

HB 2593, HD2

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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LAND  
STATE PARKS

**Testimony of  
WILLIAM J. AILA, JR.  
Chairperson**

**Before the Senate Committees on  
ENERGY AND ENVIRONMENT  
and  
WATER, LAND, AND HOUSING**

**Thursday, March 15, 2012  
2:45 PM  
State Capitol, Conference Room 225**

**In consideration of  
HOUSE BILL 2593, HOUSE DRAFT 2  
RELATING TO EMERGENCY RULES FOR THREATS TO NATURAL RESOURCES  
FOR THE HEALTH OF THE ENVIRONMENT**

The Department of Land and Natural Resources (Department) strongly supports the passage of House Bill 2593, House Draft 2, an Administration measure which proposes to provide a means for agencies to adopt emergency rules related to imminent peril to natural resources.

The Legislature has provided a means for agencies to adopt emergency rules in instances of "imminent peril to the public health, safety, or morals, or to livestock and poultry health," yet at present there are not conditions for emergency rule adoption in the instance of imminent peril to Hawaii's natural resources.

Hawaii's unique environment and natural resources face myriad threats from invasive species, changing climate, increased resource demands, and other sources. In some cases, these threats constitute imminent peril to natural resources that require rapid response. A timely response to such emergencies is essential to mitigate environmental damage from the threat as well as to prevent far higher costs that may be needed if the threat is allowed to expand.

The recent discovery of axis deer on Hawaii Island has highlighted the need for the ability to adopt emergency rules associated with significant environmental threats. Axis deer present an imminent peril to native forest ecosystems on Hawaii Island as the introduction of feral ungulates species destroys understory and removes habitat for native species. At the time of discovery, Chapters 183D, 195D, and 197, Hawaii Revised Statutes (HRS), did not effectively prohibit interisland transport of introduced wildlife, nor did Chapter 124, Hawaii Administrative Rules.

In this instance, the ability to adopt emergency rules could have immediately deterred the transportation of axis deer to Hawaii Island.

The bill was created at the request of the interagency Hawaii Invasive Species Council (Chapter 194, HRS, comprised of the departments of Land and Natural Resources; Agriculture; Health; Transportation; Business, Economic Development and Tourism; and the University of Hawai'i). The Council reviewed and approved this bill prior to its introduction, as it strengthens the State's ability to respond to environmental threats such as invasive species introductions.

It should be noted that the Department of Agriculture has existing statutory authority to adopt emergency rules related to threats to agriculture, but not to broader environmental threats. This bill addresses a critical gap in emergency rule authorities.

The Department strongly supports House Bill 2593, House Draft 2, which would amend Sections 91-3(b) and 91-4(b), HRS, to allow agencies to adopt emergency rules in the instance of imminent threats to natural resources. In the instances where threats to the environment constitute imminent peril and are not effectively regulated by existing statutes or rules, the ability to adopt emergency rules could protect Hawaii's natural resources while saving the states future restoration or control costs.



COORDINATING GROUP ON  
ALIEN PEST SPECIES

The Senate  
Committee on Energy and Environment  
Committee on Water, Land, and Housing  
Thursday, March 15, 2012  
2:45 p.m., Conference Room 225  
State Capitol

### Testimony in Support of HB 2593 HD2

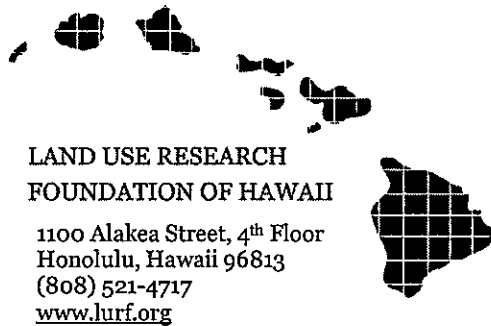
Aloha Chairs Gabbard and Dela Cruz, and Members of the Committees,

The Coordinating Group on Alien Pest Species (CGAPS) **supports HB 2593 HD2,**  
*Relating to emergency rules for threats to imminent peril to natural resources.*

Although agencies charged with protecting human health, safety, livestock, and poultry are able to adopt emergency rules when these values are threatened, agencies charged with protecting natural resources have been unable to do so. The introduction of axis deer to Hawai'i island, and the inability to enact emergency rules to clarify the illegal nature of such introductions is the latest example of the importance of this tool. Coqui frogs are another example of this need, where a pest of great concern didn't neatly fall into the established categories for emergency declaration. Protecting natural resources is one of our highest priorities, and HB 2593 HD2 gives agencies an important tool for this job. Mahalo for your consideration.

