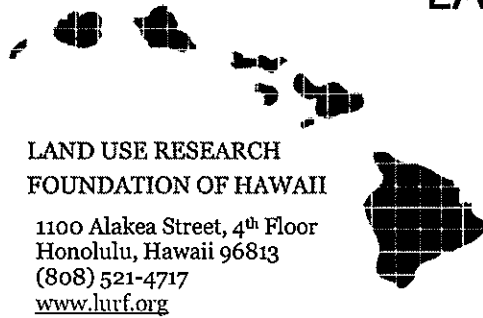


LATE TESTIMONY



February 11, 2011

Representative Clift Tsuji, Chair and Representative Mark J. Hashem, Vice Chair
Committee on Agriculture

Testimony of the Land Use Research Foundation of Hawaii

Friday, February 11, 2011 at 9:00 a.m. in CR 312

Support for HB 1607 Relating to Landowner Liability

My name is David Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable and rational land use planning, legislation and regulation.

We appreciate the opportunity to provide our testimony **in support of HB 1607, and offer comments.**

HB 1607. This bill establishes that an owner of range land owes no duty of care to keep range land safe for entry or use by a trespasser, or to warn trespassers of dangerous natural conditions, range activities, or uses on said land. HB 1607 further establishes a presumption that an owner of range land is not liable to a trespasser for injury, damage, or death occurring on such land, except where the owner is grossly negligent, willfully or wantonly disregards the safety of a trespasser, or intentionally causes injury, damage, or death to a trespasser. The bill also expands the limited liability protection of owners to those owners who allow recreational use of range land.

LURF's Position. This bill protects owners of range land, including those owners who allow recreational use of their land, from liability if a trespasser (as defined in Hawaii Revised Statutes, Section 708-814(c)) is injured, damaged, or dies while coming onto the property, unless the injury, damage or death is caused by the owner's intentional act, gross negligence, or willful or wanton conduct.

We believe that this bill represents a fair, equitable and reasonable balance between the landowner's duties, rights and responsibilities, and the rights of a trespasser if an injury or death results based on grossly negligent or intentional conduct by the landowner.

We further believe incorporation of the criminal trespass laws into the bill to define the term "trespasser" resolves previous concerns relating to inadvertent trespass, making the measure acceptable, and beneficial, particularly to owners and occupants of agricultural land, engaged in farming and ranching. These landowners and occupants have continually experienced problems with trespass, yet have been defenseless against claims

by trespassers for incidents and injuries suffered on their range lands, and have, in fact, had to protect trespassers from loss and injury despite their illegal entry.

Reference to the criteria for criminal trespass onto agricultural land which is contained in Hawaii Revised Statutes Section 708-814(c) aids greatly in addressing the concerns of range land owners, and is supported by LURF.

LURF is in **support of HB 1607**, and we respectfully urge your favorable consideration. The opportunity to present our testimony regarding this matter is greatly appreciated.

OPPOSE LATE TESTIMONY

HB1607
(RANGE LAND LIABILITY)
Friday, February 11, 2011, 9:00 a.m.
State Capitol, Rm. 312

AGRICULTURE COMMITTEE (AGR)
Rep. Clift Tsuji, Chair
Rep. Mark J. Hashem, Vice Chair

Dear Representatives:

HB1607 is an extremely **dangerous proposal for the public** and can have an **adverse impact on tourism**. Please **oppose** it for these main reasons.

1. Every **land owner**, from small to large, **should be responsible for the maintenance & upkeep of their land** so that it does not pose a danger to the hapless public. Period
2. How can land owners “not be responsible for an injury, damage, or death occurring on range land” (Page 2) while owing “no duty of care to keep range land safe for entry or use... or warn of dangerous natural conditions, range activities, or uses...”? (Page 1) This is especially worrisome as **range land used for livestock, dairy, and the likes tend to present unique environmental challenges to the air, ground, and waterway quality** of not just that land but also surrounding areas. Owners need to be responsible for their pollution output to everyone, including the occasion trespasser.
3. This non-liability proposal further extends protection to landowners who permit recreational use of range land. What is “recreational use”? This **language is too broad & vague. It presents no recourse for the public** should injury or death occur on range land under “recreational use” clause.

Mahalo~

Anjie Pham
Honolulu, Hawaii