

**JOSH GREEN, M.D.**  
Governor

**SYLVIA LUKE**  
Lt. Governor



**SHARON HURD**  
Chairperson, Board of Agriculture

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State of Hawai'i  
**DEPARTMENT OF AGRICULTURE**  
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**TESTIMONY OF SHARON HURD**  
**CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS**

**APRIL 3, 2024**  
**2:00 PM**  
**CONFERENCE ROOM 325**

**SENATE BILL NO. 2560, SD2, HD1**  
**RELATING TO INVASIVE SPECIES**

Chair Tamas, Vice Chair Takayama, and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill 2560, SD2, HD1 which provides that each lease that the Department of Agriculture (Department) enters into, renews, or extends shall authorize the Department to enter the leased premises with prior notification to survey for, identify, control, or eradicate pests; work cooperatively with a lessee to seek funding and develop a plan to maintain control of any pests on the leased premises; and terminate the lease if the lessee refuses the Department entry or refuses to work cooperatively toward the control or eradication of pests. The Department offers comments via suggesting this measure may be unnecessary as we believe these actions are already addressed through the General Lease provisions.

The Department recognizes the threat that invasive species pose and has already begun to address this issue by including an invasive species provision within its standard General Lease provisions. It reads as follows: "Inspection of premises, The Lessee shall permit the Lessor and its representatives, at all reasonable times during the lease term, to enter the demised premises... ". Additionally, it goes on "Invasive species. Lessee shall immediately notify Lessor of any suspected or known



presence of invasive species on the Premises and/or adjoining or nearby lots. Lessee shall allow Lessor access to the Premises to evaluate the situation pursuant to chapters 4-68 and 4-69, HAR. It shall be the Lessee's responsibility to take action to eradicate and/or prevent the spread of invasive species on the premises, which may include administering pesticides or other methods of remediation approved and accepted by the Department of Agriculture. In the event Lessee fails to take appropriate action to eradicate or control a known presence of invasive species on the Premises within a reasonably expedient amount of time (as determined by the nature of the invasive species), Lessor may perform such action to exterminate or control the invasive species and shall not be responsible to Lessee for any loss or damage that may occur by reason thereof, and Lessee agrees to pay Lessor on demand the cost of such remedial action made or caused to be made by Lessor together with interest thereon at the rate of two percent per month or at the maximum rate allowed by Hawaii law, whichever is less." Lastly, lease termination is an existing authority that the Board has to address violations, which unaddressed invasive species is.

Lastly, should the committee decide to move this measure forward, the Department suggests that the definition of "pest" match the existing one in HRS 150A-2. The inclusion of "restricted or prohibited species pursuant to chapter 150A" creates a situation where there are multiple definitions for an identical term within the HRS which can lead to confusion. It also subsequently prevents lessees from maintaining plants restricted by rule, such as taro, orchids, sugarcane, or pineapple, as they would require control or eradication of these plants on the premises; or requires control or eradication of species that are widespread, but still prohibited from entry such as geckos, myna birds, or bulbuls.

Thank you for the opportunity to testify on this measure.



House of Representatives  
Committee on Judiciary and Hawaiian Affairs  
Wednesday, April 3, 2024  
2:00 PM Conference Room 325  
State Capitol

### Testimony on SB2560 SD2, HD1

Aloha Chair Tarnas, Vice Chair Takayama, and Members of the Committee,

The Coordinating Group on Alien Pest Species (CGAPS) supports the intent of SB2560 SD2, HD1 *Relating to Invasive Species*, which authorizes the Hawaii Department of Agriculture (HDOA) to: (1) enter property it leases with prior notification to survey for, identify, investigate, control, or eradicate pests on the leased property; (2) work cooperatively with lessees to seek funding and develop a plan to maintain control or any pests on the leased premises; and (3) terminate a lease if the lessee refuses HDOA entry or refuses to work cooperatively toward the control or eradication of pests.

We support efforts to control pests that are present within the State. Providing HDOA the authority to require control of pests on State-owned leased agricultural land is a reasonable approach. We note that earlier versions of SB2560 authorized HDOA to: (1) enter property it leases without prior notification to survey for, identify, investigate, control, or eradicate pests on the leased property; (2) require a person leasing State lands to maintain control of invasive pests on the leased property; and (3) terminate a lease if the lessee refuses HDOA entry or violates laws, rules, or orders relating to invasive pests on the leased property. This is a common sense approach to allow HDOA to access State-owned property that it leases to address pests on that property.

