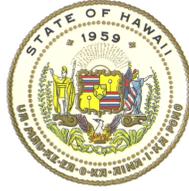


DAVID Y. IGE
GOVERNOR OF HAWAII



**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**

**Tuesday, February 15, 2022
8:30 AM**

State Capitol, Conference Room 430 and Via Videoconference

**In consideration of
HOUSE BILL 1658
RELATING TO THE TRANSFER OF NON-AGRICULTURAL PARK LANDS**

House Bill 1658 proposes to authorize the Department of Agriculture (DOA) to request information from the Department of Land and Natural Resources (DLNR) related to the establishment of easements by necessity upon the lands before the transfer of non-agricultural park lands. **DLNR supports this measure and provides the following comments and a suggested amendment.**

As noted in the bill's preamble, this measure is intended in part to facilitate the transfer of non-agricultural park lands from DLNR to DOA pursuant to Act 90, Session Laws of Hawaii 2003, where both agencies have agreed to the transfer but the lack of a documented easement across the land impedes the transfer. DLNR appreciates the bill potentially providing another tool to facilitate the Act 90 land transfer process.

The proposed amendment to Section 166E-3, Hawaii Revised Statutes, uses the phrase "easements by necessity." DLNR understands this phrase is a legal term of art that generally describes an easement that Landowner A is entitled to over Landowner B's property because Landowner B or its predecessors-in-interest created Landowner A's lot without providing it with legal access. In other words, Landowner A's lot would be landlocked without an easement over Landowner B's property.

With respect to the large tracts of forest reserve DLNR manages, a single parcel may cover tens of thousands of acres and may have several existing accesses miles apart from each other. In that sense, the parcel is not legally landlocked. However, DLNR may still want to establish additional public accesses to forest reserves or hunting areas to enhance public recreational uses or cultural and traditional practices. These kinds of easements would likely not qualify as "easements by necessity" as a legal term of art. Accordingly, DLNR proposes an amendment

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

(highlighted in yellow) to the measure that strikes the words “by necessity” on page 4, line 7 of the measure.

(d) Before any transfer of certain qualifying non-agricultural park lands, the department may request from the department of land and natural resources any information related to the establishment of easements [by necessity] upon the lands."

Thank you for the opportunity to comment on this measure.



Email: communications@ulupono.com

HOUSE COMMITTEE ON WATER & LAND
Tuesday, February 15, 2022 — 8:30 a.m.

Ulupono Initiative supports the intent of HB 1658, Relating to the Transfer of Non-Agricultural Park Lands.

Dear Chair Tarnas and Members of the Committee:

My name is Micah Munekata, and I am the Director of Government Affairs at Ulupono Initiative. We are a Hawai'i-focused impact investment firm that strives to improve the quality of life throughout the islands by helping our communities become more resilient and self-sufficient through locally produced food; renewable energy and clean transportation; and better management of freshwater and waste.

Ulupono supports the intent of HB 1658, which, before the transfer of non-agricultural parklands, authorizes the Department of Agriculture (DOA) to request information from the Department of Land and Natural Resources (DLNR) related to the establishment of easements by necessity upon the lands.

Ulupono appreciates the efforts of the Working Group established by Act 139, SLH 2021, which was established to find potential remedies to fulfill the purposes of Act 90, SLH 2003. We recognize the importance of this group's task in helping the State address the appropriate management of active agricultural leases.

This bill specifically allows the DOA to request information from the DLNR regarding necessary easement establishments prior to any land transfer. Ulupono supports the collaboration between the DOA and DLNR. While we believe that this may already be occurring, it may be beneficial to place this within statute.

Should the committee move this measure forward, we recommend amending subsection (d), page 4, line 7, to read as "establishment of **reasonable** easements by necessity upon the lands."

Thank you for the opportunity to testify on this measure.

Respectfully,

Micah Munekata
Director of Government Affairs

Investing in a Sustainable Hawai'i



February 11, 2022

Representative David A. Tarnas, Chair
Representative Patrick Pihana Branco, Vice Chair
House Committee on Water & Land

Comments Regarding HB 1658, Relating to the Transfer of Non-Agricultural Park Lands (Before the transfer of non-agricultural park lands, authorizes the Department of Agriculture [DOA] to request information from the Department of Land and Natural Resources [DLNR] related to the establishment of easements by necessity upon the lands.)

Tuesday, February 15, 2022, 8:30 a.m.; Conference Room 430, Via Videoconference

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers, and utility companies. LURF's mission 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.

LURF appreciates the opportunity to present comments regarding HB 1658 in support of the various agricultural stakeholder groups who defend the goals of viable agricultural operations and the conservation and protection of agriculture in Hawaii.

