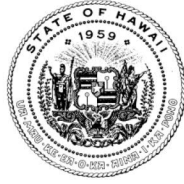


DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

March 29, 2016
2:00 p.m.
State Capitol, Room 325

S.B. 895, S.D. 1, H.D. 1
RELATING TO CRIMINAL TRESPASS

House Committee on Judiciary

The Department of Transportation (DOT) strongly **supports** this Administration bill which adds the offense of criminal trespass onto state lands to part II of chapter 708, Hawaii Revised Statutes, and amends criminal trespass in the second degree to include and apply to agricultural and DOT property owned by the government that is not fenced, enclosed or otherwise secured in a manner designed to exclude intruders, unpermitted hikers, copper thieves, vandals and other criminal trespassers.

This bill aims to clarify an important statute that will assist the DOT in protecting its lands, property, and facilities under its jurisdiction in providing a safe, efficient, accessible, and sustainable inter-modal transportation system that ensures the mobility of people and goods, and enhances and/or preserves economic prosperity and the quality of life.

Thank you for the opportunity to provide testimony.

Testimony by:
FORD N. FUCHIGAMI
DIRECTOR

Deputy Directors
JADE T. BUTAY
ROSS M. HIGASHI
EDWIN H. SNIFFEN
DARRELL T. YOUNG

IN REPLY REFER TO:

DAVID Y. IGE
GOVERNOR



KATHRYN S. MATAYOSHI
SUPERINTENDENT

STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 03/29/2017
Time: 02:00 PM
Location: 325
Committee: House Judiciary

Department: Education

Person Testifying: Kathryn S. Matayoshi, Superintendent of Education

Title of Bill: SB 0895, SD1, HD1 RELATING TO CRIMINAL TRESPASS.

Purpose of Bill: Establishes the offense of criminal trespass onto state lands to the penal code. Amends the offenses of criminal trespass in the second degree to apply to government agricultural property regardless of whether it is fenced, enclosed, or otherwise secured. (SB895 HD1)

Department's Position:

The Department of Education supports the intent of SB 0895, SD1, HD1, establishing the offense of criminal trespass onto state lands to the penal code and amends the offenses of criminal trespass in the second degree to apply to government agricultural property whether it is fenced, enclosed, or otherwise secured. Adding the provision that criminal trespassing onto state lands is a petty misdemeanor adds the necessary impact needed to deter potential violations and punish suspects who violate the law. Furthermore, adding the requirement to post signs around designated state property pinpoints the demarcation of the property and provides clear warning to suspects that trespassing is strictly prohibited. Any preventative measures to reduce trespassing on school campuses will enhance the safety of our students, staff, and visitors.

Thank you for the opportunity to testify on this measure.



HAWAII COMMUNITY
DEVELOPMENT AUTHORITY



KAKA
KALAELOA

David Y. Ige
Governor

John Whalen
Chairperson

Jesse K. Souki
Executive Director

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STATEMENT OF

JESSE K. SOUKI, EXECUTIVE DIRECTOR
HAWAII COMMUNITY DEVELOPMENT AUTHORITY

BEFORE THE
HOUSE COMMITTEE ON JUDICIARY

Wednesday, March 29, 2017
2:00 P.M.

State Capitol, Conference Room 325

in consideration of
SB895, SD1, HD1– RELATING TO CRIMINAL TRESPASS

Chair Nishimoto, Vice Chair San Buenaventura and members of the
committee.

The Hawaii Community Development Authority (HCDA) supports
SB895, SD1, HD1.

The HCDA has the responsibility to ensure public lands it oversees are safe
and well-managed for the benefit of all members of the public. As such, any tool
that allows state agencies to manage our precious resources for the maximum
safety and enjoyment of all our citizens is a step in the right direction.

I urge support for this Administration measure.

DAVID Y. IGE
Governor

SHAN S. TSUTSUI
Lt. Governor



JAMES J. NAKATANI
Executive Director

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION
235 S. Beretania Street, Room 205
Honolulu, HI 96813
Phone: (808) 586-0186 Fax: (808) 586-0189

**TESTIMONY OF JAMES J. NAKATANI
EXECUTIVE DIRECTOR
AGRIBUSINESS DEVELOPMENT CORPORATION**

BEFORE THE COMMITTEE ON JUDICIARY

Wednesday, March 29, 2017
2:00 p.m.

**SENATE BILL NO. 895
RELATING TO CRIMINAL TRESPASS**

Chairperson Nishimoto and Members of the Committee:

My name is James Nakatani, Executive Director of the Agribusiness Development Corporation (“ADC”). The ADC strongly supports Senate Bill No. 895 which establishes the offense of criminal trespass specifically onto state lands, and amends the existing criminal trespass in the second degree to apply equally to the unlawful entry onto government property as well as private property when “no trespassing” signs are posted at reasonable intervals along the boundary line of the property.

Agricultural lands tend to be vast, often bounded by geographical terrain such as the “center of a river” making enclosure impractical and sometimes ever-changing. Criminal trespass onto government-owned agricultural lands which are unfenced, unenclosed, or unsecured are currently unclear, leaving government agricultural landowners to discuss and debate with law enforcement

officers whether the law applies. When an incident occurs, landowners must act quickly. This bill makes very clear that when a government agricultural land owner properly posts signs, it is entitled to the same protection against criminal trespass to which a private landowner is entitled.

The benefits of granting government landowners the same protections afforded to private landowners are self-evident. Agricultural lands are not typically open to the public. They are usually leased to private agricultural operations. These private lessees should be entitled to the same protection as lessees of private agricultural lands and is long overdue.

Thank you for the opportunity to testify, and for your consideration of this bill.



SB895 SD1 HD1
RELATING TO CRIMINAL TRESPASS
House Committee on Judiciary

March 29, 2017

2:00 p.m.

Conference Room 325

The Office of Hawaiian Affairs (OHA) **OPPOSES** SB895 SD1 HD1. This measure may have a substantial chilling effect on the perpetuation of constitutionally-protected Native Hawaiian traditional and customary practices. SB895 SD1 HD1 also has a high likelihood of unintentionally criminalizing the homeless community, many of whom may be OHA beneficiaries, potentially exacerbating the homelessness crisis facing our islands.

While OHA appreciates the desire to protect state land and property, OHA is concerned with SB895 SD1 HD1's potential chilling effect on the perpetuation of constitutionally-protected Native Hawaiians traditional and customary practices. "Improved" state lands that are less than fully developed may contain a variety of natural and cultural resources and sites that are necessary to the exercise of Native Hawaiian traditional and customary practices. Native Hawaiians may also have to traverse "improved" state lands and state highway areas, to access wilderness areas that similarly host deeply-valued resources and sites essential to the continuation of their traditional and customary practices. **Should this measure be enacted, the prospect of committing an arrestable offense for simply traversing or occupying state lands could undoubtedly discourage Native Hawaiian cultural practitioners from accessing areas of cultural significance, and perpetuating their otherwise protected cultural practices.**

OHA further believes that this measure would only serve to further criminalize the state's homeless population, who often seek shelter and safety on state lands. While OHA understands the difficulty of balancing the integrity of state property with the mental and physical integrity of members of our most vulnerable population, this measure may unreasonably impact the homeless community, for little actual benefit to the property interests of the state. **In addition to simply displacing homeless individuals from certain state lands to other areas, this measure may in fact further exacerbate the homelessness crisis, by subjecting homeless individuals to criminal liability, thereby reducing their ability to obtain or maintain gainful employment.** Numerous existing laws currently serve to protect state property and the public welfare, including laws on vandalism and disorderly conduct; adding an additional layer of criminal trespass liability for simply occupying state lands appears unnecessary to address these legitimate state concerns.

OHA notes that our beneficiaries may be at particular risk of being or becoming homeless, and therefore may be disproportionately criminalized or otherwise impacted by this

measure. According to the *2015 Homeless Service Utilization Report*,¹ Native Hawaiians account for almost one-third of those utilizing homeless services. In addition to high homeless service utilization, 14.1% of Native Hawaiian households include a ‘hidden homeless’ member, compared to the only 4.2% of other households.² Research shows that Native Hawaiians also have higher levels of housing insecurity, with more than half of Native Hawaiian renters living in homes they struggle to afford, and often in overcrowded conditions. Such data suggests that changes in the economic conditions of the state and county may result in a disproportionate number of Native Hawaiians becoming homeless, and targeted for criminal liability under this measure. **OHA emphasizes that the disproportionate impact of the criminal justice system on Native Hawaiians accumulates at each stage,³ and may be exacerbated by this measure’s further criminalization of our homeless population.**

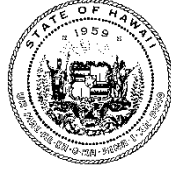
Therefore, OHA urges the Committee to **HOLD** SB895 SD1 HD1. Mahalo for the opportunity to testify on this measure.

¹ University of Hawai ‘i, Homeless Service Utilization Report 5 (2015), available at http://uhfamily.hawaii.edu/publications/brochures/789af_HomelessServiceUtilization2015.pdf.

² 2016 Hawai ‘i Housing Planning Study 73, available at https://dbedt.hawaii.gov/hhfdc/files/2016/12/State_HHPS2016_Report_111416-FINAL-122216.pdf.

³ The Disparate Treatment of Native Hawaiians in the Criminal Justice System, see <http://www.oha.org/wp-content/uploads/2015/01/native-hawaiians-criminal-justice-system.pdf>.

DAVID Y. IGE
GOVERNOR



RODERICK K. BECKER
Comptroller

AUDREY HIDANO
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

P.O. BOX 119, HONOLULU, HAWAII 96810-0119

TESTIMONY OF
RODERICK K. BECKER, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEE ON JUDICIARY
ON
WEDNESDAY, MARCH 29, 2017
2:00 P.M.
CONFERENCE ROOM 325

S.B. 895, S.D. 1, H.D. 1

RELATING TO CRIMINAL TRESPASS.

Chair Nishimoto, Vice Chair San Buenaventura, and members of the Committee, thank you for the opportunity to provide testimony on S.B. 895, S.D. 1, H.D. 1.

The Department of Accounting and General Services (DAGS) supports the measure and offers the following comments for the committee's consideration.

As a matter of equity and for the protection and preservation of State resources, DAGS supports providing similar protections against criminal trespass to various state lands (improved, on or under any highway, unfenced, unenclosed, or unsecured government agricultural lands) that are currently afforded to other property interests such as dwellings, hotels, apartment buildings, public and private schools, fenced or enclosed properties, commercial properties, certain agricultural lands, unimproved or unused lands, public housing projects and low-income housing projects, and public parks and recreational grounds.

Thank you for the opportunity to submit testimony on this matter.



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

March 29, 2017

TO: The Honorable Representative Scott Y. Nishimoto, Chair
House Committee on Judiciary

FROM: Scott Morishige, MSW, Governor's Coordinator on Homelessness

SUBJECT: SB 895 SD1 HD1 – RELATING TO CRIMINAL TRESPASS

Hearing: Wednesday, March 29, 2017, 2:00 p.m.
Conference Room 325, State Capitol

POSITION: The Governor's Coordinator on Homelessness supports this Administration bill. The Coordinator notes that when enforcement of trespass laws on state lands impacts persons experiencing homelessness, these efforts should be coordinated with homeless outreach efforts that connect homeless persons to necessary services and housing. Accordingly, the Coordinator asks for the Legislature's support of the Governor's Executive Budget request, which includes funding for homeless outreach, and for a stored property program that addresses property abandoned on or seized from state lands. The Coordinator defers to other departments in regard to statutory processes and issues related to enforcement of trespass on state lands.

PURPOSE: The purpose of the bill is to add the offense of criminal trespass onto State lands to the penal code. The bill also amends criminal trespass in the second degree to apply to government agricultural property regardless of whether it is fenced, enclosed, or otherwise secured.

The intent of the bill is not to criminalize homelessness, but to address issues related to theft and vandalism on state lands, as well as issues related to public safety. This includes addressing the safety of individuals who may be residing in unauthorized areas, which are often

closed off or restricted because they may be hazardous and not intended for human habitation or public use.

The Coordinator further notes that – if or when homeless individuals are displaced or adversely impacted by the enforcement of trespass laws on state lands – state departments and agencies work with the Coordinator’s office to ensure that homeless outreach is provided both in advance of any enforcement action, as well as during the time of enforcement. The offer of outreach is essential to provide direct assistance to unsheltered homeless households, and to build rapport that connects them to housing and services, such as Housing First, Rapid Rehousing, or shelter.

In addition to outreach, the Coordinator works with State departments and agencies to address concerns related to property or other items that may be left behind on state lands following the enforcement of trespass laws. The Legislature provided in section 171-31.5, Hawaii Revised Statutes (HRS), a process for the disposition of abandoned property on state land for all individuals, including individuals who are homeless. Section 171-31.5, HRS, requires a 30 day notice that property has been abandoned or seized, and provides a means for owners of abandoned or seized property to retrieve such property, which could include government issued identification or other government records. By following the provisions of section 171-31.5, HRS, in coordination with homeless outreach, the State works to protect the due process rights of homeless persons who may be adversely impacted by enforcement of criminal trespass laws.

Finally, the State’s strategy to address homelessness acknowledges the connection between homeless outreach and public safety efforts impacting homeless persons, and is aimed at connecting homeless persons to long-term housing as opposed to merely displacing individuals from one property to another. For example, in Kaka'ako Makai, the State balanced the enforcement of trespass in the public park with the provision of homeless outreach services that assisted over 290 of an estimated 300 homeless individuals to access shelter and permanent housing between August 2015 and present.

