

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

**LATE**

TESTIMONY OF RUSSELL S. KOKUBUN  
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEE  
ON  
WAYS AND MEANS

FRIDAY, FEBRUARY 25, 2011  
9:00 A.M.  
CONFERENCE ROOM 211

SENATE BILL NO. 1079, S.D. 1  
RELATING TO LANDOWNER LIABILITY

Chairperson Ige and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill No. 1079, S.D. 1. The purpose of this bill is to establish that an owner of agricultural or range land owes no duty of care to trespassers; establishes rebuttable presumption of no liability; permits trespassers to overcome presumption by preponderance of evidence that owner was grossly negligent or intentionally injured the trespasser; and authorizes fines of up to \$10,000 for the Criminal Trespass on Agricultural Lands Enforcement Fund. The Department strongly supports the intent of this bill and respectfully requests that the language on page 3, lines 1 and 2 be amended by deleting "...other than lands owned by the government." We defer all legal matters to the Department of the Attorney General.

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 involving injury have happened in the past leading to millions of dollars in settlement money and



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our personnel continue to see people on these non-public trails and reservoir sites in spite of repeated warnings to leave. We believe the deletion of the phrase "...other than lands owned by the government." would allow public lands and irrigation systems to be covered by the expanded reach of this bill. 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.



LAND USE RESEARCH  
FOUNDATION OF HAWAII

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**LATE**

February 25, 2011

Senator David Y. Ige, Chair and Senator Michelle N. Kidani, Vice Chair  
Senate Committee on Ways and Means

**Support of SB 1079, SD 1 (Relating to Landowner Liability - Trespass; Owners of agricultural land or range land have no duty of care to trespassers.)**

**Friday, February 25, 2011 at 9:00 a.m. in CR 211**

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.

We appreciate the opportunity to provide our testimony **in support of SB 1079, SD 1, and offer comments.**

**SB 1079, SD 1.** This bill strengthens the trespass provisions of Hawaii Revised Statutes (HRS) Chapter 663 by adding a section protecting farmers and ranchers from the effects of trespass on their agricultural and ranch land. Under this new section, an owner of such land would owe no duty of care to keep the land safe for entry or use by a trespasser, or to give any warning of a dangerous condition, use, structure or activity on the land. This section would also create a presumption that the owner of such land is not liable to a trespasser for injury, loss, damage or death occurring on the land, which presumption could be rebutted in any civil action for damages by a preponderance of the evidence that the owner (1) committed an act or omission of gross negligence; or (2) intentionally injured the trespasser.

**LURF's Position.** This bill protects owners and occupiers of private agricultural or ranch land (including irrigation systems) from liability if a person who commits the offense of criminal trespass is injured while coming onto the property, unless the injury is caused by the owner's or occupier's gross negligence or willful or wanton conduct.

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 an injury or death results based on grossly negligent or intentional conduct by the landowner.

LURF further believes 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. Owners of unimproved and unused lands, including farmers and ranchers, have continually experienced problems with trespass, yet have been defenseless against claims by trespassers for incidents and injuries suffered on their agricultural 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 HRS Section 708-814(c), and the proposed amendment thereto to include **fallow land** or land upon which there may not be a visible presence, but only **evidence of livestock raising or a crop**, as a category of agricultural land to which the criminal trespass laws apply, aid greatly in addressing the concerns of agricultural landowners and occupiers (e.g., signage/notification costs; pastoral blight), and is strongly supported by LURF.

For the same reasons, the proposed deletion of the requirements that agricultural lands must be fenced and display signs identifying the agricultural land as private property for purposes of determining whether criminal trespass has been committed is also supported by LURF, as many owners of large agricultural parcels are unable to provide signage at every entry point due to high costs and accessibility issues. LURF also supports the increase in fines of up to \$10,000 for violations of criminal trespass in the second degree.

Based on the above, LURF is in **support of SB 1079, SD 1**, and respectfully urges your favorable consideration.

Thank you for the opportunity to present testimony regarding this matter.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, February 25, 2011 6:13 AM  
**To:** WAM Testimony  
**Cc:** gottlieb@hawaii.rr.com  
**Subject:** Testimony for SB1079 on 2/25/2011 9:00:00 AM

**LATE**

Testimony for WAM 2/25/2011 9:00:00 AM SB1079

Conference room: 211  
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](mailto:gottlieb@hawaii.rr.com)  
Submitted on: 2/25/2011

**Comments:**

We support language in the proposed SD 2 submitted by the Hawaii Farm Bureau Federation. Trespassing is a huge problem for farmers and ranchers and this bill will help us with this problem, at no cost to the State.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, February 25, 2011 6:23 AM  
**To:** WAM Testimony  
**Cc:** karinguest@hawaii.rr.com  
**Subject:** Testimony for SB1079 on 2/25/2011 9:00:00 AM

**LATE**

Testimony for WAM 2/25/2011 9:00:00 AM SB1079

Conference room: 211  
Testifier position:  
Testifier will be present: No  
Submitted by: Karin Guest  
Organization: Kauai Cattlemen's Association  
Address:  
Phone:  
E-mail: [karinguest@hawaii.rr.com](mailto:karinguest@hawaii.rr.com)  
Submitted on: 2/25/2011

**Comments:**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, February 25, 2011 6:24 AM  
**To:** WAM Testimony  
**Cc:** karinguest@hawaii.rr.com  
**Subject:** Testimony for SB1079 on 2/25/2011 9:00:00 AM

**LATE**

Testimony for WAM 2/25/2011 9:00:00 AM SB1079

Conference room: 211  
Testifier position: support  
Testifier will be present: No  
Submitted by: Karin Guest  
Organization: Kauai Cattlemen's Association  
Address:  
Phone:  
E-mail: [karinguest@hawaii.rr.com](mailto:karinguest@hawaii.rr.com)  
Submitted on: 2/25/2011

**Comments:**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, February 25, 2011 6:24 AM  
**To:** WAM Testimony  
**Cc:** jguest@hawaii.rr.com  
**Subject:** Testimony for SB1079 on 2/25/2011 9:00:00 AM

**LATE**

Testimony for WAM 2/25/2011 9:00:00 AM SB1079

Conference room: 211  
Testifier position: support  
Testifier will be present: No  
Submitted by: Jeff Guest  
Organization:  
Address:  
Phone:  
E-mail: [jguest@hawaii.rr.com](mailto:jguest@hawaii.rr.com)  
Submitted on: 2/25/2011

**Comments:**

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