Aloha,

Christy Martin  
Coordinating Group on Alien Pest Species (CGAPS)  
Ph: (808) 722-0995



March 9, 2012

Senator Mike Gabbard, Chair  
Senator Kalani J. English, Vice Chair  
Committee on Energy and Environment

Senator Donovan Dela Cruz, Chair  
Senator Malama Solomon, Vice Chair  
Committee on Water, Land, and Housing

**Comments and Concerns Relating to HB 2593, H.D. 2 - Emergency Rules for Threats to Natural Resources or the Health of the Environment. (Broadens the conditions under which emergency rules may be adopted to include instances of imminent peril to natural resources.)**

**Thursday, March 15, 2012, 2:45 p.m., in Conference Room 225**

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF supports the intent of **HB 2593, H.D. 2**; however, we have **comments and concerns** related to the current language of the bill, which appears to provide state agencies with overly broad powers to change rules with little or no public notice or input, thereby impacting private land owners, agricultural operators and others who are affected by Hawaii's natural resources.

**HB 2593, H.D. 2.** The purpose of this bill is to provide a means for agencies to adopt emergency rules related to imminent peril to natural resources, in order that departments may respond rapidly to such environmental hazards.

**LURF's Position.** LURF members include private land owners, farmers, ranchers, and other agricultural stakeholders who own, maintain, and utilize natural resources and livestock which are critical to conduct their operations and to sustain their businesses.

While HB 2593, H.D. 2 may greatly assist these land owners and agricultural stakeholders in the event of emergency endangering these resources or the public health and safety, LURF has concerns regarding the current language of the bill, which appears to provide state agencies with overly broad powers to change rules with little or no public notice or input, thereby impacting those affected by Hawaii's natural resources. In particular, the unilateral rule changes without public hearings by the Department of Land and Natural Resources (DLNR) would have a major

adverse impact on farmers and agricultural operations, fishermen, hunters, and ocean recreation, etc.

Given the potential adverse impact on local stakeholders despite the valid purpose underlying this measure, LURF requests that HB 2593, H.D. 2 be amended to address the concerns of all parties. Since it appears that this measure was prompted by the imminent peril to Hawaii's environment specifically caused by the axis deer (which is an "alien invasive species"), LURF recommends that the language of the proposed bill be amended so as not to broadly address imminent peril which may be caused generally to "natural resources or the health of the environment," and to limit the rulemaking authority to instances of imminent peril specifically caused by "alien invasive species."

LURF understands that in the past, the subject legislation has been similarly amended to include "livestock" to specifically address concerns resulting from the "mad cow disease" scare; and also to include "poultry health" in response to specific concerns relating to the "Asian bird flu" outbreaks. Since the sole justification for the current measure is the peril caused by the axis deer, which is an "invasive alien species," LURF believes that it would be reasonable and consistent with past practice for the Legislature to amend this measure to limit the rulemaking authority afforded by this bill to situations of imminent peril **specifically caused by "invasive alien species."**

Public health and safety, as well as health of the environment are critical concerns of land owners and agricultural stakeholders, and the ability of agencies and departments to adopt emergency rules to aid in quick response to environmental peril provide much comfort and assurance, and directly address ongoing issues relating to environmental health and to food safety and security. LURF and its members appreciate this measure being taken which may greatly assist these stakeholders and the public, and the acknowledgement of these vital natural resources for the State, however, respectfully urge this Committee to consider the above concerns and recommendations relating to the current language of this bill.

Thank you for the opportunity to present testimony regarding this matter.



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[nature.org/hawaii](http://nature.org/hawaii)

Testimony of The Nature Conservancy of Hawai'i  
Supporting H.B. 2593 HD2 Relating to Emergency Rules for Threats to  
Senate Committee on Energy and Environment  
Senate Committee on Water, Land and Housing  
Thursday, March 15, 2012, 2:45PM, Room 225

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*The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of Hawaii's native plants, animals, and ecosystems. The Conservancy has helped to protect nearly 200,000 acres of natural lands for native species in Hawai'i. Today, we actively manage more than 32,000 acres in 10 nature preserves on Maui, Hawai'i, Moloka'i, Lāna'i, and Kaua'i. We also work closely with government agencies, private parties and communities on cooperative land and marine management projects.*

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The Nature Conservancy supports H.B. 2593 HD2 to provide emergency rulemaking authority to the Department of Land and Natural Resources (DLNR) to address issues of imminent peril to natural resources.

Invasive animals, weeds, insects, diseases, and other pests are one of the greatest threats to Hawaii's economy, agriculture, natural environment, and the health and lifestyle of its people. Evidence from Hawai'i and around the world shows that preventing new pest establishment is exponentially more economical than eradicating a pest or, even worse, controlling it indefinitely once it becomes established.

Where established in Maui county, Axis deer are causing great damage to native habitat and agricultural crops, and are a danger to vehicle traffic on roadways. Unfortunately, the DLNR and the Department of Agriculture have not had the legal tools and authorities necessary to rapidly respond to the recent discovery of Axis deer on Hawai'i island.

For these reasons, we support this measure. Thank you for the opportunity to testify.

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