Thank you for the opportunity to testify on this bill.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 10:42 AM
To: JUDtestimony
Cc: gb@dbedt.hawaii.gov
Subject: *Submitted testimony for SB895 on Mar 29, 2017 14:00PM*

SB895

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Gregory Barbour	Natural Energy Laboratory of Hawaii Authority (NELHA)	Support	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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

NOLAN P. ESPINDA
DIRECTOR

Cathy Ross
Deputy Director
Administration

Jodie F. Maesaka-Hirata
Deputy Director
Corrections

Renee R. Sonobe Hong
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON SENATE BILL 895, SENATE DRAFT 1, HOUSE DRAFT 1
RELATING TO CRIMINAL TRESPASS

by

Nolan P. Espinda, Director
Department of Public Safety

House Committee on Judiciary
Representative Scott Y. Nishimoto, Chair
Representative Joy A. San Buenaventura, Vice Chair

Wednesday, March 29, 2017; 2:00 p.m.
State Capitol, Conference Room 325

Chair Nishimoto, Vice Chair San Buenaventura, and Members of the Committee:

The Department of Public Safety (PSD) **supports** Senate Bill (SB) 895, Senate Draft (SD) 1, House Draft (HD) 1, which proposes to create a new offense of criminal trespass onto state lands to include improved lands when closed or otherwise restricted and any state land on or under any highway having a sign or signs restricting access, with specified exceptions. SB 895, SD 1, HD 1 also proposes to amend criminal trespass in the second degree to include government agricultural lands that were not fenced, enclosed, or secured in any manner to exclude intruders.

Regarding state lands, the current trespass laws apply to public schools, enclosed agricultural lands, some unimproved or unused lands, state public housing projects, and public parks and recreational grounds. Current trespass laws, however, do not apply to all state lands.

This bill provides an important tool for law enforcement to address trespassers who remain in or around state-owned office buildings and surroundings premises that are closed for business. Employees arriving early or working after

Testimony on SB 895, SD 1, HD 1
House Committee on Judiciary
March 29, 2017
Page 2

hours and on weekends do not feel safe with trespassers loitering on state premises. This bill provides law enforcement another tool to more effectively ensure public safety. PSD notes the exceptions to state lands specified on page 2, lines 2 – 9 of the proposed bill.

Thank you for the opportunity to provide testimony.

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
JUDICIARY**

**Wednesday, March 29, 2017
2:00 PM
State Capitol, Conference Room 325**

**In consideration of
SENATE BILL 895, SENATE DRAFT 1, HOUSE DRAFT 1
RELATING TO CRIMINAL TRESPASS**

Senate Bill 895, Senate Draft 1, House Draft 1 proposes to add the offense of criminal trespass onto state lands to the penal code and amend criminal trespass in the second degree to apply to government agricultural property regardless of whether it is fenced, enclosed, or otherwise secured. **The Department of Land and Natural Resources (Department) supports this Administration measure with the following suggested amendment:**

The Department previously suggested this amendment to the original version of this measure. The suggested language, which stated whenever the phrase, *“placed at reasonable intervals 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”* occurs in the measure, the Department suggests that language be replaced with, *“placed at intervals not less than three signs to a mile along the boundary line of the land and at all roads and trails entering the land”* instead.

The Department believes that the terms “reasonable intervals”, whether by our suggested language or other, must be defined. Having a measurable interval between signs would make it clear for prosecution and easily understandable for the public.

Thank you for the opportunity to comment on this measure.

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA W. KALUHIWA
FIRST DEPUTY

JEFFREY. T. PEARSON, P.E.
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



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Judiciary
March 29, 2017 at 2:00 p.m.

By

Jan Gouveia, Vice President for Administration
University of Hawai'i System

SB 895 SD1 HD1 – RELATING TO CRIMINAL TRESPASS

Chair Nishimoto, Vice Chair San Buenaventura, and members of the committee:

I am submitting written testimony on behalf of the University of Hawai'i in support of Senate Bill 895 SD1 HD1 – Relating to Criminal Trespass – which adds the offense of criminal trespass onto state lands to the penal code; and amends criminal trespass in the second degree to apply to government agricultural property regardless of whether it is fenced, enclosed, or otherwise secured.

The University of Hawai'i takes measures to ensure the safety of our students and employees but the university has experienced finding drug paraphernalia and other debris left behind by trespassers. This leads to potential health and safety concerns for not only the UH 'ohana, but the public in general. Current trespass laws apply to enclosed or fenced in areas, but it is not clear if these same trespass laws apply to unenclosed or unfenced areas, which includes many properties owned and managed by the University.

Thank you for the opportunity to testify on this bill.

DAVID Y. IGE
Governor

SHAN S. TSUTSUI
Lt. Governor



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

SCOTT E. ENRIGHT
Chairperson, Board of Agriculture

PHYLLIS SHIMABUKURO-GEISER
Deputy to the Chairperson

**TESTIMONY OF SCOTT E. ENRIGHT
CHAIRPERSON, BOARD OF AGRICULTURE**

BEFORE THE HOUSE COMMITTEE ON JUDICIARY

**MARCH 29, 2017
2:00 P.M.
CONFERENCE ROOM 325**

**SENATE BILL NO. 895 SD1 HD1
RELATING TO CRIMINAL TRESPASS**

Chairperson Nishimoto and Members of the Committee:

Thank you for the opportunity to comment on Senate Bill No. 895 SD1 HD1. The purpose of this bill is to add the offense of criminal trespass onto state lands to Part II of Chapter 708, Hawaii Revised Statutes, and amend criminal trespass in the second degree to include and apply to agricultural property owned by the government that is fenced, enclosed, or otherwise secured in a manner designed to exclude intruders. The Hawaii Department of Agriculture (HDOA) strongly supports this measure.

The department manages and operates a variety of facilities and improvements on state lands which are not always fenced, enclosed, or secured in a manner designed to exclude intruders; therefore, the department 's current practice has been to install and maintain "Danger – No Trespassing" signage giving notice that trespassing is prohibited. An example of HDOA's signage is attached as Exhibit "A." Presently, these signs are placed on security fencing around state owned and operated irrigation reservoirs and are installed on entry gates and along security fences at intervals of approximately 80 to 100 feet apart.



The department respectfully requests clarification of the terms "reasonable notice ... such signs shall contain letters not less than two inches in height and shall be placed at reasonable intervals" as they are used in Section 2, §708-__ (1)(a)(ii). This language implies that only the words "Government Property – No Trespassing" shall be not less than two inches in height and no other words or wording are necessary.

Statewide, illegal trespass and illegal activities are a serious problem on state lands and in facilities overseen by the department. The department needs the criminal statutes to allow immediate removal of offenders; otherwise, state lands become a venue for illegal activities, such as entry into closed and often unsafe areas, unpermitted camping, illegal alcohol consumption and disorderly conduct.

Criminal trespass laws can be an effective deterrent to these activities. Thank you for the opportunity to testify on this measure.

Attachment: Exhibit "A"

EXHIBIT A





**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

ON THE FOLLOWING MEASURE:

S.B. NO. 895, S.D. 1, H.D. 1, RELATING TO CRIMINAL TRESPASS.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Wednesday, March 29, 2017 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Russell A. Suzuki, First Deputy Attorney General

Chair Nishimoto and Members of the Committee:

The Department of the Attorney General supports this administration measure, which is intended to close an existing gap within current criminal trespass laws.

The purpose of this bill is to create the new offense of criminal trespass onto state lands under chapter 708, Hawaii Revised Statutes (HRS). It addresses issues presented by individuals entering or remaining on: (1) improved state land when closed or otherwise restricted; and (2) unimproved state land with appropriate signage stating "Government Property—No Trespassing." It clarifies that trespassing includes state land on or under any highway. The bill also amends the offense of criminal trespass in the second degree to clarify that it includes government agricultural lands that are not fenced, enclosed, or secured in a manner designed to exclude intruders.

Existing criminal trespass laws apply comprehensively to private property, including dwellings, hotels, apartment buildings, private schools, fenced or enclosed properties, and commercial properties. With regard to state-owned or -controlled land, existing criminal trespass laws apply to public schools (section 708-813, HRS), enclosed agricultural lands (section 708-814, HRS), certain unimproved or unused land (section 708-814, HRS), state-owned public housing projects and state low-income housing projects (section 708-814, HRS), and public parks and recreational grounds (section 708-814.5, HRS).

Existing criminal trespass laws do not, however, apply comprehensively to all state lands, including improved state lands. They are unclear as to their applicability to state land on, under or a part of any highway, or unfenced, unenclosed, or unsecured agricultural lands owned by the government, and with respect to harbors. This effectively leaves a gap in current criminal trespass laws, resulting in certain types of state lands being without the protections afforded to other properties or other types of state lands. This bill is intended to close that gap. For example, section 708-814, HRS, criminal trespass in the second degree, includes a definition for “unimproved or unused lands.” This bill will help ensure that criminal trespass laws also apply to *improved* state lands, by both defining such lands and making the law directly applicable to them.

This bill would be an important crime prevention tool. It would better enable law enforcement to keep people out of harm’s way and allow the State to preserve and protect its lands. As an example, this law would assist law enforcement in keeping individuals off highways where, amongst other things, copper theft is a dangerous and expensive problem. It would allow law enforcement to address trespassers, individuals who refuse to keep out of or away from state-owned buildings and surrounding premises that are closed for business, in the same manner as those who perform the same unlawful conduct on private property or certain state lands. The bill as drafted makes criminal trespass on state lands a petty misdemeanor, which means that people in violation may be subject to arrest.

Pursuant to sections 706-663 and 706-640, HRS, petty misdemeanors are punishable by a maximum of thirty days in jail or a fine of not more than \$1,000. In practice, however, state courts typically impose much smaller penalties. Furthermore, this practice is consistent with and pursuant to section 706-641(3)(a), HRS, which specifically provides in part that “the court *shall not* sentence a defendant to pay a fine unless ... the defendant is or will be able to pay the fine.” (Emphasis added).

In addition to this existing statutory protection for defendants who may be unable to pay a fine, and to address one of the concerns expressed to our department by the American Civil Liberties Union, we proposed, and the House Committee on Water and Land added, wording to provide for prior verbal notice in certain circumstances.

Specifically, the following wording was added to section 708- (1)(a)(i), starting on page 2, line 15, of the bill, so that this subparagraph now reads as follows:

- (a) The person enters or remains unlawfully in or upon any improved state land when:
 - (i) The land is closed to public use and its closure hours are posted on a sign or signs on the improved state land and after a request to leave is made by any law enforcement officer, the person remains in or upon the land; or

This wording was added *only* to the foregoing subparagraph, and not to section 708- (1)(a)(ii) or 708- (1)(b). The reason for this differentiation is that the properties addressed by section 708- (1)(a)(i) are open to the public only during posted hours. We do not believe it is appropriate for the same wording to be added to section 708- (1)(a)(ii) or 708- (1)(b), since the properties addressed by those subparagraphs are *never* open to the public and there should be no misunderstanding that someone could be allowed on those properties, based on the required “Government Property - No Trespassing” signs.

The Committee on Water and Land made other amendments to the bill which include: 1) an exception for “lands under the jurisdiction of the office of Hawaiian affairs” and 2) an exception for “lands that are designated as safe havens”; and 3) improved state lands that are “under executive order by the governor and have a department of health component and adequate space, not to include state hospitals.”

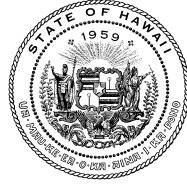
If this language remains, we suggest the following amendments: 1) amend the wording with regard to the office of Hawaiian affairs to read, “lands owned by the Office of Hawaiian Affairs” (page 2, lines 5-6 of the bill) so that the currently used term of “jurisdiction”, which we suggest be deleted, is further clarified; 2) amend the wording, “lands that are designated as safe havens” (page 2, lines 6-7 of the bill) to “lands that are designated safe havens by state departments or agencies”; and 3) add the following underlined words (page 2, lines 7-9 of the bill), “to be used as a safe haven and have a department of health component and adequate space, not to include state hospitals.”

Lastly, the Committee on Water and Land added a new section 6 that states, “This Act does not affect native Hawaiian rights or active customary practices.” We support the intent of this amendment and suggest that the wording be qualified to read instead as follows: “This Act does not affect native Hawaiian traditional and customary rights as set forth in the state constitution.”

The Department respectfully requests that the Committee pass this bill with a corrected effective date and with the above suggested amendments.

DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

MARIA E. ZIELINSKI
DIRECTOR OF TAXATION

DAMIEN A. ELEFANTE
DEPUTY DIRECTOR

To: The Honorable Scott Y. Nishimoto, Chair
and Members of the House Committee on Judiciary

Date: Wednesday, March 29, 2017

Time: 2:00 P.M.

Place: Conference Room 325, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

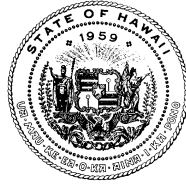
Re: S.B. 895, S.D. 1, H.D. 1, Relating to Criminal Trespass

The Department of Taxation (Department) supports S.B. 895, S.D. 1, H.D. 1, an Administration measure, and provides the following comments for your consideration.

S.B. 895, S.D. 1, H.D. 1, adds a new offense of criminal trespass onto state lands to the penal code. In general, the new offense applies when a person unlawfully enters state land if the state land is closed to the public and the closure has been made clear. The measure also amends the offense of criminal trespass in the second degree to apply to government agricultural property, whether the property is secured or not. H.D. 1 clarifies that the measure does not apply to lands administered by the Office of Hawaiian Affairs and does not affect any areas that are designated as "safe havens." H.D. 1 has a defective effective date of July 1, 2050.

The Department notes that the new offense of criminal trespass onto state land would apply to state buildings, including the building where the Department's main office is located. In the past, the Department has experienced isolated incidents of vandalism to and trespass upon its facilities. The Department takes the security of its facilities and personnel very seriously and believes this measure will provide additional recourse should such incidents recur.

Thank you for the opportunity to provide support and comment on this measure.



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

**Testimony in SUPPORT of SB895 SD1 HD1
RELATING TO CRIMINAL TRESPASS**

REPRESENTATIVE SCOTT NISHIMOTO, CHAIR
HOUSE COMMITTEE ON JUDICIARY

Hearing Date: March 29, 2017

Room Number: 325

1 **Fiscal Implications:** None for Department of Health.

2 **Department Testimony:** The Department of Health supports SB895 SD1 HD1, which is part of
3 Governor Ige's Administrative Package, that adds the offense of criminal trespass onto state
4 lands to the penal code.

