

HB 227, HD2

NEIL ABERCROMBIE
Governor



State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512

RUSSELL S. KOKUBUN
Chairperson, Board of Agriculture

JAMES J. NAKATANI
Deputy to the Chairperson

TESTIMONY OF RUSSELL S. KOKUBUN
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEE
ON
AGRICULTURE

MARCH 17, 2011
2:55 P.M.
CONFERENCE ROOM 229

HOUSE BILL NO. 227 H.D. 2
RELATING TO TRESPASS

Chairperson Nishihara and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 227, H.D. 2. The purpose of this bill is to make entering or remaining unlawfully on unimproved or unused agricultural lands without permission an offense of criminal trespass in the second degree if the lands are fenced, enclosed, or secured, or a sign is displayed. It includes entering or remaining on agricultural lands that are fallow or have evidence of livestock at the time of entry in the offense of trespass in the second degree. The Department strongly supports the intent of this bill. We defer all legal matters to the Department of the Attorney General.

We respectfully request that the language on page 6, line 6 be amended to read "installation or maintenance of utility poles ~~[and]~~, signage, and irrigation facilities and systems;"

The Department manages several irrigation systems that span many miles. In most cases, these systems are in extremely remote but beautiful natural areas that hikers and nature enthusiasts tend to seek out. The Department does not possess the manpower necessary to secure the vast area that these systems cover. The Department has spent thousands of dollars on "No Trespassing" signs; however, these warnings continue to go unheeded. Incidents



TESTIMONY OF RUSSELL S. KOKUBUN
HOUSE BILL NO. 227, H.D. 2
MARCH 17, 2011, 2:55 P.M.
PAGE 2

involving injury have happened in the past leading to millions of dollars in settlement money and our personnel continue to see people on these non-public access trails and reservoir sites in spite of repeated warnings to leave. It is also important to recognize that our employees have NO enforcement power to escort trespassers off of State land.

Thank you for the opportunity to testify on this measure.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the Senate Committee on
AGRICULTURE**

**Thursday, March 17, 2011
2:55 PM
State Capitol, Conference Room 229**

**In consideration of
HOUSE BILL 227, HOUSE DRAFT 2
RELATING TO TRESPASS**

House Bill 227 House Draft 2 proposes to strengthen trespass provisions regarding a person who enters or remains unlawfully on unimproved or unused land by adding entering and remaining on unimproved or unused land that is fenced or enclosed, or with a "private property" sign, to the offense of criminal trespass in the second degree. The Department of Land and Natural Resources (Department) supports this bill and recommends following amendment.

In its current form, this measure provides two alternatives to private property owners to protect their property from trespass – physical barriers designed to exclude intruders and appropriate signage. The Department believes that government entities should be afforded the same degree of protection from unlawful trespass as private property owners. To that end, the Department recommends the following amendment to the first sentence of proposed Section 708-814(d)(ii) in SECTION 2 of the bill:

"(ii) Have a sign or signs displayed on the unenclosed, unimproved, or unused land sufficient to give reasonable notice and reads as follows: "Private Property" or "Government Property – No Trespass," as appropriate."

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS



LAND USE RESEARCH
FOUNDATION OF HAWAII

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LATE

March 16, 2011

Senator Clarence K. Nishihara, Chair and Senator Gilbert Kahele, Vice Chair
Senate Committee on Agriculture

Support for HB 227, HD 2 (Relating to Trespass; Unused Land).

Thursday, March 17, 2011 at 2:55 p.m. in CR 229

My name is Dave 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, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF appreciates the opportunity to provide testimony **in support of HB 227, HD 2** and to offer comments.

HB 227, HD 2. This bill strengthens the trespass provisions contained in Hawaii Revised Statutes (HRS) Section 708-814, by making entering or remaining unlawfully on unimproved or unused lands without permission an offense of criminal trespass in the second degree if the lands are fenced, enclosed, or secured, or signage is displayed. The bill also includes entering and remaining on agricultural lands that are fallow or have a visible presence of livestock or a crop to the offense of criminal trespass in the second degree under HRS Section 708-814(1).

LURF's Position. The amendments to the HRS trespass laws proposed by this bill help to protect owners and occupants of unimproved/unused land (including agricultural land which is fallow or has a visible presence of livestock or a crop), who have been long exposed to liability resulting from injury or death of persons who commit the offense of criminal trespass onto the property, by making it unlawful for persons to enter or remain on such property regardless of whether they have or have not received notification (personally, or by signage) against trespass. Any person who "enters or remains unlawfully" on **agricultural lands** would, by the proposed amendment, be committing criminal trespass in the second degree if the lands are closed to exclude intruders, or have a sign or signs placed at the boundary line of the land providing sufficient notice that the lands are private property. Any person who "enters or remains unlawfully" on **unimproved or unused lands** would, by the proposed amendment, be committing criminal trespass in the second degree if the lands are closed to exclude the general public, or have a sign or signs placed at reasonable intervals along the boundary line of the land reading "Private Property – No Trespassing" or similar message providing reasonable notice that the lands are private property.

