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TESTIMONY OF SCOTT E. ENRIGHT
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON AGRICULTURE

February 11, 2016
9:00 A.M.
CONFERENCE ROOM 312

HOUSE BILL NO. 1743
RELATING TO OFFENSES AGAINST PROPERTY RIGHTS

Chairperson Tsuji, and Members of the Committee:

Thank for the opportunity to testify on House Bill No. 1743 relating to offenses against property rights. This bill removes trespass requirement that agricultural lands have a fence or signs stating private property. This bill also establishes that a person sentenced for theft of soil reimburse the land owner for the cost of the soil. The department has concerns that this bill, as written, will have adverse, unintended consequences.

The bill removes the fencing and signage requirements for trespass on agricultural lands, however, unimproved or unused lands will still require fencing and signage for trespass. Without any definitions, it is unclear what unimproved or unused agricultural land would be classified as.

Thank you for the opportunity to testify on this measure.





Hawaii Cattlemen's Council, Inc.

**HOUSE COMMITTEE ON AGRICULTURE
REP CLIFT TSUJI, CHAIR
REP RICHARD ONISHI, VICE CHAIR**

DATE: Thursday, February 11, 2016
TIME: 9:00 AM
PLACE: Conference Room 312

HB 1743 – RELATING TO OFFENSES AGAINST PROPERTY RIGHTS.

Removes trespass requirement that agricultural lands have a fence or signs stating private property.
Establishes that a person sentenced for theft of soil reimburse the land owner for the cost of the soil.

Chair Tsuji, Vice Onishi, and Members of the Committee:

My name is Dale Sandlin, and I am Managing Director of 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 140+ 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 **supports the intent** of HB 1743, as it pertains to the theft of soil (as defined in the bill), but is concerned about removing language which we worked hard to add to the law a few years ago.

Ag theft and trespassing remains a huge problem. Previously, to prove criminal trespass, we had to have fences and signs, which would often get ripped off. A few years back we worked to add language in 708-814 1(c) iii which stated:

At the time of entry, are fallow or have a visible presence of livestock or a crop:

- (A) Under cultivation;
- (B) In the process of being harvested; or
- (C) That has been harvested];

This removed all doubt to the criminal trespass law, in effect: *If there is or was agriculture there, and it is not yours, Stay Out.*

We support adding soil, as defined in the bill, to the definition of agricultural product, but we want to make sure that in removing the existing parameters for trespass, we don't downgrade the level of trespass from petty misdemeanor subject to arrest and prosecution, to a mere "violation."

Thank you for giving us the opportunity to testify on this important matter.





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February 11, 2016

HOUSE COMMITTEE ON AGRICULTURE

TESTIMONY ON HB 1743

RELATING TO OFFENSES AGAINST PROPERTY RIGHTS

Room 312
9:00 AM

Aloha Chair Tsuji, Vice Chair Onishi, and Members of the Committee:

I am Randy Cabral, President of the Hawaii Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,900 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.

Hawaii Farm Bureau **strongly supports the intent of this measure.**

Agricultural trespass and theft continues to be a critical problem for our members. Farmers and ranchers are especially vulnerable to theft since farms are usually located on large plots of land in sparsely populated areas, isolated from law enforcement. Trespassers also use these private lands as illegal dump sites and places to conduct illicit activities.

It is heartbreaking to invest financially and emotionally in farming and ranching, spend years of backbreaking work only to see it wiped out in a flash when criminals brazenly access the property to steal or vandalize whatever they can get their hands on. They know that in the unlikely event that they are caught, they will either not be prosecuted, or their case will be thrown out.

Something must be done. Over the years, we have tried working with police, prosecutors, and the attorney general's office to figure out what we can do. We've been told to call the police and wait for them to come; that it may take a several hours because they are short-staffed, but that they will come and take a report. We've been patient and we make reports. But we don't get our livestock back, we don't get our crops back, and we can't farm with our tractors that have been set ablaze.

We recognize that enforcement resources are limited and that agricultural theft is not a high priority compared with other crimes; however, if the State is sincere about food security, we need to send a clear message to thieves that they can't get away with stealing from farmers.

Trespass on agricultural lands is the first step for a thief. Every five or six years, this body amends the laws on this issue to try to help farmers. Currently, in order to convict a person of criminal trespass in the second degree on agricultural land, the lands must be fenced, enclosed, or secured in a manner designed to exclude intruders; they must have a sign or signs placed along the boundary line of the land and at roads and trails entering the land in a manner and position as to be clearly noticeable from outside the boundary line. The signs must be displayed on the unenclosed cultivated, or uncultivated agricultural land sufficient to give notice and they must read: "Private Property", in letters not less than two inches in height.

Recognizing that farmers may not be able to afford to fence or erect signs all over their property, especially for larger acreage, Act 208, Session Laws 2011, amended §708-814(1)(c) by prohibiting a person from entering or remaining on agricultural lands that are not only in crop, but may be fallow or only have evidence of livestock, at the time of trespass. This measure would make the law less complicated and easier to follow.

HFB also supports the addition of "soil" to the definition of agricultural product, since many of us have experienced thieves brazenly removing large quantities of valuable soil from our lands.