5 Although the State does not own land through the Department of Health, services to some of
6 Hawaii's most vulnerable residents are provided on agency campuses for which unwelcome
7 intrusion may be detrimental, such as the provision of mental health services to children and
8 families or individuals with judiciary involvement. Enactment of this measure, including
9 assurances that the constitutional rights of at-risk populations such as the homeless, permit
10 flexibility for the department in managing safety.

11 **Offered Amendments:** N/A.

12

13

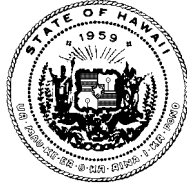
14

15

16

17

DAVID Y. IGE
GOVERNOR



PANKAJ BHANOT
DIRECTOR

BRIDGET HOLTHUS
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

LATE

March 29, 2017

TO: The Honorable Representative Scott Nishimoto, Chair
House Committee on Judiciary

FROM: Pankaj Bhanot, Director

SUBJECT: **SB895 SD1 HD1 – RELATING TO CRIMINAL TRESSPASS**

Hearing: Wednesday, March 29, 2017, 2:00 p.m.
Conference Room 325, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports this administration bill to protect State lands and offers comments. DHS notes that enforcement of trespass onto State lands may impact homeless persons. When enforcement takes place there should be an effort to coordinate with homeless outreach providers. DHS asks the Legislature to support the Governor's Executive Budget requests, so that combined outreach services by homeless services providers with enforcement efforts on state lands, will assist to connect homeless individuals and families with services, and provide an orderly process for removal, storage, and retrieval of personal property. DHS defers to other departments in regard to statutory processes and issues related to enforcement of trespass on state lands.

PURPOSE: The purpose of the measure is to add the offense of criminal trespass onto State lands to the penal code. The measure also amends criminal trespass in the second degree to apply to government agricultural property regardless of whether it is fenced, enclosed, or otherwise secured. The measure has been amended as follows:

- The Senate Committee on Judiciary & Labor, amended the measure by clarifying section 708-814(1)(c), HRS, regarding posting of signs, and adding a provision that

the Department of the Attorney General submit a written report to the Legislature regarding the extent to which criminal trespassing laws are utilized.

- The House Committee on Water & Land amended the measure by:
 - (1) Requiring a request to leave by a law enforcement officer prior to the trespass charges;
 - (2) Clarifying that no lands administered by the Office of Hawaiian Affairs will be affected by this measure;
 - (3) Clarifying that this measure will not impact any areas that are designated as safe havens;
 - (4) Changing the effective date to July 1, 2050, to encourage further discussion; and
 - (5) Making technical nonsubstantive amendments for clarity, consistency, and style.

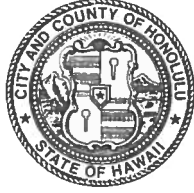
DHS understands the intent of the bill is not to criminalize homelessness, but to address issues related to theft and vandalism on state lands, as well as issues related to public safety. DHS encourages other state departments and agencies to continue to work with the Governor's Coordinator on Homelessness (Coordinator) to secure and provide appropriate homeless outreach services. Outreach services will help build trust with individuals and families and encourage them to utilize available services to address their homelessness, such as Housing First, Rapid Rehousing, or shelter.

In addition to outreach, the Coordinator works with State departments and agencies to address concerns related to personal property or other items that may be left behind on state lands following the enforcement of trespass laws. This coordination will help to protect the due process rights of homeless persons who are subjects of the enforcement of trespass laws on State lands.

Thank you for the opportunity to testify and provide comments on this measure.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu.org



KIRK CALDWELL
MAYOR

~~LEON M. KEALOH~~
CHIEF

CARY OKIMOTO
JERRY INOUE
DEPUTY CHIEFS

OUR REFERENCE DI-KO

March 29, 2017

The Honorable Scott Y. Nishimoto, Chair
and Members
Committee on Judiciary
House of Representatives
State Capitol, Room 421
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Nishimoto and Members:

Subject: Senate Bill 895, S.D. 1, H.D. 1, Relating to Criminal Trespass

I am Darren Izumo, Major of the Wahiawa Police Station, District 2, Honolulu Police Department (HPD), City and County of Honolulu.


The HPD supports Senate Bill 895, S.D. 1, H.D. 1, which adds the offense of criminal trespass onto state lands to the penal code, and amends the offense of Criminal Trespass in the Second Degree to apply to government agricultural property.

The HPD believes that the passage of this bill will help clarify, for jurisdictional and enforcement purposes, the inclusion of state lands in the criminal trespass law (HRS 708-). The current law is unclear on unenclosed state lands such as open agricultural lands or areas under or around freeways.

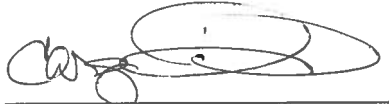
The HPD requests that your committee support the passage of Senate Bill 895, S.D. 1, H.D. 1, Relating to Criminal Trespass.

Thank you for the opportunity to testify.

Sincerely,


For Darren Izumo, Major
District 2

APPROVED BY:



Cary Okimoto
Acting Chief of Police

Serving and Protecting With Aloha

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 12:06 AM
To: JUDtestimony
Cc: aihaa@aol.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Sonny Ching	Halau Na Mamo o Pu'uanahulu	Oppose	No

Comments: Once again the Hawai`i State Legislature is considering legislation that essentially continues to destroy and put an end to traditional Native Hawaiian practices and culture. You continuously and systematically enact laws that extinguish our traditions and cultural practices, such as this bill would do. There are no provisions, exemptions, or exceptions for native practitioners, thus ending our gathering rights, our cultural beliefs and connection to the land from which we spring from. I am adamantly against SB895 and urge the senate to vote no as well as the Representatives in the House to this bills counterpart being taken up by their chamber. 'O wau, Sonny Ching - Kumu Hula

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 11:36 AM
To: JUDtestimony
Cc: barca808@hotmail.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
distin Barca	ohana farms	Oppose	No

Comments: I Oppose this bill. Whoever is writing this kind of bills are the real criminals . Please oppose this. It is our birth right to hunt and Gather our food in a respectful manner.

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 12:48 PM
To: JUDtestimony
Cc: wao-hsl@WeAreOne.cc
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Joseph Kohn MD	We Are One, Inc. - www.WeAreOne.cc - WAO	Support	No

Comments: Strongly oppose criminalizing access to public lands. The land is held in trust for public benefit. www.WeAreOne.cc

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Committee: Committee on Judiciary
Hearing Date/Time: Wednesday, March 29, 2017 at 2:00 p.m.
Place: Conference Room 325
Re: Testimony of the ACLU of Hawaii in Opposition to S.B. 895, S.D. 1, H.D. 1, Relating to Criminal Trespass

Dear Chair Nishimoto, Vice Chair San Buenaventura, and Members of the Committee:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in opposition to S.B. 895, S.D. 1, H.D. 1, which seeks to add an additional criminal trespass offense (“criminal trespass onto state lands”) to chapter 708 of the Hawaii Revised Statutes (“HRS”) and to broaden existing criminal trespass statutes.

Existing Hawaii law already penalizes several varieties of trespass, and adding an entirely new criminal trespass offense and broadening existing offenses would be unnecessarily cumulative. *See* HRS §§ 708-13 (criminal trespass in the first degree), -14 (criminal trespass in the second degree), -15 (simple trespass). Much of the conduct prohibited by the proposed offense of “criminal trespass onto state lands” is also covered under existing Hawaii law prohibiting sleeping or camping in a state park after park closure hours. *See* Hawaii Administrative Rule (“HAR”) §§ 13-146-5 (requiring permit for camping in a state park); HRS § 184-5 (violation of park rules constitutes a petty misdemeanor). Existing Hawaii law also covers the bill’s prohibition against remaining unlawfully on any highway. *See* HRS 711-1105(1) (prohibiting obstruction of “any highway or public passage”). This bill is therefore unnecessary.

Criminal trespass laws and other regulations prohibiting use of public lands are often used to punish protesters, as well as homeless individuals and families. Indeed, S.B. 895, S.D. 1, H.D. 1, seemingly *targets* protestors — such as those who demonstrated at Mauna Kea — by adding redundant penalties for remaining in/on state parks, lands, and highways. S.B. 895, S.D. 1, if passed, would merely add to a problematic national trend of punishing dissenting speech and criminalizing the status of being homeless. We strongly urge this committee to defer S.B. 895, S.D. 1, H.D. 1.

Should this Committee be inclined to recommend this measure be passed on Third Reading, the ACLU of Hawaii respectfully requests the following amendments to Section 2 of the bill to ensure proper notice and to give violators an opportunity to comply with the law without facing criminal penalties:

- (a) The person enters or remains unlawfully in or upon any improved state land when:

(i) The land is closed to public use and its closure hours are posted on a sign or signs on the improved state land, and after a request to leave is made by any law enforcement officer the person remains in or upon the land; or

(ii) The land is not open to the public and there are signs that are sufficient to give reasonable notice that read: "Government Property - No Trespassing"; provided that these signs shall contain letters no less than two inches in height and shall be placed at reasonable intervals 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; and after a request to leave is made by any law enforcement officer the person remains in or upon the land;

(b) The person enters or remains unlawfully in or upon any state land on or under any highway, and the state land has a sign or signs displayed upon the land that are sufficient to give reasonable notice that read: "Government Property – No Trespassing"; provided that the signs shall contain letters no less than two inches in height and shall be placed at reasonable intervals 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, and after a request to leave is made by any law enforcement officer the person remains in or upon the land.

This amendment would ensure that individuals remaining on state land would have adequate notice and an opportunity to comply before penalties were imposed. The ACLU of Hawaii also requests that this measure be amended to provide that “criminal trespass onto state lands” is a civil, and not criminal, violation. It is harsh and unnecessary to impose criminal penalties, including jail time, for unwittingly stumbling onto unenclosed state land.

Thank you for this opportunity to testify.

Sincerely,



Mandy Finlay
Advocacy Coordinator
ACLU of Hawaii

Chair Nishimoto and Members of the Committee

March 29, 2017

Page 3 of 3

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for 50 years.

Kau'i Pratt-Aquino, Esq.
PRATT LAW HAWAI'I, LLLC
kau@prattlawhi.com

Aloha Hawaii State House of Representatives,

Please accept this testimony in **STRONG OPPOSITION to SB 895** which would establish a new criminal trespass offense to protect against people remaining on improved state land when it is closed or otherwise restricted, or on or under state highways. In addition to this, SB 895 expands the state's reach to regulate by establishing that the criminal trespass in the second degree be amended to include government agricultural lands that are not fenced, enclosed, or secured in a manner designed to exclude intruders when there is appropriate signage giving notice that the property is government property and trespassing is prohibited.

I oppose this measure because it is overbroad, vague and will have unintended negative consequences long term. This measure does not incorporate Hawaii's unique land system and it attempts to penalize the most vulnerable of our population. I am extremely disappointed in the introducers and supporters of this measure. It is short-sighted and a band-aid solution that does nothing to address the root problems in our state.

This measure is poorly thought out. More discussion is needed to determine the goals of the state and that discussion must include the people directly impacted by this measure including but not limited to Native Hawaiian cultural practitioners, the Honolulu Police Department, State Enforcement, Homeless advocates, Prison advocates, Judiciary, and the respective agencies that manage state land resources.

SB 895 is likely unconstitutional because the land base to which it attempts to regulate is too broad. It gives state agencies unfettered discretion to regulate state lands and it does not address the multitude of implementation and enforcement issues that will arise if it becomes law. SB 895 criminalizes a person just for being on state lands under an arbitrary standard. SB 895 includes lands that are improved but extends criminal trespass to "unfenced" agricultural lands. This is absurd because of Hawaii's unique land system and the right of cultural practitioners to enter and use state lands.

This measure will likely criminalize Native Hawaiian cultural practitioners and our vulnerable homeless population despite the express amended provisions within the law. It is a knee jerk reaction to give police or state enforcement the tools they need most immediately but it does nothing to incorporate the long-term impacts on our criminal justice system or on the rights of cultural practitioners. I see this measure as a direct attack on Native Hawaiians because of our constitutional cultural rights tied to state lands and for the fact that Native Hawaiians make up a large majority of the homeless population.

First, this measure attempts to regulate Native Hawaiian customary and traditional rights out of existence (even though Section 6 declares protections). Section 6 means nothing if enforcement arms such as the Police or State agencies lack the requisite training to be able to identify cultural practices and cultural practitioners. Our state agencies lack training in this area. Because of the lack of training, enforcement arms will inevitably run into issues when they need to enforce this law and likely violate a person's constitutional rights. Who will have the discretion to determine who is a cultural practitioner and who is not? This must be considered in order for the state to meet its constitutional obligation to Native Hawaiians.

Hawaii land laws are different from any other state because of our unique history stemming from the illegal overthrow of 1893 when 1.8 million acres of government and crown lands were illegally taken from Queen Liliuokalani. As a result of the illegal overthrow, those lands were transferred by the U.S. to Hawaii and placed into the Public Lands Trust under Section 5 of the Admissions Act as a condition of statehood and subject to five public trust purposes. Under this provision, the state has a fiduciary duty to implement policies related to these lands for the "betterment of conditions of Native Hawaiians." Within in this context, the state must protect and preserve customary and traditional rights under Article XII Section 7 of the Hawaii State Constitution. This measure does the exact opposite because it places Native Hawaiian cultural practitioners in a position to be injured by just exercising their constitutional rights because the law is vague and does not provide a clear standard on how to accommodate cultural practitioners.

Customary and traditional practitioners have constitutional rights to state lands and water resources. The problem with this measure is it gives the state broad authority to regulate state lands without any consideration for these rights. History has proven that state leaders lack training in this area because it is against western property rights. Under the proposed law, a head of a state agency, who may not have had any training in Native Hawaiian rights, could make a decision on what lands should be regulated, build a tiny structure, put up a sign and prevent all from entering these lands without any discussion from those impacted by the regulation. In the alternative, this standard could apply to undeveloped agricultural lands. As result of this action, law enforcement would be forced to criminalize all people who enter on these lands so long as the state meets the proposed standard under this act which does not include the rights of practitioners or the history of that particular place, which is imperative when assessing the rights of cultural practitioners who practice in the proposed area.

