

DAVID Y. IGE
GOVERNOR OF
HAWAII



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

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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
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

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committee on
PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS**

**Thursday, March 14, 2019
1:15 PM
State Capitol, Conference Room 229**

**In consideration of
HOUSE BILL 213, HOUSE DRAFT 1
RELATING TO PRIVATE PROPERTY**

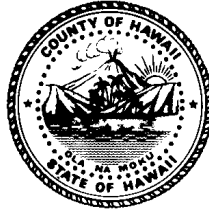
House Bill 213, House Draft 1 proposes to authorize a property owner or agent to enter adjacent property under certain conditions to control *Albizia* trees. **The Department of Land and Natural Resources (Department) supports this measure and offers the following comments.**

Due to their extreme height and brittle branches, *Albizia* trees pose a threat not only to properties on which they are rooted, but on adjacent properties where branches and other debris may fall during high wind events. The Department recognizes that the ability of landowners to control *Albizia* on adjacent properties may decrease health and safety risks associated with this species.

The Department notes that it may be beneficial to address in the measure issues of liability for any injuries or damages resulting from the removal of an *Albizia* tree.

Thank you for the opportunity to comment on this measure.

Harry Kim
Mayor



Wil Okabe
Managing Director

Barbara J. Kossow
Deputy Managing Director

County of Hawai‘i Office of the Mayor

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March 11, 2019

Senator Clarence K. Nishihara, Chair
Senator Glenn Wakai, Vice Chair
Committee on Public Safety, Intergovernmental, and Military Affairs

Dear Chair Nishihara, Vice Chair Wakai and Committee Members:

RE: HB 213, HD1 Relating to Private Property

Albizia is an attractive but extremely dangerous invasive species. It is hazardous to residents, travelers, first responders, and anyone in the vicinity of its brittle limbs.

HB 213, HD1 is an attempt to allow landowners, adjacent to a property that has albizia, to take action to deal with the danger, but within clearly defined limits. This provision is worthy of endorsement—laws should be passed that are good for the community, and that are limited so as to assure minimal infringement of the rights of others.

I am concerned that the use of the phrase “control...trees” may not be broad enough to accomplish the purpose of this bill. I believe the intent should be to “fell and remove” such trees as described in (a) (1) (B) of the bill, but “control” might be interpreted as something closer to “trimming.” I would suggest that “control” be replaced by a stronger word or phrase, or a definition be added that states that “control” includes “felling and removal.” Perhaps copy HRS 194-5, also dealing with invasive species, which uses the phrase “control or eradication.”

I hope you will act favorably on HB 213, HD1.

Respectfully Submitted,

Harry Kim
MAYOR

**TESTIMONY BEFORE THE SENATE COMMITTEE ON
PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS**

H.B. 213, HD1

Relating to Private Property

Thursday, March 14, 2019
1:15 p.m., Agenda Item #1
State Capitol, Conference Room 229

Sharon Suzuki
President, Maui County and Hawai'i Island Utilities
Hawaiian Electric Light Company, Inc. & Maui Electric Company, Limited

Aloha Chair Nishihara, Vice Chair Wakai and Members of the Committee,

My name is Sharon Suzuki and I am testifying on behalf of Hawaiian Electric Company Inc. and its subsidiary utilities Maui Electric Company, Limited and Hawai'i Electric Light Company, Inc. ("the Hawaiian Electric Companies") in support of H.B. 213, HD1, Relating to the Private Property.

H.B. 213, HD1 provides that property owners should have the authority to enter adjacent properties to control albizia trees to prevent or address hazardous conditions. Hawaiian Electric Companies support the H.B. 213, HD1 for the following reasons:

- Albizia trees are an invasive species, and a hazard to public safety and critical infrastructure.
- Strands of brittle, invasive Albizia trees up to 250 feet tall grow on many public and private properties. Tropical Storm Iselle brought down many Albizia trees, blocked roadways, and caused millions of dollars in damage to homes and important electric utility lines. Broken tree trunks continue to send out new growth creating even more unstable conditions, while seedlings are rapidly germinating in disturbed areas.

