

SB 676

RELATING TO THE POWER OF ARREST

Amends the list of federal agencies whose officers may make arrests for certain offenses under state law. Updates statutory references to reflect current names of federal agencies.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2011**

ON THE FOLLOWING MEASURE:

S.B. NO. 676, RELATING TO THE POWER OF ARREST.

BEFORE THE:

SENATE COMMITTEE ON
PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY

DATE: Tuesday, February 15, 2011 **TIME:** 2:45 p.m.

LOCATION: State Capitol, Room 224

TESTIFIER(S): David M. Louie, Attorney General, or
Lance M. Goto, Deputy Attorney General

Chair Espero and Members of the Committee:

The Department of the Attorney General strongly supports this bill.

The purpose of this bill is to amend section 803-16, Hawaii Revised Statutes, regarding arrest powers granted to federal customs and immigration officers, by granting arrest powers to officers of both the United States Immigration and Customs Enforcement (ICE) and the Federal Bureau of Investigation (FBI). The bill will also update and accurately reflect the titles of the heads of district offices for the federal agencies included under section 803-16.

The grant of limited arrest powers to federal agents, like those of ICE and the FBI, will allow them to provide support to state and county law enforcement efforts, especially in certain times of need. This is particularly important for a small multi-island state like Hawaii, which cannot depend on quick and substantial law enforcement response and support from multiple state and county law enforcement agencies. The state and county must rely on federal law enforcement cooperation and support for

natural disasters, joint law enforcement task force efforts, and major or national events.

The following are examples of joint task force cooperation. Federal agents participate on joint task forces that focus on serving outstanding arrest warrants for criminal offenders and in the investigation and apprehension of violators of the state sex offender registration laws. Federal agents also work with state and county officers on special drug enforcement task forces.

Federal cooperation and support is also important for major or national events like the Asia Pacific Economic Cooperation (APEC) Leaders Meeting, which will be held in Honolulu in November 2011. The meeting will bring thousands of people to Honolulu. To ensure the safety and security of those leaders attending the meeting and those in the community, federal, state and county law enforcement agencies must engage in a major cooperative effort. The amendments proposed in this bill could facilitate that effort.

Act 201, Session Laws of Hawaii 1980, codified as section 803-16, conferred the power to arrest under state law on officers of the United States Custom Service and the Immigration and Naturalization Service. This law provided additional protection at state airports and harbors by authorizing customs and immigration agents to assist in maintaining law and order. These agents were often in a position to observe suspicious activities but were not authorized, under prior state law, to take action under state law.

In March 2003, the Department of Homeland Security was created by combining the law enforcement arms of the former Immigration and Naturalization Service and the former Customs Service. New agencies were created under the Department of

Homeland Security, including ICE, the U.S. Customs and Border Protection Service (CBP), and the Citizenship and Immigration Services (CIS).

Act 95, Session Laws of Hawaii 2008, amended section 803-16 in an attempt to address the creation of the new federal agencies. It also created new section 803-17, which grants arrest powers to deputies of the U.S. Marshal Service. While Act 95 granted authority to deputy marshals, and amended section 803-16 to include CBP and CIS, it failed to include ICE, the largest investigative branch of the Department of Homeland Security. Furthermore, by including CIS, it included an agency that, according to ICE legal counsel, does not have the authority to make arrests under federal law. Only ICE and CBP agents have law enforcement authority.

This bill is intended to correct these issues by amending section 803-16 to include agents of ICE, and to delete reference to the officers of the CIS. It also grants authority to FBI agents, who will then be able to provide support to state and county law enforcement efforts. The FBI website describes its mission as follows:

As a national security organization, the mission of the FBI is to protect and defend the United States against terrorist and foreign intelligence threats, to uphold and enforce the criminal laws of the United States, and to provide leadership and criminal justice services to federal, state, municipal, and international agencies and partners.

FBI agents clearly have law enforcement authority and have the ability to provide additional support to the state and county if added to the provisions of section 803-16.

In recent years, representatives of both ICE and the FBI have been in support of their agencies being added to section 803-16.

The Department respectfully requests passage of this
measure.