LURF believes 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 injury or death occurs on agricultural, or unimproved or unused private property.

Owners of agricultural, unimproved and unused lands, including farmers and ranchers, have, over the years, continued to be besieged by problems relating to trespass, yet have been defenseless against claims by trespassers for incidents and injuries suffered on their property, and have, in fact, had to protect trespassers from loss and injury despite their unlawful entry.

LURF therefore **supports** **HB 227, HD 2** and respectfully urges your favorable consideration of this bill. Thank you for the opportunity to present testimony regarding this matter.



Hawaii Farm Bureau
F E D E R A T I O N

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SENATE COMMITTEE ON AGRICULTURE

Senator Clarence K. Nishihara, Chair
Senator Gilbert Kahele, Vice Chair

LATE

March 17, 2011

2:55 pm

Room 229

Relating to Trespass

HB 227 HD2

Aloha Chair Nishihara, Vice Chair Kahele, and Members of the Committee:

The Hawaii Farm Bureau, on behalf of our commercial farm and ranch families and organizations across the State, is in **strong support of the intent** of HB 227 HD2, which strengthens trespass provisions. However, what is more important to farmers and ranchers is relief from liability to trespassers who may hurt themselves while trespassing on agricultural lands. As such, we respectfully request that you incorporate the limited liability language of HB 226 HD1 into this bill, as below. Other clarification-type amendments are also offered and we would be happy to work with you on this.

Farmers and ranchers need your help.

Farms and ranches across the State are being used without permission from owners for hiking, hunting, dirt biking, and worse---illegal activities. Hard-earned crops are stolen, livestock is endangered by cut fences and damaged gates, and we are used as a rubbish dump, a place to abuse alcohol and drugs and to commit other crimes.

This bill would also make trespassing on unimproved lands that are fenced or otherwise enclosed or have clearly noticeable signs, a petty misdemeanor. We hope that this will serve as a deterrent to those who would otherwise ignore fencing and signage.

We respectfully request that you add the contents of HB 226 HD1 to this measure, as in HB 227, Proposed HD1 below. HB 226 provides that landowners are not liable to trespassers, unless the landowner intentionally or through gross negligence caused the injury, death, loss, or damage to the trespasser. This language is necessary because not only are there individuals who trespass and cause property damage; there are those who hurt themselves, and then threaten to sue the farmers and ranchers for their injuries. We cannot afford to lose

everything we work so hard to create, in litigation or settlement proceedings with those who flagrantly ignore the law and then blame others for the consequences.

Thank you very much for your help to protect the viability of the farmers and ranchers of Hawaii who would like to continue to supply our residents and visitors with the bounty of our lands and help Hawaii move toward food self-sufficiency. We would be pleased to work with the Committee on language to accomplish this goal.

HOUSE OF REPRESENTATIVES
TWENTY-SIXTH LEGISLATURE, 2011

H.B. NO. 227
PROPOSED
S.D. 1

STATE OF HAWAII

A BILL FOR AN ACT

RELATING TO TRESPASS.

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

SECTION 1. Section 708-800, Hawaii Revised Statutes, is amended by amending the definition of "enter or remain unlawfully" to read as follows:

"Enter or remain unlawfully." A person "enters or remains unlawfully" in or upon premises when the person is not licensed, invited, or otherwise privileged to do so. A person who, regardless of the person's intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless the person defies a lawful order not to enter or remain, personally communicated to the person by the owner of the premises or some other authorized person. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open

~~to the public. [A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privilege unless notice against trespass is personally communicated to the person by the owner of the land or some other authorized person, or unless notice is given by posting in a conspicuous manner.] "~~

SECTION 2. Section 708-814, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) A person commits the offense of criminal trespass in the second degree if:

(a) The person knowingly enters or remains unlawfully in or upon premises that are enclosed in a manner designed to exclude intruders or are fenced;

(b) The person enters or remains unlawfully in or upon commercial premises after a reasonable warning or request to leave by the owner or lessee of the commercial premises, the owner's or lessee's authorized agent, or a police officer; provided that this paragraph shall not apply to any conduct or activity subject to regulation by the National Labor Relations Act.

