

SB708 SD1

Measure Title: RELATING TO AGRICULTURAL LAND.

Report Title: Condominium Property Regime; Agricultural Land

Description: Prohibits the creation of a condominium property regime on agricultural land 25 acres or greater. Prohibits a condominium property regime on agricultural land from being amended to allow a residential dwelling. Prohibits the subdivision of agricultural land 25 acres or greater for the purpose of creating a condominium property regime. Prohibits any residential project created as a condominium under chapter 514B, HRS, or a planned community association under chapter 421J, HRS, in class A or B agricultural lands.

Companion:

Package: None

Current Referral: AEN, CPH

Introducer(s): L. THIELEN, RIVIERE, Gabbard, Ihara, Ruderman, Wakai

DAVID Y. IGE
Governor

SHAN S. TSUTSUI
Lt. Governor



SCOTT E. ENRIGHT
Chairperson, Board of Agriculture

PHYLLIS SHIMABUKURO-GEISER
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

TESTIMONY OF SCOTT E. ENRIGHT
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION,
& HEALTH

FEBRUARY 28, 2017
10:30 A.M.
CONFERENCE ROOM 229

SENATE BILL NO. 708 SD1
RELATING TO AGRICULTURAL LAND

Chairperson Baker and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill No. 708 SD1 that seeks to amend sections 514B-31 (creation of condominiums), and 205-4.5 (permissible uses within the Agricultural Districts) to prohibit:

1. The creation of single-family dwellings via condominium property regime (CPR) or a planned community association, but excluding plantation community subdivisions, (pg 5, lines 5-11) on a parcel of agricultural land 25 or more acres in size; (pg 17, line 3-5)
2. CPRs on any parcel of agricultural land from being later amended to allow single family dwellings (pg 17, line 8); and
3. The subdivision of parcels of agricultural land 25 or more acres in size for the purpose of creating a CPR. (pg 17, lines 9-11)

The Department of Agriculture supports the intent of this measure and offers comments and an amendment.



CPR is an alternative to the subdivision of a parcel of land. When applied to agricultural land, it can theoretically result in a larger contiguous area available for farming than under a subdivision. However, without sufficient controls, monitoring, and enforcement, CPRs have resulted in the establishment of “gentlemen farms” where “farm dwellings” are constructed but are not connected to a farm or where agricultural activity provides income to the family occupying the dwelling.

The Department of Agriculture requests that its agricultural park and non-agricultural park programs (Chapters 166 and 166E, respectively) be made exempt from the provisions of this bill. Our agricultural land management programs are managed with the singular intent of promoting commercial agricultural production, and this measure as proposed may prohibit the Department from using CPR as a tool to provide farmland and farm dwellings in a cost-effective manner.

We propose the following amendments to allow the Department to use CPR in its agricultural park and non-agricultural park programs:

(Page 4, line 4 to page 5, line 11 - new language is bold and double-underscored)

"SECTION 2. Section 205-4.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Within the agricultural district, all lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B and for solar energy facilities, class B or C, shall be restricted to the following permitted uses:

- (1) Cultivation of crops, including crops for bioenergy, flowers, vegetables, foliage, fruits, forage, and timber;
- (2) Game and fish propagation;

- (3) Raising of livestock, including poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use;
- (4) Farm dwellings, employee housing, farm buildings, or activities or uses related to farming and animal husbandry. "Farm dwelling", as used in this paragraph, means a single-family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling; provided that no project consisting of single-family dwellings shall be created as a condominium under chapter 514B or a planned community association under chapter 421J; provided further that this paragraph shall not apply to plantation community subdivisions permitted under paragraph (12) **and the restriction on single-family dwellings created as a condominium property regime shall not apply to any agricultural park or non-agricultural park lands project under chapters 166 or 166E;** "

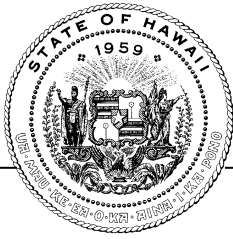
(Page 16, line 16 to page 17, line 11 new language is bold and double underscored)

"SECTION 3. Section 514B-31, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) To create a condominium property regime, all of the owners of the fee simple interest in land shall execute and record a declaration submitting the land to the condominium property regime. Upon recordation of the master deed together with a declaration, the condominium property regime shall be deemed created~~[-]~~; provided that:

- (1) No condominium property regime shall be created on any parcel of agricultural land consisting of twenty-five or more acres;
- (2) No condominium property regime created on any parcel of agricultural land shall be later amended to allow for a single-family dwelling; and
- (3) No parcel of agricultural land consisting of twenty-five or more acres shall be subdivided for the purpose of creating a condominium property regime~~[-]~~; and
- (4) provided that subparagraphs (1), (2), and (3) shall not apply to any agricultural park or non-agricultural park lands project under chapters 166 or 166E." "

Thank you for the opportunity to submit our testimony.



