

DAVID Y. IGE
GOVERNOR OF
HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
HEALTH, HUMAN SERVICES, & HOMELESSNESS**

**Tuesday, February 1, 2022
9:00 AM**

State Capitol, Via Videoconference, Conference Room 329

**In consideration of
HOUSE BILL 1514
RELATING TO BIRDS**

House Bill 1514 proposes to amend Chapter 322, Hawaii Revised Statutes, by adding a new section to address the negative impacts of excessive feeding of feral birds. **The Department of Land and Natural Resources offers the following comments.**

Excessive feeding of feral birds can negatively impact Hawaii's native wildlife. In addition to the negative impacts outlined in House Bill 1514, the excessive feeding of feral birds can affect native wildlife in the following ways:

- Excessive feeding can cause increases in populations of mongooses, rodents and feral cats, all of which pose serious threats to Hawaii's native wildlife.
- Excessive feeding of feral birds can directly impact the endangered nēnē and `alae `ula as these birds will also eat the food, and non-natural food sources can be harmful to them.
- Excessive feeding of mallards could lead to increased populations of these feral ducks which can negatively impact the endangered koloa (Hawaiian duck) through hybridization and other native waterbirds through competition.

Thank you for the opportunity to comment on this measure.

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2022**

ON THE FOLLOWING MEASURE:
H.B. NO. 1514, RELATING TO BIRDS.

BEFORE THE:
HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES, AND HOMELESSNESS

DATE: Tuesday, February 1, 2022 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 329, Via Videoconference

TESTIFIER(S): Holly T. Shikada, Attorney General, or
Wade H. Hargrove III, Deputy Attorney General

Chair Yamane and Members of the Committee:

The Department of the Attorney General provides the following comments.

This bill (1) adds a new section to chapter 322, Hawaii Revised Statutes (HRS), to prohibit the feeding of feral birds, or placement of food, in a manner that a reasonable person would expect to result in no fewer than twenty-five birds gathering within a twenty-foot radius, and to establish criteria for evidence of a violation, (2) amends section 322-1, HRS, to delete odors and filth resulting from the feeding of feral birds from the definition of nuisance, (3) amends sections 322-2, 322-3, and 322-4, HRS, to require the Department of Health (DOH) to enforce violations of the new section, (4) amends section 322-6, HRS, to include the prohibitions of the new section in the nuisance reporting requirements, (5) amends section 322-8, HRS, to provide graduated penalties for violations of the chapter, including the new section, and (6) makes other amendments for conformity, including additional definitions.

The bill, at page 3, lines 5-9, sets out a "reasonable person" standard by which to assess the violation as follows:

(a) No person shall feed, or permit or allow the placement or discarding of food or food by-products, in a manner that a reasonable person would expect to result in the lingering, roosting, or congregating of twenty-five or more feral birds within a twenty-foot radius. [Emphasis added.]

The use of this subjective standard could affect implementation, and the DOH may have difficulty enforcing it, because reasonable persons can disagree with respect to whether or not a certain amount of feeding is either above or below this regulatory threshold. To address this, we suggest removing the reasonable person standard to create an entirely objective standard for feeding violations, dependent only on the DOH confirming the prohibited feeding activity and counting the number of birds within a specific area, as follows (new material added, material to be deleted in brackets and stricken):

(a) No person shall feed, or permit or allow the placement or discarding of food or food by-products, in a manner that [~~a reasonable person would expect to result~~] results in the lingering, roosting, or congregating of twenty-five or more feral birds within a twenty-foot radius.

In the proposed subsection (b)(4) of the new section, at page 3, line 10, to page 4, line 7, there is a word agreement drafting error that may be remedied as follows (new material underscored, material to be deleted in brackets and stricken):

(b) This section shall not apply to the feeding of:

...

