

# **SB2078**

# **Testimony**



State of Hawaii  
**DEPARTMENT OF AGRICULTURE**  
1428 South King Street  
Honolulu, Hawaii 96814-2512  
Phone: (808) 973-9600 FAX: (808) 973-9613

**TESTIMONY OF SCOTT E. ENRIGHT  
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE SENATE COMMITTEE ON AGRICULTURE  
THURSDAY, JANUARY 23, 2014  
2:45 P.M.  
Room 229**

**SENATE BILL NO. 2078  
RELATING TO CONDOMINIUMS**

Chairperson Nishihara and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill No. 2078. The Department of Agriculture supports this measure that clarifies that Section 205-4.6, Hawaii Revised Statutes does not allow private restrictions to be placed on agricultural uses and activities on agricultural condominium properties. Since the enactment of this law in 2003, we have received complaints from occupants of agricultural condominiums seeking to grow crops but facing restrictions on their agricultural activities, including limitations on the days and times they may use farming equipment, limitations on the height and type of vegetation used for windbreaks, and restrictions on crop types. The Department of Agriculture strongly supports and promotes agricultural production on all agricultural lands, particularly on agricultural subdivisions and condominiums.

Thank you, again, for the opportunity to testify on this measure.





P.O. Box 253, Kunia, Hawai'i 96759  
Phone: (808) 848-2074; Fax: (808) 848-1921  
e-mail [info@hfbf.org](mailto:info@hfbf.org); [www.hfbf.org](http://www.hfbf.org)

January 23, 2014

HEARING BEFORE THE  
SENATE COMMITTEE ON AGRICULTURE

TESTIMONY ON SB 2078  
RELATING TO CONDOMINIUMS

Room 229  
2:45 PM

Chair Nishihara, Vice Chair Kouchi, and Members of the Committee:

I am Christopher Manfredi, Acting President of the Hawaii Farm Bureau Federation (HFBF). Organized since 1948, the HFBF is comprised of 1,832 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interest of our diverse agricultural community.

Hawaii Farm Bureau supports the intent of this bill to clarify that private restrictions on agricultural uses and activities on agricultural lands are inappropriate and should not be allowed.

We agree that, for example, an agricultural land owner wishing to convert his property to a condominium status under a condominium property regime, should not be able to restrict current or future agricultural uses of that property.

Local agriculture should be supported and encouraged. This bill appears to provide assurances that under these specific circumstances, agricultural land will not be subject to unreasonable restrictions that would inhibit that purpose.

Thank you for the opportunity to comment on this measure.

**PRESENTATION OF THE  
REAL ESTATE COMMISSION**

TO THE HOUSE COMMITTEE ON AGRICULTURE

TWENTY-SEVENTH LEGISLATURE  
Regular Session of 2014

Thursday, January 23, 2014  
2:45 p.m.

**TESTIMONY ON SENATE BILL NO. 2078, RELATING TO CONDOMINIUMS.**

TO THE HONORABLE CLARENCE K. NISHIHARA, CHAIR,  
AND MEMBERS OF THE COMMITTEE:

My name is Scott Sherley and I am the Condominium Review Committee Chairperson of the Hawaii Real Estate Commission ("Commission"). The Commission appreciates the opportunity to present testimony on Senate Bill No. 2078, Relating to Condominiums. Senate Bill No. 2078 clarifies the applicability of section 205-4.6, HRS, relating to private restrictions on agricultural uses and activities, to condominium projects on lands classified as agricultural. The Commission supports Senate Bill No. 2078 for the following reasons.

Condominiums may be created on lands located in an agricultural classified district. Pursuant to the condominium law, section 514B-84 (b) (1), HRS, a developer creating such a condominium shall disclose to prospective purchasers among other information as follows:

- (1) Whether the structures and uses anticipated by the developer's promotional plan for the project are in compliance with all applicable state and county land use laws;

(2) Whether the structures and uses anticipated by the developer's promotional plan for the project are in compliance with all applicable county real property tax laws, and the penalties for noncompliance; and

(3) Other disclosures and information that the commission may require.

Such disclosures are apparently intended to provide prospective purchasers relevant information relating to whether the prospective purchaser's consumer expectations may be met by purchasing a unit.

Specifically, Senate Bill No. 2078 appears to provide some additional consumer protective measures towards these ends as follows:

- Requires a developer to include in a declaration creating a new or converted condominium property regime that there are no restrictions or prohibitions disallowing any prospective purchaser from engaging in agricultural uses and activities as defined in sections 205-2 (d) and 205-4.5 (a), HRS;
- Requires a developer to obtain a verified statement signed by an appropriate county official, that the project as described and set forth in the project's declaration, condominium map, bylaws, and house rules does not include any restrictions limiting or prohibiting agricultural uses or activities, in compliance with section 205-4.6, HRS;
- Requires a developer to submit to the Commission as part of the developer's application to register the project the verified statement;

- Allows the Commission to decline to register an agricultural condominium project if the developer does not submit the required statement;
- Allows the Commission to decline to issue an effective date for a developer prepared public report to be used to sell units in the project where the developer has not submitted the required county statement;
- Permits the Commission after notice and a hearing to terminate the registration of a condominium project after a determination that a developer, or any officer, principal, or affiliate of a developer has failed to conform or comply with county zoning and development ordinances as required by chapter 205, including section 205-4.6 where applicable, and section 514B-5, HRS.

