

Intrastate Biosecurity Policy:

Survey of Concepts Introduced in the 2014 Legislative Session



A briefing paper prepared by support staff of the interagency Hawaii Invasive Species Council, on behalf of Senator Mike Gabbard
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Executive Summary

At a June 2014 meeting of the interagency Hawai’i Invasive Species Council (HISC), Senator Mike Gabbard discussed various bills from the 2014 legislative session that dealt with intrastate biosecurity issues, noting that none had passed. Senator Gabbard requested assistance from support staff associated with the HISC in gathering stakeholder input on legislative concepts dealing with this issue.

In October 2014, HISC support staff released a stakeholder survey reviewing seven legislative concepts relating to intrastate biosecurity that were introduced in the 2014 legislative session. This survey was publically available on the HISC website from October 28 to November 21, 2014, and was promoted via the Hawai’i Farm Bureau Federation (HFBF) Annual Meeting, the HFBF email list, and the HISC stakeholder email list. Sixty-seven responses were received, of which 11% came from private business, 15% came from individuals with no affiliation, 23% came from the non-profit sector, and 51% came from individuals working within a government agency.

While none of the bills introduced in 2014 that packaged these various concepts passed, the survey indicates that there may be general agreement across sectors on several of the individual concepts introduced. The survey also identified contentious areas that may require a more nuanced approach in order to progress legislatively. Broadly, our survey indicated the following:

- **Concepts with general agreement:**
 - Support for the use of quarantines for potentially infested material (p. 7)
 - Support for authorizing the State to enter into private-public partnerships for components of a biosecurity program (p. 5)
 - Support for pest inspections in non-agricultural commodities moving intrastate (p. 6)
- **Concepts with a moderate level of agreement:**
 - Requiring the State to treat lands abutting infested commercial properties (p. 10)
 - Penalties for intentional versus unintentional movement of pests (p. 8)
 - Are statutory amendments needed? (p. 4)
- **Concepts with disagreement:**
 - Determining the magnitude of penalty for movement of pests (p. 9)

I. Introduction

The Hawaii Invasive Species Council (HISC) was established by the State Legislature in 2003 for the special purpose of providing cabinet-level direction on invasive species issues. The HISC, as described in Hawaii Revised Statutes Chapter 194, is comprised of the directors, chairpersons, or designees of:

- Hawaii Department of Land and Natural Resources (DLNR)
- Hawaii Department of Agriculture (HDOA)
- Hawaii Department of Health (DOH)
- Hawaii Department of Transportation (HIDOT)
- Hawaii Department of Business, Economic Development, and Tourism (DBEDT)
- The University of Hawaii (UH).

In addition to cabinet members, discussions at HISC meetings include invited participants from the State Legislature, county governments, and federal offices in Hawaii. In 2014, Senate President Donna Mercado Kim and Speaker of the House Joseph Souki appointed the following legislators as participants in HISC discussions:

- Senators Ron Kouchi, Mike Gabbard, J. Kalani English, and Gil Kahele
- Representatives Derek Kawakami, Chris Lee, Kaniela Ing, and Richard Onishi.

At a June 2014 meeting of the Hawaii Invasive Species Council, Senator Mike Gabbard described the outcome of various intrastate biosecurity bills that had been introduced, but failed to pass, the 2014 legislative session. The Senator urged the HISC to continue exploring the issue of intrastate biosecurity and asked HISC staff to assist in gathering stakeholder input regarding this issue ahead of the 2015 legislative session. HISC members approved this request and directed staff to work with Senator Gabbard's office on gathering input on issues related to intrastate biosecurity.

In October 2014, HISC support staff released a survey reviewing specific regulatory concepts that were introduced in the 2014 legislative session and solicited input from the general public via the HISC website (hisc.hawaii.gov), from targeted emails to the HISC stakeholder email list (246 recipients) and the Hawaii Farm Bureau Federation email list, and through a presentation at the Hawaii Farm Bureau Federation Annual Meeting.

Survey questions and summarized responses are described in this report. Responders were asked a total of eight questions relating to specific concepts introduced in legislation in 2014. In particular, this survey utilized concepts introduced by House Bill (HB) 1513, HB1932 Senate Draft 2, HB1994, Senate Bill (SB) 2607, SB2347, and SB2347 Senate Draft 2 House Draft 1. Full text associated with these bills is available online at capitol.hawaii.gov, and in Appendix 3 of this report.

For the purposes of this survey, "intrastate biosecurity" refers to any procedure or practice undertaken to prevent the movement of pests between islands or between locations within a given island. Because this survey is designed to gather input relating to the 2014 legislative session, survey questions were focused on authorities and mandates provided in statute, rather than policies described by administrative rules.

