

JAN 26 2009

A BILL FOR AN ACT

RELATING TO HUNTING.

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

1 SECTION 1. In *Tanaka v. State of Hawaii, Department of Land*
2 *and Natural Resources*, 117 Haw. 16, 175 P.3d 126 (Haw. App.
3 2007), the intermediate court of appeals reversed a decision of
4 the circuit court and thereby indicated that the board of land
5 and natural resources and the department of land and natural
6 resources do not have flexibility and authority to take certain
7 actions relating to hunting except through the rule-making
8 process.

9 The legislature finds that the board of land and natural
10 resources and the department of land and natural resources need
11 to be able to react quickly to changing conditions relating to
12 hunting. The legislature further finds that the interest of the
13 public in understanding certain hunting issues and having input
14 into these issues can be fully accommodated by giving the public
15 notice and an adequate period to provide comment before
16 decisions on these issues are made by the board at its duly
17 noticed regular meetings.

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1 The purpose of this Act is to authorize the board of land
2 and natural resources and the department of land and natural
3 resources to make decisions and changes with respect to certain
4 hunting issues, without adopting rules pursuant to chapter 91,
5 Hawaii Revised Statutes.

6 SECTION 2. Section 183D-2, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§183D-2 Powers and duties of department.** The department
9 shall:

- 10 (1) Manage and administer the wildlife and wildlife
11 resources of the State;
- 12 (2) Enforce all laws relating to the protecting, taking,
13 hunting, killing, propagating, or increasing the
14 wildlife within the State and the waters subject to
15 its jurisdiction;
- 16 (3) Establish and maintain wildlife propagating facility
17 or facilities;
- 18 (4) Subject to the provisions of title 12, import wildlife
19 for the purpose of propagating and disseminating the
20 same in the State and the waters subject to its
21 jurisdiction;

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- 1 (5) Distribute, free of charge, as the department deems to
2 be in the public interest, game for the purpose of
3 increasing the food supply of the State; provided that
4 when in the discretion of the department the public
5 interest will not be materially interfered with by so
6 doing, the department may propagate and furnish
7 wildlife to private parties, upon such reasonable
8 terms, conditions, and prices as the department may
9 determine;
- 10 (6) Ascertain, compile, and disseminate, free of charge,
11 information and advice as to the best methods of
12 protecting, propagating, and distributing wildlife in
13 the State and the waters subject to its jurisdiction;
- 14 (7) Gather and compile information and statistics
15 concerning the area, location, character, and increase
16 and decrease of wildlife in the State;
- 17 (8) Gather and compile information concerning wildlife
18 recommended for release in different localities,
19 including the care and propagation of wildlife for
20 protective, productive, and aesthetic purposes and
21 other useful information, which the department deems
22 proper;

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- 1 (9) Have the power to manage and regulate all lands which
2 may be set apart as game management areas, public
3 hunting areas, and wildlife sanctuaries;
- 4 (10) Pursuant to section 183D-65 of this chapter, destroy
5 predators deemed harmful to wildlife;
- 6 (11) Formulate, and from time to time recommend to the
7 governor and legislature, such additional legislation
8 necessary or desirable to implement the objectives of
9 title 12; [~~and~~]
- 10 (12) Preserve, protect, and promote public hunting[-]; and
- 11 (13) Notwithstanding any administrative rules now in
12 existence pertaining to game bird and mammal hunting,
13 establish and change as conditions warrant, based on
14 study by the department, size limits, bag limits,
15 hunting days, open and closed seasons, specifications
16 of hunting gear that may be used or possessed, and
17 special conditions for hunting, not less than thirty
18 days after public notice in a newspaper of general
19 circulation, by affirmative vote of the board, and not
20 subject to chapter 91, or less than thirty days in the
21 case of an imminent peril to the public health and
22 safety, upon public notice in a newspaper of general

1 circulation by the board or authorized
2 representative."

3 SECTION 3. Section 183D-3, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§183D-3 Rules.** Subject to chapter 91, the department
6 shall adopt, amend, and repeal rules:

7 (1) Concerning the preservation, protection, regulation,
8 extension, and utilization of, and conditions for
9 entry into wildlife sanctuaries, game management
10 areas, and public hunting areas designated by the
11 department;

12 (2) Protecting, conserving, monitoring, propagating, and
13 harvesting wildlife;

14 (3) [~~Concerning~~] Authorizing the board to set and change
15 conditions relating to size limits, bag limits, open
16 and closed seasons, and specifications of hunting gear
17 [which] that may be used or possessed[+], and, in
18 addition to the board, authorizing a representative of
19 the department by way of public notice, to set and
20 change conditions relating to size limits, bag limits,
21 open and closed seasons, and specifications of hunting

1 gear that may be used or possessed in the case of an
2 imminent peril to public health and safety; and

3 (4) Setting fees for activities permitted under this
4 chapter, unless otherwise provided for by law.

5 The rules may vary from county to county or in any part of the
6 county [~~and may specify certain days of the week or certain~~
7 ~~hours of the day in designating open seasons~~], except that any
8 fees established by rule shall be the same for each county. All
9 rules shall have the force and effect of law."

