



# University of Hawaii at Manoa

## Environmental Center

A Unit of Water Resources Research Center  
Crawford 317 • 2550 Campus Road • Honolulu, Hawaii 96822  
Telephone: (808) 956-7361

RL:01135

### HB 251 HD 1 RELATING TO THE RIGHT TO FARM

House Committee on Judiciary

Public Hearing - February 25, 1993  
2:00 P.M., Room 802 SOT

By

John T. Harrison, Environmental Coordinator  
M. Casey Jarman, Richardson School of Law  
Jon Matsuoka, Social Sciences Research Institute  
David Penn, Geography

HB 251 HD1 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 Wildlife 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. Although the bill contains specific language to avoid conflict with State authority to protect the public, it seems that such a clause creates an inherent conflict between the bill's intent to protect a farmer and the State's authority (frequently federally delegated) to protect the public. The resulting legal uncertainties of jurisdiction and questions of federal/state preemption will require court interpretation, which will delay implementation of the bill's intent. Such is the usual legacy of overly broad legislation.

Finally, as a general consideration, our reviewers suggest that regulation of local affairs most appropriately is the responsibility of local government. Particularly in the case of agricultural activities which may be viewed significantly differently on different islands, it seems unwise to divest the counties of responsibility for jurisdiction over their internal affairs.