

Honolulu, Hawaii

APR 13 2012

RE: S.R. No. 39
S.D. 2

Honorable Shan S. Tsutsui
President of the Senate
Twenty-Sixth State Legislature
Regular Session of 2012
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred
S.R. No. 39, S.D. 1, entitled:

"SENATE RESOLUTION URGING THE ADOPTION OF LAWS TO REQUIRE
WRITTEN PERMISSION FROM THE LANDOWNER IN ORDER TO HUNT ON
PRIVATE LANDS AND TO AMEND CRIMINAL TRESPASSING LAWS TO
ADDRESS HUNTING SITUATIONS,"

begs leave to report as follows:

The purpose and intent of this measure is to develop laws to
reduce unlawful behavior on a private ranch and farmland, and
improve enforcement. Specifically, this measure urges the
adoption of laws to:

- (1) Require written permission from the landowner in order
to hunt on private lands; and
- (2) Amend the criminal trespassing laws to address hunting
situations.

Your Committee received testimony in support of this measure
from the Department of Land and Natural Resources; Hawaii Farm
Bureau Federation; Palani Ranch; PonoHolo Ranch, Ltd.; Princeville
Ranch; Waimalu Valley Ranch; Haleakala Ranch Company; Hawaii
Cattlemen's Council, Inc.; Kahua Ranch, Ltd.; Maui Cattlemen's
Association; Land Use Research Foundation of Hawaii; McCandless
Ranch; W.H. Shipman, Limited; and three private individuals.
Testimony in opposition to this measure was submitted by the
Office of Hawaiian Affairs.



Your Committee finds that existing laws do not sufficiently discourage unlawful hunting situations on private lands, as they are confusing and not easily enforced. Incidents of livestock slaughtering, theft, vandalism, crop destruction, and poaching have become common on farms and ranches on several islands.

However, your Committee also finds that this measure presents a number of practical concerns, such as difficulties in obtaining a private landowner's written permission, especially when the landowner is absent. Your Committee recognizes that hunting may occur outside the permitting landowner's property when the property boundaries are unclear or when the animal enters into the abutting or nearby property.

Your Committee notes the concerns raised by the Office of Hawaiian Affairs that requiring Native Hawaiian practitioners to obtain prior written permission from private landowners and heightening criminal trespassing penalties may unduly burden Native Hawaiian traditional and customary practices. Many Native Hawaiians currently practice hunting for subsistence and other purposes as traditional and customary practices that are protected under the Hawaii State Constitution and held as a constitutional right by the Hawaii Supreme Court in *Public Access Shoreline Hawaii v. Hawaii County Planning Commission*, commonly known as PASH.

Accordingly, your Committee has amended this measure by:

- (1) Urging the Department of Land and Natural Resources, in consultation with the Department of the Attorney General and the Office of Hawaiian Affairs, to evaluate the feasibility of establishing laws to require written permission from the landowner in order to hunt on private lands and to discuss potential amendments to criminal trespassing laws to address hunting situations;
- (2) Requesting that the discussions among the three state agencies include issues relating to:
 - (A) The feasibility of obtaining written permission from a private landowner;



- (B) The feasibility of obtaining written permission when the hunting occurs on the property of an absent, abutting, or nearby landowner;
 - (C) The enforcement of laws requiring prior written permission or criminal trespass when property boundaries are unclear; and
 - (D) The impact that new or amended laws relating to hunting may have on protecting all Native Hawaiian rights customarily and traditionally exercised for subsistence, cultural, and religious purposes pursuant to the Hawaii State Constitution;
- (3) Requesting the Department of Land and Natural Resources to submit a written report of its findings and any proposed legislation to the Legislature prior to the Regular Session of 2013;
 - (4) Changing the title to reflect the amended language; and
 - (5) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee concurs with the intent and purpose of S.R. No. 39, S.D. 1, as amended herein, and recommends its adoption in the form attached hereto as S.R. No. 39, S.D. 2.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



CLAYTON HEE, Chair



The Senate
Twenty-Sixth Legislature
State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:*	Committee Referral:	Date:	
SR 39, SD1	WLH, JDL	4/12/12	
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____			
The Recommendation is:			
<input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313			
Members	Aye	Aye (WR)	Nay
HEE, Clayton (C)	✓		
SHIMABUKURO, Maile (VC)	✓		
GABBARD, Mike	✓		
IHARA, Jr., Les	✓		
SLOM, Sam	✓		
TOTAL	5		
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted			
Chair's or Designee's Signature:			
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy			

*Only one measure per Record of Votes