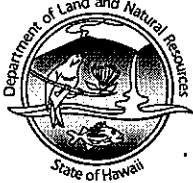


SCR85 / SR39

URGING THE ADOPTION OF LAWS TO REQUIRE WRITTEN
PERMISSION FROM THE LANDOWNER IN ORDER TO HUNT ON
PRIVATE LANDS AND TO DEFINE PLACES OF FORMAL HUNTING.

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
WATER, LAND, AND HOUSING**

**Thursday, March 29, 2012
1:25 PM
State Capitol, Conference Room 225**

**In consideration of
SENATE CONCURRENT RESOLUTION 85/SENATE RESOLUTION 39
URGING THE ADOPTION OF LAWS TO REQUIRE WRITTEN PERMISSION FROM
THE LANDOWNER IN ORDER TO HUNT ON PRIVATE LANDS AND TO DEFINE
PLACES OF FORMAL HUNTING**

The purpose of Senate Concurrent Resolution 85/Senate Resolution 39 is to address problems related to illegal trespass, vandalism and unauthorized use of firearms on private lands that creates safety risks and causes damage to property, crops, and livestock. The Department of Land and Natural Resources (Department) appreciates the intent of these resolutions to help develop laws to reduce lawless behavior on private ranch and farmland, and provides comments on approaches to make such legislation effective.

The Department cautions against adopting provisions to define “formal hunting areas”. These provisions may be confusing and may prohibit the carrying and use of firearms by government agencies and private partners charged with natural resource management and public safety mandates on state lands that are not “formal hunting areas”. The use of firearms for the control of invasive species and predators on state lands not open to hunting because of location or size is a routine part of management. The Department suggests that other approaches would be more effective without potentially restricting legitimate use of firearms for resource management activities.

The problem that these resolutions is trying to address is one of trespass and hunting on private property without permission. The Department supports a change in Section 183D-26, Hawaii Revised Statutes (HRS), which requires showing proof of “written permission” to hunt on private land. The Department further believes a more effective change would be amending the criminal trespass statutes, “Section 708-813 Criminal trespass in the first degree”, HRS, to make trespass an easier offense to enforce. This would enable a greater response from the county police departments, who have far greater resources to assist private landowners with trespass than does the Department’s Division of Conservation and Resources Enforcement (DOCARE). DOCARE

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

GUY H. KAULUKUKUI
FIRST DEPUTY

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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
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

is already stretched to the limits with enforcement on state lands and does not have the resources to cover private lands.

The Department supports measures to increase enforceability of trespass laws on private land, including hunting without permission, but urges an approach that does not deter the thousands of legal and courteous hunters that do follow the rules from participating, or hinder the ability of agencies and partners to carry out their statutory mandates to protect natural resources.

The Department suggests that the resolutions be amended to strike references to the establishment of "formal hunting areas", and suggests that the resolution be revised to focus on criminal trespass rather than "formal hunting areas". The following suggested amendments to Section 183D-26 and Section 708-813, HRS, are offered for discussion to achieve this approach.

1. ~~Amend Section 183D-26, HRS, to read as follows:~~

"§183D-26 Hunting on private lands prohibited. ~~[(a)]~~ No person shall enter upon any land or premises belonging to, held, or occupied by another, for the purpose of hunting or to take any kind of wildlife including game without first having obtained written permission from the owner or a duly appointed agent, if the owner is the occupier or holder, or if the owner has let another occupy or hold the same, without having first obtained the permission of the occupier or holder thereof, or the duly appointed agent of the occupier or holder.