Unfortunately, we cannot support the current text in SB2560 SD2 HD1 because it removes HDOA's existing tools to address pests on leased property. **The current text of SB2560 SD2 HD1 would require HDOA to weaken its existing policies related to the inspection of, and control or eradication of invasive species on, property it leases.** HDOA has previously submitted written testimony on SB2560 stating that the current standard General Lease includes provisions related to property access and invasive species.<sup>1</sup>

Issue 1: HDOA's current General Lease contains requirements for addressing invasive species as follows: "Invasive species. Lessee shall immediately notify Lessor of any suspected or known presence of invasive species on the Premises and/or adjoining or nearby lots. Lessee shall allow

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<sup>1</sup> See [https://www.capitol.hawaii.gov/sessions/session2024/Testimony/SB2560\\_SD2\\_TESTIMONY\\_AGR-WAL\\_03-20-24\\_.PDF](https://www.capitol.hawaii.gov/sessions/session2024/Testimony/SB2560_SD2_TESTIMONY_AGR-WAL_03-20-24_.PDF), pgs. 1 and 2.

Lessor access to the Premises to evaluate the situation pursuant to chapters 4-68 and 4-69, HAR. It shall be the Lessee's responsibility to take action to eradicate and/or prevent the spread of invasive species on the premises, which may include administering pesticides or other methods of remediation approved and accepted by the Department of Agriculture. In the event Lessee fails to take appropriate action to eradicate or control a known presence of invasive species on the Premises within a reasonably expedient amount of time (as determined by the nature of the invasive species), Lessor may perform such action to exterminate or control the invasive species and shall not be responsible to Lessee for any loss or damage that may occur by reason thereof, and Lessee agrees to pay Lessor on demand the cost of such remedial action made or caused to be made by Lessor together with interest thereon at the rate of two percent per month or at the maximum rate allowed by Hawaii law, whichever is less."

The text of SB2560 SD2, HD1 would prohibit HDOA from continuing to use this General Lease provision and instead merely authorizes HDOA to "work cooperatively with the lessee to seek funding" to control or eradicate pest species. This language provides no incentive for lessees to use management practices to prevent the establishment of pests or control or eradicate pests on the property they are leasing from the State.

Issue 2: With respect to access, another provision of HDOA's existing General Lease provides: "Inspection of premises, The Lessee shall permit the Lessor and its representatives, at all reasonable times during the lease term, to enter the . . . premises. . ." SB 2560 SD2 HD1 would require HDOA to give prior notice.

Additionally, HDOA has stated that lease termination is an existing authority that the Board of Agriculture has to address violations, including unaddressed invasive species.

We are unaware of any case where HDOA has enforced the General Lease provisions, either by charging a lessee for invasive species control or eradication actions or by terminating a lease because of invasive species-related concerns. However, having these requirements in place provides HDOA tools to address egregious or worst-case scenarios or situations where HDOA feels enforcement of the provisions is in the best interest of agriculture or public welfare.

We respectfully request the Committee consider amending page 1, lines 8 through 16, to read as follows:

- "(1) Enter the leased premises at any reasonable time to survey for, identify, investigate, control, or eradicate pests;
- (2) Require the lessee to maintain control of any pests on the leased premises, at the lessee's expense; and
- (3) Terminate the lease if the lessee refuses the department entry or is found in violation of any applicable law, rule, or order relating to the control or eradication of pests."

These authorities are consistent with HDOA’s existing General Lease requirements. We note that the text of all versions of SB2560 only **authorizes** HDOA to utilize the authorities set out in the bill (“the department **may**...”) and does not require HDOA to do anything differently or take any action at all. We sincerely hope this Committee will consider these proposed modifications to SB2560 SD2, HD1 if this Committee chooses to advance it. If not, not remove tools available to HDOA by advancing with its current text.

Finally, HDOA has submitted earlier testimony on SB2560 stating that including “restricted or prohibited species” in the definition of “pest” will prevent lessees from maintaining any plant regulated in any way by HDOA, including orchids, sugarcane, or pineapple. There may be some confusion here. Chapter 150A, Hawaii Revised Statutes (HRS), requires HDOA to develop lists of “restricted plants” pursuant to section 150A-6.1(a) and (b), Hawaii Revised Statutes (HRS).

HDOA has never developed lists of restricted plants pursuant to section 150A-6.1 HRS.<sup>2</sup> HDOA has designated certain plants that require quarantine or a permit when imported from another state or that are prohibited from importation from another state to protect important species like passionfruit, sugarcane, orchids, pineapples, and ohia.<sup>3</sup> However, this is not a restricted plant list, as required by section 150A-6.1 HRS.

To address HDOA’s concern, we respectfully suggest the Committee consider amending the definition of “pest” on page 2, lines 2 and 3, by deleting “or that is designated as a restricted or prohibited species pursuant to chapter 150A.” and inserting “including any noxious weed, or any prohibited or restricted species, imported or possessed in violation of applicable permit requirements.”

Mahalo for the opportunity to provide comments on SB2560 SD2 HD1 and for consideration of our testimony.

