

**NEIL ABERCROMBIE**  
Governor



State of Hawaii  
**DEPARTMENT OF AGRICULTURE**  
1428 South King Street  
Honolulu, Hawaii 96814-2512

**RUSSELL S. KOKUBUN**  
Chairperson, Board of Agriculture

**JAMES J. NAKATANI**  
Deputy to the Chairperson

**TESTIMONY OF RUSSELL S. KOKUBUN  
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE HOUSE COMMITTEE  
ON  
AGRICULTURE**

**MARCH 16, 2011  
9:00 A.M.  
CONFERENCE ROOM 312**

**SENATE BILL NO. 1079, S.D. 2  
RELATING TO LANDOWNER LIABILITY**

Chairperson Tsuji and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill No. 1079, S.D. 2. The purpose of this bill is to establish that an owner of agricultural or range land owes no duty of care to trespassers; establishes rebuttable presumption of no liability; permits trespassers to overcome presumption by preponderance of evidence that owner was grossly negligent or intentionally injured the trespasser; and authorizes fines of up to \$10,000 for the Criminal Trespass on Agricultural Lands Enforcement Fund. The Department strongly supports the intent of this bill and respectfully requests that the language on page 3, lines 1 and 2 be amended by deleting "...other than lands owned by the government." We defer all legal matters to the Department of the Attorney General.

The Department manages several irrigation systems that span many miles. In most cases, these systems are in extremely remote but beautiful natural areas that hikers and nature enthusiasts tend to seek out. The Department does not possess the manpower necessary to secure the vast area that these systems cover. The Department has spent thousands of dollars on "No Trespassing" signs; however, these warnings continue to go unheeded. Incidents involving injury have happened in the past leading to millions of dollars in settlement money and



TESTIMONY OF RUSSELL S. KOKUBUN  
SENATE BILL NO. 1079, S.D. 2  
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our personnel continue to see people on these non-public trails and reservoir sites in spite of repeated warnings to leave. We believe the deletion of the phrase "...other than lands owned by the government." would allow public lands and irrigation systems to be covered by the expanded reach of this bill. It is also important to recognize that our employees have NO enforcement power to escort trespassers off of State land.

Thank you for the opportunity to testify on this measure.



**SB 1079 SD2**  
**RELATING TO LANDOWNER LIABILITY**  
House Committee on Agriculture

March 16, 2011

9:00 a.m.

Room 312

The Office of Hawaiian Affairs (OHA) offers the following COMMENTS on SB 1079 SD2. Native Hawaiians enter onto private and public lands to exercise their traditional and customary practices, sometimes without receiving an explicit invitation from the landowner. Although Native Hawaiian traditional and customary practitioners would be able to use their constitutionally protected traditional and customary rights as a defense to trespassing, having to prove these rights as a defense to a criminal prosecution can be overly burdensome.

OHA suggests the following amendments, which can be reasonably accommodated within the statutes, to ensure recognition and protection of Native Hawaiian traditional and customary rights:

- Replace the bill's language on page 3, lines 9-11, with:  
"Trespasser" means a person who enters or remains on land without the permission of the owner or the owner's agent and who is neither an invited guest nor otherwise privileged to do so, such as a person who is exercising a traditional and customary practice pursuant to Haw. Const. Art. XII § 7, HRS § 1-1, and/or HRS § 7-1.
- Change page 5, lines 10-13, of the bill to read:  
(c) The person enters or remains on agricultural lands without the permission of the owner of the land, the owner's agent, or the person in lawful possession of the land, or without the privilege to otherwise do so, and the agricultural lands:
- Add a new section to the bill amending HRS § 708-800 as follows:  
"Enter or remain unlawfully." A person "enters or remains unlawfully" in or upon premises when the person is not licensed, invited[,] by the land owner or lawful occupier of the land, or otherwise privileged to do so-, such as a person who is exercising a traditional and customary practice

pursuant to Haw. Const. Art. XII § 7, HRS § 1-1, and/or HRS § 7-1.

