

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
WATER & LAND**

**Friday, February 12, 2016
9:30am
Conference Room 325**

**In consideration of
HOUSE BILL 1746
RELATING TO COMERCIAL FOREST PRODUCTS**

House Bill 1746 proposes to require anyone harvesting forest trees or plants for commercial purposes to obtain a license and submit monthly reports to the Department of Land and Natural Resources. **While appreciating its intent, the Department of Land and Natural Resources (Department) recommends amendments to this measure.**

House Bill 1746 provides an opportunity to collect information on the current forest product industry in Hawaii, as well as potentially addressing concerns regarding theft of forest resources. However, a number of items in the bill need to be further clarified or modified to address property rights and commerce concerns.

The definition of "forest product" provided in the bill should be clarified to "any material derived from a forest for direct commercial consumption or for the production of another product, such as biomass for energy, including timber or wood products and non-timber forest products." Further, "non-timber forest products" are any product other than for timber that is produced from materials originating from forests.

To address the concerns about theft of forest resources, an issue across landownership, the Department recommends the incorporation of a "chain-of-custody" or "certificate of ownership" requiring the harvester or driver of a vehicle containing raw forest products to travel with paperwork and associated receipts documenting that the material was legally obtained. Similar statutory requirements exist for livestock and agricultural commodities through an "ownership and movement certificate" under Section 142-49 and 145-22 to 24, Hawaii Revised Statutes, respectively.

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

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

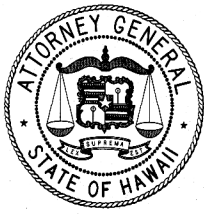
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

The Department does not believe that individuals should be restricted from collecting or harvesting forest products, especially on private lands; therefore, restrictions or the prevention of individuals from participating in commercial forestry should be stricken. The Department notes that any commercial harvest on the public forest lands or lands in the Conservation District already requires oversight and a permit from the Department.

The information provided through a commercial license system would provide much needed information about the current extent of the commercial forest industry in Hawaii. However, this information could, at least in part, be met through a “certificate of ownership” provided that copies of the receipts, similar to the livestock and agricultural commodities certificates, were submitted to the Department. This type of system could also potentially resolve concerns over takings and commerce clauses.

Over the past four legislative sessions, the Department has been asked to address concerns regarding commercial harvest or destruction of Hawaiian sandalwood. The Department has also been in consultation with U.S. Fish and Wildlife Service regarding the inclusion of one or more sandalwood tree species in Hawaii as a protected species under the Convention of International Trade of Endangered Species (CITES - www.cites.org).

The Department strongly supports sustainable management of all forest products across landownerships. The establishment of a “certificate of ownership” provision could not only help collect needed forest products industry information that bring it more in line with other agricultural sectors, but it could also help reduce theft of forest products across all landownerships and sectors.



TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-EIGHTH LEGISLATURE, 2016

ON THE FOLLOWING MEASURE:

H.B. NO. 1746, RELATING TO COMMERCIAL FOREST PRODUCTS.

BEFORE THE:

HOUSE COMMITTEE ON WATER & LAND

DATE: Friday, February 12, 2016

TIME: 9:30 a.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Douglas S. Chin, Attorney General, or
David D. Day, Deputy Attorney General

Chair Yamane and Members of the Committee:

The Department of the Attorney General understands and appreciates the objectives of this bill. However, we oppose the bill as written due to potential constitutional concerns. Specifically, the bill may be subject to challenge as violative of the Takings Clauses of the United States and Hawai'i constitutions and the Commerce Clause of the United States Constitution.

This bill adds a new chapter to the Hawaii Revised Statutes (HRS) entitled "Commercial Forestry." Among other things, it provides that the new chapter "shall apply to owners of land that harvest any forest product for commercial purposes from their own land." Page 2, lines 8–10. The bill appears to create three new types of licenses to be promulgated and managed by the Department of Land and Natural Resources (DLNR): (1) a "commercial forestry license," which a person would need to obtain to harvest any forest product for commercial purposes from a forest reserve or private land in a conservation district; (2) a "commercial forest product dealer license," which DLNR may require a commercial forest product dealer to obtain in order to, among other things, sell or purchase forest products harvested in the State for commercial purposes; and (3) a license that DLNR may require of any person seeking to export any forest product taken within the State for a commercial purpose. The bill provides various obligations upon licensees, including reporting requirements, and imposes criminal and administrative penalties for violations.

First, because the bill restricts the use of private land by requiring a commercial forestry license to harvest forest products, there is a possibility that the State could be subject to court

challenges or lawsuits seeking compensation under the Takings Clause. To the extent the bill seeks to require private landowners to pay for licenses to harvest any forest products, where they were previously authorized to do so without a license, there is a potential that such landowners could bring regulatory-takings claims to recover compensation for the restriction in use.

