

NEIL ABERCROMBIE
Governor



RUSSELL S. KOKUBUN
Chairperson, Board of Agriculture

SCOTT E. ENRIGHT
Deputy to the Chairperson

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

TESTIMONY OF RUSSELL S. KOKUBUN
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON AGRICULTURE

February 11, 2013
9:00 A.M.
ROOM 423

HOUSE BILL NO. 442
RELATING TO AGRICULTURE

Chair Wooley and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 442. The purpose of this bill is to extend the limited liability protections against trespasser lawsuits to qualifying owners of four or less acres of agricultural lands. The Department respectfully opposes this bill.

The Department realizes that farmers often face the problem of trespassers on their lands and supports any efforts to decrease the risk of liability for farmers enabling their continued success. However, we feel it is inconsistent to require a taxable criteria for a farm of less than 4 acres that is not similarly applied to a farm larger than 4 acres. Furthermore, we believe the variability of a farmer's income from year to year should be taken in to account. The Department questions the arbitrary standard being imposed inconsistently within this bill.

Thank you for the opportunity to testify on this measure.



**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO H.B. NO. 442**

Date: Monday, February 11, 2013

Time: 9:00 am

To: Chairperson Jessica Wooley and Members of the House Committee on Agriculture:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in OPPOSITION to H.B. No. 442, relating to Agriculture.

Large agricultural parcels of 4 acres or more were given immunity from liability to trespassers in 2011. This measure seeks to extend the immunity to parcels of less than 4 acres as well.

HAJ opposes this measure because it is not needed and it is not good public policy. Although there are many imagined scenarios of criminal trespassers suing farmers there is no supporting data. There is no rash of such lawsuits and no crisis of trespasser claims. Under Hawaii law, a farmer is liable only to those “reasonably anticipated to be upon the property” and only for failures to “exercise reasonable care or warn” of dangerous conditions.

The types of criminal trespassers this measure seeks to address (theft of crops, livestock and machinery) do not qualify for recoveries because they are not persons reasonably anticipated to be upon the property for which a farmer must make the property safe. The issue of trespassers who “cut fences, cut gates chains, and leave gates open, which result in substantial costs” to farmers is not one of civil immunity for the farmer but one of criminal prosecution and will not be helped by this bill. Perhaps more

importantly, these criminals do not sue farmers because doing so will reveal their identities and subject them to criminal prosecution for their crimes.

The choice of 4 acres in 2011 was a considered decision weighing factors of location and difficulty of safely maintaining property against the need to protect and promote safety for the general public, particularly our children. It is important to keep in mind that the word “trespasser” has a popular connotation of an evil person who is intentionally violating property rights with a criminal intent. The legal definition however is much broader so many, if not most, “trespassers” are actually innocent people who mean no harm to the land or landowner. Children who play in an open field or take a short-cut to school through the corner of a flower farm are technically trespassers. The general public who use long established paths through agricultural lands to the beach are trespassers. The grandmother who, while waiting for a bus, stands under a fruit tree at the edge of a fruit farm bordering the street is a trespasser. Most of us are from time to time unintentional or innocent trespassers who have no criminal intent.

It may be very difficult, if not impractical, to inspect, discover and maintain large agricultural or pasture lands in rural or remote locations. It is not as difficult with a 20,000 sq. ft. pikake farm in Kaimuki. Large agricultural tracks are more likely found in rural areas which are less densely populated and away from school children. There are many smaller farms in highly urban areas which naturally attract children or are so close to homes that it is reasonable to expect interaction with the neighbors. If for example, a small farm is located next to an elementary school, it is reasonable to expect that children will occasionally trespass to retrieve an errant ball or frisbee. An open area of a small unfenced papaya farm in the middle of a Kaneohe housing development will certainly

attract children who have no other open space to play. These children are technically trespassers, but certainly have no criminal intent and should not be treated with the disdain appropriate to real criminals.

The current law strikes a reasonable balance of all relevant factors. If there does indeed develop a crisis of lawsuits by trespassers against small farming operations, those lawsuits can be examined and a focused solution formulated to address the situation. This measure is not necessary at this time and has many unintended consequences for ordinary citizens.

Thank you very much for allowing me to testify in OPPOSITION to this measure. Please feel free to contact me should you have any questions or desire additional information.

onishi1-Jerry

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 09, 2013 10:00 AM
To: AGRtestimony
Cc: lynhowe1946@yahoo.com
Subject: Submitted testimony for HB442 on Feb 11, 2013 09:00AM

HB442

Submitted on: 2/9/2013

Testimony for AGR on Feb 11, 2013 09:00AM in Conference Room 423

Submitted By	Organization	Testifier Position	Present at Hearing
Lyn Howe	Individual	Support	No

Comments: I agree with decreasing the amount of acreage. I would like to see the annual income requirement decreased.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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onishi1-Jerry

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 08, 2013 3:28 PM
To: AGRtestimony
Cc: pennysfh@hawaii.rr.com
Subject: Submitted testimony for HB442 on Feb 11, 2013 09:00AM

HB442

Submitted on: 2/8/2013

Testimony for AGR on Feb 11, 2013 09:00AM in Conference Room 423

Submitted By	Organization	Testifier Position	Present at Hearing
Penny Levin	Individual	Comments Only	No

Comments: I support the intent of this bill. This bill defines "agriculture lands" in excess of and less than four acres and places an income criteria of "in excess of \$100,000" for farms under four acres. Unless someone is growing an illegal crop the likelihood of generating this amount of revenue from a four acre farm growing vegetable crops here is slim. The criteria to be recognized as a farmer for tax purposes is an income of at least \$1,000 per year. Most small farms will never qualify under the income criteria that has been set by this bill. Taro farmers on small farms will never meet this qualification because of the farmgate price of the taro. Yet, in the last 10 years there have been numerous cases of malicious damage to taro farms as well as general trespass. I would recommend the income requirement be reduced to an "annual taxable revenue in excess of \$3,000"

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