

STAND. COM. REP. NO.

367

Honolulu, Hawaii

FEB 18 2011

RE: S.B. No. 1079  
S.D. 1

Honorable Shan S. Tsutsui  
President of the Senate  
Twenty-Sixth State Legislature  
Regular Session of 2011  
State of Hawaii

Sir:

Your Committees on Judiciary and Labor and Agriculture, to which was referred S.B. No. 1079 entitled:

"A BILL FOR AN ACT RELATING TO LANDOWNER LIABILITY,"

beg leave to report as follows:

The purpose and intent of this measure is to protect farmers and ranchers from the effects of trespass on their agricultural land and ranch land by:

- (1) Clarifying that owners of agricultural land and ranch land have no duty of care to keep their lands safe for trespassers or to warn them of potentially dangerous conditions on the land, except when the owner is grossly negligent or intentionally injures the trespasser;
- (2) Deleting the requirements that agricultural lands must be fenced and display signs identifying the agricultural land as private property, for purposes of criminal trespass on agricultural land;
- (3) Authorizing a fine of up to \$10,000 for a violation of criminal trespass in the second degree for trespass on agricultural land; and
- (4) Establishing a fund into which the fines described in paragraph (3) above shall be deposited to be used by the county in which the agricultural trespass occurred.



Your Committees received testimony in support of this measure from the Hawaii Farm Bureau Federation, the Maui Cattlemen's Association, the Hawaii Cattlemen's Council, Inc., the Kauai Cattlemen's Association, and six individuals. Your Committees received testimony in opposition to this measure from the Hawaii Association for Justice. Your Committees received comments on this measure from the Department of Land and Natural Resources and the Office of Hawaiian Affairs.

Your Committees find that farms and ranches within the State are being used without permission from owners for hiking, hunting, dirt biking, and on occasion illegal activities. When trespassers go onto farms and ranches, they may injure themselves then threaten to sue the owners for their injuries. Due to the nature of the activities on this type of land, there may be large tracts or areas, such as irrigation ditches or areas containing farm equipment that are not feasible to make safe. By increasing the penalties for trespassing on agricultural land, your Committees intend to deter these trespassers from going onto agricultural and ranch land so that fewer or no injuries will occur.

Your Committees acknowledge that while establishing an enforcement fund may help to offset the costs to law enforcement for enforcing criminal trespass, establishing this type of fund adds a layer of complexity to this measure that may not be necessary.

Accordingly, your Committees have amended this measure by:

- (1) Deleting references to the Criminal Trespass on Agricultural Lands Enforcement Fund to more simply effectuate the intent of this measure;
- (2) Adding irrigation systems to the definition of "land", to ensure that these components are included within the protections given to ranch land and agricultural land owners;
- (3) Broadening the type of agricultural land that is covered under the criminal trespass in the second degree law by including a description of ranch land and fallow land;
- (4) Inserting an effective date of July 1, 2050, to allow for 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 Judiciary and Labor and Agriculture that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 1079, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 1079, S.D. 1, and be referred to the Committee on Ways and Means.

Respectfully submitted on behalf of the members of the Committees on Judiciary and Labor and Agriculture,


Clarence K. Nishihara  
CLARENCE K. NISHIHARA, Chair

Clayton Hee  
CLAYTON HEE, Chair



The Senate  
 Twenty-Sixth Legislature  
 State of Hawai'i

**Record of Votes**  
**Committee on Judiciary and Labor**  
**JDL**

Bill / Resolution No.:* <b>SB1079</b>	Committee Referral: <b>JDL/AGL, WAM</b>	Date: <b>2/7/11</b>		
<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
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile (VC)	✓			
GABBARD, Mike				✓
IHARA, Jr., Les	✓			
SLOM, Sam			✓	
<b>TOTAL</b>	<b>3</b>	<b>0</b>	<b>1</b>	<b>1</b>
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
<b>Distribution:</b> Original     Yellow     Pink     Goldenrod File with Committee Report     Clerk's Office     Drafting Agency     Committee File Copy				

\*Only one measure per Record of Votes

The Senate  
 Twenty-Sixth Legislature  
 State of Hawai'i

**Record of Votes**  
**Committee on Agriculture**  
**AGL**

Bill / Resolution No.:* SB 1079	Committee Referral: JDL/AGL, WAM	Date: <i>FEB 7-2011</i>		
<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
NISHIHARA, Clarence K. (C)	✓			
KAHELE, Gilbert (VC)	✓			
CHUN OAKLAND, Suzanne				✓
DELA CRUZ, Donovan M.				✓
KOUCHI, Ronald D.	✓			<del>✓</del> <i>cm</i>
SHIMABUKURO, Maile	✓			
TOKUDA, Jill N.				✓
WAKAI, Glenn				✓
SLOM, Sam			✓	<del>✓</del> <i>cm</i>
<b>TOTAL</b>	<b>4</b>		<b>1</b>	<b>4</b>
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <i>Gilbert Kahele</i>				
<b>Distribution:</b> Original     Yellow     Pink     Goldenrod File with Committee Report     Clerk's Office     Drafting Agency     Committee File Copy				

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