10 SECTION 4. Section 183D-5, Hawaii Revised Statutes, is
11 amended by amending subsection (a) to read as follows:

12 "(a) Any person violating section 183D-21, 183D-25, 183D-
13 33, or 183D-63 or any rule adopted under this chapter or any
14 hunting condition or requirement adopted pursuant to section
15 183D-2(13) shall be guilty of a petty misdemeanor, and upon
16 conviction thereof, shall be punished as follows:

17 (1) For a first conviction, by a mandatory fine of not
18 less than \$100, or imprisonment of not more than
19 thirty days, or both;

20 (2) For a second conviction within five years of a
21 previous conviction, by a mandatory fine of not less
22 than \$500, or by imprisonment of not more than thirty

1 days, or both, and all firearms used in the commission
2 of such violations shall be considered contraband to
3 be forfeited to and disposed of by the State; and
4 (3) For a third or subsequent conviction within five years
5 of the first two or more convictions, by a mandatory
6 fine of not less than \$1,000, or by imprisonment of
7 not more than thirty days, or both, and all firearms
8 used in the commission of such violations shall be
9 considered contraband to be forfeited to and disposed
10 of by the State."

11 SECTION 5. Section 183D-12, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "[+]§183D-12[+] **General administrative penalties.** (a)
14 Except as otherwise provided by law, the board is authorized to
15 set, charge, and collect administrative fines or bring legal
16 action to recover administrative costs of the department or
17 payment for damages or for the cost to correct damages resulting
18 from a violation of subtitle 4 of title 12 or any rule adopted
19 thereunder[-] or any hunting condition or requirement adopted
20 pursuant to section 183D-2(13). The administrative fines shall
21 be as follows:

1 (1) For a first violation, by a fine of not more than
2 \$10,000;

3 (2) For a second violation within five years of a previous
4 violation, by a fine of not more than \$15,000; and

5 (3) For a third or subsequent violation within five years
6 of the last violation, by a fine of not more than
7 \$25,000.

8 (b) In addition, an administrative fine of up to \$5,000
9 may be levied for each specimen of wildlife taken, killed,
10 injured, or damaged in violation of subtitle 4 of title 12 or
11 any rule adopted thereunder[-] or any hunting condition or
12 requirement adopted pursuant to section 183D-2(13).

13 (c) Any criminal action against a person for any violation
14 of subtitle 4 of title 12 or any rule adopted thereunder or any
15 hunting condition or requirement adopted pursuant to section
16 183D-2(13) shall not be deemed to preclude the State from
17 pursuing civil legal action to recover administrative fines and
18 costs against that person. Any civil legal action against a
19 person to recover administrative fines and costs for any
20 violation of subtitle 4 of title 12 or any rule adopted
21 thereunder or any hunting condition or requirement adopted
22 pursuant to section 183D-2(13) shall not be deemed to preclude

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1 the State from pursuing any criminal action against that
2 person."

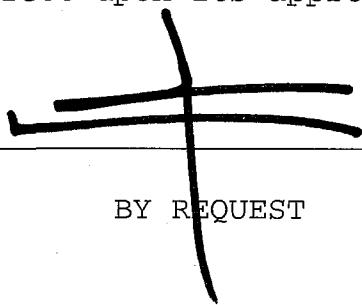
3 SECTION 6. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY:


BY REQUEST

8

Report Title:

Hunting

Description:

Authorizes the Board and Department of Land and Natural Resources to make certain decisions and changes relating to hunting issues without adopting rules pursuant to chapter 91, Hawaii Revised Statutes.

SB 961

JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO HUNTING.

PURPOSE: To authorize the Board of Land and Natural Resources (Board) and the Department to make certain decisions and changes relating to hunting issues without adopting rules pursuant to chapter 91, Hawaii Revised Statutes (HRS).

MEANS: Amend sections 183D-2, 183D-3, 183D-5(a), and 183D-12, HRS.

JUSTIFICATION: In *Tanaka v. State of Hawaii*, Department of Land and Natural Resources, 117 Haw. 16, 175 P.3d 126 (Haw. App. 2007), the Intermediate Court of Appeals reversed a decision of the Circuit Court and thereby indicated that the Board and the Department do not have flexibility and authority to take certain actions relating to hunting except through the rulemaking process. Adjustments to the conditions set for hunting each year, and frequently during the year, are necessary to be able to respond quickly to protect public safety such as after the Kula Forest Reserve fire and to make adjustments and routine and serve to enhance hunting opportunities based on changing environmental conditions, and allow for the flexibility to increase hunting pressure in cases where animal numbers are high. The overall goal of the public hunting program is to maximize hunting opportunities where appropriate through proper management of the game resources.

Game animal numbers occasionally become undesirably high in some areas and adjustments are needed to open areas and increase hunting pressure to allow for an increase in harvest. A recent example of this was seen two years ago when frequent

complaints of pigs in the Manoa area of urban Honolulu were reported. The Department was able to quickly establish special hunts to increase hunting pressure and harvest - reducing and mitigating the problem. Giving the Board the authority to set these conditions will provide the needed flexibility for adjustments and responses that will help control game and enhance hunting opportunities. It is not feasible to go through an administrative rule process each time a localized adjustment is needed in hunting bag limits, season, or conditions.

This bill gives the Board the flexibility to take quick action to close areas when needed for public safety, set size and bag limits, hunting days, open and closed seasons, hunting gear to be used, and special conditions for hunting without going through the rulemaking process.

Impact on the public: The public would have a reduced opportunity for comment on hunting conditions changed by the Board rather than through an official rulemaking process. However, the changes that would be made in hunting conditions, other than when needed for public health and safety, would be done by the Board at its duly noticed and regular meetings, and after public notice of 30 days. The 30-day notice will provide the public the opportunity to provide input before the Board action and all comments received would be provided to the Board for their consideration.

Providing the Board with the authority to make changes in hunting conditions would allow the Department to proactively respond to animal damage situations and benefit the public by controlling game animal damage to natural resources and private lands in problem areas and provide more hunting opportunity.

Impact on the department and other agencies:
Streamlined processes for making adaptive and emergency changes in hunting seasons and conditions will help the Department respond to protect public safety, prevent damage to natural resources, and respond to public complaints about damage to private property.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: LNR 804.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.