



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

LATE TESTIMONY

TESTIMONY OF RUSSELL S. KOKUBUN
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON AGRICULTURE

&

FRIDAY, FEBRUARY 3, 2012

8:00 a.m.

Room 312

HOUSE BILL NO. 1827
RELATING TO AGRICULTURE

Chairperson Tsuji and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 1827. The bill proposes to impose a 1 cent fee on each pound of green coffee beans grown in or imported into the State to be deposited into a special fund to control and eradicate the coffee borer beetle and to establish provisions to eradicate and control pests and infections on coffee trees.

The Department of Agriculture agrees that the coffee borer beetle is detrimental to the coffee industry, but feels that there needs to be more work done on this proposal. The Department would request that the bill be deferred to allow the Department and stakeholders to work together to develop a better resolution for the situation.

Thank you, again, for the opportunity to testify on this measure.



paid by the person who sells green coffee beans “grown” in the State, which is apparently an error, because the fee relative to Hawaii-grown coffee is already addressed in subsection (a). (See page 3, line 21 – page 4, line 1; page 3, line 10-12.) In the second situation, section 150A-C(b)(2) requires the fee to be paid by the roaster if the imported green coffee beans are not sold in the State before roasting in the State. (See page 4, lines 2-5.) Reading subsection (b)(1) and (2) together, it appears that subsection (b)(1) intended to address the situation where imported green coffee beans are “sold” in the State and not green coffee beans “grown in the State. (See page 3, line 21.) Correction of the term “sold” to “grown” at line 21 would reflect a parallel structure between subsection (b)(1) and (2) and a more logical reading to cover both situations for imported green coffee beans. If the imported green coffee beans are sold in the State before being roasted in the State, the fee shall be paid by the person who sells the green coffee beans. (See page 3, lines 21 – page 4, line 1.) If green coffee beans are not sold in the State before being roasted in the State, the fee shall be paid by the person who roasts the green coffee beans, i.e., the roaster. (See page 4, lines 3-5.)

Second, section 7 of the bill sets out provisions under which the Department of Agriculture’s authorized representatives may “enter at any time any premises or structure where coffee trees are grown or situated for any purpose, to inspect the trees and cherry for coffee berry borer infection.” (See page 15, lines 8-12.) The bill further provides that “[n]o person shall hinder or interfere with any entering or inspection authorized by this section.” (See page 15, lines 13-14.) The provision for entry onto private property at any time without notice or opportunity for consent raises questions as to the procedural due process rights of private property owners under article XIV, section 1, of the United States Constitution and article I, section 5 of the Hawaii Constitution. Although government has greater powers in emergency situations to dispense with constitutional protections such as notice and opportunity for consent, it is not clear that the case has been made that inspection for coffee borer beetle infestation is such an emergency. Moreover, the need for entry onto the property “at any time,” as distinguished from entry at reasonable times, seems inconsistent with what would appear to be a visual inspection that would require daylight.

The bill also provides for a condemnation procedure, which requires service of a written condemnation order on the owner of premises where coffee borer beetle infested trees are

situated, and orders, within a stated time, the disinfection of the infected portion of the premises or destruction of coffee trees that have been determined to be incapable of disinfection. (Page 15, line 15-21.) If the order is not complied with, within the stated time, the inspecting officer must destroy the coffee trees by cutting them down or removing them and charge the expense to the owner. (See page 16, line 1-5.) Shipment, transport, sale, or other disposition of any coffee cherry, green coffee beans, or coffee trees from the premises are prohibited until all the requirements of the condemnation notice and order are complied with and the inspector issues a written permit to do so. (See page 16, lines 6-11.) This raises a procedural due process concern. The bill does not appear to provide an opportunity for the owner to object to the determination that the owner's trees are incapable of disinfestation or, even that destruction of the infested trees is the appropriate means to eliminate the infestation from the property. In emergency situations, post-deprivation remedies may suffice, but it is not clear that the coffee borer beetle, as serious a pest as it is, is the kind of emergency that would warrant dispensing with such constitutional protections. If the Legislature believes that such stringent methods are necessary (and that measures such as those set forth in section 141-3.6, Hawaii Revised Statutes, would not suffice), it is important that the Legislature set forth the basis for its determination.