SB 895 gives law enforcement broad powers to criminalize individuals without any consideration to customary and traditional rights. What guideline does law enforcement have to determine who is a cultural practitioner or who is not? What guideline does law enforcement have to determine what "improved state lands" means? Is this guideline discretionary? Will this guideline be determined by the law enforcement's subjective view of the property? Are the police trained in Native Hawaiian law? From the plain language of this measure, law enforcement does not have any guideline to work with. Without such guideline, the unintended consequence will likely lead to law enforcement violating the constitutional rights of cultural practitioners.

Because Native Hawaiians and the general public have a property interest in these lands through the Public Land Trust, a discussion MUST take place with the community before any regulation can be placed on these lands if the goal of the state is to develop viable long term solutions that work to meet the needs of everyone but also to honor the constitutional rights of cultural practitioners.

There are sufficient protections in place now under current case law to provide the state with power to regulate such lands (Pratt, Hanapi decisions). The state cannot regulate Native Hawaiians completely off of state lands. In addition to this, more discussion is needed to determine what constitutes “improved state lands.” This term is still unclear and more discussion is needed with the community to come up with a solid definition instead of making a law that has a very broad definition with zero consultation from the community who will suffer the consequences.

The second problem with this bill is that it will be a direct attack on our vulnerable homeless population. It is no secret that homeless individuals take refuge under or near state highways on the island of Oahu. This bill criminalizes our homeless who have no to low resources to support or defend themselves. This is not a viable solution for our community because it does nothing to address the underlying issue or cause of homelessness. The underlying issue is Hawaii’s high cost of living and several other important factors. This bill would create another set of problems because it would give police the right to ticket individuals who are homeless even though there is an express provision in the law. This is unethical and immoral because it is likely that our vulnerable homeless population will not be able to afford the penalties associated with this measure unless the intent is to imprison them permanently. Our criminal courts are already inundated with thousands of cases in which our state is unable to maintain. Our courts, prosecutors and public defenders are overwhelmed with hundreds of cases each day. Why, then, would we add more work for them? This bill would have an adverse impact on our prison system because once an individual is in the system after multiple violations and the failure to pay those fines, he or she will go to prison for a long period of time. The expense to maintain this measure will fall on tax payers.

I am disappointed that our lawmakers would introduce and attempt to pass such a bill. I expect more from you to come up with viable solutions for today and the future. This bill does nothing for our future but to create more problems. Please do right by our communities and kill this bill. Feel free to call or email me with any questions.

Sincerely,

Kau‘i Pratt-Aquino

(808) 393-1948

BEFORE THE HOUSE COMMITTEE ON JUDICIARY

March 29, 2017

Senate Bill No. 895 SD1 HD1
Relating to Criminal Trespass

Aloha Chair Nishimoto, Vice Chair Buenaventura, and Members of the Committee:

KPAC submits the following testimony in strong opposition to SB 895 SD1 HD1. This bill adds the offense of criminal trespass onto lands held by the State including agricultural lands to the penal code.

The Ka Lāhui Hawai‘i Political Action Committee (KPAC) affirms and defends the Kanaka Maoli (aka Native Hawaiian) peoples' right to over 1.8 million acres of the former Crown and government lands of the Kingdom of Hawaii which were illegally transferred to the US and as a condition of Statehood was transferred to the State of Hawaii to be held as a public trust. Much of the lands currently held by DOT are public trust lands where the traditional, customary, and subsistence access and gathering rights of the Kanaka Maoli are reserved and have been since the time of the Mahele (1848) and Kuleana Act of 1850.

Kanaka Maoli rights to access lands for traditional, customary, and subsistence purposes are recognized in the Hawaii State Constitution (1978) Article XII Section 7 which gives the government a duty to “protect all rights customarily and traditionally exercised for subsistence, cultural and religious purposes.” The right to access lands was reconfirmed by the court in the Kalipi vs. Hawaiian Trust (1982) case. The cultural and customary access rights of Kanaka Maoli were further expanded in the courts in the Paty vs. Pele Defense Fund (1992) and in the Public Access and Shoreline vs. Hawaii County Planning Commission (1995) court decisions.

This bill criminalizes Kanaka Maoli rights to access public lands for traditional, customary purposes and provides no accommodations and protections for Kanaka Maoli and initially assumes guilt - putting the burden of legal protection of rights upon the Kanaka Maoli people. This coupled with the fact that Kanaka Maoli as a group are socio-economically challenged would give undue hardship and stress to the people of the ‘āina (land).

Respectfully Submitted,

Healani Sonoda-Pale
KPAC Chair

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 7:34 AM
To: JUDtestimony
Cc: beutyula.sk@gmail.com
Subject: *Submitted testimony for SB895 on Mar 29, 2017 14:00PM*

SB895

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Sheldon K Kaopuiki	HĀLAU NA MAMO O PU'UANA HULU	Oppose	No

Comments:

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To: JUDtestimony
Cc: noheakaolulo@yahoo.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Christy Rose Kaolulo	Halau Na Mamo O Pu'uanahulu	Oppose	No

Comments: Aloha mai, I am against SB895. As a hula student, it is vital to access State lands for the gathering of plants. It is a part of our culture and everything we learn in Halau. We have very few access with the development throughout the State. When we gather, we do not gather more than we need. We understand the importance and need for these plants. We respect our 'aina and we take care of what is provided to us. We are not criminals. We need the opportunity to continue our traditions without being criminalized in our own homes for doing what our ancestors have been doing for many years. If you pass this bill, we will not have any place to go to gather plants. It is our cultural practice. Please do not pass this bill, it will restrict us from everything that is Hawai'i.

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 8:56 AM
To: JUDtestimony
Cc: moku.nua@gmail.com
Subject: *Submitted testimony for SB895 on Mar 29, 2017 14:00PM*

SB895

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Kapua Francisco	Halau Na Mamo O Ka Liko Maile O Kohala	Oppose	No

Comments:

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HOUSE COMMITTEE ON THE JUDICIARY
Wednesday, March 29, 2017 2PM Room 224
In **OPPOSITION** **SB895** Relating to Criminal Trespass

Aloha Chairman Nishimoto, and members of the Judiciary Committee,

On behalf of our 20,000 members and supporters throughout the Hawaiian Islands, the Sierra Club of Hawai'i **strongly opposes SB895**, which seeks to overly limit public access to public lands.

Since 1968, the Sierra Club of Hawai'i has been helping people properly access public and private lands for the purpose of hiking, camping, trail maintenance, clean ups, and native habitat restoration. Connecting people to the environment is a key part of our mission. SB895 would undermine our mission with overly broad assertions of criminal trespass that would result in a "chilling effect" on legitimate public access to public land.

Under the authority proposed in this bill, an agency can close public land for an unlimited amount of time and for no particular reason, and as long as a sign is posted, unknowing members of the public—be it hikers, hunters, surfers, fishermen, canoe paddlers, cultural practitioners—now suddenly become criminals.

This bill is not needed. Hawai'i already enjoys robust protections against criminal activity on public land, including trespass. Hawaii Revised Statute § 708-814.5 is directly on-point because it authorizes the arrest of individuals for trespass after an enforcement officer requests the individual leave the premises. If SB2816 is passed, then officers can arrest people without asking them to leave first. So effectively, this bill broadens the criminal net to include otherwise innocent people. See also HRS § 708-13 dealing with criminal trespass in the first degree, HRS § 708-14 concerning criminal trespass in the second degree, HRS § 708-15 concerning simple trespass. Hawai'i Administrative Rules already outlaw sleeping or camping in a state park after closure without a permit, such as HAR § 13-146-5 requiring permit for camping in a state park. See also HRS § 184-5 violation of park rules constitutes a petty misdemeanor. Hawai'i's highways are also already protected from misuse because HRS § 711-1105(1) prohibits obstruction of "any highway or public passage".

This bill could not be more unnecessary, and if passed, will infringe on the people's right to use, access, and enjoy public lands set aside for those very purposes.

Thank you very much for this opportunity to provide testimony on this important issue.

Mahalo,

Marti Townsend
Director



LATE

March 28th, 2017

Hawai'i State Legislature, Regular Session of 2017
Committee on Judiciary
Conference Room 325, State Capitol
Date & Time of Hearing: Wednesday, March 29, 2017, at 2:00 PM

Aloha Chair Nishimoto, Vice-Chair San Buenaventura, and Members of the JUD:

On behalf of Ūlio'ulaokalani, I am authorized as one of its senior legislative liaisons to **OPPOSE SB895 SD1 HD1**. Although we can understand and appreciate the intent to deter true criminal activities and acts of legitimate trespassing on state lands, it is our position that as written, SB 895 has the potential to impact certain Native Hawaiian traditional and customary rights protected under state constitutional law. "Improved" state lands as defined in the bill can include areas on "less than fully developed property" that contain natural and cultural resources that are vital to access for purposes of subsistence resource extraction and gathering purposes for food, medicine, or other cultural uses in both the upland and coastal regimes. Implementation of this measure could have a detrimental impact on Native Hawaiian gathering rights which are protected under Hawaii Revised Statutes (HRS) 1-1, 7-1, and Article XII, Section of the Constitution of the State of Hawai'i.

Specifically, HRS 1-1 states:

The common law of England, as ascertained by English and American decisions, is declared to be the common law of the State of Hawaii in all cases, except as otherwise expressly provided by the Constitution or laws of the United States, or by the laws of the State, or fixed by Hawaiian judicial precedent, or established by Hawaiian usage; provided that no person shall be subject to criminal proceedings except as provided by the written laws of the United States or of the State.

Specifically, HRS 7-1 states in full:

Where the landlords have obtained, or may hereafter obtain, allodial titles to their lands, the people on each of their lands shall not be deprived of the right to take firewood, house-timber, aho cord, thatch, or ki leaf, from the land on which they live, for their own private use, but they shall not have a right to take such articles to sell for profit. The people shall also have a right to drinking water, and running water, and the right of way. The springs of water, running water, and roads shall be free to all, on all lands granted in fee simple; provided that this shall not be applicable to wells and watercourses, which individuals have made for their own use.

Further Article XII, Section 7 states in full:

The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

The Hawai'i State Supreme Court has cited HRS 1-1 as a basis for protecting traditional and customary Native Hawaiian rights. Further, Hawai'i Courts have interpreted Native Hawaiian rights to extend beyond the immediate right of access within one's own land but inclusive within the entire ahupua'a to obtain resources necessary for said practices as provided for in HRS 7-1. Accordingly, the exercise of traditional and customary rights is specifically afforded distinct protections under Hawai'i law for stated purposes under Article XII, Section 7. Therefore, SB 895 SD1 HD1 as written does not address how its implementation would ensure the protection and perpetuation of these said rights. For example, many local Hawaiian fishermen in Keauhou and Hana access their respective small boat harbor areas at all hours for subsistence-based fishing. As proposed, SB 895 SD1 HD1 would criminalize their basic need to feed their family which is a protected right of the land.

Second, it would appear that SB895 SD1 HD1 would criminalize the homeless/houseless community, some of whom are Native Hawaiians, potentially exiling a struggling portion in our population who are afforded additional and unique protections under the Kānāwai Māmalahoe, which under Article IX (Public Health and Welfare), Section 10 states that as decreed by Kamehameha I, it shall be the law of this land that every elderly person, woman and child shall lie by the roadside in safety. SB 895 SD1 HD1 as written could potentially be in violation of this traditional customary law that is codified under this Section to ensure the protection, assistance, and respect of this unique population.

Finally, it would appear that this bill also would in effect punish those that participate in dissenting speech in public forums, a potential infringement upon First Amendment rights of the people to peaceably assemble and exercise their religion, specifically in an applicable situation that would involve the access of public lands. One such example where this bill and its criminalization clause could have come to bear on our people in a disparaging manner is in the case example of peaceful assembly of Native Hawaiians on Mauna Kea that responded in kapu aloha to a proposed telescope project on designated public lands. A bill such as SB895 SD1 HD1 if passed would have the potential to further disenfranchise the rights of Native Hawaiians to not only access and gather in their own homeland but the right to peacefully assemble in pule as the ancestral descendants to the kūpuna that dwell within these public lands.

In summary, ʻĪlioʻulaokalani states its position that until these issues are resolved, SB895 SD1 HD1 be tabled until further meaningful dialogue with key Native Hawaiian and civil rights leaders in Hawaiʻi has transpired in a collective spirit of lauaki.

Respectfully submitted,

Signed: 

Mark Kawika McKeague, AICP

T: 808.265.7901

Email: kmckeague87@gmail.com

STATEMENT OF
NOLAN OKALANI TALLETT

I am in opposition of SB895. I was born and raised in Hawaii, learned how to hunt, fish and gather during my upbringing. Now as a hula and lomi practitioner gathering is detrimental to these practices. Once again the state is trying to oppress the native people and their traditions. This needs to STOP!! It was, is and always will be a way of life in Hawaii and we need to remain diligent in maintaining the accessibility, knowledge and sustainability of this practice. Once again I am in opposition of SB895. Mahalo!

Nolan Okalani Tallett

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 27, 2017 11:51 PM
To: JUDtestimony
Cc: mluzyjon@yahoo.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/27/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Jon Hopcia	Individual	Oppose	No

Comments: I oppose this bill that makes trespassing on government lands a criminal offense. This bill clearly jeopardizes public access to historic trails. Please reject this bill. Jon Hopcia 73-4164 Kaalele Pl. Kailua Kona, HI. 96740 808-325-2505

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My Name is Rocky Ishibashi, I live in Puna Hawaii. When I was 4 (1959), I asked my grandmother to teach me to speak Hawaiian. She said she didn't know how. But I would hear her speak it all the time to her friends. Being 4 I asked her Why? She told me "BECAUSE IT WAS NOT ALLOWED. Why would a loving grandmother refuse to teach her grandson Hawaiian? Because the terrorist USA/territory/State of Hawaii said so. On Wednesday, 3/29/ 2017 a vote will take place, this vote, to take more rights away from Kanaka and even making kanaka criminal for protecting our sacred.