HB 1658. The underlying intent of this bill is to effectuate and facilitate the transfer of certain public lands classified for agricultural use from the DLNR to the DOA pursuant to Act 90, Session Laws of Hawaii (2003) (Act 90); Chapter 166E, Hawaii Revised Statutes; and for the purposes and in a manner consistent with Article XI, Section 10, of the Hawaii Constitution, which establishes that "the public lands shall be used for the development of farm and homeownership on as a widespread a basis as possible, in accordance with procedures and limitations prescribed by law."

In furtherance of said transfer of public lands, an Act 90 working group was established by Act 139, Session Laws of Hawaii, which group has determined that lands under the DLNR used for "the primary and substantial management objective of agricultural production" should be transferred to the DOA.

The specific purpose of this bill is to adopt a recommendation from the Act 90 working group that authorizes the DOA to inquire with the DLNR, prior to offering a lease, regarding any easements required on the lands that are subject to the lease.

LURF's Position. LURF members include property owners, farmers and ranchers who own, maintain, and engage in agricultural enterprises, and who consider efforts to protect and support agriculture significant to the continued conduct of their operations and to help sustain and preserve farming and ranching businesses into the future.

Many farmers and ranchers have been awaiting the transfer of their land leases from the DLNR to the DOA pursuant to Act 90, which was enacted to ensure long-term productive use of public agricultural lands to be managed by the DOA, which department is better suited to administer agricultural lands. The now 19-year delay of the anticipated transfers, however, has impaired the ability of farmers and ranchers to establish and implement long-term plans for their operations.

LURF appreciates the intent of this measure as it promotes cooperation between the DOA and DLNR; understands the significance of effectuating and facilitating the transfer of certain public lands classified for agricultural use from the DLNR to the DOA pursuant to Act 90; and acknowledges the need of the DOA to be provided with information relating to the establishment of easements by necessity upon those lands in order that it can best advance and sustain the needs of agriculture and the agricultural industry in this State.

LURF believes, however, that the term "easement" may potentially be too broadly construed and subject to interpretation, and therefore recommends that the term be more clearly defined and limited to easements for **reasonable and necessary** access through transferred lands, and to disallow expanded interpretation of the term to potentially entail and include the land transferred in its entirety. The term "easement" should also be defined so as to preclude the access authorized from causing any negative impacts on agricultural production, such as infestation by invasive species due for example, by mismanagement of the access.

By recognizing the importance of, and need to assist the local agriculture industry, and implement measures which help to support the viability and maintenance of agriculture in the State, this bill, if clarified and amended, can significantly help to promote economically viable agriculture, increased food production, and food self-sufficiency in Hawaii.

Thank you for the opportunity to present comments and concerns regarding this measure.

HB-1658

Submitted on: 2/14/2022 6:58:49 AM

Testimony for WAL on 2/15/2022 8:30:00 AM

| Submitted By | Organization | Testifier Position | Remote Testimony Requested |
|---------------------|---------------------|---------------------------|-----------------------------------|
| Lani Petrie | Kapapala Ranch | Oppose | No |

Comments:

HB1658 should not stand alone from HB1657, HB1659, and HB1660. It would be like putting effort into a puzzle that may not have all the pieces or worse having pieces from another puzzle.



COMMITTEE ON WATER & LAND
Rep. David A. Tarnas, Chair
Rep. Patrick Pihana Branco, Vice Chair

HB1658
Relating to the Transfer of Non-Agricultural Park Lands

Tuesday, February 15, 2022, 8:30 AM
VIA VIDEOCONFERENCE

Chair Tarnas, Vice Chair Branco, and Members of the Committee,

The Hawaii Cattlemen's Council (HCC) is the Statewide umbrella organization comprised of the five county level Cattlemen's Associations. Our 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 over 750 thousand acres of land in Hawaii, or 20% of the State's total land mass. We represent the interests of Hawaii's cattle producers.

The Hawaii Cattlemen's Council **supports HB1658 with amendments** to authorize HDOA to request information from DLNR related to the establishment of easement by necessity upon the lands before the transfer of non-agricultural park lands.

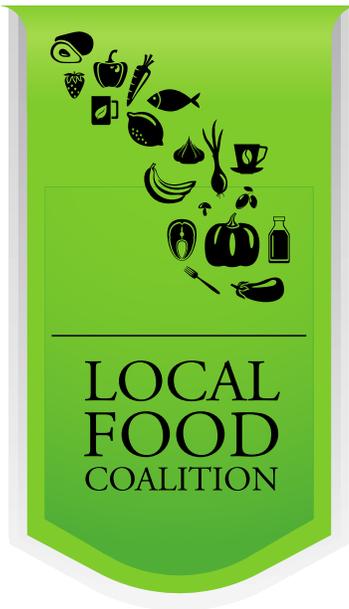
While we believe that HDOA already has the authorization to inquire with DLNR as to easements, we support this measure. Since easements can be broadly interpreted and could lead to misuse of the mechanism, we respectfully ask that Page 4, lines 4-7 be amended to read:

(d) Before any transfer of certain qualifying non-agricultural park lands, the department may request from the department of land and natural resources any information related to the establishment of **reasonable** easements by necessity upon the lands."