We respectfully request that the Legislature address the inconsistency, ambiguity, and procedural due process concern identified in this bill.



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

LATE TESTIMONY

2343 Rose Street • Honolulu, Hawaii 96819
Phone: (808) 848-2074 • Neighbor-Islands: (800) 482-1272
Fax: (808) 848-1921 • Email: info@hfbf.org
www.hfbf.org

FEBRUARY 3, 2012

HEARING BEFORE THE
HOUSE COMMITTEE ON AGRICULTURE

TESTIMONY ON HB 1827
RELATING TO COFFEE

Room 312
8:00 AM

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

I am Brian Miyamoto, Chief Operating Officer and Government Affairs Liaison for the Hawaii Farm Bureau Federation (HFBF). Organized since 1948, the HFBF is comprised of 1,800 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interest of our diverse agricultural community.

HFBF supports the intent of HB 1827, however, we have serious concerns with portions of this measure.

HFBF applauds the coffee industry and the ad-hoc Coffee Berry Borer (CBB) Task Force as it has shown leadership in quickly dealing with the discovery of the most destructive pest known to coffee. The industry realizes that state funding for CBB research and control would place an additional burden on the State's already over-stressed budget. In that vein what is being proposed here is the embodiment of a public-private partnership. The coffee industry is proposing to impose a fee upon itself and administer those funds through HDOA to be used solely for CBB control.

This initial effort is to be celebrated, but there are issues with the legislation that must be addressed before HFBF can lend its full support.

First: The language in sections b (1) and (2) of §150A-C fails to address green coffee exports intended for roasting on the mainland. Without including green coffee exports, the monetary targets envisioned in the legislation cannot be met.

Second: HFBF is in STRONG OPPOSITION with subsections 4-8 and recommends they be replaced with language that provides for penalties for offenders that may be enforced on a criminal level. HFBF rejects these sections for one or more of following reasons:

1. Portions of the existing language are inconsistent with HFBF policy
2. Portions may prove to be unconstitutional
3. Duties and enforcement activities are not presently included in HDOA's budget, and/or are beyond the Department's regulatory authority, and are therefore unenforceable.
4. In the case of Section 4, may endanger health, safety and welfare of citizens and state employees.

Third: The language 'coffee borer beetle' should be replaced with 'Coffee Berry Borer' and referred to in the definitions section along with the acronym 'CBB' and reference made to the scientific name '*Hypothenemus hampei*'.

Fourth: The Department is allowed flexibility to determine priorities within their resources to address the needs of the industry.

Thank you for the opportunity to provide testimony on this important measure.

Hawaii Crop Improvement Association

Growing the Future of Worldwide Agriculture in Hawaii

Testimony by Alicia Maluafiti

HB 1827 – Relating to Coffee

The House Committees on Agriculture and
Economic Revitalization & Business

Friday, February 3, 2012

8:00 a.m., Room 312

Position: Comments and Concerns

Aloha Chairs Tsuji and McElvey, Vice Chairs Hashem and Choy, and members of the Committees:

My name is Alicia Maluafiti, Executive Director of the Hawaii Crop Improvement Association, a nonprofit trade association representing Hawaii's seed farmers. HCIA offers comments and concerns about HB 1827 which creates a special fund and establishes policies to eradicate the coffee borer beetle.

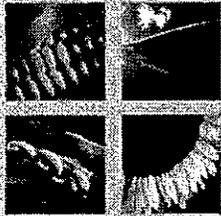
HCIA defers technical and policy questions to the State Department of Agriculture. But what we understand is that this bill will have unintended consequences on State Dept. of Agriculture and establishes a precedent that could prove problematic to the ag industry in the future.