For the reasons discussed, the Commission supports Senate Bill No. 2078.

Thank you for the opportunity to testify.

January 22, 2014

**The Honorable Clarence K. Nishihara, Chair**  
Senate Committee on Agriculture  
State Capitol, Room 325  
Honolulu, Hawaii 96813

**RE: S.B. 2078, Relating to Condominiums**

**HEARING: Thursday, January 23, 2014, at 2:45 p.m.**

Aloha Chair Nishihara, Vice Chair Kouchi, and Members of the Committee:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,300 members. HAR **supports the intent** of S.B. 2078, which clarifies the applicability of section 205-4.6, Hawaii Revised Statutes ("HRS"), relating to private restrictions on agricultural uses and activities, to condominiums projects on lands classified as agricultural.

HAR supports an owner's right to farm. This measure accomplishes that by, amending HRS §205-4.6 to protect uses and activities on agricultural lands through prohibiting any restrictions by private agreement contained in any condominium declaration, map, bylaws, and other documents executed and submitted under HRS §514A and §514B relating to condominium property regimes.

Furthermore, HAR believes that consumers may be better informed by disclosing in the condominium developer's public report that there are no restrictions or prohibitions disallowing a potential purchaser from engaging in farming as defined in HRS §205.

HAR notes that this measure, as written, may apply retroactively to all condominium property regimes, inasmuch as it restricts any private agreement contained in a condominium declaration, map, bylaws, and other documents.

Mahalo for the opportunity to testify.

January 22, 2014

**Oppose** Condominiums; Condominium Projects; Agricultural Uses and Activities  
**SB2078** Clarifies the applicability of section 205-4.6, HRS, relating to private restrictions on agricultural uses and activities, to condominium projects on lands classified as agricultural.



**Senate Agriculture Committee**

January 23, 2014

Room 229 2:45 PM

Aloha Honorable Chair and Senators,

We find it quite alarming that SB2078 seek **§205-4.6** be amended to include the possibility of condominiums on agricultural lands. We would like to direct your attention to "Urban Type Residential Communities in the Guise of Agricultural Subdivisions:" Addressing an Impermissible Use of Hawai'i's Agricultural District. 25 UH L. Rev. 199 (2002).

We can see no justification to support condominium projects on lands classified as agricultural. Amending 514B-5 simply permits the inclusion of new sections in 205-4.6 being proposed. It is difficult to imagine a condominium development which does not include any restrictions limiting or prohibiting agricultural uses or activities when by nature, the construction of a condominium project would likely cause significant disturbance to farming operations.

Without viable justifications for condominium erection on agricultural land, it is our hope that this bill is deferred indefinitely. We request that the introducers clarify the alleged necessity for condominium projects on land zoned for agriculture that would warrant such a bill. We find no mention of agricultural work force housing nor indication that such condominiums on agriculture lands would be designated for needed cost-reducing and affordable workforce housing in order to increase local food production at a beneficial and profitable rate for our local farmers.

The primary purpose of our agricultural land should be safe, non-toxic food, period. The already overburdened infrastructure on Oahu alone cannot handle this legislation.

We need local food production and neither 205-2(d) and 205-4.5(a) currently mention or allow condominium projects on agricultural lands. We need to minimize urban sprawl, not expand condominiums onto agricultural lands of which 40-60,000 acres are already being used for non-food genetic testing and exported genetically engineered seeds.

The rest of the bill appears to be nothing more than an attempt to allow condominium development on agricultural lands. There is potentially some confusion for the reasoning behind considering the allowance of condo developments on agricultural land when we are importing more than 90% of our food. It seems

#babesagainstbiotech



we cannot actually afford to sacrifice agricultural land for more condos. How is it that condo developments will not limit or prohibit agricultural uses? By absorbing square footage with construction without any kind of needed workforce housing initiative, you are removing agricultural land from production.

We ask that the introducers and this committee please address the proposed justification for:

1. More condominium projects in Hawaii
2. Condominium projects on agricultural lands.

Please oppose this bill enthusiastically or provide ample justification which I can take back to the 13,000 Babes Against Biotech about why you think Hawaii agricultural lands should allow condominium projects to be built on them.

Mahalo.

Best Regards,

--

**Nomi Carmona**  
President  
Babes Against Biotech  
+1 808 436 7006  
nomi@babesagainstbiotech.org

[babesagainstbiotech.org](http://babesagainstbiotech.org)  
fb: [fb.com/babesagainstbiotech](https://www.facebook.com/babesagainstbiotech)  
twitter: [@babesagainstgmo](https://twitter.com/babesagainstgmo)  
insta: [@babesagainstbiotech](https://www.instagram.com/babesagainstbiotech)

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [AGL Testimony](#)  
**Cc:** [prentissc001@hawaii.rr.com](mailto:prentissc001@hawaii.rr.com)  
**Subject:** Submitted testimony for SB2078 on Jan 23, 2014 14:45PM  
**Date:** Friday, January 17, 2014 2:58:29 PM

---

**SB2078**

Submitted on: 1/17/2014

Testimony for AGL on Jan 23, 2014 14:45PM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Charles Prentiss		Support	No

Comments: This bill is needed to fill current loopholes.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)