OHA urges the committee to make the aforementioned amendments. Mahalo nui loa for the opportunity to testify.



**Hawaii Farm Bureau**  
F E D E R A T I O N

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COMMITTEE ON AGRICULTURE

Rep. Clift Tsuji, Chair

Rep. Mark J. Hashem, Vice Chair

**March 16, 2011**

**9:00 am**

**Room 312**

**SB 1079 SD2 RELATING TO LANDOWNER LIABILITY**

Chair Tsuji, Vice Chair Hashem, and Members of the Committee,

The Hawaii Farm Bureau Federation, as the largest non-profit general agriculture organization representing approximately 1,600 farm and ranch family members statewide, **strongly supports SB 1079 SD2 with a very important technical amendment.**

**Farmers and ranchers are asking for your help in protecting them from unfair liability. This bill will provide relief without financially burdening the State.**

Farms and ranches across Hawaii are being used without permission from owners for hiking, hunting, dirt biking, and worse---illegal activities. Hard-earned crops are stolen, livestock is endangered by cut fences and broken gates, and valuable land is used as a rubbish dump, a place to abuse alcohol and drugs and to commit other crimes.

In addition, there are individuals who trespass, hurt themselves, and then threaten to sue for their injuries. Farmers cannot afford to lose everything they work so hard to create, in litigation due to trespass. There is certainly no benefit provided to the farmer or rancher from these trespassers or their activities and there should be only a minimal duty of care owed to them.

This bill provides that:

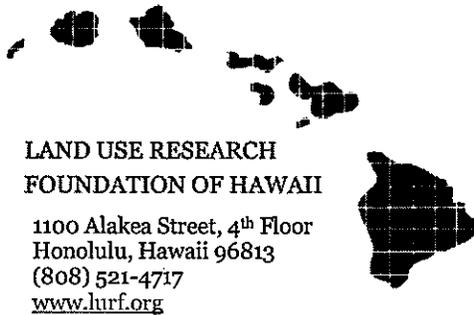
1. Farmers and ranchers have **no duty of care** to keep their lands safe for trespassers or to warn them of potentially dangerous conditions on the land (no liability unless of course, the landowner is grossly negligent or intentionally injures the trespasser).
2. If a person can see evidence of crops or livestock, that person should know that this land is not open to him to do what he wants, even if it is not fenced off and there are no signs telling him that the land isn't his (criminal trespass in the second degree).
3. Significant fines can be levied (these fines are not mandatory however) against those who trespass on agricultural lands that are fenced or have signs or have evidence of crops or livestock.

This bill will protect farmers from owing a duty of care to those who do not deserve it. It may make trespassers think twice before endangering themselves and the livestock and crops that don't belong to them.

**We respectfully request that you restore the language currently in law but stricken on page 5, lines 13-22, and page 6, lines 1-3 of this bill.** This language was deleted in the original bill and subsequent drafts with the intent to provide greater protection for farmers and ranchers whose land is not fenced or posted, but in fact, it give less protection and should be retained.

Thank you very much for your help to protect the viability of the farmers and ranchers of Hawaii who would like to continue to supply food to our residents and visitors, and help Hawaii move toward food self-sufficiency.

We would be pleased to answer any questions, please contact Janet Ashman, at 226-5483.



March 16, 2011

Representative Clift Tsuji, Chair and Representative Mark J. Hashem, Vice Chair  
House Committee on Agriculture

**Support of SB 1079, SD 2 (Relating to Landowner Liability - Trespass; Owners of agricultural land or range land have no duty of care to trespassers.)**

**Wednesday, March 16, 2011 at 9:00 a.m. in CR 312**

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

We appreciate the opportunity to provide our testimony **in support of SB 1079, SD 2, and offer comments.**

**SB 1079, SD 2.** This bill strengthens the trespass provisions of Hawaii Revised Statutes (HRS) Chapter 663 by adding a section protecting farmers and ranchers from the effects of trespass on their agricultural and range lands. Under this new section, an owner of such lands would owe no duty of care to keep the land safe for entry or use by a trespasser, or to give any warning of a dangerous condition, use, structure or activity on the land. This section would also create a presumption that the owner of such land is not liable to a trespasser for injury, loss, damage or death occurring on the land, which presumption could be rebutted in any civil action for damages by a preponderance of the evidence that the owner (1) committed an act or omission of gross negligence; or (2) intentionally injured the trespasser.

