

JAN 27 2021

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- Inspection; exhibit upon demand; penalty. (a)
5 Section 199-7 notwithstanding, any police officer or agent of
6 the department of land and natural resources upon whom the board
7 of land and natural resources has conferred police powers may,
8 in the performance of the officer's or agent's primary duties,
9 stop 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 the person's possession, including the
15 contents of any bag or container of any kind used to carry
16 natural resources, and any equipment, article, instrument,
17 aircraft, vessel, vehicle, or conveyance being used, to
18 determine whether the person is in compliance with title 12 and

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1 chapters 6D, 6E, and 6K under title 1, and any rules adopted
2 thereunder, relating to the protection and conservation of
3 natural resources. For purposes of this section, "natural
4 resources" includes any archaeological artifacts, minerals, any
5 aquatic life or wildlife or parts thereof, including their eggs,
6 and any land plants or parts thereof, including seeds.

7 (b) Any license, permit, stamp, tag, or other relevant
8 documentation, any natural resources in the person's possession,
9 and any device or apparatus designed to be and capable of being
10 used to take natural resources, shall be exhibited upon demand
11 to any person authorized by the department of land and natural
12 resources to enforce title 12 and chapters 6D, 6E, and 6K under
13 title 1, and any rule adopted thereunder, relating to the
14 protection and conservation of natural resources.

15 (c) Any person violating subsection (b) shall be guilty of
16 a misdemeanor and, in addition to any other penalties, shall be
17 fined not less than:

18 (1) \$250 for a first offense;

19 (2) \$500 for a second offense;

20 (3) \$1,000 for a third or subsequent offense."

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

4 SECTION 3. New statutory material is underscored.

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

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INTRODUCED BY: 

8

BY REQUEST

S.B. NO. 1176

Report Title:

Natural Resources; Inspection; Penalties

Description:

Clarifies that any police officer or agent of the Department of Land and Natural Resources (Department) upon whom the Board of Land and Natural Resources (Board) 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, and any rule adopted thereunder, relating to the protection and conservation of natural resources. Establishes penalties for refusal to comply with inspection requests made by any police officer or agent of the Department upon whom the Board has conferred police powers.

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

SB. NO. 1176

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 (Board) 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 and chapters 6D, 6E, and 6K, Hawaii Revised Statutes (HRS), under title 1, and any rule adopted thereunder, relating to the protection and conservation of natural resources; and to establish penalties for refusal to comply with inspection requests made by any police officer or agent of the Department upon whom the Board has conferred police powers.

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

JUSTIFICATION: Since 2007, there has 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 No. 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 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 No. 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." However, an exception remains—whereas an unlicensed hunter has given no prior consent, and may not be searched without giving his or her consent.

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. If, however, a lawful demand to exhibit is unsuccessful, then a limited and narrow inspection may be executed in cases involving hunting and commercial fishing, by virtue of holding licenses for these activities. DOCARE officers are operating under the assumption that their limited inspection 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 legislative wording outlining a limited inspection authority coupled with the need to exhibit upon a lawful demand, the proposed legislation will allow any police officer or agent of the Department upon whom the Board has conferred police powers 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.

Establishing a criminal penalty for refusal to comply with inspection requests made by any police officer or agent of the Department upon whom the Board has conferred police powers would strengthen the Department's enforcement capabilities and allow for greater protection of the State's natural resources.

Impact on the public: This bill 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 this bill would clarify the general conditions under which the inspections would occur.

Impact on the department and other agencies:
This bill 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.