We appreciate the support we have gotten from legislators on this issue. It's possible that the only way to get relief is through more funds being provided to the counties to hire more law enforcement officers. HFB hopes that we can have that discussion in the very near future. In the meantime, however, this bill would seem to make it easier to prosecute a trespasser on agricultural land.

Our only concern is that with this simplification/clarification of the language, this body does not inadvertently downgrade the level of trespass from a petty misdemeanor, as it is now, subject to arrest and prosecution, to a mere violation. For the purposes of on-the-ground law enforcement personnel, prosecutors, and judges, we hope that the legislature's intent is made clear.

Thank you for your consideration of our testimony.

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 10, 2016 8:22 PM
To: AGRtestimony
Cc: wwalter@whshipman.com
Subject: Submitted testimony for HB1743 on Feb 11, 2016 09:00AM

HB1743

Submitted on: 2/10/2016

Testimony for AGR on Feb 11, 2016 09:00AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
William Walter	W. H. Shipman, Limited	Support	No

Comments: Gravel, rock, soil and such products are important products for maintenance of farm roads, planting and the like. They to this point have not been covered specifically in State law - but need to be. We recently had thieves come onto our property - after removing no trespassing signs - bring heavy equipment and large dump trucks to remove our gravel pile. They were caught with the material and equipment on site but were not arrested because the crime is not specifically covered and signs had been removed (they had been in place. - the signs) two days earlier. This should be an offense and the thieves should have been charged and been required to return and/or pay for the stolen material.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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HB1743
RELATING TO OFFENSES AGAINST PROPERTY RIGHTS
House Committee on Agriculture

February 11, 2016

9:00 a.m.

Room 312

The Office of Hawaiian Affairs (OHA) Committee on Beneficiary Advocacy and Empowerment will recommend to the Board of Trustees a position of **OPPOSE** for HB1743, which may unduly burden Native Hawaiians exercising their traditional and customary practices anywhere in the agricultural district, and subject Native Hawaiians and others to potential criminal liability for unintentionally traversing or remaining in agricultural lands.

Many Native Hawaiians currently engage in traditional and customary practices for subsistence, cultural, and religious purposes. The Hawai‘i Constitution, Hawai‘i Supreme Court, and this Legislature consistently protect the perpetuation of these practices as a living component of the Hawaiian culture. Native Hawaiians’ cultural and spiritual identity also derives from their relationship with the ‘āina: the ‘āina is part of their ‘ohana, and accordingly, traditional Hawaiian practices emphasize respect and care for the ‘āina and surrounding resources.¹ Consequently, gathering practices traditionally and customarily exercised by Native Hawaiians may be essential to the maintenance of the Native Hawaiian identity.

A wide range of Native Hawaiian traditional and customary practices require access to natural resources and cultural sites found on undeveloped or less-than-fully-developed lands, including lands within or adjacent to the agricultural district. For example, members of hula hālau may gather “ferns, maile, and lauhala necessary to make their ceremonies pono, proper.” Experts in lā‘au lapa‘au similarly gather the plants and herbs necessary for their practice. Likewise, fishermen, hunters, and others may access and rely upon the natural or cultural resources of undeveloped areas for subsistence purposes. **Accordingly, the Hawai‘i Supreme Court recognizes the rights of Native Hawaiians to reasonably engage in traditional and customary practices on “undeveloped or less than fully developed property,”² which may include private agricultural lands.**

While OHA appreciates this bill’s apparent desire to protect the property rights of landowners, **HB1743 may vastly expand the areas in which Native Hawaiian practitioners could be subject to criminal citation or arrest, simply for exercising their rights on undeveloped agricultural lands – including lands that are not in cultivation or otherwise demarcated in any way.** While practitioners who are arrested may have the opportunity to vindicate their rights in court, doing so may require substantial time and financial resources.

¹ Davianna Pōmaika‘i McGregor, *An Introduction to the Hoa‘āina and Their Rights*, 30 HAWAIIAN J. HIST. 1, 15-20 (1996).

² *State v. Hanapi*, 89 Hawai‘i 17, 970 P.2d 485 (1998).

Practitioners who would otherwise access resources on unused agricultural lands could also experience a chilling effect in general, as they may wish to avoid the burden of proving their rights to enforcement agents and prosecutors who may not understand the complex legal authority protecting traditional and customary practices. Thus, while practitioners could have a trespassing citation issued under this measure dismissed by the courts, OHA expresses concern with the substantially increased burdens HB1743 could place on Native Hawaiians reasonably exercising their traditional and customary rights.

HB1743 also creates practical concerns for Native Hawaiian practitioners and others who simply wish to avoid citation or arrest for second degree trespass. Without the reasonable notice elements removed by this measure, such as fences, signs, or visibly cultivated crops, those traversing through undeveloped areas may not have any knowledge whether they are on private agricultural lands, or on adjacent public lands. Practitioners who wish to access or gather from upper mauka regions such as forest reserves and watershed areas must often traverse through or nearby agricultural lands, and could find themselves subject to criminal citation or arrest without any intention of entering or remaining on private property. Again, while those exercising traditional and customary rights may raise a defense to such a charge in court, the burden of doing so could require significant time and financial resources, and may discourage other practitioners from even attempting to exercise their rights in the first place.

In light of all these concerns, OHA urges the Committee to **HOLD** HB1743. Mahalo for the opportunity to testify on this measure.