There are currently other initiatives moving forward within the Dept. of Land and Natural Resources (DLNR) that address entry onto private property and the seizure of invasive species targeted for eradication. Because the Hawaii Invasive Species Council (HISC) coordinator is housed at DLNR, they can add to the list of invasive species. The proposed rule also allows HISC or their agents entry onto private property for eradication.

The proposed amendments to §13-124 are the responsibility of DLNR. The rules passed their board and are scheduled for public hearing. Their penalty section states "any equipment, article, instrument, aircraft, vehicle, vessel, business record or natural resource used or taken in violation of this chapter may be seized and subject to forfeiture as provided by HRS section 199-7 and 712A."

We believe that before there is a rush to mandate a new special fund and establish new policies and procedures for eradication of an invasive species by the HDOA, that we pause for a moment to see if the DLNR is able to properly manage this issue.

Mahalo for the opportunity to comment.



HCIA 2010-2012 Board of Directors

President

Fred Perak

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Treasurer

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Mark Stoutemyer

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Executive Director

Alicia Maluafiti

91-1012 Kahi'uka Street
Ewa Beach, HI 96706
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director@hciaonline.com
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LATE TESTIMONY

**Ka'u Farm Bureau
PO Box 1109
Naalehu Hawaii 96772
808-929-9550**

FEBRUARY 3, 2012

HEARING BEFORE THE
HOUSE COMMITTEE ON AGRICULTURE

TESTIMONY ON HB 1827
RELATING TO COFFEE

Room 312
8:00 AM

Chair Tsuji and Members of the Committee:

Ka'u is the only Hawaiian district outside of Kona that has the dubious distinction of having a small and recent infestation of Coffee Berry Borer (CBB). Since our "infestation" is relatively small and contained, and we don't have nearly as much feral coffee as Kona, our strategy and our needs are different than that of Kona.

Notwithstanding, Ka'u is taking CBB **very seriously** and is very aggressive when it comes to controlling the pest with eradication being the goal. Ka'u growers have worked collaboratively with HDOA, landowners, researchers, suppliers and the ad-hoc CBB task force to manage life after CBB.

Ka'u Farm Bureau supports the intent of HB1827, but takes issue with several elements of the bill and suggests amendments.

The coffee industry and the ad-hoc Coffee Berry Borer Task Force has demonstrated effective leadership by rapidly responding to the discovery of coffee's most destructive pest. The industry is cognizant that state funding for CBB research and control would place an additional burden on the State's narrowing budget. What is being proposed in HB1287 is exemplary of a public-private partnership wherein the coffee industry is proposing to impose a fee upon itself and administer those funds through HDOA to be used solely for CBB control via a special fund.

Ka'u Farm Bureau respects and supports this initiative, and also believes that enhanced research, training and collaboration with our coffee growing colleagues around the world is critically important to our members.

For example, controlling feral coffee in Ka'u will do nothing to control it here. What little we have of it is not infested. The reverse is true in Kona. Feral coffee in Kona is a huge problem; acting as a reservoir for the pest and thwarting even the most effective

control methods. Nevertheless, Ka'u understands that the Kona coffee industry is in crisis and that threatens the coffee industry throughout the state, and puts all growers at risk.

Our concerns with the bill are thus:

First: The language in sections b (1) and (2) of §150A-C fails to address green coffee exports intended for roasting on the mainland. Without including green coffee exports, the monetary targets envisioned in the legislation cannot be met.

Second: Ka'u Farm Bureau is in **STRONG OPPOSITION** with subsections 4-12 and recommends they be replaced with language that provides for penalties for aggravated offenders that may be enforced. Ka'u Farm Bureau rejects these sections for one or more of following reasons:

1. Portions may prove to be unconstitutional
2. Duties and enforcement activities are not presently included in HDOA's budget, and/or are beyond the Department's scope of regulatory authority; thereby unenforceable.
3. In the case of Section 4, may endanger health, safety and welfare of citizens and state employees.
4. Ka'u Farm Bureau finds that overly broad authority is given to the Department in these sections, which will damage the existing relationship built of cooperation between the growers and HDOA. We want to encourage growers to come forward, to seek help, rather than be driven into the shadows of criminality, or a threat of taking of private property. We feel without an environment conducive to cooperation, the net yield will be results contrary to the overarching intent of the measure.

