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SB 1202 and SB 1191

RELATING TO CONSERVATION OF ENDANGERED OR THREATENED WILDLIFE AND PLANTS

Statement for
Senate Committee on Ecology, Environment and Recreation
Public Hearing, 2 March 1977

by
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SB 1202 and SB 1191 would amend certain of the provisions in Chapter 195D of Hawaii Revised Statutes, the chapter dealing with conservation of wildlife and plants. This statement on these bills has been submitted for review to the legislative subcommittee of the Environmental Center of the University of Hawaii. It does not represent an institutional position of the University.

SB 1202

The several amendments proposed in SB 1202 are best addressed separately with reference to the sections of HRS 195D to which they relate.

Section 195D-2

The rationale for the proposal to delete the qualifying phrase "any non-domesticated species of" from the definition of "wildlife" is not clear. The proposal may be intended to allow the inclusion of feral animals as wildlife. However, with the deletion of the phrase, "wildlife" would include domestic cats, dogs, cattle, horses, and pigs. This is surely not intended.

Section 195D-3

Two minor appropriate housekeeping amendments are proposed in subsec. (a).

Subsec. (b) is omitted in the bill, which is worded so that the omission could be interpreted as intended to effect deletion of the subsection although, if this was the intent, subsec. (b) should have been included in brackets. Subsec. (b) contains the authorization to the Department of Land and Natural Resources to promulgate conservation regulations concerning wildlife and plants, and is critical to the effect of the rest of the section with respect to both wildlife and plants.

Subsec. (c) now makes it unlawful to take, possess, transport, export, process, sell, or ship any species of wildlife or plants needing special conservation except as permitted under the regulations authorized in subsec. (b). SB 1202 would delete the applicability of this section to plants, and would instead provide a new subsec. (d), relating only to plants. The new subsection would totally bar any taking of plants needing special conservation from State lands, but would not provide for any control whatever with respect to such plants on private lands. The rationale for this pair of proposed amendments is most unclear. It may be considered that there will be undue stringency of controls on disturbances of plants deserving conservation. However, there is no mandate in 195 D-4(b) for DLNR to adopt, and there is no likelihood that DLNR will adopt, unduly stringent regulations. With the amendment proposed, even DLNR itself could not remove a species of plant needing conservation from State land, nor even remove the seeds from such a plant for the sake of conservation.

Sec. 194D-4

Sec. 194D-4 deals specifically with endangered species of wildlife and plants and not simply those in need of conservation. SB 1202 would amend the prohibition subsection (e) of the section so as to:

1) Apply to threatened as well as endangered species of wildlife (but not plants) and to separate completely the provision respecting plants from those respecting wildlife. The principal effect of the separation appears to be the deletion of the prohibition against the taking and possession of endangered plants. The rationale for this proposed amendment may be that some actions may be warranted even if they will result in destruction of some individual of a species of plant on the endangered list, which is yet to be adopted. Subsec. (f) now provides that DLNR may permit the taking of an endangered species, but only "for scientific purposes or to enhance the propagation of the affected species." It may be that the language of subsec. (f) is too restrictive, but certainly there should be some means in the law by which the taking of endangered plants may be closely controlled by the DLNR. We call your attention to an amendment of this subsection that is proposed in SB 1191 that would provide for some extension of the provisions for permits, and would do so appropriately with a minor change which we are pointing out in our review of that bill.

SB 1202 actually proposes deletion of subsection (f) although it is still referred to in the proposed revised version of subsec. (e). The result would be that even DLNR could not collect specimens of endangered wildlife or send out-of-state any specimens or seeds of endangered plants for the purposes indicated. No reason for the proposed deletion can be discerned.

Sec. 195D-5

Amendments proposed to Sec. 195D-5, pertaining to conservation programs, would extend the provisions of the section to wildlife in general, not merely birds and mammals, threatened species and not merely those endangered, and aquatic habitats and not merely lands, as well as provide other improvements in its language.

Summary

In summary, some of the amendments proposed to Chapter 195 represent improvements but some of the more important amendments appear distinctly unwise, at least in the form proposed.

SB 1191

SB 1191 proposes amendments mainly to Sec. 195-4.

The language proposed for deletion from subsec. (a) is poorly worded and may not be essential, but may perhaps be useful. We are not aware of any reason for the deletion.

The amendments proposed in subsec. (e) are inconsequential.

The amendment prepared in subsec. (f) may, with one change, provide appropriate relaxation of the restriction of the issuance of permits for the "taking", or other actions respecting endangered or threatened wildlife and plants. In our comments on SB 1202, we suggested that such relaxation would provide "hardship" grounds for the issuance of permits, and would thus allow DLNR to permit an action that would result, say, in the destruction of an individual plant of an endangered species if the destruction were warranted by the importance of the action. The provision should, however, be an authorization to DLNR and not a mandate. Even an extreme hardship would not warrant the destruction of the last individual of an important species, especially since the State would very probably have other means to provide relief to the person concerned. Hence the word "shall" should be replaced with the word "may" in p. 2, l. 22, and p. 3, l. 1.

We have no comments on the amendment proposed to Sec. 195D-5.