- There are many landowners that either refuse, or fail to respond to repeated notices to control invasive species on their property.
- This bill allows for an owner of real property, or the owner's agent to enter vacant real property that is privately owned, and adjacent to the entering owner's property, after unsuccessful attempts to contact the owner of record to control one or more albizia trees located on the property, if the entering owner reasonably believes that: (1) the alizia tree(s) create a condition that could become hazardous to the entering owner's property or persons if left untreated, (2) the albizia may be felled, removed and or treated without damaging any structure, utility pole, or utility line.

Accordingly, the Hawaiian Electric Companies support H.B. 213, HD1 which will help further efforts to control or eradicate albizia trees. Thank you for this opportunity to testify.

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March 13, 2019
Attn: House Committee on Judiciary
RE: HB213 Relating to Private Property

Aloha,

I am writing on behalf of the Big Island Invasive Species Committee to express the Committee's support for HB213 relating to albizia tree control.

Since 2013, BIISC has been working with communities that have been impacted by albizia trees. In 2014, Tropical Storm Iselle crushed homes, cars, and electric lines, leaving residents trapped in their homes for hours and without power for weeks, and costing millions in damages to the County, State, and utility companies.

In the months and years following the storm, we have worked with community members who stepped forward, determined to organize and work to create safer communities through albizia control. In some subdivisions, hundreds of lots have been cleared of albizia through the effort of volunteers working tirelessly to obtain permission and then enter these lots to treat trees.

Their work is constrained by the lack of response from distant property owners. Without permission from an absentee owner, neighbors must watch in growing concern as young albizia, which could have been treated for a few dollars, grow into hazards that can cost thousands for removal – or thousands in damages from dropping limbs. Many residents have expressed their willingness to pay to have a hazardous tree removed in order to save their own homes, but have no way to do so when the owner will not respond to notifications.

HB213 gives residents some recourse in attempting to address these frightening and dangerous situations. We fully support HB213 allowing access for this key aspect of public safety in Hawaii.

Mahalo for your consideration,

Franny Kinslow Brewer
Communications Director

HB-213-HD-1

Submitted on: 3/8/2019 11:41:01 AM

Testimony for PSM on 3/14/2019 1:15:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Allix Hessick | Individual | Support | No |

Comments:

It only makes sense to be legally able to defend one's own property from these invasive trees, and to be able to defend one's neighbors property against the dangers of allowing these trees uninhibited growth on the land.

They were a mistake to bring here, and are proving to be costly to take care of in conventional means

HB-213-HD-1

Submitted on: 3/12/2019 6:33:16 AM

Testimony for PSM on 3/14/2019 1:15:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Andrea Davis | Individual | Comments | No |

Comments:

Thank you for the opportunity to testify in support of this bill.

Please retain words calling for the eradication of Albizia trees. Controlling them would be more costly than eradication. These trees grow up to 15 feet a year and we are facing a small forest of these trees on my neighbor's property. Property owners of these trees should pay for the eradication particularly when they are intentionally grown as on my neighbor's property.

I have a small fruit tree farm in Pupukea. My neighbor had his land cleared several years ago and allowed his giant Albizia tree to seed the cleared land. His many Albizia trees border my agricultural land and their branches cover nearly 30 feet of our land. We are in danger of sudden limb drop every time we work our land under these trees. Given the extreme height of the trees even small branches that drop can cause serious injury and even death. My neighbor has allowed the trees to grow despite repeated requests to his wife to take out the trees and a certified letter to the owner on the danger of these trees.

HB-213-HD-1

Submitted on: 3/13/2019 4:25:48 PM

Testimony for PSM on 3/14/2019 1:15:00 PM

LATE

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Kawehi Lopez | Individual | Support | No |

Comments:



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

ON THE FOLLOWING MEASURE:

H.B. NO. 213, H.D. 1, RELATING TO PRIVATE PROPERTY.