OFFICE OF PLANNING STATE OF HAWAII

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DAVID Y. IGE
GOVERNOR

LEO R. ASUNCION
DIRECTOR
OFFICE OF PLANNING

Statement of
LEO R. ASUNCION
Director, Office of Planning
before the
**SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION,
AND HEALTH**

Tuesday, February 28, 2017
10:30 AM

State Capitol, Conference Room 229

in consideration of
SB 708, SD 1
RELATING TO AGRICULTURAL LAND.

Chair Baker, Vice Chair Nishihara, and Members of the Senate Committee on Commerce, Consumer Protection, and Health.

The Office of Planning (OP) does not support SB 708, SD 1, in its current form, and offers these comments. SB 708, SD 1 would amend Hawaii Revised Statutes (HRS) § 205-4.5 (a)(4) to prohibit projects consisting of single-family dwellings—with the exception of plantation community subdivisions—as a condominium property regime (CPR) or planned community association on lands rated by the Land Study Bureau as ‘A’ or ‘B’ overall master productivity rating. The measure would also prohibit: the creation of CPRs on parcels of agricultural land of 25 or more acres; the amendment of CPRs created on agricultural land to allow residential uses; and the subdivision of a parcel of agricultural land 25 acres or greater for the purpose of creating a CPR.

OP is very concerned about the encroachment of low-density, higher-valued residential uses on Hawaii’s agricultural lands, and we generally support measures that attempt to address this problem. However, we are very concerned that a blanket prohibition on the use of CPRs on agricultural lands to address residential encroachment would eliminate the CPR as a very important tool for legitimate farmers, especially small farmers. Agricultural CPRs could lower costs to farmers, farm cooperatives, or other farm entities by making it easier to access agricultural lands and by reducing the cost of agricultural infrastructure and operations through shared infrastructure investments and maintenance.

In addition, OP is concerned that the measure would have no effect on CPRs on pre-existing smaller lots in the Agricultural District, which would allow continued conversion of agricultural land for low-density residential use in areas that may lack public infrastructure and services. Furthermore, the amendment to HRS § 514B-31 does not define “agricultural land,” which will complicate any enforcement of that provision.

OP recommends consideration of the following approaches, rather than an outright prohibition of CPRs, as means to stem the encroachment of residential uses on agricultural lands.

- Amend the amendment to HRS § 514B-31 to require the prohibition of residential uses in the master deed and declaration of any CPRs created on lands in the State Agricultural Land Use District.
- Authorize the creation of an agricultural CPR, which is specifically limited to agricultural operations and prohibits residential uses, on lands in the State Agricultural District, as is proposed in SB 1177.

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
Governor

SHAN S. TSUTSUI
Lieutenant Governor

LUIS P. SALAVERIA
Director

MARY ALICE EVANS
Deputy Director



LAND USE COMMISSION
Department of Business, Economic Development & Tourism
State of Hawai'i

DANIEL ORODENKER
Executive Officer

Bert K. Saruwatari
Planner

SCOTT A.K. DERRICKSON AICP
Planner

RILEY K. HAKODA
Chief Clerk/Planner

FRED A. TALON
Drafting Technician

Statement of
Daniel E. Orodenker
Executive Officer
Land Use Commission
Before the
Senate Committee on Commerce, Consumer Protection, and Health
Wednesday February 28, 2017
10:30 AM
State Capitol, Conference Room 229

In consideration of
SB 0708 SD1
RELATING TO AGRICULTURAL LAND

Chair Baker, and Vice Chair Nishihara, and members of the Senate Committee on Commerce, Consumer Protection, and Health:

The Land Use Commission (LUC) offers comments on this measure which prohibits the use of condominium property regime (CPR) on agricultural lands for residential project development. This is consistent with ensuring that agricultural lands will be available for agricultural use and not cause impacts to public trust resources and infrastructure systems in areas not planned for residential development.