Regulatory takings jurisprudence is a complex area of the law, and the validity of claims are frequently dependent on the specific factual circumstances of individual landowners. There is a possibility that this bill may lead to potential takings litigation, even in situations that are difficult to foresee. The possibility will continue to exist to the extent the bill changes existing law. To minimize the potential for litigation, we recommend that the Committee carefully consider exactly what “forest products” are at issue. For example, if the definition of “forest product” is clarified or narrowed so that it does not include fruits, vegetables, and other forms of agriculture, then the possible taking claim is likewise narrow. We also recommend clarifying the requirements for obtaining the licenses created by this bill.

Second, the license that the DLNR may require of any person seeking to export forest products potentially raises concerns under the Commerce Clause of the United States Constitution. The Commerce Clause provides Congress with the power to regulate foreign and interstate commerce. Courts have interpreted the Commerce Clause to likewise prevent states from burdening foreign and interstate commerce—the so-called dormant Commerce Clause. Individuals can challenge state laws regulating the export of natural resources under the Commerce Clause. Courts have held that state laws discriminating against foreign and interstate commerce on their face are virtually per se invalid. *See Camps Newfound/Owatonna, Inc. v. Town of Harrison, Me.*, 520 U.S. 564, 575 (1997). A license requirement imposed upon persons who specifically seek to export forest products from the State raises the potential for a legal challenge under the Commerce Clause. We recommend that this requirement be deleted.

The recommended changes herein may minimize any potential legal challenges. However, based on the foregoing, we respectfully request that the Committee defer the bill.



**Department of Land and Natural Resources
Aha Moku Advisory Committee
State of Hawaii
Post Office Box 621
Honolulu, Hawaii 96809**

Testimony of
Leslie Kuloloio, Chair

Before the House Committee on
Water and Land

Friday, February 12, 2016
9:30 AM
State Capitol, Conference Room 325

**In Consideration of
HOUSE BILL 1746
RELATING TO COMMERCIAL FOREST PRODUCTS**

House Bill 1746 requires anyone harvesting forest trees or plants for commercial purposes to obtain a license and submit monthly reports to DLNR. **The Aha Moku SUPPORTS this measure.**

The Aha Moku encompasses the eight main Hawaiian Islands, which in turn is comprised of 47 moku and 607 ahupua'a, each one of which is individual and unique with its own natural resources. The commonality among all of them is that native Hawaiian forests, on public and private lands contain many endemic and indigenous trees and plants that are always in demand and therefore, rapidly dwindling. While Aha Moku objects to the selling of endemic trees anyway because our native forests are fragile as it is, now, if it is allowed, then we believe the practice should be regulated.

The focus of the Aha Moku System, as stated by this Legislature is to assist the State in the protection and sustainability of its distinctive natural and cultural resources by bringing forward Native Hawaiian empirical resource methodology that together with scientific expertise may further protect our natural assets.

Today, it is often difficult to protect these resources because of the increased demand for native woods. We believe this measure is greatly needed. On most islands we currently have to deal with the rapid dwindling of our Hawaiian Sandalwood (*Iliahi*) trees. In time, if regulations are not in place, we will lose all of our endemic and indigenous trees and plants.

Thank you for the opportunity to offer testimony and we urge this committee pass this measure.



Hawaii Cattlemen's Council, Inc.

COMMITTEE ON WATER & LAND

Rep. Ryan I. Yamane, Chair

Rep. Ty J.K. Cullen, Vice Chair

DATE: Wednesday, February 10, 2016
TIME: 3:15 PM
PLACE: Conference Room 224

HB 1746 – RELATING TO COMMERCIAL FOREST PRODUCTS.

Requires anyone harvesting forest trees or plants for commercial purposes to obtain a license and submit monthly reports to DLNR.

Chair Gabbard, Vice Chair Nishihara, and Members of the Committee:

My name is Dale Sandlin, and I am Managing Director of 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 140+ 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 **opposes** HB 1746 in it's current form as this measure's intent in sound, however should be changed to accomplish it's desired goals.

Many of our ranchers are diversified into several crops on their operations. Some stick to livestock production, others include coffee and others into sustainable timber harvesting. This bill would infringe upon the rights of private landowners to manage the assets on their property through Item 2. While requiring a license to harvest commercial forest assets on conservation land is understandable, requiring the same on private land is an overreach of private property rights.

If this bill is to help determine if timber has been legally harvested, then we feel that this could be accomplished by other means. Our industry understands an "origin of shipment" concept, as it's state law for ranchers to have on their possession a Certificate of Livestock Ownership/Movement that must be provided to law enforcement officials upon request when transporting all livestock in the state. This paperwork provides a chain of custody of the livestock and could be a viable solution for the timber industry.

