HB 251
RELATING TO THE RIGHT TO FARM

House Committee on Agriculture
Public Hearing - February 1, 1993
9:00 A.M., Room 1206 SOT

By
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HB 251 would amend Chapter 165, HRS, to provide certain legal remedies pertinent to the right to farm, to expand relevant definitions, and to render void county ordinances which declare a farming operation a nuisance.

Our statement on this bill does not constitute an institutional position of the University of Hawaii.

It appears that the underlying intent of this legislation is to remedy conflicts that have arisen as a consequence of encroachment of urbanization and other non-agricultural development on lands formerly devoted to longstanding rural agricultural practices. Particularly in more populous regions of the state, there appears to be a need for some resolution of these issues. However, our reviewers feel that this bill is overly broad in its conferral of immunity from nuisance litigation. While the intent is self-described as remedial, it is not clear that the problems the measure addresses are amenable to an imposed legislative resolution. It would seem more appropriate to approach the issue as one of economic and social fabric, and to seek remedies which address the underlying economic and social weave which defines the context of the conflicts.

Our reviewers had specific concerns with the amendment of the definition of "established date of operation". Apart from the fact that the amended definition is inherently inconsistent with reality, we question the wisdom of artificially grandfathering actions that may have far reaching environmental and social consequences. As an example, conversion of aquaculture operations in Kahuku from fresh water to salt water ponds was found to have degraded water quality in the adjacent Ki'i National N...
Refuge. Although no nuisance litigation was undertaken in this case, such an issue would have been unreasonably prejudiced had court action ensued and this measure were in force. Similarly, the expanded definition of "farming operation" conveys an overly broad spectrum of activities, many of which have proven historically to contribute to serious compromises of public health and welfare. The combination of this proposed definition with the deletion of lines 3 and 4 on page 5 relating to water pollution or flooding is not only unwise, but will undoubtedly be challenged legally on grounds of inappropriate state preemption of federal anti-pollution statutes.

Finally, since much of the responsibility for regional planning and management is relegated to the counties under the rationale that local governments are better aware of their needs and specific problems than state level agencies, the abrogation of home rule in this area would seem ill advised.