SB895 and companion HB1029 is targeting kanaka, and is illegal. You all sore to protect the Hawaii State constitution, yet by creating these bills, you will take away more of "OUR" rights. Why are there so many bills in the legislature, that , are giving the Thirty Meter Telescope more right to build on Kanaka Maoli's most sacred site? Even though, kanaka rights are protected in the Hawaii State Constitution? I believe, that if any mega corporation waves \$1.4 billion dollars in front of certain politicians, these politicians will pimp out Hawaii like a whore, and allow them to rape our sacred.

I was watching a show on TV the other day that were talking about cultures around the world going extinct. Kanaka are at the brink of extinction today. With each right you the legislators take away, you are pushing kanaka off the face of this planet, into extinction. This is yet another terrorist act against my culture. I had one pro TMT supporter tell me, "TMT is not causing the extinction of the Kanaka" arrogantly citing there were so many children in Hawaiian immersion schools today. Yes, this is true. There are so many keiki learning our culture, but, language without culture equals extinction of the kanaka race. All caused by another terrorist act by the largest terrorist country in the world. Many kanaka that protect our Mauna today graduated from these schools. They learned they have a kuleana (responsibility) to protect Hawai'i Nei against all enemies, foreign and domestic. With every right the Hawaii State Legislature takes away, pushes my race towards extinction.

I am 60 years old and have seen so many extinctions of native Indian cultures by the largest terrorist country in the world, the United States of America. Now, you as a representatives of this terrorist organization have set your sights on exterminating Kanaka. STOP this political agenda of eradicating Hawaiians cultural rights, or in my lifetime, the extinction of kanaka will be complete.

I have always believed that each and everyone one in the world has a right to believe in whatever makes them Happy. And each of these beliefs should be protected. If you believe in Jesus Christ, Buddha, Allah, or don't believe in anything at all, these rights should be protected. But, SB895 and HB1029 will make me a criminal if I protect my right to my religious cultural rights.

Why is the State of Hawaii creating special rights/favors for the mega corporation TMT? The law was changed to allow TMT to skip all the levels of the USA/State of Hawaii court system to allow them to present their case at the Hawaii Supreme Court. Now you want to create SB895 and HB1029, that will make it a criminal offense to protect Mauna Kea from desecration. Religious right that are supposed to be protected in the US and Hawaii State Constitutions.

Appears that you, as legislators, have a choice, you can chose to follow the USA/ Hawaiian law or you can revert back to being terrorist against kanaka. A vote for SB895 and HB1029 is a vote to make Kanaka Maoli criminals for merely protecting our lands from terrorists. .

Why did the Hawaii Supreme Court invalidate TMT's building permit? Because of a corrupt Board of Land and Natural Recourses granted a building permit before a contested case hearing was held. This corrupt act by the BLNR has cost Hawaii taxpayer an estimated \$2 Million dollars already, with more to come.

This is why I am pushing for HB/SB Honesty and Integrity Bill to be created. This bill will require all state and county employees to follow all laws, regulations, and criteria's before granting any applicant a building permit. Had an "Honesty and Integrity" bill/law been in place, then all the BLNR members would have to pay for the cost that Hawaii taxpayer are now forced to pay.

This legislative sessions has had so many bills targeting the removal of Kanaka rights than I have ever seen, and for what? A god damn telescope? Nowhere in the Hawaii State constitution does it give rights to a telescope, however, the Hawaii State Constitution states that Kanaka Maoli have protected cultural rights. It is your jobs as legislators, to protect my right to be kanaka Maoli, or you will be looked upon forever in Hawaiian history as terrorists that made Kanaka Maoli go extinct.

So many pro TMTer's say "Science and culture can co-exist" on the Mauna. I disagree 100%. Why? As you go up to the top of the Mauna you will see a sign that reads "Turn off cell phones" as these cells disrupt the telescopes. In the same ways, the telescopes interrupt Hawaiian cultural practitioners as we practice our "PROTECTED" cultural rights. Yet you want to create laws to let TMT be built. How can we have peace and quiet on the Mauna if we are interrupted by all the vehicles going up and down the access road. How will we not be impacted by 5 to 7 years of construction, dust, and noise? Telescopes demand cell phones are turned off, yet how do we turn off construction, vehicles and dust? This is not co-existing it is one sided slanted towards the telescopes.

Here is the choice you all will choose from, Hawaiian rights, that are supposed to already be PROTECTED in the Hawaii State constitution, or to make it illegal for Kanaka Maoli to protect what we believe as sacred. Here would be a great time for all of you voting on the Honesty and Integrity bill/law.

A'ole TMT

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 27, 2017 9:32 PM
To: JUDtestimony
Cc: moanimahuna@yahoo.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/27/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Moani Mahuna	Individual	Oppose	No

Comments: I am writing this testimony in opposition of SB895. Many Hawaiians, like myself, exercise our rights as Hawaiians to gather flora and fauna from the aina on lands that are held by the State of Hawaii, and to criminalize that right would be a blatant attack against Native Hawaiians; Native Hawaiian rights, and Native Hawaiian culture.

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March 27, 2017

TO: Chairman Scott Nishimoto, Vice-Chair Joy San Buenaventura, and Members of the House Judiciary Committee

FROM: Deborah Chang, kulaiwi@hawaiiantel.net P.O. Box 202, Pa`auilo, HI 96776

I am opposed to the broadly written amendments to HRS §708-814 currently proposed in SB895 SD1 HD1. By including unfenced and unenclosed government agricultural lands in the list of criminal trespass in the second degree offenses, the public's right to use government-owned, historic Hawaiian trails and historic, government-owned roads within those areas could be affected significantly. These trails and roads are commonly unfenced and located within larger agricultural tracts of land. The proposed law does not require government or private landowners to clearly justify the need to close the public historic Hawaiian trails and old government roads located on the subject properties and for how long.

As it is, when historic Hawaiian trails are found to be owned by the State of Hawai'i (per the Highways Act of 1892-see HRS §264-1), the state's Nā Ala Hele program has a legal mandate through HRS Chapter 198D to assert the state's ownership and to manage the trail for public use when resources are available to do so. Too often these trails remain closed for decades, due to lack of resources, but the public's rights to use the trails and roads are not diminished and are reserved for the future. Posting of government-owned trails and roads as no trespassing could have far-reaching consequences, particularly if the closure is indefinite. Over time the old trails and roads are "lost" to neglect, becoming overgrown and unrecognizable, damaged, and/or destroyed. Although Native Hawaiian customary use of the trails is protected by this bill, no-trespassing signs are intimidating and discouraging of Native Hawaiian use, unless clearly stated as permitted on the no-trespassing sign. The bill, as written, will support the indefinite use of government-owned trails and roads for private benefit. How are the public's present and future rights to use the historic trails/roads protected?

In summary, the posting of no-trespassing signs for unfenced government agricultural property will likely affect public rights to use historic Hawaiian trails and old government roads. To minimize the long-term consequences of such public trail and road closure, the law should require the government agency with jurisdiction over the affected property to: (1) acknowledge which government-owned trails and roads exist in the affected property and the process by which the trails/roads can be opened in the future; (2) provide the public with information and the opportunity to comment on any planned closures or restrictions, including a justification for why the closure is necessary and the period of time the trail or road is expected to remain closed; and (3) adopt specific language on the no-trespassing signs to clarify that Native Hawaiian traditional and customary rights will not be denied on the posted property.

Mahalo for your consideration of these concerns.

Charlotte Leger

371 Haili St

Hilo, HI 96720

3/27/2017

Dear Senate, Representatives, and all who make decisions for us.

I am writing to you because I oppose SB 895. I live on Hawai'i and am a Hula practitioner. Gatherings practices are incredibly important to the livelihood of long-standing traditions and connection to the land. Please protect the rights of natives here to continue learning and sharing their culture for all future generations. Today is a time of unprecedented fear and ecocide in the U.S., and Hawai'i's colonial history reverbrates in the hearts of the people. It is so paramount to end the repression of culture and transmissal. Access to these lands is a birthright. Do the right thing.

Thank you

Charlotte Leger

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 27, 2017 6:39 PM
To: JUDtestimony
Cc: paresagirl@yahoo.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/27/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Noelani Paresa	Individual	Oppose	No

Comments: Aloha. We are called again to submit testimony against another bill or really another vicious act against us, kanaka maoli, and to remind you that we will not sit quietly as corporate greed and u.s. law making cowards attempt to disregard our rights. Do not continue pushing this bill or any other bill similar to. Do what is pono. Mahalo, Noelani Paresa of waihe'e the great granddaughter of Rebecca Pomaikai Paresa , direct descendant of King Kamehameha

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 27, 2017 5:56 PM
To: JUDtestimony
Cc: tulsigreenlee@icloud.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/27/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Tulsi Greenlee	Individual	Oppose	No

Comments: Aloha. I strongly oppose this bill because it could harm Hawaiians gathering rights. Thank you for opposing this bill. Tulsi

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 27, 2017 5:11 PM
To: JUDtestimony
Cc: ipoc.m.chang@hotmail.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/27/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Corine Chang	Individual	Oppose	No

Comments: Corine M Chang 11-2207 Ohialani Road Mountain View, Hawaii 96720 808-968-7192 I Oppose Senate Bill 895 that would criminalize Hawaiian gatherers and traditional practitioner's who access lands under the "State of Hawaii." Punishable by 30 days in jail. Much of the lands currently held by the "State" are Hawaiian Crown or Government Public lands where the rights of the Maka'ainana are reserved. Please Oppose Senate Bill 895. Mahalo. Sincerely, Corine M Chang

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 27, 2017 5:10 PM
To: JUDtestimony
Cc: tianad79@gmail.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/27/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Tiana C.N. Dole	Individual	Oppose	No

Comments: I am Kanaka Maoli and a cultural practitioner and I am on the board of a Non Profit group called Papaku no Kameha'ikana. Our group educates people on cultural protocol and connection to the'āina and kekai, to the land and ocean. And part of our practices is going to sacred sites around our islands, gathering there and honoring it, taking care of it, and making sure it is there for generations after generations for our children to learn who they are and where they come from. I am also a Kanaka who worships at these sites and go there to give offerings and do ritual ancient practices. It is my religious and cultural right along with ALL Kanaka Maoli to be able to do so. Without the State punishing us for doing what's in our blood to do. We live and breathe with our land and ocean. We cannot keep being punished for wanting to be a part of our own home. It is morally or ethically wrong to continue to stop us from caring for what is ours. We will never stop it is our kuleana it is ours to look after. We are the stewards of this place. We will never stop fighting for what belongs to our culture...to our people. Stop this bill!

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 27, 2017 4:22 PM
To: JUDtestimony
Cc: cualesmile@aol.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/27/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Constance Keoahunui Uale Warrington	Individual	Oppose	No

Comments: As a Native Hawaiian I am opposed to this measure. We Kanaka Maoli have rights to access the aina for foliage gathering or meditation with nā kupuna afreely without worry of breaking a law or arrest.

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 27, 2017 3:40 PM
To: JUDtestimony
Cc: sgajate@yahoo.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/27/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Serafina Gajate	Individual	Oppose	No

Comments: Aloha, I am writing to OPPOSE SB 895, which seeks to criminalize, incarcerate and/or fine those who access state lands. Most of the land areas held by the state are crucial environmental, cultural and spiritual resource sites, and as such these areas are most often accessed by Hawaiian Cultural Practicioners. The state needs to stop trying to criminalize Hawaiians practicing their culture. Their rights are protected by law, and that's how they will stay. He ali'i ka 'Āina, he kauwā ke kanaka.

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 27, 2017 1:35 PM
To: JUDtestimony
Cc: noelopes4625@gmail.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/27/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
noe lopes	Individual	Oppose	No

Comments: I oppose SB 895 it is wrong to take Kanaka's way of living away.... to simply live...we need our resources culturally traditional and our gathering right... do not pass this bill!!

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 27, 2017 11:58 AM
To: JUDtestimony
Cc: alohaaina9@yahoo.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/27/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Kupono Ana	Individual	Oppose	Yes

Comments: Aloha everyone, my Name is Kupono Ana and I am a Sovereign Hawaiian National living under duress in our illegally occupied Hawaiian Kingdom government. Today I am testifying in strong opposition to this purposed senate bill "SB 895", Mainly because I am a Hawaiian Cultural practitioner and the fact that it's in direct violation of the de facto state of Hawaii's constitutional law that was recognized and affirmed on November 7, 1979. Our Hawaiian TRADITIONAL AND CUSTOMARY RIGHTS noted in Article 12,Section 7 That states The De Facto State of Hawaii reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes to our Hawaiian Nationals that live here on all Of the Hawaiian islands. Furthermore I would also like to say that I have been arrested before practicing my cultural rights that I'm supposed to be protected by and that was only for one day, imagine being arrested for 30 days and all the negative consequences that would occur like people loosing their jobs, that provide food and shelter for their families or even as far as making people loose their children to child protective services because theirs no one at home to care for them. Imagine how many families this law would break up. Iv noticed for some time now that for some reason the HPD , DLNR and Sheriffs department doesn't even know about these laws that protect all the people of Hawaii from being harassed by law enforcement. I feel that if they don't know their own laws they shouldn't be in those positions of power at all and After my arrest Iv asked every Police officer, DLNR agent and Sheriff I come into contact with if they know these laws and every single one said they didn't know what I was talking about. With all these different categories of law enforcement, Iv asked about a total of 60 of them within two years time. The arrest brought me financial hardship and a sense of uneducated law enforcement agencies in Hawaii. Oh honest Americans, Please kill this bill and stop the continual Breaking of you're own laws. Please do the right thing and honor you're existing Hawaii constitutional laws and protect the host culture you see everyday. Mahalo nui loa. Sincerely Kupono Ana. Contact info e mail -alohaaina9@yahoo.com and ph# 808-339-0272. A hui hou.

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the committee prior to the convening of the public hearing.

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Aloha no!