Third: The moniker 'coffee borer beetle' should be replaced with 'Coffee Berry Borer' throughout and referred to in the definitions section along with the acronym 'CBB' and reference made to the scientific name '*Hypothenemus hampei*'.

Fourth: The Department is allowed some flexibility to determine priorities within their resources, with the requirement that collaboration with the industry locally and statewide in how resources are applied is critically important.

Thank you for the opportunity to provide testimony on this important measure.

With aloha,



Chris Manfredi
President

LATE TESTIMONY

Chairman Tsuji of the Hawaiian House Agricultural Committee

I am submitting testimony in opposition to HB1827.

As a small coffee farmer in Kona I am very concerned that a bill giving the power to the Hawaiian Department of Agriculture to enter, condemn, destroy and put a lien on someone's property because they have a pest infestation is a serious proposal which needs to be presented to the farmers whom this measure would possibly affect. The bill is not specific enough in defining "infestation". I would request that this bill be deferred by the legislature until all definitions have been clarified.

I do not oppose a tax to mitigate the effects of CBB but I believe the spending of this tax should be specified in the bill and I further believe the funds raised through such a tax should be spent on two (2) pursuits 1) the hiring of an entomologist to reside in the Kona District to help us understand and coordinate our fight against CBB and 2) to harvest and purify the naturally occurring fungus needed to develop inoculants to distribute to farmers as is done in the other coffee growing regions of the world. This way farmers would have the tools to fight the CBB infestation without threatening our civil rights.

Sincerely,
Louie Hanna
Luther Coffee Farm
88-1583 Ala Malino Rd
Captain Cook, HI 96704

LATE TESTIMONY

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 02, 2012 7:41 PM
To: AGRtestimony
Cc: sandrascar@aol.com
Subject: Testimony for HB1827 on 2/3/2012 8:00:00 AM

Testimony for AGR 2/3/2012 8:00:00 AM HB1827

Conference room: 312
Testifier position: Oppose
Testifier will be present: No
Submitted by: Sandra Scarr
Organization: Daily Fix Coffee
E-mail: sandrascar@aol.com
Submitted on: 2/2/2012

Comments:
Clift Tsuji, Chair
House Agriculture Committee
The Capitol

Dear Chair Tsuji and Committee Members:

This bill is flawed in two major respects. Part I seeks a pittance to address an expensive agricultural problem. Part II is an affront to citizens' Constitutional Rights under the Fourth Amendment; to wit, safety from unreasonable search and seizure. The bill is Unconstitutional on its face.

If the Legislature wants to raise sufficient funds to help farmers fight the coffee berry borer and to prevent its spread, an inspection fee of at least ten cents (\$0.10) per pound of green coffee beans imported and certified by the State must be levied. With an inspection fee of ten cents per pound, at least 5 million dollars can be raised.

Part II of this bill is a terrifying assault on civil rights under the Constitution. A government agency cannot be authorized by law to invade a person's home and business without a warrant or court order. I will not dwell on this aspect of the bill.

All in all, this bill should not be voted out of committee. Please vote NO on HB 1827

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 03, 2012 7:55 AM
To: AGRtestimony
Cc: colemel@kanalanifarm.org
Subject: Testimony for HB1827 on 2/3/2012 8:00:00 AM

Testimony for AGR 2/3/2012 8:00:00 AM HB1827

Conference room: 312
Testifier position: Oppose
Testifier will be present: No
Submitted by: Colehour Bondera
Organization: Individual
E-mail: colemel@kanalanifarm.org
Submitted on: 2/3/2012

Comments:

I am not in support of HB1827 as written since it does not help those who are dealing with the problem as the priority.

