

STAND. COM. REP. NO. 2578

Honolulu, Hawaii

FEB 28 2014

RE: S.B. No. 2347  
S.D. 2

Honorable Donna Mercado Kim  
President of the Senate  
Twenty-Seventh State Legislature  
Regular Session of 2014  
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred  
S.B. No. 2347, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO INVASIVE SPECIES,"

begs leave to report as follows:

The purpose and intent of this measure is to prevent the  
spread of pests across the State by:

- (1) Requiring nursery stock that is infested with certain pests to be treated for eradication of pests before the sale or transport of the nursery stock from one island to another island within the State or intraisland;
- (2) Requiring an element of gross negligence, rather than intent, for a violation of section 150A-6(3) or (4), Hawaii Revised Statutes, relating to the importation, possession, or transportation of certain animals, plants, or equipment that is harmful to agriculture, horticulture, animals, public health, or natural resources; and
- (3) Eliminating the element of intent to propagate, sell, or release from the penalty for transporting, harboring, or importing prohibited animals or restricted plants, animals, or microorganisms without a permit and from the penalty for importing, possessing, harboring, transferring, or transporting any designated pest.



Your Committee received testimony in support of this measure from the Department of Land and Natural Resources, The Nature Conservancy, Oahu Invasive Species Committee, Maui Invasive Species Committee, Molokai/Maui Invasive Species Committee, Airlines Committee of Hawaii, Outrigger Hotels Hawaii, and six individuals. Your Committee received testimony in opposition to this measure from the Hawaii Farm Bureau; Hawaii Export Nursery Association; Hawaii Floriculture and Nursery Association; Kauai Nursery & Landscaping, Inc.; and four individuals. Your Committee received comments on this measure from the Department of Agriculture and Department of the Attorney General.

Your Committee finds that pests, such as the coqui frog and little fire ant, are threatening Hawaii's delicate ecosystem and must be controlled. This measure requires that pests be eradicated before they are sold or transported in the State so that destructive pests are not able to infest the Hawaiian islands.

Your Committee notes the concerns raised by the Department of the Attorney General regarding requiring the criminal state of mind of gross negligence for a person violating section 150A-6(3) or (4), Hawaii Revised Statutes, and eliminating the intent to propagate, sell, or release with regard to prohibited animals and restricted plants. However, your Committee recognizes the pervasive problem of pest infestation in Hawaii and the potential economic, environmental, and public health problems that such infestations may cause if not adequately controlled or prevented. Thus, your Committee believes that the issue regarding mens rea merits further discussion as this measure moves through the legislative process and encourages the Department of the Attorney General to develop language that would address the Department's concerns.

Your Committee further notes that this measure addresses pest eradication of nursery stock, but believes that a comprehensive intransland quarantine program is necessary to control the continued reintroduction of pests. Thus, your Committee believes that inserting certain parts of S.B. No. 2607 (2014), into this measure will assist the Department of Agriculture in providing a more comprehensive pest prevention and eradication program across the State.

Your Committee has amended this measure by:



- (1) Inserting certain sections of S.B. No. 2607 (2014), to establish a comprehensive intraisland quarantine program to control the spread of pests within the State that:
  - (A) Prohibits a person from moving any regulated article intrastate from any quarantined area;
  - (B) Specifies the types of regulated articles that are prohibited from intrastate movement;
  - (C) Requires the Department of Agriculture to quarantine each portion of the State that is infested and sets guidelines for the Department to designate and terminate designation of quarantined areas;
  - (D) Establishes conditions for the movement of regulated articles from quarantined areas that are established by the Department of Agriculture;
  - (E) Authorizes an inspector to issue a certificate or limited permit for the intrastate movement of a regulated article approved under a compliance agreement if certain conditions are met;
  - (F) Requires the Department of Agriculture to develop and implement a comprehensive and effective interisland quarantine program, including the use of compliance agreements patterned after specific federal regulations;
  - (G) Allows any person who grows, handles, or moves regulated articles intrastate to enter into a compliance agreement with the Department of Agriculture;
  - (H) Authorizes an inspector to cancel any certificate, limited permit, or compliance agreement in the event of noncompliance by the holder of a certificate or limited permit or person who entered into a compliance agreement, and allows such person to appeal the cancellation of the certificate, limited permit, or compliance agreement;

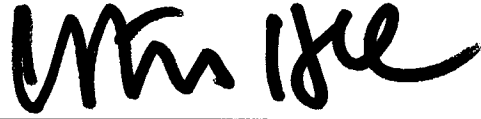


- (I) Establishes requirements for the attachment and disposition of the certificates and limited permits;
  - (J) Establishes within the Department of Agriculture a little fire ant and coqui frog detection, control, exclusion, and enforcement programs for nurseries producing containerized plants to keep nurseries free of the little fire ant and coqui frog and provide a basis to certify containerized nursery stock for intrastate movement;
  - (K) Establishes requirements and procedures for the little fire ant and coqui frog detection, control, exclusion, and enforcement programs for nurseries producing containerized plants;
  - (L) Authorizes the counties to establish their own requirements by ordinance to prevent the introduction of infested, regulated articles that are consistent with law and rules until the Department of Agriculture implements this measure; and
  - (M) Establishes a fine equal to the value of shipment of \$10,000, whichever is greater, for any person who moves infested regulated articles intrastate; and
- (2) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2347, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 2347, S.D. 2.



Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary and  
Labor,



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CLAYTON HEE, Chair



The Senate  
 Twenty-Seventh Legislature  
 State of Hawai'i

**Record of Votes**  
**Committee on Judiciary and Labor**  
**JDL**

|  |                     |          |     |         |
|--|---------------------|----------|-----|---------|
| Bill / Resolution No.:*  | Committee Referral: | Date:    |     |         |
| SB 2347, SD1   | AGL/ENE, JDL        | 2/20/14  |     |         |
| <input type="checkbox"/> The committee is reconsidering its previous decision on this measure.<br>If so, then the previous decision was to: _____  |                     |          |     |         |
| The Recommendation is:<br><input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313 |                     |          |     |         |
| Members  | Aye                 | Aye (WR) | Nay | Excused |
| HEE, Clayton (C)   | ✓                   |          |     |         |
| SHIMABUKURO, Maile S.L. (VC)   | ✓                   |          |     |         |
| GABBARD, Mike  | ✓                   |          |     |         |
| GALUTERIA, Brickwood   |                     |          |     | ✓       |
| IHARA, Jr., Les  | ✓                   |          |     |         |
| SOLOMON, Malama  |                     |          |     | ✓       |
| SLOM, Sam  |                     |          |     | ✓       |
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| <b>TOTAL</b>   | 4                   |          |     | 3       |
| Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted   |                     |          |     |         |
| Chair's or Designee's Signature:   |                     |          |     |         |
| <b>Distribution:</b> Original     Yellow     Pink     Goldenrod<br>File with Committee Report     Clerk's Office     Drafting Agency     Committee File Copy   |                     |          |     |         |

\*Only one measure per Record of Votes