**LURF's Position.** This bill protects owners and occupiers of private agricultural or range land (including irrigation systems) from liability if a person who commits the offense of criminal trespass in the second degree is injured while coming onto the property, unless the injury is caused by the owner's or occupier's gross negligence or willful or wanton conduct.

LURF believes that this bill represents a fair, equitable and reasonable balance between the landowner's duties, rights and responsibilities, and the rights of a trespasser if an injury or death results based on grossly negligent or intentional conduct by the landowner.

LURF further believes incorporation of the criminal trespass laws into the bill to define the offense of "trespass" resolves previous concerns relating to inadvertent trespass,

making the measure acceptable and beneficial, particularly to owners and occupants of agricultural land engaged in farming and ranching. Owners of unimproved and unused lands, including farmers and ranchers, have continually experienced problems with trespass, yet have been defenseless against claims by trespassers for incidents and injuries suffered on their agricultural lands, and have in fact, had to protect trespassers from loss and injury despite their illegal entry.

Reference to the criteria for criminal trespass onto agricultural land which is contained in HRS Section 708-814(c), and the proposed amendment thereto to include fallow land or land upon which there may not be a visible presence, but only evidence of livestock raising or a crop, as a category of agricultural land to which the criminal trespass laws apply, aid greatly in addressing the concerns of agricultural landowners and occupiers (e.g., signage/notification costs; pastoral blight), and is strongly supported by LURF.

For the same reasons, the proposed deletion of the requirements that agricultural lands must be fenced and display signs identifying the agricultural land as private property for purposes of determining whether criminal trespass has been committed is also supported by LURF, as many owners of large agricultural parcels are unable to provide signage at every entry point due to high costs and accessibility issues. LURF also supports the increase in fines of up to \$10,000 for violations of criminal trespass in the second degree.

Based on the above, LURF is in **support of SB 1079, SD 2**, and respectfully urges your favorable consideration.

Thank you for the opportunity to present testimony regarding this matter.



## **Hawaii Cattlemen's Council, Inc.**

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HOUSE COMMITTEE ON AGRICULTURE  
Wednesday March 16, 2011 9:00 a.m. Room 312

### **SB 1079 SD2 RELATING TO LANDOWNER LIABILITY**

Chairman Tsuji, Vice Chairman Hashem and Members of the Committee:

My name is Alan Gottlieb, and I am a rancher and the Government Affairs Chair for the Hawaii Cattlemen's Council. The Hawaii Cattlemen's Council, Inc. (HCC) is the Statewide umbrella organization comprised of the five county level Cattlemen's Associations. Our 130+ member ranchers represent over 60,000 head of beef cows; more than 75% of all the beef cows in the State. Ranchers are the stewards of approximately 25% of the State's total land mass.

The Hawaii Cattlemen's Council **strongly supports SB 1079 SD2, with a suggested change.**

Trespassing crimes are very serious to cattle ranchers and other agricultural commodities across the state. Trespassers cause damage to property, increase liability to operators, and pose a serious threat to our food safety issues. This past year, there have been several incidents where trespassing vandals destroyed papaya farms on Oahu and the Big Island, costing farmers tens of thousands of dollars.

Property damage, such as livestock caught in snares, damaged fences, stealing of agriculture products can be irreversible for the landowner. Thousands of dollars are spent per year in repairing damages created by trespassers and it affects the economic survival for all ag commodities. We are often easy targets because of our remote locations, easy access and limited surveillance. We have a responsibility to be good stewards of our land and trespassers make it difficult to continue that without proper consequences. The stiffer fine of \$10,000 in this bill helps to send this message to trespassers.

