

ACE 494

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S.B. NO.

1643
S.D. 2
H.D. 1

A BILL FOR AN ACT

RELATING TO CONSERVATION OF THREATENED AND ENDANGERED SPECIES.

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

1 SECTION 1. In June 1995, the United States Army conducted a
 2 prescribed burn in Makua Valley on the island of Oahu. The
 3 purpose of this burn was to reduce fuel loads within the impact
 4 area, that is, by burning the brush within the impact area, the
 5 Army was attempting to lessen the chance of an uncontrolled fire
 6 igniting during military exercises conducted within the valley.

7 Two major areas were burned successfully; however, an
 8 attempt to burn a ridge between the two areas resulted in the
 9 fire escaping due to an inadequate fire break. As a result of
 10 the fire the eastern wall of Makua Valley was burned, indigenous
 11 native plants were destroyed and, according to the Army,
 12 approximately fifty endangered species were among the plants
 13 burned, including nearly two-thirds of an existing population of
 14 eighty-five plants of one species alone.

15 The prescribed fire was carefully planned, but a peer review
 16 of the plan could have identified weaknesses in the plan and
 17 recommended possible corrective measures, thereby helping to
 18 minimize the risk.

19 At a community informational briefing in Waianae, it was

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1 recommended that burning could be better coordinated if more
2 formal methods of peer review were established. The purpose of
3 this review should be to evaluate the goals of the prescribed
4 burn, to assess the risk of damage to environmentally sensitive
5 areas where native flora and fauna known to be threatened or
6 endangered are identified as inhabiting, and to ensure that
7 adequate measures are implemented to conduct a safe and effective
8 prescribed burn and to protect threatened and endangered species
9 when the need arises.

10 Case law asserts that military operations are not exempt
11 from State laws that are part of a threatened and endangered
12 species program, and it is the intent the legislature to further
13 clarify the primacy of State law with regards to the existence of
14 threatened and endangered species on military-controlled lands in
15 the State of Hawaii. The legislature is encouraged by the
16 cooperation between the military and civilian communities in
17 arriving at solutions to the Makua Valley situation, and supports
18 the idea of constructive engagement with the military on issues
19 such as this. In order to make any State endangered species
20 program truly successful, the military, along with the civilian
21 community, must be part of any solution to problems that might
22 arise.

23 The purpose of this Act is to establish a mechanism through

1 which laws, rules, and policies of those agencies responsible for
2 the regulation of prescribed burning are both effectively
3 reviewed and coordinated, so as to minimize to the greatest
4 extent possible the danger to endangered and threatened species
5 and environmentally sensitive areas, regardless of whether or not
6 these species and areas happen to be located within any military-
7 controlled lands.

8 SECTION 2. Chapter 185D, Hawaii Revised Statutes, is
9 amended by adding a new section to be appropriately designated
10 and to read as follows:

11 "§185D- Prescribed burning coordinating council;
12 appointment; duties. (a) There is established within the
13 department of land and natural resources for administrative
14 purposes, the Hawaii prescribed burning coordinating council.
15 The members shall include:

- 16 (1) The chairperson of the board of land and natural
17 resources or the appointed representative thereof;
18 (2) A representative of the department of health;
19 (3) A representative of the department of agriculture;
20 (4) A representative of each county fire department;
21 (5) A representative of the national park service;
22 (6) A representative from the military; and



- 1 (7) Other appropriate individuals.
- 2 (b) Members shall serve without compensation.
- 3 (c) The council shall meet at such times and in such places
- 4 as it deems necessary. The meetings shall be open and accessible
- 5 to the general public.
- 6 (d) The council shall:
- 7 (1) Review laws, rules, regulations, and policies of all
- 8 agencies with jurisdiction for prescribed burning;
- 9 (2) Identify any gaps or overlaps of laws, rules,
- 10 regulations, and policies between agencies with
- 11 jurisdiction for prescribed burning; and
- 12 (3) Recommend ways to better coordinate laws, rules,
- 13 regulations, and policies of all agencies with
- 14 jurisdiction for prescribed burning to minimize the
- 15 impacts of prescribed burning associated with
- 16 threatened and endangered species and the environment.
- 17 SECTION 3. New statutory material is underscored.
- 18 SECTION 4. This Act shall take effect upon its approval.

Cynthia -
bill passed out of
Sten's committee 6-0 w/4 absent
DM.