My name is Kaylene Kauwila Sheldon, I am the founder of The John Munn Kahikina Kelekona Foundation and we are protectors of 1. Sacred sites 2. Water 3. Land 4 Hawaiian language & Culture. We oppose SB895 SD1 Relating to Criminal Trespass and HB 1142. This bill threatens our gathering access rights making it hard for me and my family to gather medicines, ferns, flowers or adornments for special ceremonies and detaches us from our sacred places. It also threatens my family's health and well-being. My nephews are 5th generational hunters and fishermen who depend on hunting and fishing to sustain us. We do not always depend on outside food and we try to raise and grow our own food. Furthermore, this bill disrupts the legalities of the legal Hawaiian government, Ko Hawaii Pae 'Āina, and The Hawaiian Kingdom. The land does not belong to the State, it belongs to the First Peoples and rulers of Hawaii! The people acting within the State are managers not owners therefore this law should not apply to "stolen lands."

Mahalo,

Kaylene Kauwila Sheldon

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 27, 2017 9:58 AM
To: JUDtestimony
Cc: burgharc@gmail.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/27/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
cheryl	Individual	Oppose	No

Comments: Where are the amendments? Where is any recognition of the testimony on previous days in previous committees about this bill. IT NEEDS TO BE stopped immediately. THIS BILL should not be heard again. It seems that the people who are pushing for this bill including the Governor want to criminalize anyone who is not acting the way they in their "cush" living style believe they should. AS one Uncle last week said, the Legislature, Governor and etc. are bullies and we just had a HUGE "NO MORE" campaign. This bill makes it arrest first, ask questions later. THAT MEANS IF I or any other cultural practitioner is on the land per the laws of native gathering rights, we are arrested first, have to go through all of the court etc., pay the money , fight it and eventually are proclaimed not guilty AND I, NOR ANYONE ELSE SHOULD BE arrested for doing what we are allowed to do legally in the first place. This bill was designed to work against the protectors on Mauna Kea, those who stand for water, against Pohakuloa. It's not blatant but it's there and known in the community to be so. This bill is just WRONG. IN ADDITION, this bill targets and criminalizes houseless people. THE comments in previous committee from the DOT (they steal copper and wires) Really, if someone is stealing we already have plenty laws in place for that. I understand the issues with houseless people. I have worked with Mr. Morishige to help get housing for some. Criminalizing is NOT working to date WHY would we continue it? The DOE/BOE is currently sharing Nā Hopena A'o as a path for all members of the community. Perhaps it is something that the legislators should look at. It talks about understanding the place we live. You all need some work on that. THIS IS Hawai'i. There is only one group of people that can and do trace their lineage to these islands. Everyone else has lineage to somewhere else whether it be Japan, China, Philippines, Portugal. IT IS TIME THAT THIS legislature began to remember this is Hawai'i and follow the laws already established, such as the splintered paddle. With aloha.

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Testimony of Laulani Teale, MPH in **OPPOSITION to SB 895 HD1**, Relating to the criminal trespass COMMITTEE ON JUDICIARY

Rep. Scott Y. Nishimoto, Chair; Rep. Joy A. San Buenaventura, Vice Chair
Rep. Della Au Belatti, Rep. Mark M. Nakashima, Rep. Tom Brower, Rep. Marcus R. Oshiro,
Rep. Aaron Ling Johanson, Rep. Bob McDermott, Rep. Chris Lee, Rep. Cynthia Thielen, Rep. Dee Morikawa
Wednesday, March 29, 2017 2:00 PM Conference Room 325

Aloha and mahalo for this opportunity to testify.

As a Public Health professional, trained traditional La‘au Lapa‘au, and an advocate for Kanaka Maoli rights, I must very strongly oppose this measure.

My traditional gathering practices would be severely impacted by SB 895 in any form. Section 6 does not realistically protect practitioners at all, because police do not actually read laws.

Amending the offense of criminal trespass in the second degree “to include government agricultural lands that are not fenced, enclosed, or secured in a manner designed to exclude intruders when there is appropriate signage giving notice that the property is government property and trespassing is prohibited” would exclude me from many places of medicinal gathering and practice, including many little-recognized sacred sites.

Please note that I never get a permit to do any of my customary practices. I cannot. This goes against the kapu that I was given, and must abide by.

The lands of Hawai‘i have always been cared for by Nā Kānaka. If they are to flourish in future generations, they must continue to be. Cutting off that integral relationship is hewa (wrong) and must not occur.

I also oppose this bill because to me, it represents further persecution of the houseless that I find unacceptable. If people are in these areas, it is because they have nowhere to go. Many are there because they were kicked off the streets. Yes, we need solutions – solutions that are in line with Kānāwai Māmalahoe and universal Human Rights. I have attached these for reference. As long as Kānāwai Māmalahoe is being broken, Hawaiian rights are not being protected.

Please respect and protect all customary traditions and our ancient laws.

Mahalo nui loa once again for the opportunity to testify before this committee.

Aloha me ka ‘oia‘i‘o,



Laulani Teale, MPH



Kānāwai Māmalahoe



E nā kānaka, E mālama ‘oukou i ke akua A e mālama ho‘i ke kanaka nui a me kanaka iki; E hele ka ‘elemakule, ka luahine, a me ke kama Amoe i ke ala ‘A‘ohe mea nāna e ho‘opilikia. Hewa nō, make.

—Kamehameha I

O people, Honor and care for God; Respect the rights of powerful and humble people as the same; May our aged, our women, and our children Go forth and lay upon any path or roadside Without being harmed or troubled. Disobey, and die.

http://www.capitol.hawaii.gov/hrscurrent/Vol01_Ch0001-0042F/05-Const/CONST_0009-0010.htm

PUBLIC SAFETY

Section 10. The law of the splintered paddle, mamala-hoe kanawai, decreed by Kamehameha I--Let every elderly person, woman and child lie by the roadside in safety--shall be a unique and living symbol of the State's concern for public safety.

The State shall have the power to provide for the safety of the people from crimes against persons and property. [Add Const Con 1978 and election Nov 7, 1978]

Law Journals and Reviews

Ke Kanawai Mamalahoe: Equality in Our Splintered Profession. 33 UH L. Rev. 249 (2010).

See Also: <https://www.youtube.com/watch?v=x3jSLdmgKWU>

Universal Declaration of Human Rights

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1.

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3.

Everyone has the right to life, liberty and security of person.

Article 4.

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5.

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6.

Everyone has the right to recognition everywhere as a person before the law.

Article 7.

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8.

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9.

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10.

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12.

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13.

(1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14.

(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15.

(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16.

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17.

- (1) Everyone has the right to own property alone as well as in association with others.
- (2) No one shall be arbitrarily deprived of his property.

Article 18.

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19.

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20.

- (1) Everyone has the right to freedom of peaceful assembly and association.
- (2) No one may be compelled to belong to an association.

Article 21.

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- (2) Everyone has the right of equal access to public service in his country.
- (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22.

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23.

- (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- (4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24.

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25.

- (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26.

- (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
- (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
- (3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27.

- (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
- (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28.

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29.

(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30.

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

<http://www.un.org/en/universal-declaration-human-rights/>

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 27, 2017 8:32 AM
To: JUDtestimony
Cc: 808nateyuen@gmail.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/27/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Nathan Yuen	Individual	Oppose	No

Comments: I strongly oppose SB 895 which criminalizes Hawaiian gatherers and traditional practitioners from accessing lands under State control. It is wrong to block Hawaiians from accessing customary and traditional lands. Do not pass this bill.

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To: JUDtestimony
Cc: wildman1101@gmail.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/27/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Melvin Mcaulton	Individual	Oppose	Yes

Comments: I will be testifying regarding clarification of the bill.

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To: JUDtestimony
Cc: dkg1031@gmail.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/27/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Debra Koonohiokala Norenberg	Individual	Oppose	No

Comments: I strongly oppose this bill because, among other relevant reasons, it adversely conflicts with other laws already on the books.

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Cc: alex.beers@gmail.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/27/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
alex beers	Individual	Comments Only	No

Comments: Aloha, I strongly appose SB895. Blessings, Alex Beers

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 27, 2017 6:00 AM
To: JUDtestimony
Cc: keohihawn@yahoo.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/27/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Keoki	Individual	Oppose	No

Comments: THE CONSTITUTION OF THE STATE OF HAWAII PREAMBLE We, the people of Hawaii, grateful for Divine Guidance, and mindful of our Hawaiian heritage and uniqueness as an island State, dedicate our efforts to fulfill the philosophy decreed by the Hawaii State motto, "Ua mau ke ea o ka aina i ka pono." We reserve the right to control our destiny, to nurture the integrity of our people and culture, and to preserve the quality of life that we desire. We reaffirm our belief in a government of the people, by the people and for the people, and with an understanding and compassionate heart toward all the peoples of the earth, do hereby ordain and establish this constitution for the State of Hawaii. [Am Const Con 1978 and election Nov 7, 1978] FEDERAL CONSTITUTION ADOPTED The Constitution of the United States of America is adopted on behalf of the people of the State of Hawaii.

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From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 26, 2017 11:53 PM
To: JUDtestimony
Cc: mmcardle19@aol.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/26/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Peggy McArdle	Individual	Oppose	No

Comments: Aloha. Please oppose SB 895 This measure would criminalize Native Hawaiians who practice customary and traditional gathering rights protected under the Hawaii State Constitution on state land. Please protect Hawaii's indigenous people's rights. Mahalo.

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Sent: Sunday, March 26, 2017 10:12 PM
To: JUDtestimony
Cc: ryanadventure2@yahoo.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/26/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Ryan Sonognini	the average hawaiian	Oppose	Yes

Comments: We as the average Hawaiian citizens oppose this bill on the grounds that it violates our constitutional rights to hunt, gather and practice our religious beliefs and traditions on lands reserved for the exact rights stated. Please don't make criminals out of average Hawaiians living life as they've known for generations

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Sent: Sunday, March 26, 2017 10:07 PM
To: JUDtestimony
Cc: waiala.ahn@gmail.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/26/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Wai'ala Ahn	Individual	Oppose	No

Comments: Aloha, Please OPPOSES SB 895 To STOP THE CRIMINALIZING OF HAWAIIAN GATHERERS AND TRADITIONAL PRACTITIONERS who access lands under State control. This is a basic right for the indeginous people of this land who are the original stewards of this land and who for generations could care for, manage and responsibly take care of the āina and it's resources long before American government and fake state laws. Thank you for your time and consideration on such a sad bill that would criminalize the First Nation people of this land who are practicing their own rights.

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To: JUDtestimony
Cc: rstewart99489@hawaii.rr.com
Subject: *Submitted testimony for SB895 on Mar 29, 2017 14:00PM*

SB895

Submitted on: 3/26/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Roxane Stewart	Individual	Oppose	No

Comments:

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Sent: Sunday, March 26, 2017 8:21 PM
To: JUDtestimony
Cc: cushmanzoo@hawaiiantel.net
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/26/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Sharron Cushman	Individual	Oppose	No

Comments: I strongly oppose SB895.

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SB895

Submitted on: 3/26/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Pono Kealoha	Individual	Oppose	No

Comments:

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Cc: pamelapcm@gmail.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/26/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Pamela M Williams	Individual	Oppose	No

Comments: Strongly oppose this measure.

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Cc: naniomerod1@gmail.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/26/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
MaryAnn Omerod	Individual	Oppose	No

Comments: I strongly oppose SB895 RELATING TO CRIMINAL TRESPASS, which establishes the offense of criminal trespass onto state lands to the penal code and amends the offenses of criminal trespass in the second degree to apply to government agricultural property regardless of whether it is fenced, enclosed, or otherwise secured.

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From: mailinglist@capitol.hawaii.gov
Sent: Saturday, March 25, 2017 10:13 PM
To: JUDtestimony
Cc: kimcoco@kimcoco.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/25/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Kim Coco Iwamoto	Individual	Oppose	No

Comments: Please accept this testimony in STRONG OPPOSITION to SB895. I have served the homeless, or previously homeless, in various capacities since 2002. I most recently participated in the point-in-time count of unsheltered homeless. Through my first hand conversations with the houseless living on state land and discussions with outreach workers, I can attest that this bill would not motivate these people to move into housing (that does NOT even exist), to materialize rent (if housing was available), or comply with the rules that come with being a tenant. It breaks my heart that so many lawmakers that I respect and admire would vote to pass this kind of bill that not only lacks compassion, but is actually cruel. I feel like I am watching a friend cross the street to kick a person lying on the ground, who is poor or in poor health -- truly heartbreaking. We know there is no real appropriate housing options for them at this time - so what outcome does this bill seek to achieve? How can supporters of this bill assert that this is not about criminalizing the homeless, when this bill falls within the criminal code. Hawaii already criminalizes destruction of state property so this bill is not needed to stop that kind of behavior. Please remember you can do better than this bill, you can create better solutions; you did not become a lawmaker to scapegoat these people for being collateral damage to a profit-focused corporatocracy and short-sighted civic planning. Thank you for your time and consideration.

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Sent: Tuesday, March 28, 2017 9:40 AM
To: JUDtestimony
Cc: meridianwoman@yahoo.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Donna Grabow	Individual	Oppose	No

Comments: Oppose biased SB 895 This proposed law would Criminalize Hawaiian People of practicing traditional and customary gathering rights. These rights are PROTECTED by the De Facto State of Hawaii constitutional law Article 12,section 7 The De Facto State of Hawaii reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes that has been voted in on Nov 7, 1978. SB 985 is a part of a package of purposed Bills that the Fake Governor David IGE has put forth. So please call David Ige and thank him for trying to criminalize all Hawaiian nationals up to 30 days in prison on land that is rightfully Hawaiian Kingdom crown lands.

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 10:07 AM
To: JUDtestimony
Cc: stephmanera@gmail.com
Subject: *Submitted testimony for SB895 on Mar 29, 2017 14:00PM*

SB895

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Stephanie Manera	Individual	Oppose	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 10:49 AM
To: JUDtestimony
Cc: zaydie_2011@hotmail.com
Subject: *Submitted testimony for SB895 on Mar 29, 2017 14:00PM*

SB895

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Cheryl Lee Valmoja	Individual	Oppose	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 10:42 AM
To: JUDtestimony
Cc: fischerb001@yahoo.com
Subject: *Submitted testimony for SB895 on Mar 29, 2017 14:00PM*

SB895

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Brenda M H Fischer	Individual	Oppose	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 10:36 AM
To: JUDtestimony
Cc: hapagurl7669@yahoo.com
Subject: *Submitted testimony for SB895 on Mar 29, 2017 14:00PM*

SB895

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Theodora Akau Gaspar	Individual	Oppose	No

Comments:

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SB895 SD1 HD1

Testimony of Toni Withington sundownertoni@yahoo.com Hawi, Hawaii

I am opposed to the amendments to HRS §708-814 currently proposed in SB895 SD1 HD1. By including unfenced and unenclosed government agricultural lands in the list of criminal trespass in the second degree offenses, the public's right to use government-owned, historic Hawaiian trails and historic, government-owned roads within those areas could be affected significantly.