Aloha,



Christy Martin, CGAPS Program Manager



Stephanie Easley, CGAPS Legal Fellow

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<sup>2</sup> CGAPS petitioned the Board of Agriculture to request rulemaking to designate a list of invasive plant species as the restricted plant list required by section 150A-6.1 HRS. The Board approved the petition to be sent to the Advisory Committee on Plants and Animals for consideration on February 26, 2019. Presumably, it is still pending. See Board of Agriculture Meeting Agenda, Feb. 26, 2019, <https://hdoa.hawaii.gov/wp-content/uploads/2019/02/02-26-19-AGENDA.pdf>, pg. 2 “VI. New Business.”; Minutes of the Board of Agriculture, Feb. 26, 2019, <https://hdoa.hawaii.gov/wp-content/uploads/2019/04/BOA-minutes-2.26.19-DRAFT.pdf>, beginning on page 15, line 49 through pg.17, line 24.

<sup>3</sup> See ch. 4-70 HAR “Plant Import Rules”.



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April 3, 2024

HEARING BEFORE THE  
HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

**TESTIMONY ON SB 2560, SD2, HD1**  
**RELATING TO INVASIVE SPECIES**

Conference Room 325 & Videoconference  
2:00 PM

Aloha Chair Tarnas, Vice-Chair Takayama, 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 provides comments on SB 2560, SD2, HD1**, which provides that each lease that the Department of Agriculture enters into, renews, or extends shall authorize the DOA to enter the leased premises with prior notification to survey for, identify, investigate, control, or eradicate pests; work cooperatively with a lessee to seek funding and develop a plan to maintain control of any pests on the leased premises; and terminate the lease if the lessee refuses the DOA entry or refuses to work cooperatively toward the control or eradication of pests.

HFB recognizes the importance of preventing destructive invasive species from entering the State and how difficult it is to manage those that become established in our islands. We appreciate the difficult work of HDOA and its partners in preventing entry and their efforts to eradicate or control these detrimental animals, insects, weeds, diseases, and other pests.

As farmers and ranchers, we understand the need for updated policies and procedures to prevent the spread of these pest species. Our way of life and our livelihood is entirely dependent upon the ecological balance of our environment.

HFB has the following comments.

- HDOA already includes an invasive species provision within its standard General Lease provisions.
- Is it fair to target lessees if invasive pests are ubiquitous in the area, making it nearly impossible to prevent re-infestation, especially if there are no similar control requirements for the surrounding properties?

- Would large ranches, for example, those on hundreds of thousands of acres on Hawai'i Island that have been devastated by the two-lined spittlebug, be subject to the provisions of this bill even though there are currently no reasonable, cost-effective treatments available? Would having these pests on a farm or ranch be considered a violation?

Department funding and staffing have long been insufficient to adequately prevent the entry and establishment of dangerous and damaging invasive species. We must ensure that HDOA has the resources and personnel to educate the public and producers, assist agricultural businesses with compliance, and conduct inspections and enforcement.

Thank you for the opportunity to provide our comments and your continued support of Hawai'i's agricultural community.



**Hawaii Cattlemen's Council, Inc.**

**COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS**

Rep. David A. Tarnas, Chair

Rep. Gregg Takayama, Vice Chair

**SB2560 SD2 HD1**

**RELATING TO INVASIVE SPECIES**

Wednesday, April 3, 2024, 2:00 PM  
Conference Room 325 & Videoconference

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

The Hawaii Cattlemen's Council **offers comments on SB2560 SD2 HD1** which provides that each lease that the Department of Agriculture enters into, renews, or extends after the effective date of this Act shall authorize the DOA to: (1) Enter the leased premises at any time to survey for, identify, investigate, control, or eradicate invasive pests; (2) Require a lessee to maintain control of any invasive pests on the leased premises, at the lessee's expense; and (3) Terminate the lease if the lessee refuses the DOA entry or is found in violation of any applicable law, rule, or order relating to the control or eradication of invasive pests.

We support the intent of this bill to manage invasive species on Department of Agriculture leases. We believe the current SB2560 SD2 HD1 ensures that the bill does not unfairly put the entire responsibility on the lessee. Invasive species are difficult and costly to manage once they are established. In many cases, leased state lands already had invasive species present that the state departments should have been controlling. Instead of putting this burden solely on the leaseholder, it is in the best interest of the state departments to work with cooperatively with the leaseholder on a plan to manage the invasive species.

Thank you for the opportunity to testify on this matter. The Hawaii Cattlemen's Council (HCC) is the Statewide umbrella organization comprised of the four 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.

Nicole Galase  
Hawaii Cattlemen's Council  
Managing Director





**SB-2560-HD-1**

Submitted on: 4/3/2024 11:09:12 AM

Testimony for JHA on 4/3/2024 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Carol Kwan	Carol Kwan Consulting LLC	Support	Written Testimony Only

Comments:

This is a no-brainer. Of course lessees need to allow HDOA onto the property related to invasive species, and lessess must be good land stewards by keeping invasive species off of the property. I work in the industry, and I fully support this measure.