

STAND. COM. REP. NO.

460

Honolulu, Hawaii

FEB 19 2021

RE: S.B. No. 1410
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirty-First State Legislature
Regular Session of 2021
State of Hawaii

Sir:

Your Committees on Agriculture and Environment and Hawaiian Affairs, to which was referred S.B. No. 1410 entitled:

"A BILL FOR AN ACT RELATING TO AGRICULTURE,"

beg leave to report as follows:

The purpose and intent of this measure is to:

- (1) Amend section 165-2, Hawaii Revised Statutes, by adding "customary and traditional subsistence farming", defined as an activity "conducted by a native Hawaiian cultural practitioner", that is used for direct personal or family consumption on land that contains no dwelling or residence and on which no person resides, to the definition of "farming operation";
- (2) Amend chapter 205, Hawaii Revised Statutes, to add customary and subsistence farming to the permitted uses within the State Agricultural District, which is currently reserved primarily for commercial agriculture; and
- (3) Amend chapter 226, Hawaii Revised Statutes, to protect customary and traditional subsistence farming as part of the State's economic policy.



Your Committees received testimony in support of this measure from seven individuals. Your Committees received comments on this measure from the Department of Agriculture, Office of Planning, Center for Hawaiian Sovereignty Studies, and one individual.

Your Committees find that subsistence farming is relied upon by native Hawaiians and should be protected. Article XI, section 3, of the Constitution of the State of Hawaii requires the Legislature to provide standards and criteria to increase Hawaii's agricultural self-sufficiency. Prioritizing traditional agricultural techniques such as traditional Hawaiian farming is increasingly viewed as good policy. The United Nations Commission on Trade and Development urges nation states to support the development of sustainable small-scale farms and traditional farming systems to achieve food security, particularly considering climate change. Supporting traditional farming is also consistent with the recommendations of the Taro Security and Purity Task Force's legislative report, emphasizing the need to invest in traditional farming and crops to perpetuate culture and to support disaster preparedness and food security in our islands.

Your Committees support the practice of traditional Hawaiian farming to promote Hawaii's agricultural self-sufficiency. Your Committees also find that traditional Hawaiian farming systems still play a critical role in Hawaii and should be encouraged to promote greater self-sufficiency, crop diversity, and food security. Moreover, traditional Hawaiian crops like kalo, uala (sweet potato), limu (various seaweeds), awa, hoio (large native fern), and olena (turmeric) that were cultivated using these traditional Hawaiian farming techniques continue to be important agricultural products for food, medicine, and cultural practices today.

However, your Committees find that equating native Hawaiian traditional and cultural subsistence farming with commercial agriculture under the Hawaii Right to Farm Act may lead to numerous zoning and land-use disagreements and disruptions to county administration, which may ultimately cause more harm than good for the agriculture community, including subsistence farmers.

In addition, your Committees find that article XII, section 7, of the Hawaii State Constitution reaffirms traditional and customary rights exercised for subsistence, cultural, and



religious purposes by native Hawaiians, which are an integral part of Hawaiian civilization retained by its descendants. Therefore, your Committees find it necessary to acknowledge that the rights of native Hawaiians to engage in customary and traditional subsistence farming shall not be trumped by any judicial interpretation of article XII, section 7, of the Hawaii State Constitution.

Your Committees believe that assuring the right to subsistence farming under the Hawaii State Planning Act preserves the spirit of this measure while avoiding potentially detrimental unintended consequences.

Accordingly, your Committees have amended this measure by:

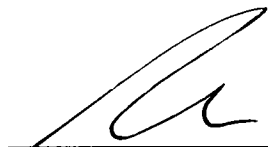
- (1) Deleting language that would have included customary and traditional subsistence farming in the Right to Farm Act, to address the concerns of conflation of commercial agriculture and subsistence farming;
- (2) Amending the Hawaii state plan policy to achieve the culture objective of the Hawaii State Planning Act to include assurance of the right of traditional and customary subsistence farming by:
 - (A) Providing that the right of traditional and customary subsistence farming shall not be preempted by any judicial interpretation of article XII, section 7, of the Hawaii State Constitution;
 - (B) Allowing traditional and customary subsistence farmers to reside on their land upon approval by the Department of Agriculture and verification by a cultural practitioner council that the land use is traditional and customary;
 - (C) Declaring that no court, official, public servant, or public employee shall declare any operation of traditional and customary subsistence farming a nuisance if the farming operation is conducted in a manner consistent with generally accepted agricultural and management practices; and



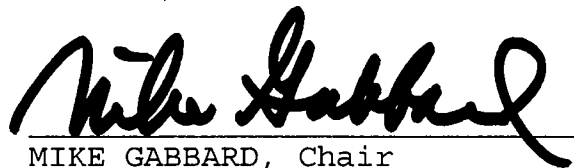
- (D) Defining "traditional and customary subsistence farming" as farming conducted by a native Hawaiian cultural practitioner for direct personal or family consumption;
- (3) Inserting a preamble to explain the amended purpose of this measure and to assert support of native Hawaiian subsistence farmer multi-family cooperatives;
- (4) Inserting an effective date of July 1, 2060, to encourage further discussion; and
- (5) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the records of votes of the members of your Committees on Agriculture and Environment and Hawaiian Affairs that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 1410, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 1410, S.D. 1, and be referred to your Committee on Judiciary.

Respectfully submitted on
behalf of the members of the
Committees on Agriculture and
Environment and Hawaiian
Affairs,



MAILE S.L. SHIMABUKURO, Chair




MIKE GABBARD, Chair



The Senate
 Thirty-First Legislature
 State of Hawai'i

Record of Votes
Committee on Hawaiian Affairs
HWN

Bill / Resolution No.:*	Committee Referral:	Date:		
SB 1410	AEN/HWN, JDC	2/9/2021		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312	<input checked="" type="checkbox"/> Pass, with amendments 2311	<input type="checkbox"/> Hold 2310		
<input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
SHIMABUKURO, Maile S.L. (C)	X			
KEOHOKALOLE, Jarrett (VC)		X		
ACASIO, Laura		X		
IHARA, Jr., Les		X		
FEVELLA, Kurt	X			
TOTAL	2	3		
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
				
Distribution:				
Original File with Committee Report	Yellow Clerk's Office	Pink Drafting Agency	Goldenrod Committee File Copy	

*Only one measure per Record of Votes