Kona coffee farmers need the support and help of Hawaii to ensure that the farm level management of CBB is attained.

Funds should go towards helping farmers to manage the pest and facilitate an educated manner to do so.

Since this is a significant problem, it needs to be dealt with in a significant way! The suggested tax must meet those standards and since 1 cent is so minimal, it is my suggestion that the tax be at least 10 cents per pound.

The tax should be collected at the time of HDOA inspection of green coffee, be it Hawaiian or imported. Simplifying the tax collection designation would result in a system that does not get congested in process!

Where CBB is should be the focus of the resources. Controlling CBB means working with the coffee farmers in Kona and other regions where it is found to help with control. Controls have not yet been worked out in Hawaii, though they have been in other parts of the world where coffee is grown. The international experience needs to be made use of in order to speed up the learning curve of the HDOA on this topic!

The state does not need to be raising funds to help those who are moving coffee around in green form as urgently as it needs to help the Hawaii farmers be able to allocate enough resources to mitigate the problem on the ground! Please do not build coffee processors a fumigation facility while coffee farmers are to lose their livelihoods!!!

Mitigating the problem means coming up with an adequate system, which cannot be accomplished by chopping trees down, since the CBB resides with alternative hosts and also on the soil. A system approach to addressing the issue requires experienced professionals on the ground working with coffee farmers to deal with this huge problem!

A free form definition of the word "infested" is not appropriate for a law, since this would allow various interpretations depending upon the person implementing. Small scale coffee farmers being removed from the equation will not make sense if the infected areas also include land that is not so dealt with...

YV-11 J

Essential; if those with significant capital and mostly out of state ownership are able to best keep the CBB off their farms, the CBB has to move somewhere and just because small scale operators do not have the resources to better resist should not mean that they lose their farms. Instead the state could use this fund to balance the management effectively across ownership lines!

Since the CBB is an insect, it moves. Thus an area which has none now will, sometimes within months, have a devastating infection rate. The definition of "infestation" and also of "best management" are difficult to narrow and should not be left up to interpretations of those without experience.

Coffee farmers need help to control CBB, and this piece of legislation needs re-wording and changes to serve this purpose. The reasons outlined below need to be addressed and the legislation then needs to be considered again...

Sincerely,

Colehour Bondera
Kanalani Ohana Farm
Kona Coffee Farmers Association, President Emeritus

LATE TESTIMONY

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 02, 2012 6:27 PM
To: AGRtestimony
Cc: dankuhn808@gmail.com
Subject: Testimony for HB1827 on 2/3/2012 8:00:00 AM

Testimony for AGR 2/3/2012 8:00:00 AM HB1827

Conference room: 312
Testifier position: Support
Testifier will be present: No
Submitted by: Dan Kuhn
Organization: Individual
E-mail: dankuhn808@gmail.com
Submitted on: 2/2/2012

Comments:

I hope this works. I dont see the actual file only. It shows the path in the computer and then the file. Strange.

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 03, 2012 7:33 AM
To: AGRtestimony
Cc: victor.lim@partners.mcd.com
Subject: Testimony for HB1827 on 2/3/2012 8:00:00 AM

Testimony for AGR 2/3/2012 8:00:00 AM HB1827

Conference room: 312
Testifier position: Support
Testifier will be present: No
Submitted by: Victor Lim
Organization: Individual
E-mail: victor.lim@partners.mcd.com
Submitted on: 2/3/2012

Comments:

As a McDonald's franchisee who have been serving Kona Blend coffee in our restaurants for over 40 years, we fully support our local coffee industry.

