



State of Hawaii
DEPARTMENT OF AGRICULTURE
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LATE TESTIMONY
RUSSELL KOKUBUN
Chairperson, Board of Agriculture

TESTIMONY OF RUSSELL KOKUBUN
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON WATER, LAND, AND OCEAN RESOURCES
Tuesday, February 21, 2011
Room 325
11:00 A.M.

HOUSE BILL NO. 2151, HOUSE DRAFT 1
RELATING TO AGRICULTURAL-BASED COMMERCIAL OPERATIONS

Chairperson Chang and Members of the Committee:

Thank you for this opportunity to provide testimony on House Bill No. 2151, House Draft 1 which proposes to amend references to roadside stands in Chapter 165, the Hawaii Right-to-Farm Law, and in Sections 205-2 and 4.5, the State Land Use Law with a three-tiered definition of agricultural-based commercial operations. The Department of Agriculture supports the intent of this measure that proposes to expand the variety of venues from which farmers can sell their agricultural products but has concerns about unintended consequences and enforcement.

The first tier of operations is similar in concept to the existing definition of a roadside stand. It allows for sale of raw and processed agricultural products sourced from within the county, however there is no requirement that the roadside stand sell agricultural products from the property on which the operation is located, as what the current definition requires. This suggests that an owners or lessees of agricultural lots not engaged in agricultural production may sell agricultural products grown and processed within the county.



The second tier of agricultural-based commercial operations is a producer-operated operation that offers raw and processed agricultural products grown within the county; county-specific, agriculture-related paraphernalia; and the sale of other food items. There is no definition of what a producer-operator is and whether the operation has to be located on the same property as the producer-operator. As in the case of a roadside stand, there is no requirement that this operation sell agricultural products grown on the property where the operation is located.

The third tier is a retail food establishment that unlike the other tiers requires the use of raw and processed agricultural products grown on the premises and within the county and well as agricultural products grown elsewhere in the State with the provision that 51 percent of the wholesale value of the final product is sourced from within the county.

We have 2 concerns

1. As all of these operations will be allowed throughout the Agricultural District on all classes of agricultural land, from "A" to "E" we would expect the definition of terms used and the acceptable scale of activity be more specific so as to provide adequate guidance to the counties and to ensure there are no unintended negative consequences that would compromise the primary use of agricultural lands, particularly "A" and "B", which is crop and livestock production.

For instance, a food establishment according to the administrative rules of the Department of Health (Title 11, Chapter 12) appears to cover operations ranging from a push cart hot dog stand to a full-service, sit-down restaurant. This measure does not specify how many unrelated operations may be located on an agricultural property. An entrepreneurial agricultural landowner could have several operations located on a single parcel.

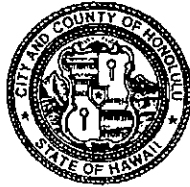
2. Enforcement of these operations may become problematic for State and county agencies who will likely need to identify who is qualified to have an operation; verify the source of fresh, processed, or cooked agricultural products as being from the county or grown on the premises; the wholesale value of the retail food being sold; and the variety of "other food items" being sold.

Thank you for the opportunity to comment.

LATE TESTIMONY

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU
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PETER B. CARLISLE
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DAVID K. TANOUE
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DEPUTY DIRECTOR

February 21, 2012

The Honorable Jerry L. Chang, Chair
and Members of the Committee on Water,
Land, and Ocean Resources
The Honorable Denny Coffman, Chair
and Members of the Committee on Energy
and Environmental Protection
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chairs Chang, Coffman, and Committee Members:

Subject: House Bill 2151, H.D. 1
Relating to Agricultural-Based Commercial Operations

The Department of Planning and Permitting **opposes** House Bill No. 2151, H.D. 1, which would allow agricultural-based commercial operations within the State Agricultural District as a principal use.

The proposal is too vague and broad and the proposed parameters on retailing are too difficult to monitor and thus, unenforceable. Our enforcement staff is already spread thin, and not trained to analyze accounting ledgers. If we were to enforce these proposals, we would need accountants and manufacturing forensic consultants added to our inspection staff. How will we ascertain whether a sales product involved an agricultural material grown in our county? If a product has a stamp, "Made in China", is that a de facto unpermitted product? As there is no provision to limit the amount of non-Hawaii based raw materials used or sold, the commercial operators could primarily market or use out-of-state materials. Even if quantitative limits were established, such as total square footage or cubic feet land space used for commercial operations, we would be hard-pressed to enforce them, as these are easily changed.