LATE

BEFORE THE:

SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND
MILITARY AFFAIRS

DATE: Thursday, March 14, 2019

TIME: 1:15 p.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Clare E. Connors, Attorney General, or
Lance Goto, Deputy Attorney General

Chair Nishihara and Members of the Committee:

The Department of the Attorney General (the Department) submits comments on this bill.

The purpose of this bill is to authorize a property owner or agent to enter adjacent private property with albizia trees to "control" the trees after doing the following: (1) consulting with a tree arborist to confirm that the albizia trees are creating a condition that could become hazardous, but could be safely addressed; and (2) unsuccessfully making two or more attempts to contact the owner of the adjacent private property within the previous thirty days. The bill also establishes a defense for the entering property owner or agent to criminal prosecution for criminal trespass and criminal property damage offenses.

The bill seeks to achieve its purpose by adding a new section to chapter 708, Hawaii Revised Statutes (HRS), a chapter within the Hawaii Penal Code that addresses offenses against property rights. But a law to allow for control of albizia trees on private property should not be in the Hawaii Penal Code.

On page 2, at lines 14-21, the bill requires the entering owner to consult with a certified arborist who must confirm certain conditions about the albizia tree on the private property. It is not clear, however, how the certified arborist is to legally enter the private property, if necessary, to make the necessary assessments.

On page 3, lines 8-12, the bill creates the following defense:

It shall be a defense to citation or prosecution under sections 708-814, 708-815, 708-820, 708-821, 708-822, 708-823, and 708-823.5 that the entering property owner or agent entered an adjacent property for the purposes of and in compliance with this section.

There are two primary concerns with this defense. First, this provision creates a defense for the person entering another's land to protect the person from prosecution for criminal trespass and five different criminal property damage offenses. For example, criminal property damage in the first degree, in violation of section 708-820, HRS, prohibits damaging property in excess of \$20,000, or damaging agricultural equipment, supplies, or products, including trees, bushes, or any other plant and livestock of another, in an amount exceeding \$1,500. This defense provision does not set any limitations to the type of conduct that is protected. It does not limit the defense for the criminal property damage offenses to just damage to albizia trees. A person could enter another's private property to control albizia trees and be protected from prosecution for conduct that resulted in damage to other property. Perhaps the defense should be limited to damage to albizia trees.

Second, this defense places the burden on the prosecutor to disprove beyond a reasonable doubt that the property owner or agent entered an adjacent property for the purposes of and in compliance with the albizia control provisions. See section 701-115(2)(a), HRS. The owner or agent entering the property would not have to prove compliance with the albizia control provisions. This means that the prosecutor would have to somehow disprove that the owner or agent consulted with a certified arborist and made two or more unsuccessful attempts within the previous thirty days to contact the owner of the property containing the albizia trees. But this information would not be accessible to the prosecutor, so it would be extremely difficult for the prosecutor to disprove these matters.

It would be more appropriate to establish this defense as an affirmative defense, which places the burden on the defendant to prove by a preponderance of the evidence facts that negate the defendant's penal liability. See section 701-115(2)(b), HRS. Then the defendant owner or agent would have to prove compliance with the albizia control

provisions. Section 712-1231(b), HRS, is an example of an affirmative defense provision that could be used in this bill.

On page 4, at lines 1-7, the bill amends section 708-816, HRS, in an attempt to create a defense to trespass for the albizia control provisions. But section 708-816 is inapplicable to this bill. It does not involve trespass to private property. It provides that traveling to or from a public beach over certain government lands does not constitute trespass. Not only is section 708-816 inapplicable to this bill, but it is also inconsistent with the title of this bill, "Relating to Private Property." Therefore, we recommend deleting this section.

The Department appreciates this opportunity to provide comments.