Thanks

LATE TESTIMONY

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 02, 2012 9:44 PM
To: AGRtestimony
Cc: marylou@cuppakona.com
Subject: Testimony for HB1827 on 2/3/2012 8:00:00 AM

Testimony for AGR 2/3/2012 8:00:00 AM HB1827

Conference room: 312
Testifier position: Oppose
Testifier will be present: No
Submitted by: Mary Lou Moss
Organization: Individual
E-mail: marylou@cuppakona.com
Submitted on: 2/2/2012

Comments:

Kona coffee farmers need to have time to respond to this bill. Some parts of this bill are unrealistic and unreasonable. We don't want the State able to go on someone's property and be able to condemn coffee trees that they think are infected with CBB, destroy the trees and then expect the owner of the property to pay for it.

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 03, 2012 6:12 AM
To: AGRtestimony
Cc: page@princessradhafarm.com
Subject: Testimony for HB1827 on 2/3/2012 8:00:00 AM

LATE TESTIMONY

Testimony for AGR 2/3/2012 8:00:00 AM HB1827

Conference room: 312
Testifier position: Oppose
Testifier will be present: No
Submitted by: Page Trygstad ①
Organization:
E-mail: page@princessradhafarm.com
Submitted on: 2/3/2012

Comments:

The Kona Coffee Farmers Association attempted to discuss a similar matter with the HDOA and legislative representatives numerous times and were denied that opportunity. The coffee blenders/processors who brought the industry this problem intend to use this bill to pillage other tax payer dollars out of the government to support their own agenda and business. This bill needs to be re-written in a manner that provides support to the individual farmer who is bearing the financial burden of control and mitigation. Table the measure and re-write the bill with input from the coffee farmers.

Additional Comments on REVERSE

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 02, 2012 10:19 PM
To: AGRtestimony
Cc: page@princessradhafarm.com
Subject: Testimony for HB1827 on 2/3/2012 8:00:00 AM

Follow Up Flag: Follow up
Flag Status: Completed

Testimony for AGR 2/3/2012 8:00:00 AM HB1827

Conference room: 312
Testifier position: Oppose
Testifier will be present: No
Submitted by: Page Trygstad (2)
Organization:
E-mail: page@princessradhafarm.com
Submitted on: 2/2/2012

Comments:

Until all coffee farmers are able to treat their farms with the Beauveria Bassiana fungus and other control and mitigation methods the removal of feral coffee is of no use. Any funding must support providing the small farmer with the various tools to do control and mitigation. The funding needs to be substantially larger than proposed. Table this measure until it is re-drafted with the contributions of the Kona coffee farmers.

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 02, 2012 9:48 PM
To: AGRtestimony
Cc: page@princessradhafarm.com
Subject: Testimony for HB1827 on 2/3/2012 8:00:00 AM
Attachments: HB1827 TESTIMONY 2-3-12.doc

LATE TESTIMONY

Testimony for AGR 2/3/2012 8:00:00 AM HB1827

Conference room: 312
Testifier position: Oppose
Testifier will be present: No
Submitted by: Page Trygstad
Organization: Individual
E-mail: page@princessradhafarm.com
Submitted on: 2/2/2012

Comments:

I am opposed to this bill, HB1827. Individuals and our organization were not consulted in advance on this matter. The funding requested is not sufficient. The uses of the funding are questionable at best. The government and its agencies attempting to force control over my land and enforce rules without cause. You are mis-informed if you think that every cherry or seed can be removed from a coffee farm. It is physically impossible! The gestapo hdoa police will not be allowed on my farm. I, personally have been one of the leaders in the farm community in getting our current treatment to the farmers. We were not consulted on this measure. The inspection fee on the imported green beans needs to be substantially larger, more like .25 cents per pound. The funds held in trust by the government for the use of the farmers to do their own control and mitigation of the CBB. You are misinformed if you believe that we will EVER be free of this unwelcome uninvited guest brought to us by the blenders. This bill needs to be table until the stakeholders, we Kona coffee farmers, are consulted and allowed input into a bill which would substantially effect our lives. To do otherwise is a violation of our rights as citizens, voters, and your employer!!!