In addition, we expect the Bill to increase expectations about the value of agricultural lands. The Bill opens up lands to retailing without regard to their value for crop production. Where food crops are now grown, retailing could become the major activity, showcasing imported logo products and the sale and service of food products produced out-of-state. Certainly, the value of land used for commercial operations is more than that for crop production. No longer would retailing supplement a farmer's income from crops, but become the principal income-producing activity on the lot.

The Honorable Jerry L. Chang, Chair
and Members of the Committee on Water,
Land, and Ocean Resources
The Honorable Denny Coffman, Chair
and Members of the Committee on Energy
and Environmental Protection
House of Representatives
Re: House Bill No. 2151, H.D. 1
February 21, 2012
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Moreover, retail activities "in a producer-operated enclosed structure" would dramatically change the rural character of an area. In addition to the structure, there would be paved parking lots with night lights and loading docks. As there is no limit on the number of commercial operations, nor their size, this Bill could allow a shopping center on agricultural land with no government or community review.

Existing provisions of Chapter 205, HRS, already allow agricultural-based commercial operations as accessory to a working farm, and thus, protects farm land primarily for crop production. If commercial operations are believed to be needed as a principal use, Section 205-6, HRS, already provides a mechanism for allowing them; the special use permit. This permit process allows proposals to be evaluated on individual merits, including effects on the immediate neighborhood and on the larger agricultural industry. It can determine the appropriate size of the operation and the hours of operation. It can mitigate anticipated traffic impacts. It can require buffering and screening strategies, if needed. It also allows for agency and community input.

The Department will not support any proposals to change the zoning ordinance to allow retailing, as outlined by House Bill No. 2151, H.D. 1, on lands zoned agriculture. Thus, even if this Bill is adopted, the proposed uses would be prohibited by county zoning. Nevertheless, passage of House Bill No. 2151, H.D. 1, could still raise expectations about "highest and best use" of agricultural lands. At a time when community demand for more local food crops is increasing, this Bill seems to position the State in the opposite direction.

Please hold House Bill No. 2151, H.D. 1. Thank you for the opportunity to testify.

Very truly yours,



David K. Tanoue, Director
Department of Planning and Permitting

DKT:js

hb2151 hd1-k

Environmental Caucus of the Democratic Party of Hawai'i

State Democratic Headquarters ♦ 1050 Ala Moana Boulevard, D26 ♦ Honolulu, Hawai'i, 96814
(808) 596-2980 ♦ <http://EnvironmentalCaucusoftheDemocraticPartyofHawaii.com>

Testimony in Support of HB 2151 HD1

COMMITTEE ON WATER, LAND, & OCEAN RESOURCES

Rep. Jerry L. Chang, Chair

Rep. Sharon E. Har, Vice Chair

COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

Rep. Denny Coffman, Chair

Rep. Derek S.K. Kawakami, Vice Chair

House committee members of Water, Land & Ocean and Energy & Environmental Protection

My name is Juanita Kawamoto Brown and I am the subcommittee chair for Food and Farm Sustainability of the Environmental Caucus of the Democratic Party of Hawaii and we strongly support HB 2151 HD1 RELATING TO AGRICULTURAL-BASED COMMERCIAL OPERATIONS..

Small family farms and community based farms will thrive and succeed as viable agribusiness ventures through the endeavors of this bill. Small family farms and community culture based gardens and farms can awaken the people of Hawaii to get in touch with where our food comes from and how we can create a balance environmentally, economically and holistically.

The many financial responsibilities currently imposed upon farmers who make it their livelihood to provide natural, safe, healthy foods are suffering economic collapse without the support of this legislation.

We believe it is imperative to support the local farmers whose intentions are to keep us food self sufficient in Hawaii. We should allow small local farmers every opportunity to expand their agribusiness through increased local food crops, small farm agribusiness cooperatives, community based local feed mills who use local grown ingredients for local livestock, local grown value added products, direct marketing and educational agricultural tourism. Hawaii needs to prepare for food self sufficiency and local farmers with the support of this bill, can provide a positive impact for the future of Hawaii and its communities.

Please support this bill and thank you for the opportunity to provide testimony.