The LUC generally supports measures to limit encroachment of residential developments without any meaningful agricultural activities taking place. We understand that there are times when CPR projects within the State Agricultural District can be an important tool for lowering costs to legitimate farmers by encouraging shared infrastructure investments and maintenance.

The LUC concurs with the State Office of Planning's concerns and suggested recommendations for amending this measure.

Thank you for the opportunity to testify on this matter.



AMERICANS FOR DEMOCRATIC ACTION

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Alan Burdick, Vice President
Marsha Schweitzer, Treasurer
Karin Gill, Secretary

DIRECTORS

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Gloria Borland Stephen O'Harrow
Chuck Huxel Cameron Sato

MAILING ADDRESS

P.O. Box 23404
Honolulu, Hawai'i 96823

www.adaaction.org

February 24 , 2017

TO: Honorable Chair Baker and Members of Consumer Protection & Commerce
 Committee

RE: SB 708 SD1 Relating to Agricultural Land
 Support for hearing on February 28

Americans for Democratic Action is an organization founded in the 1950s by leading supporters of the New Deal and led by Patsy Mink in the 1970s. We are devoted to the promotion of progressive public policies.

We support SD 708 SD1 as it prohibits the use of condominium property regime (CPR) on agricultural lands for residential project development. This is consistent with ensuring that agricultural lands will be available for agricultural use and not cause impacts to public trust resources and infrastructure systems in areas not planned for residential development.

Thank you for your consideration.

Sincerely,

John Bickel
President

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 27, 2017 9:24 AM
To: CPH Testimony
Cc: lbwood451@aol.com
Subject: *Submitted testimony for SB708 on Feb 28, 2017 10:30AM*

SB708

Submitted on: 2/27/2017

Testimony for CPH on Feb 28, 2017 10:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Lisa Wood	Hawaii Cattlemen's Council	Oppose	No

Comments:

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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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 27, 2017 11:48 AM
To: CPH Testimony
Cc: alan@prlooffice.com
Subject: Submitted testimony for SB708 on Feb 28, 2017 10:30AM

SB708

Submitted on: 2/27/2017

Testimony for CPH on Feb 28, 2017 10:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Alan Gottlieb	Ponoholo Ranch Limited	Oppose	No

Comments: While limiting the size of the land to 25 acres or more, this measure would not allow for the equitable division of land in the case of a large parcel split among several heirs. Although this might not affect the smaller parcels in the state, it does hinder the rights and privileges of large landowners unfairly. Also, the infrastructure that is needed to service the rural areas of the state could be provided more efficiently as a larger lot could be split into several smaller portions. By centralizing the infrastructure needed to serve the split, this would require fewer resources to complete. Also, if this measure is passed, the cost to purchase or lease smaller parcels of land for ag use is likely to escalate. With the cost of the land being one of the highest inputs for farmers and ranchers, this could cripple the profitability of the farm or ranch. Having more options for farmers and ranchers through being able to include large TMK's for consideration in a CPR, would yield for a more sustainable future for both the farmer or rancher and the state's food sustainability. If the purpose of this bill was to reduce the number of "gentleman's farms" in the state, we believe that this could be accomplished through enforcement of current land use laws by both the state and the counties.

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Anthony Andrade

University of Hawaii Student

Measure SB 0708

I want to start by thanking the legislative branch for accepting my testimony. I support SB 0708 for restricting condominium regimes from taking agricultural lands of 25 and more acres and using them for residential use. Protecting agricultural lands helps keep our society a lot cleaner. Allowing these condominiums will help over populate such a small island. Agricultural lands will help keep money local as well. Mahalo for my testimony. Aloha!!

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 22, 2017 4:25 PM
To: CPH Testimony
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for SB708 on Feb 28, 2017 10:30AM*

SB708

Submitted on: 2/22/2017

Testimony for CPH on Feb 28, 2017 10:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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2/22/17

Dear Chair Baker and members of the Committee on Commerce, Consumer Protection and Health,

Please support SB708 as it will address a loophole in the current law that allows development of agricultural land for high-end residential use. Once that land converts to residential, it will never be returned to agricultural use.

One of two areas that has lost the most tree canopy on Oahu in the last five years, according to a study by Smart Trees Pacific, is Kailua / Waimanalo because of a single development where 64 acres of forest land, zoned agricultural, was clear cut and developed and marketed as a gated, luxury community "Olomana heights." In order to meet agricultural requirements, they told clients they would plant fruit trees along the shared roads and have someone harvest them and take them to farmers market. Residents need not be involved in any way.