For the purposes of this paragraph, "reasonable warning or request" means a warning or request communicated in writing at any time within a one-year period inclusive of the date the incident occurred, which may contain but is not limited to the following information:

(i) A warning statement advising the person that the person's presence is no longer desired on the property for a period of one year from the date of the notice, that a violation of the warning will subject the person to arrest and prosecution for trespassing pursuant to section 708-814(1)(b), and that criminal trespass in the second degree is a petty misdemeanor;

(ii) The legal name, any aliases, and a photograph, if practicable, or a physical description, including

but not limited to sex, racial extraction, age, height, weight, hair color, eye color, or any other distinguishing characteristics of the person warned;

- (iii) The name of the person giving the warning along with the date and time the warning was given; and
- (iv) The signature of the person giving the warning, the signature of a witness or police officer who was present when the warning was given and, if possible, the signature of the violator; [e]

(c) The person enters or remains unlawfully on agricultural lands without the permission of the owner of the land, the owner's agent, or the person in lawful possession of the land, and the agricultural lands:

- (i) Are fenced, enclosed, or secured in a manner designed to exclude intruders;
- (ii) Have a sign or signs displayed on the unenclosed cultivated or uncultivated agricultural land sufficient to give notice and reading as follows: "Private Property". The sign or signs, containing letters not less than two inches in height, shall be placed along the boundary line of the land and at roads and trails entering the land in a manner and position as to be clearly noticeable from outside the boundary line; or
- (iii) At the time of entry, are fallow or have a visible presence or evidence of livestock-raising, such as cattle, horses, water troughs, shelters, paddocks, or of a crop:
 - (A) Under cultivation;
 - (B) In the process of being harvested; or

(C) That has been harvested[-];

or

(d) The person enters or remains unlawfully on unimproved lands or unused lands without the permission of the owner of the land, the owner's agent, or the person in lawful possession of the land, and the lands:

(i) Are fenced, enclosed, or secured in a manner designed to exclude intruders; or

(ii) Have a sign or signs displayed on the unenclosed, unimproved, or unused land sufficient to give reasonable notice and reads as follows: "Private Property". The sign or signs, containing letters not less than two inches in height, shall be placed along the boundary line of the land and at roads and trails entering the land in a manner and position as to be clearly noticeable from outside the boundary line."

SECTION 3. Chapter 663, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§663- Trespass; limited liability of land owner. (a)

Notwithstanding any other law to the contrary, an owner of agricultural land shall not be liable for any injury, death, loss, or damage suffered by a trespasser unless the injury, death, loss, or damage:

(1) Was intentionally inflicted upon the trespasser by the owner of the land; or

(2) Was caused by the gross negligence of the owner of the land,

and the intentional act or gross negligence was committed by the person sought to be held liable.

(b) As used in this section, unless the context otherwise requires:

"Invited guest" means any person specifically invited by the owner or the authorized representative of the owner to enter or remain on the land for social, business, or other purposes.

"Agricultural land" means means land used for farming operations, as defined in §165-2. For the purposes of this chapter, it includes land required for farm buildings and dwellings, roads, and irrigation infrastructure associated with the agricultural land.

"Fallow" means lands that are plowed but left unseeded for a time after successive crops.~~land, roads, water, water infrastructure, private ways and buildings, structures, and machinery or equipment when attached to realty.~~

"Owner" means the possessor of a fee interest, a tenant, lessee, occupant, or person, group, club, partnership, or corporation in control of the land.

"Trespasser" means a person who enters or remains on the land without the permission of the owner or the authorized representative of the owner and who is not an invited guest."

SECTION 43. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 54. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 65. This Act shall take effect upon its approval.



TESTIMONY BEFORE THE SENATE COMMITTEE ON
AGRICULTURE

HOUSE BILL 227, HD2

RELATING TO TRESPASS

PRESENTED TO THE TWENTY-SIXTH LEGISLATURE

MARCH 2011

CHAIRPERSON CLARENCE K. NISHIHARA and Members of the Committees:

STRONG SUPPORT.

My name is Loren Mochida, Director of Agricultural Operations at W. H. Shipman, Limited in Keaau on the Big Island. We are a local kamaaina-family owned land management company that is engaged in Agriculture and Commercial/Industrial development and leasing. We currently lease lands to over 125 individual growers at W.H. Shipman, Ltd.

W. H. Shipman, Ltd., supports HB 227, HD2 and its intent, Relating to Trespass. Makes entering or remaining unlawfully on unimproved or unused agricultural lands without permission an offense of criminal trespass in the second degree if the lands are fenced, enclosed, or secured, or a sign is displayed will assist in our efforts to curtail trespassers and illegal hunters. Criminal trespass on farm properties in Keaau and throughout the Big Island is a major problem. This also results in a number of problems destructive to our farms.

Illegal trespassers and hunters increase the liability for the landowner and their families and workers. We appreciate the efforts of the legislature to tighten laws giving farmers additional tools to combat what is a very serious problem to us.