~~[(b) No prosecution shall be brought under this section, except upon the sworn complaint of the owner, occupier, or holder of the land or premises, or a duly appointed agent, or if the owner, occupier, or holder is either a corporation or a partnership, then the complaint shall be sworn to by an officer of the corporation or by one of the members of the partnership.]"~~

2. Amend Section 708-813, HRS, to read as follows:

"§708-813 Criminal trespass in the first degree. (1) A person commits the offense of criminal trespass in the first degree if:

- (a) That person knowingly enters or remains unlawfully:
 - (i) In a dwelling; or
 - (ii) In or upon the premises of a hotel or apartment building;
 - (b) That person:
 - (i) Knowingly enters or remains unlawfully in or upon premises ~~[that are fenced or enclosed in a manner designed to exclude intruders]~~; and
 - (ii) Is in possession of a firearm, as defined in section 134-1, at the time of the intrusion;
[or]
 - (c) That person enters or remains unlawfully on private property at night while in the possession of a firearm, as defined in section 134-1; or
 - ~~[(e)]~~ (d) That person enters or remains unlawfully in or upon the premises of any public school as defined in section 302A-101, or any private school, after reasonable warning or request to leave by school authorities or a police officer; provided however, such warning or request to leave shall be unnecessary between 10:00 p.m. and 5:00 a.m.
- (2) Criminal trespass in the first degree is a misdemeanor. "

Additionally, this bill presents many practical concerns for practitioners on the ground. The boundaries between public and private property in forested and undeveloped areas are rarely clearly marked. Also, although the Constitution broadly protects these activities, practitioners in the field could still experience a chilling effect, as they could not be assured that agents enforcing this law properly understood the complex legal authority protecting their practices. Moreover, such laws would place the burden upon Native Hawaiian practitioners to legally defend themselves and their lawful actions.

In light of all these concerns, OHA urges the committee to HOLD SCR85 / SR39. Mahalo for the opportunity to testify on this important measure.



SCR85 / SR39

**URGING THE ADOPTION OF LAWS TO REQUIRE WRITTEN PERMISSION FROM THE
LANDOWNER IN ORDER TO HUNT ON PRIVATE LANDS AND TO DEFINE PLACES OF
FORMAL HUNTING.**

Senate Committee on Water, Land, & Housing

March 29, 2012

1:25 p.m.

Room 225

The Office of Hawaiian Affairs (OHA) **OPPOSES** SCR85 / SR39, which urges the adoption of laws to require written permission from the landowner in order to hunt on private lands and to define places of formal hunting.

Many Native Hawaiians currently practice hunting for subsistence and other purposes as a traditional and customary practice. The Hawai'i Constitution, Supreme Court, and this Legislature consistently protect the perpetuation of these historic practices as a living component of the Hawaiian Culture. Requiring Native Hawaiian practitioners to obtain written permission from private landowners prior to engaging in these practices would unduly burden the practices and, in some areas, could regulate them out of existence.

Hunting remains an important cultural and subsistence practice for many Native Hawaiians in rural regions. For example, a report issued by the Governor's Moloka'i Subsistence Task Force found that Hawaiian families on Moloka'i continue to rely heavily upon subsistence to supplement meager incomes, deriving 38% of their food from these activities. These practices rely primarily upon wildlife game that is abundant on privately owned land because the game on public lands is too scarce to be hunted. This report revealed that subsistence activities, including hunting, were also critical to the persistence of Hawaiian cultural customs and values.

OHA appreciates the desire to protect property rights and ensure the safety of all citizens of Hawai'i. However, the laws envisioned by this resolution reach too broadly by requiring prior permission from private landowners. Such requirements do not consider the difficulty most will find in attempting to obtain such permission. Much of Hawai'i's land is owned by large landowner corporations whose offices may exist on a different island from the land in question, and most landowners—even if they know hunting currently takes place on their land—would not open themselves to the liability inherent in conferring written permission for hunters to bear and use firearms on their properties.

Additionally, this bill presents many practical concerns for practitioners on the ground. The boundaries between public and private property in forested and undeveloped areas are rarely clearly marked. Also, although the Constitution broadly protects these activities, practitioners in the field could still experience a chilling effect, as they could not be assured that agents enforcing this law properly understood the complex legal authority protecting their practices. Moreover, such laws would place the burden upon Native Hawaiian practitioners to legally defend themselves and their lawful actions.

In light of all these concerns, OHA urges the committee to HOLD SCR85 / SR39. Mahalo for the opportunity to testify on this important measure.