In addition, this measure seeks to solicit more information from those in the timber business than should be required. In section 6, item c, the language includes unreasonable information requiring personal information, specifically the "value of each of the species of forest product purchased, transferred, exchanged, or sold during the previous month." While well-meaning, this component marks the first step to regulating, then restricting and ultimately shutting down the timber industry in Hawaii through the citizen's right to suit. While the DLNR may do it's best to keep this information confidential, this cannot be the case as court orders and subpoenas prevent it's confidentiality. Also, while the DLNR does and should have the right to manage the timber



resources of state lands, it's the timber resources of private land that this measure attempts an overreach.

While many of the stands of Koa forest have already been harvested from private lands, that leaves those landowners that have sustainable operations of Koa harvest and replanting left in the balance. While we agree there should be a chain of custody or branding through a certificate of timber ownership/movement similar to that of livestock, there should be restrictions regarding the data collection, reporting and licensing that need to be given more thought and include a larger group of stakeholders, including those with sustainable harvest and replant operations.

We respectfully ask this committee to oppose the passage of HB 1746 in it's current form. We appreciate the opportunity to testify on this important matter.



HAWAI'I FOREST INDUSTRY ASSOCIATION (HFIA)

P. O. Box 66 ❖ 'O'ōkala, HI 96774

Phone: 808-933-9411

Email: hfia@hawaiiiforest.org

Website: www.hawaiiiforest.org

February 11, 2016

Rep. Ryan I. Yamane, Chair
Committee on Water and Land

Re: Testimony on HB 1746

Honorable Representative Yamane,

The Hawai'i Forest Industry Association (HFIA) is a statewide nonprofit corporation established in Hawai'i in 1989 to promote healthy and productive forests and a sustainable forest industry through forest management, education, planning, information exchange, and advocacy. HFIA's programs promote healthier forests, increased business in Hawaii's estimated \$30.7 million annual forest industry, and more jobs (currently numbered at more than 1,000) within the sector.

HFIA has over 250 members, including professional foresters, millers, harvesters, growers, educators, retailers, manufacturers, wholesalers, governments, nonprofits, horticulturists, and others interested in HFIA's mission of healthy and productive forests.

We applaud the aim of this bill to collect and disseminate information on forestry in Hawai'i. We also share the concern about the illegal harvest (poaching) of trees and plants from private and public lands, and support efforts to reduce its incidence.

However, the association is concerned about the impact the proposed legislation will have on the livelihoods of our members and the very forests it is intended to protect. In its current form, SB 2532 is:

- 1) Too broad: It will result in duplication of information on forest products at all levels of the supply chain. The measure also covers non-traditional forest products, which is ambiguous, and needs to be

⇒ We suggest limiting it to specific products (wood, logs, certain plants) and primary producers only

- 2) Injurious to business: Without a licence, trees of any species, even those planted for that very purpose cannot be harvested. This could also be considered a "taking" of private property rights, by restricting the ability of private landowners to act on their own properties

⇒ Such a license (and we doubt it is needed) must be more of a registration than a permission. It must not be arbitrarily withheld without a compelling and concrete cause, and establish a short timeline for granting such a license which will have no or a very small administrative fee

- 2) Onerous for small operations: Monthly reporting is arbitrary and time consuming

⇒ Longer reporting period adjusted to the scale of operations, no reporting needed for small sales of less than \$1,000.00 – inflation adjusted

We support the implementation of some sort of chain of custody or certificate of origin similar to that used in transporting livestock through:

- ⇒ Evidence of legal harvest / possession of forest products through specific invoices, permits or contracts that identify both the source and intended destination
- ⇒ Copy of such to be furnished to State on a voluntary, electronic basis to provide public data on forest products trends

It is not easy to craft legislation that respects private property rights, the privacy of individuals, and allows the free flow of business yet at the same time undermines the ability of those who illegally harvest wood and other forest products.

We ask that you proceed with care, lest we snuff out the very thing we are trying to promote: healthy forests in Hawai'i that sustain and are promoted by a healthy forest products industry.

Mahalo,
Nicholas Koch, HFIA President
P.O. Box 66
'O'ōkala, HI 96774
Phone: 808-933-9411
Email: hfia@hawaiiiforest.org

P.O. Box 66 • 'O'ōkala, HI 96774 • Phone: 808-933-9411 • Email: hfi@hawaiiiforest.org • Web: www.hawaiiiforestinstitute.org

Honorable Senators and Representatives

Haloa Aina LLC is in support with modifications to: HB No. 1746

I am Wade C. Lee a managing member of Hāloa Aina LLC owner of 3,000 acres of presently managed sustainable native dry-land forest on the Island of Hawaii. I am a Biologist with an M.S. degree and have been a consultant to land owners in the state of Hawaii for the past twenty years. I have worked with the US Fish and Wildlife Service, The Colorado Division of Wildlife and the Alaska Department of Fish and Game.