Thank you very much for the opportunity to provide testimony on HB 227, HD2.

nishihara5 - Randy

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 16, 2011 7:09 AM
To: AGL Testimony
Cc: pihanoha@ksbe.edu
Subject: Testimony for HB227 on 3/17/2011 2:55:00 PM
Attachments: HB 227HD2 Senate 031711.doc

Follow Up Flag: Follow up
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Testimony for AGL 3/17/2011 2:55:00 PM HB227

Conference room: 229
Testifier position: support
Testifier will be present: Yes
Submitted by: Kapu Smith
Organization: Kamehameha Schools
Address:
Phone:
E-mail: pihanoha@ksbe.edu
Submitted on: 3/16/2011

Comments:

nishihara5 - Randy

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 16, 2011 9:03 AM
To: AGL Testimony
Cc: dan.nellis@dole.com
Subject: Testimony for HB227 on 3/17/2011 2:55:00 PM

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Testimony for AGL 3/17/2011 2:55:00 PM HB227

Conference room: 229
Testifier position: support
Testifier will be present: No
Submitted by: Daniel Nellis
Organization: Dole Food Company Hawaii
Address:
Phone:
E-mail: dan.nellis@dole.com
Submitted on: 3/16/2011

Comments:

Dole Food Company Hawaii strongly supports HB227, particularly the provision in HB227 that eliminates the need for personal notice of trespass on ag. lands including fallow and livestock range. The current need for notice which includes written warning, photographs, and signatures from trespassers makes trespass laws virtually unenforceable with no real deterrent to prevent continued trespass. Dole has experienced costs exceeding \$100,000 in 2010 from removal of trespassers and the clean up of their illegal dumping. An enforceable trespass law should provide some relief from these costs in the future.



HB 227 HD 2
RELATING TO TRESPASSING
Senate Committee on Agriculture

March 17, 2011

2:55 p.m.

Room 229

The Office of Hawaiian Affairs (OHA) **OPPOSES** HB 227 HD2 as drafted, because of the bill's possible implications to the exercise of traditional and customary Native Hawaiian practices.

Native Hawaiians enter onto unimproved and unused lands to exercise their traditional and customary practices, sometimes without receiving an explicit invitation from the landowner. HB 227 HD2 seeks to ensure that criminal trespass in the second degree applies to persons that enter onto unimproved lands that are fenced or otherwise enclosed, or have signs to give reasonable notice of private property. It would also remove the presumption that a person entering unfenced, unimproved and apparently unused land does so with privilege unless personal notice is communicated by the owner of the land. Although Native Hawaiian traditional and customary practitioners would be able to use their constitutionally protected traditional and customary rights as a defense to trespassing, having to prove these rights as a defense to a criminal prosecution is overly burdensome, particularly when the recognition of entry for traditional and customary practices can be reasonably accommodated within the statute.

OHA would not oppose HB 227 HD2 if the following amendments were made to recognize and protect Native Hawaiian traditional and customary rights:

- Replace the bill's language on page 1, lines 4-7, with:

HRS § 708-800. “Enter or remain unlawfully means a person who “enters or remains unlawfully” in or upon premises when the person is not licensed, invited, or otherwise privileged to do so, such as a person who is exercising a traditional and customary practice pursuant to Haw. Const. Art. XII § 7, HRS § 1-1, and/or HRS § 7-1.

- Replace the bill's language on page 4, lines 3-7, with:

HRS § 708-814(c). The person enters or remains unlawfully on

agricultural lands without the permission of the owner of the land, the owner's agent, or the person in lawful possession of the land, or without the privilege to otherwise do so, and the agricultural lands:

- Replace the bill's language on page 5, lines 3-6, with:

HRS § 708-814(d). The person enters or remains unlawfully on unimproved lands or unused lands without the permission of the owner of the land, the owner's agent, or the person in lawful possession of the land, or without the privilege to otherwise do so, and the lands:

OHA urges the committee to HOLD HB 227 HD2 as drafted. However, OHA would not oppose HB 227 HD2 with the aforementioned amendments. Mahalo nui loa for the opportunity to testify.

nishihara5 - Randy

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 17, 2011 9:39 AM
To: AGL Testimony
Cc: gottlieb@hawaii.rr.com
Subject: Testimony for HB227 on 3/17/2011 2:55:00 PM

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Testimony for AGL 3/17/2011 2:55:00 PM HB227

LATE

Conference room: 229
Testifier position: support
Testifier will be present: No
Submitted by: Alan Gottlieb
Organization: Hawaii Cattlemen's Council
Address:
Phone:
E-mail: gottlieb@hawaii.rr.com
Submitted on: 3/17/2011

Comments:

We are in strong support of the Hawaii Farm Bureau Federation's testimony