Juanita C. Kawamoto Brown
Subcommittee Chair of Food and Farm sustainability
Environmental Caucus of the Democratic Party of Hawaii
Democratic State Headquarters
1050 Ala Moana Blvd, D26
Honolulu, Hawaii 96814

LATE TESTIMONY



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

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FEBRUARY 21, 2012

HEARING BEFORE THE
HOUSE COMMITTEE ON WATER LAND & OCEAN RESOURCES

TESTIMONY ON HB 2151 HD1
RELATING TO AGRICULTURAL-BASED COMMERCIAL OPERATIONS

Room 325
11:00 AM

Chair Chang, Vice Chair Har, and Members of the Committee:

I am Brian Miyamoto, Chief Operating Officer and Government Affairs Liaison for the Hawaii Farm Bureau Federation (HFBF). Organized since 1948, the HFBF is comprised of 1,800 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interest of our diverse agricultural community.

Hawaii Farm Bureau Federation supports HB 2151, HD1 as amended, clarifying requirements for farm stands and other farm related retail activities in the agricultural district.

Farm stands and other retail sales are significant revenue enhancing opportunities for our farmers and ranchers. The existing law has created some challenges for our existing farmers and ranchers who are conducting true farm stands in agricultural areas.

Many of our farmers have multiple lots on different TMKs. The existing law only allows sale of "products grown on the premise". This limits the opportunity of the farm stand as if followed literally they would not be able to sell all of the products they grow. At the same time, we have many "farm stands" selling product not grown in the County or Hawaii. We do not believe this is the intent of this amendment. The original Bill, broadening the scope of the language to "raw Hawaii agricultural products" may be too broad, encouraging farm stands that are unrelated to actual agricultural activity.

The language in (c) is modified from the "Made in Hawaii" statute. We modified it to read "county" since it is our intent of this measure is to encourage farm and ranch viability within the county in which the farm stand is located and not to encourage sale of products solely from outside of the county.

Enforcement of these laws is usually the challenge and HFBF is especially concerned about unintended consequences of allowing other types of retail activities. We therefore suggest the following language that requires self-certification of goods sold and provides significant penalties for violation.

The owner of the farm or retail establishment shall certify that the products can be evaluated to determine that the raw agricultural products were grown in the County and that information may be requested to verify that the agricultural product meets the minimum specifications under this Chapter. Under this provision, the producer(s) certifies under penalty of sanctions that the offered agricultural product meets the requirements of this chapter.

HFBF respectfully requests passage of this measure with the amendment as suggested. We strongly believe farm stands and other on farm retail opportunities will increase the viability of our farmers and ranchers but also realize there is great opportunity of abuse. We feel, however, with adequate self-certification requirements that do not overly burden the County of enforcement responsibilities, the intended goal of this measure can be accomplished without significant unintended consequences.

I can be reached at (808) 848-2074 if you have any questions. Thank you for the opportunity to testify.



LATE TESTIMONY

KAMEHAMEHA SCHOOLS®

February 21, 2012

Testimony to the House Committee on Water, Land and Ocean Resources

By

Kapu Smith, Sr. Land Asset Manager

Kamehameha Schools

Hearing Date: Tuesday, February 21, 2012

11:00 a.m., Conference Room 325

Rep. Jerry L. Chang, Chair

Rep. Sharon Har, Vice Chair

Members of the Committee on Water, Land and Ocean Resources

RE: Support of House Bill No. 2151 – Relating to Agricultural Based Commercial Operations

I am Kapu C. Smith, Senior Land Asset Manager for Kamehameha Schools' Kawaihoa Plantation in Waialua, Oahu. I am here to testify in support of HB 2151 because it will have an immediate impact on the farmers' ability to improve their economic feasibility and thus continue to farm. Under the current land use, agricultural based commercial operations are not described as one of the permissible uses. As a result, this has increased permitting, limited the farmers' economic opportunities and placed them at a disadvantage with neighboring landowners. This means that their products can be sold across the street by others but not by the farmer on their own farm lot.

Thank you for the opportunity to testify in support of HB 2151.

LATE TESTIMONY



Hawaii's Thousand Friends

25 Malunui Ave., Suite 102., PMB 282 • Kailua, HI 96734 • Phone/Fax: (808) 262-0682 E-mail: htf@lava.net

February 21, 2012

COMMITTEE ON WATER, LAND & OCEAN RESOURCES

Rep. Jerry Chang, Chair
Rep. Sharon Har, Vice Chair

COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

Rep. Denny Coffman, Chair
Rep. Derek S.K. Kawakami, Vice Chair

HB 2151, HD1

RELATING TO AGRICULTURAL-BASED COMMERCIAL OPERATIONS

Committee Chairs and Committee Members;

Hawaii's Thousand Friends, a statewide non-profit water and land use planning organization, opposes HB 2151 HD1, which allows agricultural-based commercial operations in the State Agricultural District.