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

2343 Rose Street • Honolulu, Hawaii 96819
Phone: (808) 848-2074 • Neighbor-Islands: (800) 482-1272
Fax: (808) 848-1921 • Email: info@hfbf.org
www.hfbf.org

Thursday, March 29, 2012
1:25 pm
Conference Room 225
Senate Committee on Water, Land, and Housing

Testimony on SCR 85/SR 39

**URGING THE ADOPTION OF LAWS TO REQUIRE WRITTEN PERMISSION FROM THE
LANDOWNER IN ORDER TO HUNT ON PRIVATE LANDS AND TO DEFINE PLACES OF
FORMAL HUNTING**

Aloha Chair Dela Cruz, Vice Chair Solomon, and Members of the Committee,

I am Janet Ashman, testifying on behalf of 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 interests of our diverse agricultural community.

We **strongly support** this resolution and appreciate its introduction, since the bill that would have addressed the problem did not pass this session. The purpose of that bill was to require people who want to hunt on our ranches and farms, to get written permission from the farmers and ranchers that manage that land. In addition, it would have made enforcement of criminal activities easier by clarifying current statutes.

This is necessary because criminals have learned there is no practical enforcement of hunting laws and this allows thieves and vandals armed with guns to trespass, steal valuable crops and equipment, harm livestock, and threaten farmers and ranchers.

Over the past several years, incidents of livestock slaughtering, theft, vandalism, crop destruction, and poaching have become commonplace on farms and ranches on all of the islands. The current laws are confusing and not easily enforced. Additionally, the burden is on the rancher or farmer to prove that he did not give permission to a gun-wielding trespasser to use his property.

We look forward to working with law enforcement, DLNR, and the hunting community to address this issue before next session. We sincerely believe that this can be done without penalizing legitimate hunters or hindering the ability of agencies and their partners to carry out their statutory mandates to protect natural resources.

Thank you very much for your support of Hawaii's farmers and ranchers.



Hawaii Cattlemen's Council, Inc.

P O Box 437199 Kamuela HI 96743

Phone (808) 885-5599 • Fax (808) 887-1607

e-mail: HICattlemens@hawaii.rr.com

SENATE COMMITTEE ON WATER, LAND & HOUSING

Thursday March 29, 2012 1:25 p.m. Room 225

SCR 85

URGING THE ADOPTION OF LAWS TO REQUIRE WRITTEN PERMISSION FROM THE LANDOWNER IN ORDER TO HUNT ON PRIVATE LANDS AND TO DEFINE PLACES OF FORMAL HUNTING

Chair Dela Cruz, Vice Chair Solomon and Members of the Committee:

My name is Alan Gottlieb, and I am a rancher and the Government Affairs Chair for the Hawaii Cattlemen's Council. The Hawaii Cattlemen's Council, Inc. (HCC) is the Statewide umbrella organization comprised of the five county level Cattlemen's Associations. Our 130+ member ranchers represent over 60,000 head of beef cows; more than 75% of all the beef cows in the State. Ranchers are the stewards of approximately 25% of the State's total land mass.

The Hawaii Cattlemen's Council **strongly supports** SCR 85

As you can well imagine, it is bad enough for landowners to have trespassers (by definition: without permission) on their property, but when trespassers carry firearms we are extremely concerned. Folks with guns often discourages the bravest of us from approaching these trespassers and asking them to leave.

Many Hawaii ranchers already allow hunters on their property, and some have worked with a permission system. Hunters who ask permission often help us take care of feral pig populations, close gates behind them, and let us know when our water troughs are overflowing, or a gate has been cut. Hunters who do not seek permission are by definition not respectful of our property, and often times cut fences (allowing cattle out onto the road, a great danger to the public), leave gates open and destroy private property. The hunters who ask permission are often the ones who help us keep out the ones who don't.

We really do feel that something must be done to prevent folks from coming onto private property with guns, without permission. Of course, if asked, any trespasser I have ever met says "the other guy said I can hunt here" so requiring written permission from the landowner or land manager takes away that lie, and allows the police to verify that the person really does have permission.

Thank you for giving me the opportunity to testify in favor of this very important issue.