Liability is also a tremendous burden for landowners. This bill will limit that liability when trespassers try to claim injury sustained on private property. Landowners cannot have a legal duty to protect a person who is uninvited onto the property and gets injured because of any natural risks or hazards that are inherent characteristics of agricultural land. This bill would reduce landowner's liability. We view the "NO DUTY OF CARE" contained in this bill as the most effective piece of any of the bills introduced this session to deal with shielding landowners from liability by trespassers.

**The change we suggest for this bill** is to restore the language deleted by strikethrough in 708-814 (c) (i) and (ii). This language offers similar protection to vacant agricultural land when it is fenced or has signage. Vacant ag land is not otherwise covered in the remainder of (c) if this language is not included. We humbly request that you restore (c) (i) and (ii).

In closing, trespassers can ultimately create intense damage to our agricultural economy and this needs to be prevented by stricter laws and stiffer fines. We need to increase advocacy for farmers and ranchers who want to continue to produce food in an efficient, profitable, and responsible manner. Government needs to protect the intrinsic value of ranchers and farmers for the present and the future, by making greater efforts to limit liability of all agricultural landowners and SB 1079 SD2 will create that.

Thank you for giving me the opportunity to testify in favor of this very important issue.



TESTIMONY BEFORE THE HOUSE COMMITTEE ON  
AGRICULTURE

SENATE BILL 1079, SD2

RELATING TO LANDOWNER LIABILITY

PRESENTED TO THE TWENTY-SIXTH LEGISLATURE

MARCH 2011

CHAIRPERSON CLIFT TSUJI and Members of the Committees:

**STRONG SUPPORT.**

My name is Loren Mochida, Director of Agriculture Operations at W. H. Shipman, Limited in Keaau on the Big Island. We are a local kamaaina-family owned land management company that is engaged in Agriculture and Commercial/Industrial development and leasing. We currently lease lands to over 125 individual growers at W.H. Shipman, Ltd.

W. H. Shipman, Ltd., supports SB 1079, SD2 and its intent, Relating to Landowner Liability. The presumption that an owner of agricultural or range land is not liable to a trespasser for injury, loss, damage, or death occurring on the agricultural or range land will assist in our efforts to curtail trespassers and illegal hunters. Criminal trespass on farm properties in Keaau and throughout the Big Island is a major problem. This also results in a number of problems destructive to our farms.

Illegal trespassers and hunters increase the liability for the landowner and their families and workers. Landowners should not be liable for illegal trespassers for injuries, damage, or death occurring on their land.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, March 15, 2011 9:05 AM  
**To:** AGRtestimony  
**Cc:**  
**Subject:** Testimony for SB1079 on 3/16/2011 9:00:00 AM

Testimony for AGR 3/16/2011 9:00:00 AM SB1079

Conference room: 312  
Testifier position: support  
Testifier will be present: No  
Submitted by: Michelle Galimba  
Organization: Hawaii Cattlemen's Association  
Address:  
Phone:  
E-mail:  
Submitted on: 3/15/2011

Comments:

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 14, 2011 3:10 PM  
**To:** AGRtestimony  
**Cc:**  
**Subject:** Testimony for SB1079 on 3/16/2011 9:00:00 AM

Testimony for AGR 3/16/2011 9:00:00 AM SB1079

Conference room: 312  
Testifier position: support  
Testifier will be present: No  
Submitted by: Daniel Nellis  
Organization: Dole Food Company Hawaii  
Address:  
Phone:  
E-mail: ;  
Submitted on: 3/14/2011

**Comments:**

Dole Food Company Hawaii strongly supports SB 1079. Increasing the fines for trespass as well as eliminating some of the liability for landowners are important strides forward. Dole has continual costs associated with clean up of illegal dumping and camping by trespassers. A stronger penalty for trespass will hopefully be a deterrent to future trespassers. Agricultural lands need to have enforceable trespass laws protecting them as physically enclosing large acreage is not practical or affordable for agriculture operations.

Thank You.  
Daniel Nellis, Operations Dir. Dole Hawaii