In our forest we have regenerated over a million new Iliahi, Mamane, Koa, Naio and Pukeawe trees all within the last five years.

We have created a model for sustainable sandalwood forest on the island of Hawaii and have at this time accomplished the following in addressing sustainability.

Having a chain of custody for our forestry products as well as accumulating Data on the industry is critical for the Forestry Industry in the State of Hawaii. The information collected needs to be available to the public and for private and public land managers in establishing management plans for specific forestry restoration projects to become sustainable. To the landowners this will help the theft of Forest products. The license must be made available to everyone in the forest industry, much like the present Commercial Fishing License. The monthly reporting must not be too cumbersome, should take less than 5min on line or by mail monthly.

Wade C. Lee

RANDALL S. SENOCK, PhD
Associate Professor Geological and Environmental Sciences
California State University at Chico
400 West 1st Street, Chico, CA 95929-0205

My name is Randall S. Senock and thankful to the COMMITTEE ON LAND & WATER for the opportunity to submit testimony in response to H.B. 1746 Relating to COMMERCIAL FOREST PRODUCTS.

I am currently an Associate Professor for the California State University at Chico in the Department of Geological and Environmental Sciences, director of the degree option in Applied Ecology and Coordinator of the graduate Professional Science Masters Program. Formally I was a research fellow with the University of Hawaii at Manoa in forestry (1994-1998) and then an assistant professor of tropical forestry (1998-2004) at the University of Hawaii at Hilo, College of Agriculture. My current research in Hawaii focuses on the dry montane forests of the Big Island. My career research over the past 30 years on forests around the world has been directed towards understanding the ecology and sustainability (environmental, social and economic) of forest ecosystems.

The proposed legislation in its broadest context should NOT be supported as a measure to aid in supporting sustainable forest land management in Hawaii. As proposed the legislation is too broad, over reaching and unsubstantiated at this point in time to ensure either the sustainability of the forest ecosystem or the proper role of government agencies in forest management practices on privately owned land. **There cannot be one single governmental approach applied equally to Hawaii's forests. Each forest type with their individual tree species in each of its own environments will likely require a different approach to ensure regeneration of the forests for future generations to enjoy.** Given that a large majority of Hawaiian forest resources are found on private land the role of government agencies should be to cooperatively work with landowners to ensure the sustainability of all forest resources. This need is directly acknowledged by the U.S. Forest Service who works cooperatively with non-industrial private forest landowners (NIPF) that across the country manage over **60%** of the nation's forest resources.

For this reason the outright banning of forest product harvesting, the government licensing and the monthly reporting requirements will only serve to discourage proper forest land management. In the same regard, without proper economic incentives to sustainably produce endemic native sandalwood species landowners will consider other non-native species that will then not achieve the stated goals of the agencies responsible for ensuring conservation of all Hawaiian forests.

The current state of scientific knowledge, however concerning most native Hawaiian forest species or their ecology is notably insufficient at this time to support legislation that would inadvertently restrict proper sustainable management of native forest on private or public lands. What little is known is based on limited scientific information, antidotal observations and subjective interpretations. Some Hawaiian forest types can certainly be best conserved with minimal disturbance impacts. There are, however, several Hawaiian forest types that need repeated and continual disturbance using various management techniques to regenerate. It was a range of disturbances over time that contributed to the degeneration of many of Hawaiian's forests. It will only be through directed disturbances that many forest types can be successfully regenerated and then maintained for future generations. Such directed disturbances, by necessity will require substantial economic investment.

Based on the current accepted ecological role of disturbance in many forest ecosystems any proposed legislation that contains language that would arbitrarily lead to burdensome governmental regulation and oversight on private lands is an issue of concern.

Based on the above stated reasoning concerning the current state of knowledge about much of Hawaii's native forest resources, and the need for all stakeholders, public and private, to be adequately engaged any **proposed legislation should contain wording that uses the definition of the word "Sustainable"** based on the Brundtland Commission of the United Nations 1987 conference which states that environmental, social and economic aspects equally define "sustainable". This accepted view suggests that for any environment to be properly sustained it has to be supported socially and economically. In terms of **"Sustainable Forests"** due consideration should be given to the necessary regeneration requirements of all component species required to perpetuate the presence of many native species in the future forest type under management.

In conclusion any governmental legislation should provide incentives and motivation to private land owners to properly manage all Hawaiian forests so that future generations of Hawaiian children will have the opportunity to enjoy native Hawaiian forests.