Where there is money to be made, investors will take advantage of this loophole. Please protect our agricultural and forest lands.

Mahalo,

Lisa Marten

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 23, 2017 8:50 AM
To: CPH Testimony
Cc: waa@hawaii.rr.com
Subject: Submitted testimony for SB708 on Feb 28, 2017 10:30AM

SB708

Submitted on: 2/23/2017

Testimony for CPH on Feb 28, 2017 10:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Annette Lee	Individual	Support	No

Comments: More and more ag lands are being lost to developers. We need to preserve and protect what we have left. Please support this bill.

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Testimony of Michael G. Buck
on
S.B. 708, SD1
Relating to Agricultural Lands
Senate Committee on Commerce, Consumer Protection, and Health
Tuesday, February 28, 2017
Conference Room 229

Thank you for the opportunity to submit testimony in support of SB 708, SD1. I am a small farmer in Waimanalo and served on its Neighborhood Board for over 20 years. I am also Board President of the Waimanalo Market Co-op which provides a market for over 80 local farmers .

I support the protections that this bill will provide for our agricultural lands. It will help to close loopholes in development procedures that negatively impact implementing requirements in our State constitution to preserve and protect agricultural land, and promote food sustainability programs.

For these reasons, I strongly support S.B. 708, SD1 and request that the committee pass this measure.

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 23, 2017 9:15 AM
To: CPH Testimony
Cc: sandy@hawaiiinursery.com
Subject: Submitted testimony for SB708 on Feb 28, 2017 10:30AM

SB708

Submitted on: 2/23/2017

Testimony for CPH on Feb 28, 2017 10:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Sandy Kasman	Individual	Support	No

Comments: The agricultural community struggles to find suitable and available ag land to support the community's interests and needs. Building condos and large housing areas on those lands is detrimental to the health and wealth of our community and lessens our abilities to support our own people's needs. Please support this bill. Mahalo

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From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 23, 2017 12:17 PM
To: CPH Testimony
Cc: scoleman@surfrider.org
Subject: *Submitted testimony for SB708 on Feb 28, 2017 10:30AM*

SB708

Submitted on: 2/23/2017

Testimony for CPH on Feb 28, 2017 10:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Stuart Coleman	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 23, 2017 3:55 PM
To: CPH Testimony
Cc: patriciablair@msn.com
Subject: *Submitted testimony for SB708 on Feb 28, 2017 10:30AM*

SB708

Submitted on: 2/23/2017

Testimony for CPH on Feb 28, 2017 10:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Patricia Blair	Individual	Support	No

Comments:

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From: Cindy Turner, 1460 Kiukee Place, Kailua, Hawaii 96734, tel 808-261-2179

Submitted on: February 26, 2017

RE: Senate Bill 708 SD1 : RELATING TO AGRICULTURAL LAND.

Testimony in support of 708 SD1

I am testifying in total support of Senate Bill 708 SD1.

Developers are using the current zoning laws to create estates for wealthy buyers on our vital agriculture lands. By passing this bill you will be helping to keep agriculture lands affordable for farmers and keeping Hawaii's limited supply of ag lands in agricultural use.

I have lived in Hawaii all my life. Now my husband and I live in the Enchanted Lake area of Kailua, and we had seen many acres of ag land in Windward Oahu split up into 2-acre "agriculture-estates". McMansions on built on them and rarely do any of them have any real farming.

Olomana Heights, currently under development in the hills between Kailua and Waimanaol, is an excellent example of why we need this bill. From a realtor's website:

Olomana Heights offers home sites on 64 acres of agricultural land with pristine panoramic ocean and mountains views, surrounded by miles of conservation land with hiking and biking trails. Incredible views of the majestic Koolau Mountains on the Windward Side of Oahu make the Olomana Heights area one of the best, most secluded, serene places to live on Oahu. Freedom to adventure, freedom to build the house you want, Olomana Heights is an ideal location with possibilities limited only by your imagination.

No mention of growing anything! Prices for two acre lots start at over \$1 million and go up to nearly \$4 million. There is no way this "agriculture" zoned land will ever be used for agriculture again. No real farmer could afford it.

We must not squander our agriculture lands. Please protect them by voting in favor of this bill.