These trails and roads are commonly unfenced and located within larger agricultural tracts of land. The proposed law does not require government or private landowners to clearly justify the need to close the public historic Hawaiian trails and old government roads located on the subject properties and for how long.

In North Kohala we have historic Hawaiian trails on lands owned by the State of Hawai'i (per the Highways Act of 1892-see HRS §264-1), the state's Nā Ala Hele program has a legal mandate through HRS Chapter 198D to assert the state's ownership and to manage the trail for public use when resources are available to do so. Too often these trails remain closed for decades, due to lack of resources, but the public's rights to use the trails and roads are not diminished and are reserved for the future.

Posting of government-owned trails and roads as no trespassing could have far-reaching consequences, particularly if the closure is indefinite. Over time the old trails and roads are "lost" to neglect, becoming overgrown and unrecognizable, damaged, and/or destroyed. Although Native Hawaiian customary use of the trails is protected by this bill, no-trespassing signs are intimidating and discouraging of Native Hawaiian use, unless clearly stated as permitted on the no-trespassing sign. The bill, as written, will support the indefinite use of government-owned trails and roads for private benefit. How are the public's present and future rights to use the historic trails/roads protected?

The posting of no-trespassing signs for unfenced government agricultural property will seriously affect public rights to use historic Hawaiian trails and old government roads.

Mahalo for your consideration of these concerns.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 1:10 PM
To: JUDtestimony
Cc: bob-marion@hawaiiantel.net
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Marion McHenry	Individual	Oppose	No

Comments: I strongly oppose this bill.STOP THE CRIMINALIZING OF HAWAIIAN GATHERERS AND TRADITIONAL PRACTITIONERS who access lands under State control. Many of these lands were crown lands.

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 1:02 PM
To: JUDtestimony
Cc: dkg1031@gmail.com
Subject: *Submitted testimony for SB895 on Mar 29, 2017 14:00PM*

SB895

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Debra Koonohiokala Norenberg	Individual	Oppose	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 1:51 PM
To: JUDtestimony
Cc: blackbird4aloha@hotmail.com
Subject: *Submitted testimony for SB895 on Mar 29, 2017 14:00PM*

SB895

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Merle Hayward	Individual	Oppose	No

Comments:

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TO: Chair Scott Nishimoto, Vice-Chair Joy San Buenaventura, and Members of the
House Committee on Judiciary

FROM: Candace Fujikane, UH English Professor and Board Member of KAHEA: The
Hawaiian-Environmental Alliance

RE: Opposition to SB895, "Relating to Criminal Trespass"

DATE: March 28, 2017

Aloha mai kākou,

My name is Candace Fujikane, I'm an English professor at the University of Hawai'i, and I teach classes on land and water struggles in Hawai'i. I strongly oppose SB895, "Relating to Criminal Trespass."

From the public's point of view, this legislative bill is an attempt to circumvent Native Hawaiian traditional and customary rights. The Hawai'i State Constitution states in Article XII, section 7: "The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. [Add Const Con 1978 and election Nov 7, 1978]." We see the introduction of SB895 as a deliberate act toward extinguishing Native Hawaiian cultural practices, such as gathering rights, as well as their rights to protect Hawaiian cultural and natural resources, such as Mauna a Wākea. There is no statement in the bill that excludes Native Hawaiians based on their rights as stated in the Hawai'i State Constitution; therefore, it is logical to conclude that their rights are being targeted by this bill.

I want to raise a critical point here regarding these court cases and this legislative bill: justice must have the appearance of justice. As Hawai'i Supreme Court Justice Sabrina McKenna reminded us in what was ruled as BLNR's procedural error in the TMT case: "Justice can perform its function in the best way only if it satisfies the appearance of justice. Justice must not only be done, but manifestly seen as done." From the public's perspective, the targeting of Native Hawaiian customary and traditional rights does not have the appearance of justice.

I want to remind you of what happened in 1997 when a similar bill was introduced by then Senators Randy Iwase and Malama Solomon: SB8. Hula practitioners' response to Senate Bill 8 has been indelibly etched upon Hawai'i's collective memory, both for the power of their response in the 24-hour vigil at the State Capitol, beating the pahu to protect their right to gather for their hula practices, and the way in which it was documented and recorded in a book that I co-edited with Jonathan Okamura entitled *Asian Settler Colonialism: From Local Governance to the Habits of Everyday Life in Hawai'i*. There, Hawaiian cultural practitioner Momiala Kamahale explains in her essay, "'Īlio'ulaokalani: Defending Native Hawaiian Culture," that in 1995, the Hawai'i

Supreme Court ruled in favor of Pacific Access Shoreline Hawai‘i (PASH), reaffirming both Native Hawaiian rights to gather resources of the land and the fact that land titles in Hawai‘i confirm only a limited property interest as compared with Western land patents and concepts of property. She then describes the tremendous power of the Hawaiian cultural practitioners’ vigil, where hundreds of protectors of Hawaiian culture, both Hawaiian and non-Hawaiian, from diverse economic backgrounds and professions, gathered at the State Capitol to the beating of one hundred pahu. As Kamahale writes,

The scene of protest was the rotunda of the State Capitol, located in downtown Honolulu. Seated around the center of the large rotunda area, kumu hula, their students, and supporters began the most ancient and sacred of hula, ‘*Au‘a ‘Ia*—“Hold fast to tradition.” Though many of us had danced this hula in the past, this time it held a depth and power that connected us not only to the current political struggle but to a historic ancestral moment in the distant past. Each time the drums sounded, we heard “refuse to part with your traditions.” Each time the voices of the kumu hula chanted we believed the central message, “defend and protect your way of life.” And each time the dancers swirled in rhythmic body movements, we implicitly understood our responsibility to “keep traditions precious, for one day they will be taken.” (90)

Because of this powerful act of defending Native Hawaiian culture and the support of a key senator on the Ways and Means Committee, SB8 was killed. Hawaiian cultural practitioners, however, are always on the alert because they know that this bill will rise up again, and SB895 seems to be the most recent reincarnation of SB8. Kamahale concludes in her essay,

The denial of the existence of Native Hawaiians as a distinct people is a way of legitimizing the State’s claim to our ancestral lands. Destroying the right to traditional and customary practices eliminates the conditions necessary for the [Hawaiian] national culture to flourish. Thus, from my perspective, Native Hawaiians have become victims of a conscious and persistent effort of destruction directed against them. Presently, cultural resilience among Native Hawaiians remains within the colonial frame, one in which we are subject to a sustained effort to destroy us. (95-96)

I bring up this chapter in our book to show you that these decisions are historical decisions that will be on public record, which will be read and studied by students in Hawai‘i and across the country in Hawaiian studies, in legal studies, in ethnic studies, in Indigenous studies, and in settler colonial studies.

I urge you to consider the direction you will take this historic record, and I urge you to oppose SB895.

Sincerely,



Candace Fujikane
Associate Professor of English
University of Hawai'i

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 2:05 PM
To: JUDtestimony
Cc: frankiestapleton@gmail.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Frances K. (Frankie) Stapleton	Individual	Oppose	No

Comments: Aloha e Chair Nishimoto, Vice Chair SanBuenaventura and members of the Committee of the Judiciary. My name is Frances K. (Frankie) Stapleton, a 47-year resident of the State of Hawaii, currently living at 14-803 Crystal Circle, Pahoa HI 96778. I've spent most of my adult life here in Hawaii as a journalist and school teacher, now retired. I am testifying in opposition to SB895 SD1 as I feel it unnecessarily criminalizes not just homeless people but the public at large. Despite the wording of this bill, it just adds to the burden of the homeless, ever increasing in number! For shame! And if it's NOT about the homeless as stated, then it is aimed at citizens publicly protesting governmental or government's "friends" actions, which is a matter of First Amendment rights and the practice of free speech! I can't believe the Aloha State is trying to criminalize our pathways which are often state DOT ag properties, especially on the Neighbor Islands. Whatever happened to the Law of the Splintered Paddle????!!!. Have you legislators lost all touch with the common people?... that you don't realize every citizen in the state is a potential pedestrian and not everyone travels in automotive vehicles? Nor can we run round looking for signs w/2-inch letters telling us we can't walk there, stand there or sit down! I have a home but being older now and slightly disabled with knee and ankle problems, going on excursions or just walking my leashed puppy in communities around the state, I have sometimes just needed to sit somewhere and rest. And there are lots of senior citizens, parents with young children, disabled people in wheelchairs or with walkers, just needing to rest. Please be pono and vote against SB895 SD1. Respectfully submitted, Frankie Stapleton

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 2:33 PM
To: JUDtestimony
Cc: okalani_6@msn.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Nolan Okalani Tallett	Individual	Comments Only	No

Comments: Unfortunately I will not be able to make it to testify in person tomorrow but I am still in opposition of Bill SB895. Initially I was planning to be there. Mahalo!!

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 2:57 PM
To: JUDtestimony
Cc: 3242keao@gmail.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Aggie Marti-Kini	Individual	Oppose	No

Comments: This Bill violates our State and Constitutional rights as public citizens to access our lawful easements, trails and paths.

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 2:55 PM
To: JUDtestimony
Cc: ronsan2224@aol.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Ronald S. Fujiyoshi	Individual	Oppose	No

Comments: I strongly oppose this bill. It is vague. Does it aim at the homeless? If so, Kamehameha I proposed as his first law the Law of the Splintered Paddle. To deal with homelessness, solve the problem! You do not solve the problem by upping the punishment! Our prisons are filled with poor people, including the majority Kanaka Maoli. We do not need more people in our prisons! If this bill is to target the protestors on Mauna Kea, I definitely oppose this. Judge Takase through out the cases against trespassing. The rights of native Hawaiians are not spelled out in this bill. I oppose this bill!

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 3:56 PM
To: JUDtestimony
Cc: barbarapolk@hawaiiantel.net
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM
Attachments: Testimony SB895 Criminal Trespass-2.odt

SB895

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Polk	Individual	Oppose	No

Comments:

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March 28, 2017

**TESTIMONY IN OPPOSITION TO SB8 95 SD1 HD1 RELATING TO CRIMINAL TRESPASS
by Barbara Polk**

Dear Chair Scott Nishimoto, Vice Chair Joy SanBuenaventura and
Members of the House Committee on the Judiciary,

SB895 would criminalize remaining on State land when it is closed or otherwise restricted or under state highways. I strongly oppose this bill because it is yet another step in criminalizing homelessness. The State Legislature, over the past decade, has done little to provide housing or adequate shelter for people who cannot afford the high cost of rentals or home purchase in Hawaii. Yet the city and state continue to take steps to see to it that those people cannot stay or sleep anywhere.

The sweeps of homeless people (as though they were trash to be swept up!) has been a failed strategy, only increasing the pain of the weakest members of our community rather than addressing their needs. While the human cost has been extremely high, as a taxpayer I am also concerned with the monetary cost of this failed policy. Many millions of dollars have been wasted over the past decade to arrest, jail prior to trial, and try those who do not have houses, and more recently, to set up procedures for recording confiscated property and providing a system for reclaiming it. Please do not waste more money pushing people around.

I have read the testimony presented at the Senate hearing on SB 895 by the Governor's Coordinator on Homelessness, seeking to reassure legislators that sweeps of homeless people is paired with support and assistance. However, we all know that there is not enough housing to place currently houseless people in. That testimony appears to be wishful thinking, presenting aspirations as though they were successes. Surely assisting 290 Kakaako homeless individuals over a two to three year period to find "shelter" or permanent housing, makes little difference to the other 6000-12,000 houseless individuals in the State, and hardly justifies further limitations on where houseless individuals can stay. In particular, I cannot see how sheltering under highways is a problem for anyone. It certainly beats sheltering in the doorways of business throughout the island.

Until such time as the state can provide permanent housing for those who are houseless, I urge you to defer SB895.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 4:07 PM
To: JUDtestimony
Cc: Neicey_1017@hotmail.com
Subject: *Submitted testimony for SB895 on Mar 29, 2017 14:00PM*

SB895

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Denise Hokulani Epstein	Individual	Oppose	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 29, 2017 7:05 AM
To: JUDtestimony
Cc: kaiulambert@yahoo.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/29/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
kaiulani	Individual	Oppose	No

Comments: I am in total opposition of this bill which appears to criminalize two groups of people. The Homeless and Hawaiian practitioners. You need to really put some effort into fixing the homeless situation versus putting out grapy bills like this. Do you due diligence. Hawaiian gathering rights is a constitution right and not something you can spin with this bill. Kill It!

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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 29, 2017 2:27 AM
To: JUDtestimony
Cc: kmurray.testimony@gmail.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/29/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Karen Murray	Individual	Oppose	No

Comments: Please oppose SB895. This bill is so wrong and so wrong for Hawaii. Please preserve Hawaiian gathering rights and all human rights to our connection to the 'aina.