(4) Any [~~food or bait products used~~] bird by a pest control operator licensed under chapter 460J;

Finally, the bill would create criteria for presenting evidence of a prima facie case that does not appear to have its intended effect and may cause confusion, in proposed subsection (c), at page 4, lines 8-17:

(c) Prima facie evidence of a violation of subsection (a) or of a cease and desist order issued under section 322-2 or 322-3 shall include:

- (1) A certificate, sworn to or affirmed by an individual authorized to enforce this section, based upon inspection of the premises and witnessing a violation; or
- (2) A photograph or video recording evidencing a violation that was gathered or received by an individual authorized to enforce this section.

"Prima facie evidence" is often specified in statutes to characterize a necessary element of a violation or crime, for example, possession in criminal

drug cases. See, e.g., section 712-1251(1), HRS ("the presence of a dangerous drug, harmful drug, or detrimental drug in a motor vehicle, other than a public omnibus, is prima facie evidence of knowing possession thereof by each and every person in the vehicle at the time the drug was found."). The wording of this proposed subsection (c) appears to set out what form of evidence can be used (a sworn affidavit or photographic evidence) by the DOH to prove violations, rather than define a specific fact, or set of facts, that once proven (in whatever manner is possible under the circumstances of the case) shift the burden of proof to the violator.

The proposed subsection (c) above will not materially change the DOH's presentation of evidence – it does not shift any burden of proof with respect to the establishment of relevant facts and does not enhance the enforceability of the new bird feeding prohibition as appears to be the intent. Therefore, we respectfully recommend that proposed subsection (c) be removed from the new section in its entirety.

Thank you for the opportunity to share these comments.

DAVID Y. IGE
GOVERNOR OF
HAWAII



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BOARD OF LAND AND NATURAL RESOURCES
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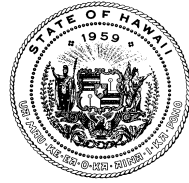
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HOUSE BILL 1514
RELATING TO BIRDS

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- Excessive feeding of feral birds can directly impact the endangered nēnē and `alae `ula as these birds will also eat the food, and non-natural food sources can be harmful to them.
- Excessive feeding of mallards could lead to increased populations of these feral ducks which can negatively impact the endangered koloa (Hawaiian duck) through hybridization and other native waterbirds through competition.

Thank you for the opportunity to comment on this measure.



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

Testimony COMMENTING on HB 1514
RELATING TO BIRDS

REPRESENTATIVE RYAN I. YAMANAE, CHAIR
HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES & HOMELESSNESS
Hearing Date: 2/1/2022 Room Number: 329

1 **Fiscal Implications:** NONE

2 **Department Testimony:** The Department of Health is aware and understands the public's
3 frustrations with filth and odor resulting from excessive feeding of feral birds.

4 Statewide, Department of Health inspectors respond to bird feeding complaints regularly and
5 have issued field citations to require clean up of the odors and filth. Enforcement is almost
6 always ignored. Oftentimes the bird feeder has underlying problems that issuance of a citation
7 will not correct.

8 As currently drafted, the bill states, "no person shall feed, or permit or allow the placement or
9 discarding of food or food by-products, in a manner that a reasonable person would expect to
10 result in the lingering, roosting, or congregating of twenty-five or more feral birds within a
11 twenty-foot radius." Realistically, field inspectors would not be able to apply these conditions in
12 a practical and consistent manner and thus enforcement would be difficult.

13 **Offered Amendments:** The Department respectfully requests that the bill be amended to
14 prohibit feeding of feral birds.

15

16 Thank you for the opportunity to testify on this measure.

HB-1514

Submitted on: 1/27/2022 5:29:54 PM

Testimony for HHH on 2/1/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Lynn Murakami-Akatsuka	Individual	Support	No

Comments:

To the Members of the House Health, Human Services & Homelessness Committee,

I strongly support the passage of HB 1514 and its contents. This bill will enable the Department of Health to enforce the current law in place without the constraint to determine the odors and filth from bird waste as a nuisance. It is a public health problem for those who live next to or work at a facility that has individuals who continue to feed the birds without any consequences to their actions even after you have spoken to them about the current law and its impact on the individual's health and destruction of property of others.