The bill is vague, does not provide any perimeters on the size of the nonpermanent roadside stands or food establishments and does not identify which government agency would enforce these new provisions.

The bill does not state which government entity will oversee enforcement to ensure that just 51% not more and not less of the wholesale value of the perishable consumer commodity is added within the county.

The present definition (9) Roadside stands for the sale of agricultural products grown on the premises is easier to enforce and helps ensure that farming not retail is the primary activity.

As communities struggle to keep agricultural land for farming to ensure food security for our islands and so that residents can be more self-sufficient HB 2151 HD1 two more non-farm related activities can be added to the list of permitted activities on prime A and B agricultural land;

1. Day camps
2. Picnic grounds
3. Parks
4. Riding stables
5. Public, private and quasi-public utility lines, roadways, transformer stations
6. Solid waste transfer stations
7. Plantation community subdivisions
8. Agricultural tourism
9. Wind energy facilities
10. Construction and operation of wireless communication antennas

Help your community and constituents retain Hawaii's agricultural land for farming by holding HB 2151 HD1 in community.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 21, 2012 8:21 AM
To: WLOtestimony
Cc: kaiawemakanani@aol.com
Subject: Testimony for HB2151 on 2/21/2012 11:00:00 AM

Testimony for WLO 2/21/2012 11:00:00 AM HB2151

Conference room: 325
Testifier position: Support
Testifier will be present: No
Submitted by: Kaiawe Makanani
Organization: Individual
E-mail: kaiawemakanani@aol.com
Submitted on: 2/21/2012

Comments:

LATE TESTIMONY

Testimony of
Jon Okudara
on

H.B. 2151, H.D. 1

Relating to Agricultural-based Commercial Operations

Committee on Water, Land and Ocean Resources

Tuesday, February 21, 2012

11:00 a.m.

Conference Room 325

Thank you for the opportunity to testify in support of H.B. 2152, H.D. 1, with certain amendments.

The objective of H.B. 2151, as originally introduced, was to provide more profit-making opportunities for agricultural producers and to preserve agriculture by making it profitable.

The land use law describes as primary permissible uses on class A and B agricultural lands: open area recreational uses, transformer stations, communications equipment buildings, solid waste transfer stations, wind energy facilities, biofuel processing facilities, and wireless communication antennas. The only direct sales allowed on agricultural lands are “roadside stands for the sale of products grown on the premises.”

Section 165-2, HRS, the Hawaii Right to Farm Act, describes a “farming operation” as including but not limited to “[m]arketed produce at roadside stands or *farm markets*.” “Farm market” is not defined, and is not described as a permissible use on agricultural lands in the Land Use Law.

The Land Use Ordinance of the City and County of Honolulu, allows “*agribusiness activities*” in an agriculture zone, including “*retail activities in an enclosed structure ...limited to a structure not exceeding 500 square feet*”. “Agribusiness activities” is not defined in the Land Use Ordinance,” and is not listed as a permissible use on agricultural lands in the Land Use Law.

Under section 166-3.5, HRS, the Agricultural Parks law, the Department of Agriculture allows “*agricultural-based commercial venture operations*” on lots leased and operated by an agricultural park lessee. “Agricultural-based commercial venture operations” is not define in Chapter 166 or in the rules of the Department, and “agricultural-based commercial venture operations” is not listed as a permissible use on agricultural lands in the Land Use Law.

These uses, however, may be allowed with a special permit from the county planning commission. The special permit process can be an expensive alternative. In 2008, the Hawaiian Vanilla Company on the island of Hawaii spent over \$30,000 to get a special permit to operate a retail establishment and retail food establishment for sale and tasting of its vanilla products. (Board of Appeals, County of Hawaii, Hearing transcript, February 8, 2008).

H.B. 2151

H.B. 21751 as originally introduced, defined “agricultural-based commercial operations” as a permissible use on agricultural lands. This will include:

- Roadside stands *for displaying and selling of agricultural products and value-added products produced from Hawaii agricultural materials*. It removed the restriction that products be grown on the premises. In many instances, producers do not have the roadside exposure to set up a roadside stand, have multiple farm lots, or do not have sufficient manpower to operate a stand. This will encourage synergy among agricultural producers.
- Retail activities such as farm markets *to allow direct sales of fresh agricultural products, value-added products, logo items related to the agricultural operations, and food items*.
- Retail food establishments permitted under the rules of the Department of Health, that *prepare and serve food using products grown on the premises and other Hawaii agricultural products*.

