers. Extends to the agricultural theft enforcement program the applicability of certain statutory provisions relating to the law enforcement officer independent review board; possession of electric guns; the law enforcement standards board; emergency vehicles; and worker's compensation for volunteer emergency response personnel. Authorizes the use of funds in the agricultural development and food security special fund for protection of agricultural resources. Appropriates funds.

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