

LINDA LINGLE
Governor



SANDRA LEE KUNIMOTO
Chairperson, Board of Agriculture

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**TESTIMONY OF SANDRA LEE KUNIMOTO
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE HOUSE COMMITTEE
ON
WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS**

FEBRUARY 6, 2008, 8:30 A.M.

**HOUSE BILL NO. 2358
RELATING TO LIABILITY**

Chairperson Ito and Members of the Committee:

Thank you for the opportunity to comment on House Bill No. 2358. This bill provides that an irrigation system owner shall owe no duty of care to a trespasser who enters onto land containing or bordering an irrigation system. The department strongly supports this bill.

The department of agriculture has struggled with the issue of trespassing on its irrigation systems and facilities for many years. It is not economically feasible to patrol or set up a security system due to the remoteness of the infrastructure and an inability to access it rapidly. We deal with trespassing daily in addition to vandalized property which may lead to thousands of dollars in unnecessary repair costs and litigation expenses. Unfortunately, some of our infrastructure have become popular hiking

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attractions due to irresponsible listings in tourism and travel guides. The department has made efforts to de-list the systems from the guides, but has had limited success so far. We respectfully request the following additional language to strengthen the existing language: to the definition of "Irrigation system" in §167-24 (e), add "access trails" after "reservoirs" to read "... reservoirs, access trails, and accessory facilities ...".



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TESTIMONY OF ALFREDO LEE
EXECUTIVE DIRECTOR
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BEFORE THE HOUSE COMMITTEE ON
WATER, LAND, OCEAN RESOURCES &
HAWAIIAN AFFAIRS

February 6, 2008
8:30 a.m.

HOUSE BILL 2358
RELATING TO LIABILITY

Chairperson Ito and Members of the Committee:

Thank you for the opportunity to testify on House Bill 2358. The Agribusiness Development Corporation (ADC) is in strong support of this measure.

The ADC fully recognizes the importance that irrigation systems play in sustaining Hawaii's agricultural industry and feels that this bill offers irrigation system owners reasonable protection from liability as a result of their property being trespassed.

In certain instances, irrigation systems are not operated by their owner. We therefore request that irrigation system operators be offered similar protection.

Thank you for the opportunity to comment on this measure.

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE CONSUMER
LAWYERS OF HAWAII (CLH) IN OPPOSITION TO H.B. NO. 2358**

February 6, 2008

To: Chairman Ken Ito and Members of the House Committee on Water, Land, Ocean Resources & Hawaiian Affairs:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Consumer Lawyers of Hawaii (CLH) in strong opposition to H.B. No. 2358.

Almost 40 years ago, the Hawaii Supreme Court abolished the ancient common-law tradition of varying the responsibility of a landowner from taking reasonable steps to eliminate or adequately warn of dangerous conditions on the land depending upon whether visitors on the property were considered invitees, licensees or trespassers. Instead, the Supreme Court reasoned that the obligation to eliminate or warn of conditions on the land which pose an unreasonable risk of harm should depend upon whether the person was reasonably anticipated to be on the property. This rule was decided in the cases of Pickard v. City and County of Honolulu, 51 Haw. 134 (1969), and Gibo v. City and County of Honolulu, 51 Haw. 299 (1969).

This is the modern rule now followed in most states of the nation. This bill proposes a return to the ancient common-law rule that was abandoned in Hawaii almost 40 years ago. The current law is preferable because it does not rely upon arbitrary classifications that no longer fit modern society, but instead focuses on whether a person entering upon the land is reasonably anticipated to be there by the landowner. Under current law, owners of irrigation systems have no responsibility for those not reasonably anticipated to be on the land. There is no liability for irrigation systems located in agricultural areas where people are not reasonably anticipated to be there. On the other hand, if an irrigation flume is located next to a school and the owner knows that school children are playing in and around the irrigation system, then the owner is required to

take reasonable steps to eliminate or adequately warn against hazards. If this bill is passed, the irrigation owner would have no obligation to take reasonable steps to eliminate or adequately warn of known hazards for the children, but would condone the perpetuation of hazardous conditions for children who are known to be playing in and around the irrigation system.

There are several areas throughout the islands where playing in and around irrigation systems have been neighborhood traditions for generations. The current law provides the flexibility to require no action on the part of irrigation owners for the vast majority of their irrigation systems where the presence of visitors is not reasonably anticipated, while requiring that reasonable care be exercised where children are known to play. The current law should be maintained because it most fairly accommodates the competing public policies of providing for the safety of our children while encouraging agricultural irrigation.

Thank you very much for this opportunity to testify in opposition to H.B. No. 2358.