We appreciate the Act 90 Working Group's efforts to seek solutions, and agree that HDOA and DLNR should work together to identify reasonable, necessary easements.

Nicole Galase
Hawaii Cattlemen's Council





HOUSE COMMITTEE ON WATER AND LAND
February 15, 2022 – 8:30 a.m. – Via Videoconference

RE: HB 1658 – Relating to the Transfer of Non-Agricultural Park Lands – Support Intent, Request Amendment

Aloha Chair Tarnas, Vice Chair Branco and Members of the Committee:

The Local Food Coalition **supports the intent** of HB 1658, which before the transfer of non-agricultural park lands, authorizes the Department of Agriculture (DOA) to request information from the Department of Land and Natural Resources (DLNR) related to the establishment of easements by necessity upon the lands.

Farmers and ranchers need long-term leases in order to reasonably invest in infrastructure improvements on the leased land. Lands in active agricultural production should be transferred to the DOA, so that long-term planning can be implemented. The success of farmers and ranchers is a key component in the State’s goal to double local food production.

We agree with the Act 90 Working Group’s determination that certain lands would be considered eligible for transfer if an easement were provided to allow the DLNR or the public to access an adjacent parcel, and the DOA and DLNR should work together to identify any easements required on lands that are subject to the lease.

The Local Food Coalition would like to request your consideration of the following amendment - Page 4, line 7 be amended to read:

“to the establishment of reasonable easements by necessity upon the lands.”

We appreciate the work of the Act 90 Working Group during the interim to identify the challenges and potential remedies to transfer lands intended under Act 90.

The Local Food Coalition is an organization comprising of farmers, ranchers, livestock producers, investors and other organizations working to provide Hawaii’s food supply.

Thank you for the opportunity to submit testimony.

Kendall Matsuyoshi
808-544-8345
kmatsuyoshi@wik.com

Hawai'i Aquaculture & Aquaponics Association
Hawai'i Cattlemen's Council
Hawai'i Farm Bureau Federation
Hawai'i Farmers' Union United
Hawai'i Food Industry Association
Hawai'i Food Manufacturers Association
Kohala Center
Land Use Research Foundation of Hawai'i
Maui Farm to School Network (Maui F2SN)
Ulupono Initiative
College of Tropical Agriculture and Human Resources - University of Hawai'i at Manoa



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February 15, 2022

HEARING BEFORE THE
HOUSE COMMITTEE ON WATER & LAND

TESTIMONY ON HB 1658
RELATING TO THE TRANSFER OF NON-AGRICULTURAL PARK LANDS

Conference Room 430 & Videoconference
8:30 AM

Aloha Chair Tarnas, Vice-Chair Branco, and Members of the Committee,

I am Brian Miyamoto, Executive Director of the Hawai'i Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,800 farm family members statewide and serves as Hawai'i's voice of agriculture to protect, advocate and advance the social, economic, and educational interests of our diverse agricultural community.

The Hawai'i Farm Bureau supports HB 1658, which authorizes HDOA to request information from DLNR related to the establishment of easements by necessity upon the lands before the transfer of non-agricultural park lands.

HFB greatly appreciates the work of the Act 90 working Group and the efforts that have been made to accomplish the transfer of DLNR lands in agriculture production to DOA and respectfully requests the following amendments that will further clarify and facilitate the intent that State lands in agricultural use, including pasture use, will be transferred from DLNR to DOA.

- On page 4, modify lines 4 through 7 to read: (d) Before any transfer of certain qualifying non-agricultural park lands, the department may request from the department of land and natural resources any information related to the establishment of **necessary and reasonable** easements **by necessity** upon the lands."

HFB also respectfully requests the addition of a deadline for the transfer of DLNR lands in agriculture production to DOA. Producers whose leases have not been transferred after the nearly 19 years since Act 90 continue to be in a state of limbo, without the security and stability necessary to make investments and infrastructure improvements, or even contemplate long-term plans. No business can operate this way.

Hawai'i's food producers are also land stewards who are an important part of Hawai'i's goals of greater self-sufficiency and conservation efforts. Enabling their continued work

is in the best interest of the public. They should not be trapped in decades of debate about which agency controls their existence when it is the mission of one agency, DOA, to foster agriculture in Hawai'i. Supporting agriculture and conserving natural resources are not mutually exclusive. Producers should not be forced into waiting additional years while DLNR works to adjust its priorities, policies, and rules to expand its mission to support food production.

Thank you for taking our concerns into consideration and for your continued support of Hawai'i agriculture.