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 10:58 PM
To: JUDtestimony
Cc: rayneregush@aol.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Rayne Regush	Individual	Oppose	No

Comments: Aloha e Chair Nishimoto and members of the House Committee on Judiciary: I am testifying in strong opposition to SB 895 SD1 HD1 which seeks to add a new section "Criminal trespass onto state lands" to HRS Chapter 708 Offenses Against Property Rights. This bill unnecessarily criminalizes the public at large and particularly residents in rural areas near government agricultural lands. The bill's last page notes that the criminal trespass offense applies to government agricultural property even though it may not be fenced or enclosed. This clearly applies to historic trails, which are usually not fenced on both sides or otherwise enclosed. After reviewing testimony from the various state agencies, it is apparent that public trust obligations related to historic trail preservation and access have not been considered. This law will make it that much easier to prohibit access to and along public trails, despite the protections afforded by the Highways Act of 1892. This threat is compounded by DLNR's lack of resources and tendency to dodge historic trail ownership, despite generations of public use. Furthermore, the posting of no trespassing signage may deter Native Hawaiians from exercising their legally protected traditional and customary practices and access to resources and culturally significant areas within government property. Finally, this bill is unnecessary because existing Hawaii law already addresses penalties for various trespass offenses: See HRS §§ 708-13; HRS §§ 708-14; HRS §§ 708-15; HAR §§ 13-146-5; HRS § 184-5; and HRS 711-1105(1). Please vote against SB895 SD1 HD1. Respectfully submitted, Rayne Regush Kauai

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 9:27 PM
To: JUDtestimony
Cc: launahele@yahoo.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Benton	Individual	Oppose	No

Comments: I oppose SB895 SD1. This measure may have a substantial effect on the perpetuation of constitutionally-protected Native Hawaiian traditional and customary practices. SB895 SD1 also has a high likelihood of unintentionally criminalizing the homeless community, many of whom are Native Hawaiian, potentially exacerbating the homelessness crisis facing our islands.

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 7:36 PM
To: JUDtestimony
Cc: dcmu49@gmail.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Robert U. Cazimero	Individual	Oppose	No

Comments: I do not see needed language protecting Native Hawaiian gathering and cultural rights as noted in the Hawai'i State Constitution, which should not be restricted.

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 7:35 PM
To: JUDtestimony
Cc: burtonwhite@gmail.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Burton White	Individual	Oppose	No

Comments: I do not see needed language protecting Native Hawaiian gathering and cultural rights as noted in the Hawai'i State Constitution, which should not be restricted.

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 6:32 PM
To: JUDtestimony
Cc: ygetemail@yahoo.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Joanna Maile Pokipala	Individual	Oppose	No

Comments: Aloha mai Kākou! My name is Joanna Pokipala and I oppose SB895. It should never be a crime to practice the rights of a Hawaiian. This bill will state just that. We are the host culture. Without Hawaiians and the culture, you have no Hawaii. Keep Hawaii, Hawaii and let the people practice their akua given right. Please oppose this bill. Mahalo, Joanna Pokipala

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 5:20 PM
To: JUDtestimony
Cc: rubyolili@gmail.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM
Attachments: SB895 SD1 HD1 Testimony.docx

SB895

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Roberta (Ruby) Tzimeas	Individual	Oppose	No

Comments:

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Honorable Members of the Judiciary Committee,

I am writing to express my concerns regarding SB895 SD1 HD1, as it is currently written. Specifically, I request that you consider the unintended consequences of amending HRS Sections 708-814, and make appropriate changes before passing the Bill on to the full House.

On Hawai'i Island, undeveloped, government-owned lands include many public trails protected by the Highways Act of 1892. A significant number of them cross private landholdings, and have yet to be surveyed and officially opened to the public due to staffing shortages. However, they are in regular use, and it is important that this practice continue because it keeps them from being overgrown or subsumed into private holdings and lost forever.

Under the provisions of the revised law, both hikers and Native Hawaiians utilizing historic PUBLIC trails to exercise their gathering rights, could be confronted with keep out signs, and could be cited for criminal trespass in the second degree. I do not believe that this was the intent of the bill, but that would be the effect.

I thank you for your consideration. This is not a trivial matter to many of us on Hawai'i Island.

Where the bill gets especially relevant to those of us who live in rural areas surrounded by vast, undeveloped agricultural lands, is from page 5 to the last page, where it proposes to amend Section 708-814 of the HRS. Agricultural private lands have had this protection from trespassers in the law for some time. This bill would add government property to this protection. The only requirement would be to post no trespassing signs at reasonable intervals and next to roads or trails entering the property. My major concern is where historic Hawaiian trails exist on private lands. These trails, in many cases, are government property. The Haleakalā Trail, Judd Trail, Ho`okena-Kauhakō Trail, several trails to Ka`awaloa, and Kaua`i Ala Loa, are just a few historic trails that come to mind. These trails and many others are kept closed by the state for lack of "resources" to open them to the public. While they remain closed, they are vulnerable to being "lost" to neglect, becoming overgrown and unrecognizable, damage, and destruction. This law will make it that much easier to legally prohibit access to trails that

are public trails per the Highways Act of 1892. Most people are respectful of keep out signs, and over time the knowledge that a public trail exists in that area will be lost. Only Native Hawaiians will be able to legally access the public trails as part of customary practices, but posting a no trespassing sign at the trail is likely to discourage or intimidate Native Hawaiians too. The law currently protects Native Hawaiian rights to use the trails – see Section 6 on the bill’s last page. Is this an acceptable approach where public trails are concerned? Another important detail: the Bill’s Description on the final page states that the criminal trespass offense applies to government agricultural property even though it may not be fenced or enclosed. This clearly applies to historic trails, which are usually not fenced on both sides or otherwise enclosed.

The more I read this bill, the more deeply concerned I become. I urge you to email your concerns to the House Judiciary Committee members as soon as possible, if you share these concerns! Here’s the

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 4:26 PM
To: JUDtestimony
Cc: rspacer@yahoo.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Spacer	Individual	Oppose	No

Comments: Aloha Senators. I OPPOSE this bill. This bill if it becomes law will likely be used against members of the public who are not Native Hawaiian who use historic trails owned by the state such as Haleakala on Maui and the ala loa trail in the moku of Koolau on Kauai. The introducer is Kauai Senator Kouchi. The description says it was introduced on behalf of someone. I would like to know exactly who. A rich land owner like Grove Farm? Or the Wilcox family (Waioli Corporation) who are getting Kauai County to spend \$70,000. of taxpayer monies to erect a fence to keep the public from using our atate owned ala loa trail? Or Waioli's neighbor and supporter Patricia Hanwright? Or Facebook's Mark Zuckerberg? All of these land owners either deny the state owned historic trails exist, or that the trail is somewhere other than where people use it. This bill is a bad idea and should be scuttled. Our Highways Act (HRS 264-1) guarantees our historic trails are public access property. This bill conflicts with this law when it comes to state owned historic trails.

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LATE

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 29, 2017 7:35 AM
To: JUDtestimony
Cc: kaikeanaaina@gmail.com
Subject: *Submitted testimony for SB895 on Mar 29, 2017 14:00PM*

SB895

Submitted on: 3/29/2017
Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Kainoa Keanaaina	Individual	Oppose	No

Comments:

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LATE

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 8:36 PM
To: JUDtestimony
Cc: katc31999@gmail.com
Subject: *Submitted testimony for SB895 on Mar 29, 2017 14:00PM*

SB895

Submitted on: 3/28/2017
Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Kat Culina	Individual	Oppose	No

Comments:

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From: Joan Kinchla <islandhopr@hawaii.rr.com>
Sent: Tuesday, March 28, 2017 6:05 PM
To: JUDtestimony
Subject: Testimony SB895 SD1 HD1

LATE

Aloha Judiciary Committee Members:

I heard about the possible amending of HRS Sections 708-814 and am quite concerned, that by doing so, will restrict many of us Hawaiian residents who enjoy hiking public trails here on the Big Island. I believe amending Section 708-814 should not limit those that respect the 'aina and wish to enjoy it by hiking. I also believe it is against the Highways Act of 1892 and further consideration needs to be given before the proposed amendment is put to a vote.

As a past hike leader for the Kona Hiking Club, I have witnessed where too many historic/public trails has been lost due to private property owners placing No Trespassing signs and/or diverting a public trail to their benefit and to the detriment of hikers. I do not believe any more historic and/or public trails should be further compromised. Please accept my testimony.

Respectfully,

Joan Kinchla
77-6393 Kaheiau St.
Kailua Kona, HI 96740
808-987-1869

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 29, 2017 8:15 AM
To: JUDtestimony
Cc: donna.akina@gmail.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/29/2017
Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
donna akina	Individual	Oppose	No

Comments: To The Honorable Sen. Gilbert S.C. Keith Agaran, Chair Senate Committee on Judiciary and Labor From Donna Akina Subject SB 895 SD 1 HD 1 Respectfully, I oppose this bill and ask that it be killed or deferred until the following clarifications are made: Does SB 895 conflict with the PASH decision and Article XII Section 7 of the Hawai'i Constitution? Does SB 895 conflict with HRS Sec. 7-1? Does SB 895 conflict with HRS Sec. 1-1? As the bill reads now, it appears to be an attack on Hawaiian traditional and customary rights. Thank you.

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LATE

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 29, 2017 8:03 AM
To: JUDtestimony
Cc: kohala1@yahoo.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/29/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Joe Carvalho	Individual	Oppose	No

Comments: I am afraid this bill does not take into account the many trails on the big isle, especially on the North Kohala area where I am from. I can imagine the state lands that we have procured along Akoni Pule highway with intimidating signs KAPU NO TRESPASSING. And then branding me a criminal because I walked into Pao'o to fish from shore. Auwe, Please rethink this bill. aloha, joe carvalho halaula,Kohala

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 3:09 PM
To: JUDtestimony
Cc: pratt.ronni@yahoo.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Ronni Pratt	Individual	Oppose	No

Comments: Aloha JUD Committee, Please accept this testimony in STRONG OPPOSITION to SB 895 which would establish a new criminal trespass offense to protect against people remaining on improved state land when it is closed or otherwise restricted, or on or under state highways. In addition to this, SB 895 expands the state's reach to regulate by establishing that the criminal trespass in the second degree be amended to include government agricultural lands that are not fenced, enclosed, or secured in a manner designed to exclude intruders when there is appropriate signage giving notice that the property is government property and trespassing is prohibited. I oppose this measure because it is over-broad, vague and will have unintended negative consequences long term. This measure does not incorporate Hawaii's unique land system and it attempts to penalize the most vulnerable of our population. I am extremely disappointed in the introducers and supporters of this measure. It is short-sighted and a band-aid solution that does nothing to address the root problems in our state. This measure is poorly thought out. More discussion is needed to determine the goals of the state and that discussion must include the people directly impacted by this measure including but not limited to Native Hawaiian cultural practitioners, the Honolulu Police Department, State Enforcement, Homeless advocates, Prison advocates, Judiciary, and the respective agencies that manage state land resources. SB 895 is likely unconstitutional because the land base to which it attempts to regulate is too broad. It gives state agencies unfettered discretion to regulate state lands and it does not address the multitude of implementation and enforcement issues that will arise if it becomes law. SB 895 criminalizes a person just for being on state lands under an arbitrary standard. SB 895 includes lands that are improved but extends criminal trespass to "unfenced" agricultural lands. This is absurd because of Hawaii's unique land system and the right of cultural practitioners to enter and use state lands. This measure will likely criminalize Native Hawaiian cultural practitioners and our vulnerable homeless population despite the express amended provisions within the law. It is a knee jerk reaction to give police or state enforcement the tools they need most immediately but it does nothing to incorporate the long-term impacts on our criminal justice system or on the rights of cultural practitioners. I see this measure as a direct attack on Native Hawaiians because of our constitutional cultural rights tied to state

lands and for the fact that Native Hawaiians make up a large majority of the homeless population. First, this measure attempts to regulate Native Hawaiian customary and traditional rights out of existence (even though Section 6 declares protections). Section 6 means nothing if enforcement arms such as the Police or State agencies lack the requisite training to be able to identify cultural practices and cultural practitioners. Our state agencies lack training in this area. Because of the lack of training, enforcement arms will inevitably run into issues when they need to enforce this law and likely violate a person's constitutional rights. SB895 is a bad bill, and I humbly ask you to Oppose it! Thank you, Ronni Pratt

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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 29, 2017 10:16 AM
To: JUDtestimony
Cc: juan@islandbreath.org
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/29/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Juan Wilson	Individual	Oppose	No

Comments: Kill this bill! It is a wedge to criminalize people being public land and committing no crime. I understand that there are sensitive areas and places that need protection, but this bill is blunt instrument to push homeless people around rather than fixing the problems they face.

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Sent: Wednesday, March 29, 2017 9:24 AM
To: JUDtestimony
Cc: sthatchertalivaa@gmail.com
Subject: *Submitted testimony for SB895 on Mar 29, 2017 14:00PM*

SB895

Submitted on: 3/29/2017
Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Summer-Rey Thatcher-Taliva'a	Individual	Oppose	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 29, 2017 11:41 AM
To: JUDtestimony
Cc: heretamanui001@yahoo.com
Subject: *Submitted testimony for SB895 on Mar 29, 2017 14:00PM*

SB895

Submitted on: 3/29/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
christopher ramento	Heretama Nui/Halau Hula O Kauhionamauna/Na Mamo O Puuanahulu	Oppose	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 29, 2017 12:57 PM
To: JUDtestimony
Cc: lokai@hawaii.edu
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/29/2017
Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Lokai	Individual	Oppose	No

Comments: STRONGLY OPPOSE. THIS IS OUR RIGHT AS HAWAIIAN PEOPLE.

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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 29, 2017 1:46 PM
To: JUDtestimony
Cc: madeinhawaii@mac.com
Subject: Submitted testimony for SB895 on Mar 29, 2017 14:00PM

SB895

Submitted on: 3/29/2017
Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Dr. Chris Keliwaiho'ikeone Camarillo	Individual	Oppose	No

Comments: Aloha This bill violates rights protected under kanawai mamalahoe, and the 1st amendment of the US constitution. This bill goes directly to criminalize our hunting gathering rights and our right to protect our lands from illegal development. Oppose this bill. The penalty for breaking kanewai mamalahie is sacrifice.

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Sent: Wednesday, March 29, 2017 1:18 PM
To: JUDtestimony
Cc: carlfpao@gmail.com
Subject: *Submitted testimony for SB895 on Mar 29, 2017 14:00PM*

SB895

Submitted on: 3/29/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Carl FK Pao	Individual	Support	Yes

Comments:

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Sent: Wednesday, March 29, 2017 1:07 PM
To: JUDtestimony
Cc: amtamaira@gmail.com
Subject: *Submitted testimony for SB895 on Mar 29, 2017 14:00PM*

SB895

Submitted on: 3/29/2017
Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Marata Tamaira	Individual	Support	No

Comments:

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