

STAND. COM. REP. NO. 1214

Honolulu, Hawaii

March 27, 2009

RE: S.B. No. 1088
S.D. 2
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Sir:

Your Committee on Water, Land, & Ocean Resources, to which
was referred S.B. No. 1088, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO PUBLIC ACCESS,"

begs leave to report as follows:

The purpose of this bill is to:

- (1) Amend the offense of obstructing access to public property to include visual and other impediments, and to include "no trespassing" signs and vegetation among the described physical impediments; and
- (2) Create a private right of action for a person to enforce a violation of the offense.

Kahea, Windward Ahupuaa Alliance, the Sierra Club, Hawaii Chapter, Beach Access Hawaii, Surfrider Foundation, and many individuals supported this bill. The Land Use Research Foundation of Hawaii, Hawaii Developers' Council, Building Industry Association of Hawaii, and The Chamber of Commerce of Hawaii opposed this measure. The Department of Land and Natural Resources (DLNR) offered comments.



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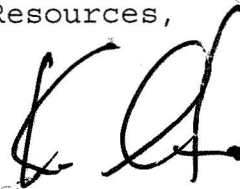
Your Committee has amended this bill by:

- (1) Deleting the limitation that the prevailing party entitled to recover costs and attorneys' fees must be the party bringing the action;
- (2) Clarifying that the person or entity responsible for the alleged violation be given 30 days to remove the obstruction; and
- (3) Making technical, nonsubstantive changes for style, clarity, and consistency.

Your Committee notes that DLNR in its testimony defers to the Department of the Attorney General (AG). The absence of testimony from the AG causes your Committee concern. Your Committee further notes that access issues addressed by this bill apply to shoreline areas as well as beaches. In addition, your Committee respectfully requests that the Committee on Judiciary consider exempting governmental entities in the performance of routine maintenance from the offense of obstructing access to public property.

As affirmed by the record of votes of the members of your Committee on Water, Land, & Ocean Resources that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1088, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1088, S.D. 2, H.D. 1, and be referred to the Committee on Judiciary.

Respectfully submitted on
behalf of the members of the
Committee on Water, Land, &
Ocean Resources,



KEN ITO, Chair



State of Hawaii
House of Representatives
The Twenty-fifth Legislature

HSCR 1214

Record of Votes of the Committee on Water, Land, & Ocean Resources

Bill/Resolution No.: SB 1088, SD2	Committee Referral: WLO, JUD	Date: 3/23/09		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to: <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
WLO Members	Ayes	Ayes (WR)	Nays	Excused
1. ITO, Ken (C)	✓			
2. HAR, Sharon E. (VC)	✓			
3. CABANILLA, Rida				✓
4. CHANG, Jerry L.	✓			
5. CHONG, Pono				✓
6. COFFMAN, Denny	✓			
7. HERKES, Robert N.	✓			
8. LEE, Chris	✓			
9. LUKE, Sylvia	✓			
10. MORITA, Hermina M.	✓			
11. SAGUM, Roland D., III	✓			
12. CHING, Corinne W.L.	✓			
13. THIELEN, Cynthia	✓			
TOTAL (13)	11			2
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. <small style="margin-left: 150px;">committee acronym(s)</small>				
Vice Chair's or designee's signature: _____ 				
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