

SB 951

Testimony



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

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Statement of
JESSE K. SOUKI
Director, Office of Planning
Department of Business, Economic Development, and Tourism
before the
**SENATE COMMITTEE ON AGRICULTURE
AND
SENATE COMMITTEE ON WATER AND LAND**
Thursday, January 31, 2013
2:45 PM
State Capitol, Conference Room 229

in consideration of
SB 951
RELATING TO PART III OF CHAPTER 205, HAWAII REVISED STATUTES.

Chairs Nishihara and Solomon, Vice Chairs Kouchi and Shimabukuro, and Members of the Senate Committees on Agriculture and Water and Land.

The Office of Planning (OP) supports the intent of SB 951, which would establish an ad hoc advisory committee (Committee) to study and propose statutory amendments to the important agricultural lands (IAL) law as contained in Hawaii Revised Statutes (HRS) Chapter 205, Part III.

OP's notes that pursuant to HRS §205-44.5, the Departments of Agriculture and Land and Natural Resources are required to collaborate to identify public lands that should be designated IAL. OP further notes that the Committee should also solicit input from stakeholders involved in promoting and facilitating diversified agriculture as well as increasing agricultural self-sufficiency.

Thank you for the opportunity to testify.

Testimony of
Jon Okudara
on
S.B. 951
Relating to Part III of Chapter 205, Hawaii Revised Statutes
Committee on Agriculture
Committee on Water & Land
Thursday, January 31, 2013
2:45 p.m.
Conference Room 229

Thank you for the opportunity to testify in support of S.B. 951.

S.B. 951 proposes the establishment of an ad hoc advisory committee to review and propose amendments to Act 183, Session Laws of Hawaii 2005, now part III of Chapter 205, HRS, much like the process used for the Penal Code revision.

When passed in 2005, Act 183 contained admitted ambiguities and inconsistencies, which were promised to be addressed in the next legislative session. In 2006, no amendments were proposed, and none have been proposed since.

Lapse deadlines

Since 2005, the deadlines established by Act 183 have lapsed, making it unclear when the designation process of part III, chapter 205, HRS will become effective.

SECTION 8 of Act 183, Session Laws of Hawaii 2005, appropriated \$75,000 as a grant-in-aid to the counties for the identification and mapping of important agricultural lands, provided that the land use commission was to submit annual reports on the progress of the counties to the legislature prior to the convening of the regular sessions of 2006 through 2009.

SECTION 7 of Act 183, provided that each county was to submit its report and maps with recommendations for lands eligible for IAL designation no later than sixty months after receipt of the state funds appropriated for the identification process. Any funds appropriated in 2005 will have lapsed.

SECTION 14 of Act 183, provides that section 205-47, the county process for identification of IAL, shall take effect *three years after the enactment of legislation establishing incentives and protections for IAL*. That would have been July 1, 2011.

Section 205-51, HRS, requires each county to adopt ordinances that reduce infrastructure standards for IAL *no later than the effective date of the legislative enactment of protection and incentive measures for IAL* (July 1, 2008). No county has complied with this requirement.

Ambiguities in the law

The lack of standards and guidelines can be seen in the differences in the conclusions of law of three different petitions for designation of important agricultural lands on the criterion relating to “land that contributes to maintaining a critical land mass important to agricultural operating productivity.”

Alexander & Baldwin, Inc., Docket No. DR 09-38
Petition for Declaratory Order to Designate Important Agricultural Lands for approximately 27,133 acres at Wailuku and Makawao, Maui Hawaii...

8. Land that contributes to maintaining a critical land mass important to agricultural operating productivity. Petitioner seeks to designate approximately 27,133 acres of land as IAL, approximately 93% of which are used for the cultivation of sugar cane, seed corn, pineapple and pasture. ...*Additional lands proposed for inclusion, which consist of essential elements of the agricultural operations, are necessary to provide the overall critical “contiguous” land mass necessary for agricultural operating productivity. Lands containing high to steep slopes which include gulches, valleys, ravines and drainage ways provide critical infrastructure support of the adjacent highly productive lands by providing and preserving the necessary natural drainage ways for adjacent lands which have been identified as highly productive. Similarly, lands containing natural and/or man-made water ways and features such as streams, reservoirs, wetlands, and drainage basins provide critical infrastructure support for adjacent highly productive lands by providing and preserving the necessary water source for existing as well as potential future irrigation systems necessary to assure agriculture productivity.* The entire Property, including those areas that are not being actively cultivated comprised of gulches, streams and reservoirs, constitute contiguous intact, and functional land units large enough to allow flexibility in agricultural production and management and is consistent with the policies of HRS §205-43(1).

Mahaulepu Farm LLC, Docket No. DR11-43
Petition for Declaratory Order to Designate Important Agricultural Lands for approximately 1,533 acres at Koloa, Kauai, Hawaii.

9. *The Petition Area contributes to maintaining a critical land mass that is important to agricultural operating productivity in accordance with HRS §205-44(c)(7).*

Alexander & Baldwin, Inc., Docket No. DR 09-38
Findings of Fact, Conclusions of Law, and Decision and Order to Designate Important Agricultural Lands for approximately 27,133 acres at Wailuku and Makawao, Maui Hawaii...

8. *The entire Petition Area, including those areas comprised of gulches, streams and reservoirs, that are not actively cultivated constitute a critical land mass that is important to agricultural operating productivity in accordance with HRS §205-45(c)(7).*

Those are just some of the ambiguities and inconsistencies in part III that have to be addressed, and using an expert panel like was done with the Penal Code to clarify, define, and update the statutory language to express the legislative intent that was the objective of Act 183.

Thank you for the opportunity to offer these comments.