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, March 24, 2012 6:46 PM
To: WLH Testimony
Cc: gregf@haleakalaranch.com
Subject: Testimony for SCR85 on 3/29/2012 1:25:00 PM

Testimony for WLH 3/29/2012 1:25:00 PM SCR85

Conference room: 225
Testifier position: Support
Testifier will be present: No
Submitted by: Gregory Friel
Organization: Haleakala Ranch Company
E-mail: gregf@haleakalaranch.com
Submitted on: 3/24/2012

Comments:

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 25, 2012 10:10 PM
To: WLH Testimony
Cc: jacinthow001@hawaii.rr.com
Subject: Testimony for SCR85 on 3/29/2012 1:25:00 PM

Testimony for WLH 3/29/2012 1:25:00 PM SCR85

Conference room: 225
Testifier position: Support
Testifier will be present: No
Submitted by: William Jacintho
Organization: Maui Cattlemen's Association
E-mail: jacinthow001@hawaii.rr.com
Submitted on: 3/25/2012

Comments:

Trespassers and uninvited hunters are a very large problem in agriculture. Unregulated firearms are very dangerous for owners as well as workers on property. These people come on property any time they want to, with no regard to safety or who or what might be in the area. We've had many animal deaths, and other close calls, and this needs to stop.


Thank you,
William Jacintho
MCA President

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 25, 2012 6:54 PM
To: WLH Testimony
Cc: PSGMikilua@aol.com
Subject: Testimony for SCR85 on 3/29/2012 1:25:00 PM

Testimony for WLH 3/29/2012 1:25:00 PM SCR85

Conference room: 225
Testifier position: Support
Testifier will be present: No
Submitted by: Phyllis Shimabukuro-Geiser
Organization: Mikilua Farm Bureau Center
E-mail: PSGMikilua@aol.com
Submitted on: 3/25/2012

Comments:



From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 26, 2012 5:59 AM
To: WLH Testimony
Cc: bcraven@lanihau.net
Subject: Testimony for SCR85 on 3/29/2012 1:25:00 PM

Testimony for WLH 3/29/2012 1:25:00 PM SCR85

Conference room: 225
Testifier position: Support
Testifier will be present: No
Submitted by: britt craven
Organization: palani ranch
E-mail: bcraven@lanihau.net
Submitted on: 3/26/2012

Comments:

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 26, 2012 11:44 AM
To: WLH Testimony
Cc: karin@princevilleranch.com
Subject: Testimony for SCR85 on 3/29/2012 1:25:00 PM

Testimony for WLH 3/29/2012 1:25:00 PM SCR85

Conference room: 225
Testifier position: Support
Testifier will be present: No
Submitted by: Karin Guest
Organization: Individual
E-mail: karin@princevilleranch.com
Submitted on: 3/26/2012


Comments:

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 26, 2012 9:55 AM
To: WLH Testimony
Cc: afrancokaupo@gmail.com
Subject: Testimony for SCR85 on 3/29/2012 1:25:00 PM

Testimony for WLH 3/29/2012 1:25:00 PM SCR85

Conference room: 225
Testifier position: Support
Testifier will be present: No
Submitted by: Alex Franco
Organization: Individual
E-mail: afrancokaupo@gmail.com
Submitted on: 3/26/2012

Comments:



From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 26, 2012 6:46 AM
To: WLH Testimony
Cc: jimmygomes@hawaii.rr.com
Subject: Testimony for SCR85 on 3/29/2012 1:25:00 PM

Testimony for WLH 3/29/2012 1:25:00 PM SCR85

Conference room: 225
Testifier position: Support
Testifier will be present: No
Submitted by: Jimmy Gomes
Organization: Individual
E-mail: jimmygomes@hawaii.rr.com
Submitted on: 3/26/2012

Comments:

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, March 24, 2012 2:24 PM
To: WLH Testimony
Cc: kwood@parkerranch.com
Subject: Testimony for SCR85 on 3/29/2012 1:25:00 PM

Testimony for WLH 3/29/2012 1:25:00 PM SCR85

Conference room: 225
Testifier position: Support
Testifier will be present: No
Submitted by: Keoki wood
Organization: Individual
E-mail: kwood@parkerranch.com
Submitted on: 3/24/2012

Comments: