

Honolulu, Hawaii

FEB 17

, 2006

RE: S.B. No. 3091
S.D. 1

Honorable Robert Bunda
President of the Senate
Twenty-Third State Legislature
Regular Session of 2006
State of Hawaii

Sir:

Your Committees on Business and Economic Development and Water, Land, and Agriculture, to which was referred S.B. No. 3091 entitled:

"A BILL FOR AN ACT RELATING TO PUBLIC ACCESS TO COASTAL AND INLAND RECREATIONAL AREAS,"

beg leave to report as follows:

The purpose of this measure is to:

- (1) Require agencies to protect public rights-of-way to coastal or inland recreational areas; and
- (2) Create a public prescriptive easement if the right-of-way has been used continuously by the public for over five years.

A new section added to chapter 115, Hawaii Revised Statutes, will require state and county agencies reviewing an application for a permit for a development project, to protect a public right-of-way that has been in use for more than five years if the project will affect public access.

Your Committees received testimony in support of this measure from the Hawaii Chapter of the Sierra Club, Earthjustice, the Ho`okipa Network of Kauai, the Hawaii Boaters Political Action Association, the Limu Coalition, and forty private individuals. Your Committees received testimony in opposition of this measure from the Department of Land and Natural Resources, the Department



of Planning and Permitting of the City and County of Honolulu, the firm of Alston, Hunt, Floyd and Ing, and the Land Use Research Foundation of Hawaii.

Public access to the State's coastal and mountain areas may become obstructed or limited when private property changes ownership, is developed or subdivided, or is rezoned. Your Committees find that it is important to protect public access, especially when that access could be affected by a planned development or rezoning project.

The firm of Alston, Hunt, Floyd and Ing raised a concern that the creation of a prescriptive easement with a prescriptive period of five years is contrary to Hawaii case law.

Your Committees have amended this measure by deleting the amendment to section 115-6, Hawaii Revised Statutes that would create a public prescriptive easement.

Furthermore, your Committees have amended this measure by requiring permit granting agencies to determine whether a public right-of-way will be obstructed before granting a permit, rather than requiring the agencies to ensure that a public right-of-way is made available. Your Committees also made technical, nonsubstantive amendments to make stylistic changes.

Additionally, your Committees find that the issue of public rights-of-way raises concerns that merit further consideration. Accordingly, your Committees have amended this measure by inserting an effective date of July 1, 2050 to ensure ongoing discussion on this issue.

As affirmed by the records of votes of the members of your Committees on Business and Economic Development and Water, Land, and Agriculture that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 3091, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 3091, S.D. 1, and be referred to the Committee on Judiciary and Hawaiian Affairs.



Respectfully submitted on
behalf of the members of the
Committees on Business and
Economic Development and Water,
Land, and Agriculture,

Russell S. Kokubun ^{W/R}

RUSSELL S. KOKUBUN, Chair

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WILL ESPERO, Chair