Thank you for the opportunity to testify on this bill.

HB-1514

Submitted on: 1/27/2022 9:13:00 PM

Testimony for HHH on 2/1/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Patricia Mcmanaman	Individual	Oppose	No

Comments:

Every morning I throw out my leftover rice in the backyard. I grew up in Hawaii and my family would do the same. I'm sure there are days more than 25 Doves, Maynas, Bobo birds, Cardinals, Brazilian Cardinals, or the neighborhood stray hen nicknamed "Myrtle," show up for breakfast. Our yard is also home to Japanese White Eyes, Common Waxbills, Red-Cheeked Bobos, Java Finches, and other birds

Our neighbors are unaffected by excessive "poop" or other nuisances, and we have never received any complaints. We maintain a bird fountain in our backyard and cultivate indigenous and non-indigenous plants that attract birds, indigenous butterflies and moths.

Setting a limit of 25 birds at any given feeding is too high and unrealistic.

Thank you for your consideration.

1622 Hooheho Street
Pearl City, Hawaii 96782
January 29, 2022

Bill HB1514
Prohibition on the Feeding of Feral Birds

We have been struggling with the pigeon and dove droppings on our roof and solar panels for years. It is aggravating because we don't think putting a screen to prevent the pigeons from coating our panels and roof with their faeces would help. We don't see them going under the panels. They're hopping on top and around it. There are days when clouds of them will settle on our roof.

On some of our morning walks, we've seen people on another street feeding the birds, but the birds don't seem to stay there. We've asked neighbors close to us to stop feeding the birds and even requested someone who used to come and drop bread crumbs a few houses down from us on their walks to please stop doing that. They did comply. But the birds unfortunately must have homed in on our two story roof.

We've also seen people leaving bread crumbs for chickens on the road! Why would you do that?

There is no need to feed birds! Hawaii does not have a winter that prevents them from finding food. By feeding them, you are merely creating more of an annoying population that is probably causing a problem for the native bird population.

Please, my husband and I would request that you pass the bill to prohibit the feeding of feral birds.

Thank you,
Kay and Art Kawatachi

HB-1514

Submitted on: 1/29/2022 1:09:33 PM

Testimony for HHH on 2/1/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Charles Prentiss	Individual	Support	No

Comments:

Support.

TESTIMONY OF

LARRY S VERAY

HOUSE OF REPRESENTATIVES
TO THE COMMITTEE ON HEALTH, HUMAN SERVICES & HOMELESSNESS

MOST STRONGLY SUPPORT HB 1514

RELATING TO BIRDS

January 30, 2022

Aloha, Chair Ryan Yamane, Vice Chair Adrian Tam and Committee members. Thank you for allowing me the opportunity to provide testimony on HB 1514. Although I am Chair for the Pearl City Neighborhood Board No. 21, I am submitting this testimony as an individual because this bill is so important to our community for the legislature to develop mitigation control and enforcement laws on those individuals who continue to feed feral birds such as chickens and pigeons.

Over the past years, Pearl City has observed a major increase of feral chickens and pigeons in our neighborhoods, schools and shopping center areas. These feral birds have made a huge negative impact on our environment primarily with their bird feces spread over large areas where the birds roost over public eating, recreational and family yards. Numerous chickens have continued to expand their groups in Pacific Palisades near the Waiawa hiking trail. Roosters have invaded neighborhoods waking people up at all hours of the day. The pigeons have made their nest areas near City buildings, schools and housing areas in lower Pearl City.