Other testimony

The Department of Planning and Permitting testified that:

“...The proposal is too broad and ***the requirement that vendors primarily use raw Hawaii agricultural materials is very difficult to monitor and thus, unenforceable***. In addition, the proposal ***would open up lands that have the greatest crop production ratings for commercial operations that include the retailing of imported logo products and the sale and service of food products produced out-of-state***. As there is no language to limit the amount of non-Hawaii based raw materials used or sold, the commercial operators could primarily market or use out-of-state materials. Moreover, the bill would allow commercial operators to establish operations on any farm lot thereby competing with farmers who supplement their income with onsite sales of products grown on the premises and could drive up the price of good quality farm land. ... Existing provisions of Chapter 205, HRS, already allow agricultural-based commercial operations as accessory to a working farm, and thus, protects farm land primarily for food production.

Response: H.B. 2151 would allow: sale of agricultural products and value-added products produced using raw Hawaii agricultural materials at a roadside stand; ***producer-operated*** retail activities to sell fresh agricultural products, value-added products, logo items ***related to Hawaii agricultural operations***, and other food items; and retail food establishments licensed by the Department of Health preparing and serving food ***using products grown on the premises, raw Hawaii agricultural products, and value-added products produced using raw Hawaii agricultural products***.

DPP testifies that the provisions of H.B. 2151 will be unenforceable, but section 21-5.10A of the Land Use Ordinance of the City and County of Honolulu, permits “Agribusiness activities,” described as “retail activities in an enclosed structure ...not exceeding 500 square feet of floor area, and all products for sale therein shall be (i) agricultural products grown on the parcel, (ii)

agricultural products grown in the City and County of Honolulu, or (iii) jams, jellies, candies and pickled or dried products made from those products.” The Land Use Law does not describe “agribusiness activities” as a permissible use on agricultural lands. The Land Use Ordinance describes “agribusiness activities” in section 21-5.10A, which are allowed under a special permit from DPP.

Russell Kokubun, Chair, Board of Agriculture testified that:

The Department is agreeable to allowing roadside stands to sell agricultural products grown in Hawaii and value-added products produced using raw Hawaii agricultural materials, understanding that this would also require Department of Health (DOH) oversight. However, ***other proposed retail activities are more difficult to align with the Department’s goal to perpetuate agriculture and therefore difficult to enforce compliance.*** Also, retail food establishments go beyond the purview of the Department of Agriculture and would necessitate the involvement of DOH.

Response: H.B. 2151 proposes to perpetuate agriculture by making agriculture profitable. An agricultural operation that is profitable will continue in agriculture. H.B. 2151 attempts to provide agricultural operators a means to increase their profits by expanding the market for their products.

The Farm Bureau testified:

“...it is our intent of this measure is to encourage farm and ranch viability ***within the county in which the farm stand is located and not to encourage sale of products solely from outside of the county.***”

Enforcement of these laws is usually the challenge and HFBF is especially concerned about unintended consequences of allowing other types of retail activities. We therefore suggest the following language that requires self-certification of goods sold and provides significant penalties for violation.

The owner of the farm or retail establishment shall certify that the products being displayed or sold can be evaluated to determine that the products were grown in the County and that information may be requested to verify that the agricultural product meets the minimum specifications under this Chapter. Under this provision, the producer(s) certifies under penalty of sanctions that the offered agricultural product meets the requirements of this chapter.

Response: H.B. 2151 proposes to support all agriculture in Hawaii. It requires use of raw Hawaii agricultural products and value-added products made from Hawaii agricultural materials. Restricting sales to products grown in a county prohibits the development of a statewide synergy among agricultural producers. H.B. 2151 requires that the operations be producer-operated.

The Farm Bureau requirement that the owner certify that the agricultural product meet minimum specifications places an additional burden on the operator. The Department of Agriculture and the Department of Planning and Permitting testified on the difficulty of enforcing the provisions being proposed. If the owner is required to certify compliance, who will check the compliance certification?

Amendments

Amend paragraph (A) referring to roadside stands by deleting “soft-sided nonpermanent” and amending the paragraph to read:

“A roadside stand, which is not an enclosed structure, for displaying and selling of agricultural products and value-added products produced using raw Hawaii agricultural materials.”

Thank you for the opportunity to offer these comments in support of H.B. 2151.