I ask your committee to be creative in your enforcement plan for HB 1514. We know the State and City lacks law enforcement resources to effectively police all the problem areas of our island and City. I suggest you add some teeth into this bill by empowering the public to provide video evidence, signed affidavits by witnesses who documented time/place of suspect violators coupled with police reports to effectively make arrests and prosecute individuals who violate the law and feed feral birds. Without this engagement plan, you will just have another update to the law and little to no enforcement because, as usual, for any prosecution, the law enforcement officer must witness the violator feeding the feral birds. I can tell you that the public is ready to stand up for their neighborhoods to keep them healthy, safe and secure as eyes and ears for law enforcement.

I most strongly urge you to support and approve HB 1514 coupled with the above recommended language for this bill. We are with you! Mahalo!

Very respectfully,

Larry S. Veray

HB-1514

Submitted on: 1/30/2022 7:43:24 PM

Testimony for HHH on 2/1/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Toni Pedro	Individual	Support	No

Comments:

I am in support of HB1514. I and 8 of my neighbors suffered for at least 10 years from the feral pigeon feeding of one of our neighbors. We live in a lane of Kawainui St, the area is concentrated, properties are in close proximity. The pigeons would congregate on the telephone wires, on roof tops, window ledges, anywhere they could, between feeding times. A couple of neighbors got sick when the birds started making nests in their attics. The pigeons peck away at screens, at attic covers, grass, wood. I had to have screens replaced every year since 2017 to 2021 due to the pecking of the pigeons. I even had to replace the fascia of my front door way twice in just one year. The incomplete method the neighbor had of cleaning their property caused foul odors from the pigeon feces and feathers. In 2021 I rallied the other neighbors to get involved so we could put a stop to the other neighbor feeding the pigeons. We had previously tried to get the offending neighbor to cease by calling the police. The police always redirected us to Dept of Health. DOH visited the offending neighbor just once but nothing happened and the offending neighbor retaliated against another neighbor. We had given up but in 2021 it was just getting to be ridiculous. We sent email to Esther Kia'aina, Rep Marten and, Rep Branco. Rep Branco stepped up and followed through with DOH, myself and another neighbor. The situation was resolved. The feeding of feral pigeons is a public safety hazard. We could not prove that the neighbors got sick from the pigeons infiltrating their attics, but some of our pets got sick when they had contact with the pigeon droppings. There were literally 300 pigeons surrounding our little dead-end daily.

HB-1514

Submitted on: 1/30/2022 7:50:09 PM

Testimony for HHH on 2/1/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Stephanie Ware	Individual	Support	Yes

Comments:

HB1514 is a good start and I thank Representatives Branco for authoring and Rep LoPresti for promoting this much needed bill. The feral chicken population on Oahu has exploded over the last two years since the City & County had to stop its capture and removal efforts when COVID started.

Feral chickens are an invasive species and cause environmental problems, damage to landscape, noise pollution, driving hazards and negatively impact native bird species.

While the bill is a step in the right direction, it only addresses feeding "excessive" numbers, which is defined as 25 or more.

As chickens can rapidly multiply with one mating pair resulting in 36 – 50 chickens in a single year and very often they are eating cat food put down by individuals feeding feral cats, I'd like to propose the following two adjustments to the bill:

- 1) Eliminate the quantification and prohibit feeding any feral birds as their presence has a negative impact regardless of how many birds there are.
- 2) City & County fund and re-initiate its feral chicken mitigation program. Without mitigation the problem on Oahu is only going to get worse, regardless of whether this bill passes or not.

HB-1514

Submitted on: 1/31/2022 11:59:25 PM

Testimony for HHH on 2/1/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Danny Liebertz	Individual	Support	No

Comments:

As a homeowner in Ewa Beach, I strongly urge our state legislatures to support this bill prohibiting the feeding of feral birds. This practice of feeding the birds is getting out of hand; the birds are multiplying; more and more feeders are showing up; and there is a lack of enforcement. These birds are causing a serious quality of life issue; they are loud, obnoxious, unsanitary and leave droppings everywhere they stray. Children, have been seen petting and playing with these feral birds - it is totally unacceptable and setting a dangerous precedent. We know these birds are unhealthy for the community, but we need to move now to stop their feedings!