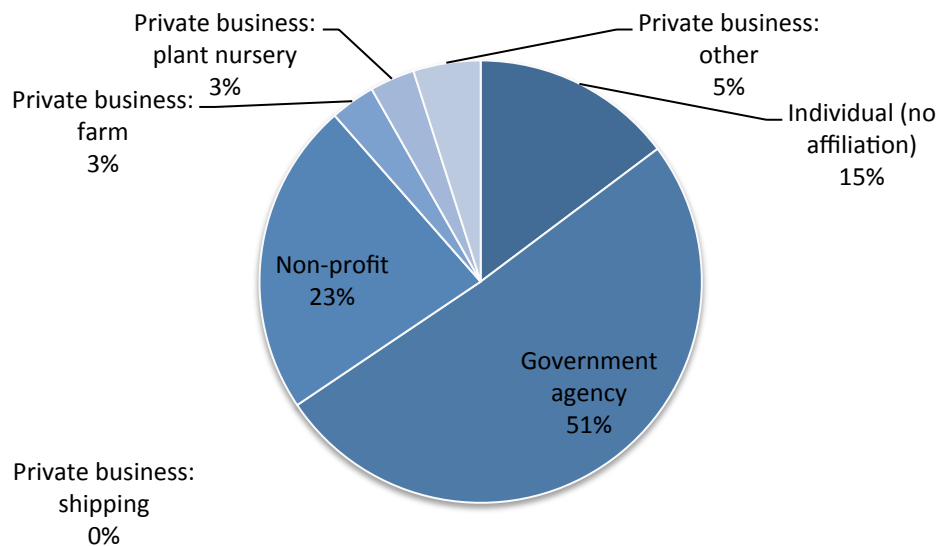
Survey analysis provided in this report is for information purposes only and does not constitute legislative intent, or a formal position by the HISC or any of its constituent agencies.

II. Summary of Survey Responses

For the survey period of October 28 through November 21, 2014, 67 responses were received. Because the survey allowed users to skip questions that they did not want to answer, the total number of responses for each question is equal to or in some cases less than 67. Total number of responses is provided for each question below.

Question 1: What type of agency or organization are you affiliated with?

Individual (no affiliation)	9	15%
Government agency	31	51%
Non-profit	14	23%
Private business: shipping	0	0%
Private business: farm	2	3%
Private business: plant nursery	2	3%
Private business: other	3	5%



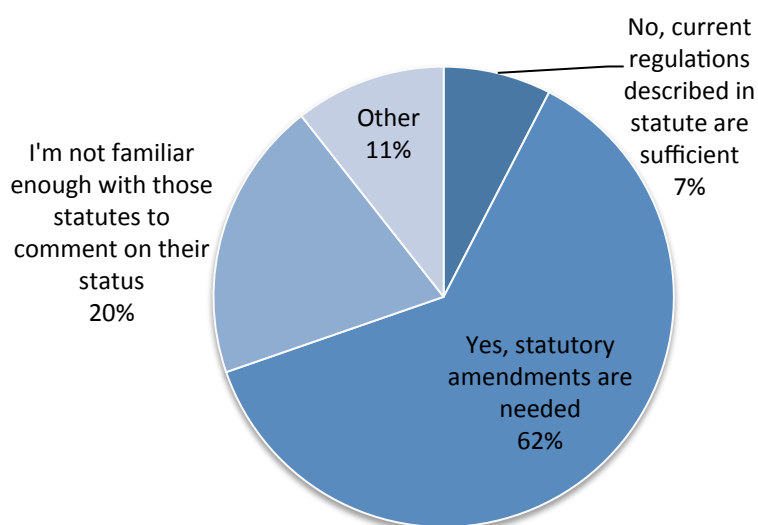
While 51% of respondents recorded “Government agency” as their affiliation, this category is broadly interpreted and may include individuals affiliated with State, County, or Federal agencies, the University of Hawai‘i, or the State Legislature.

Question 2: Current statutes versus statutory amendments

"Most of the legislation relating to biosecurity in the 2014 legislative session proposed amendments to two chapters of the Hawaii Revised Statutes: HRS 141 ("Department of Agriculture") and HRS 150 A ("Plant and Non-domestic Animal Quarantine"; you can review existing regulations here:

www.capitol.hawaii.gov/hrscurrent/). Are Hawaii's current statutes sufficient for implementing an effective intrastate biosecurity program, or do you feel that amendments are needed?"

No, current regulations described in statute are sufficient	5	7%
Yes, statutory amendments are needed	41	62%
I'm not familiar enough with those statutes to comment on their status	13	20%
Other	7	11%



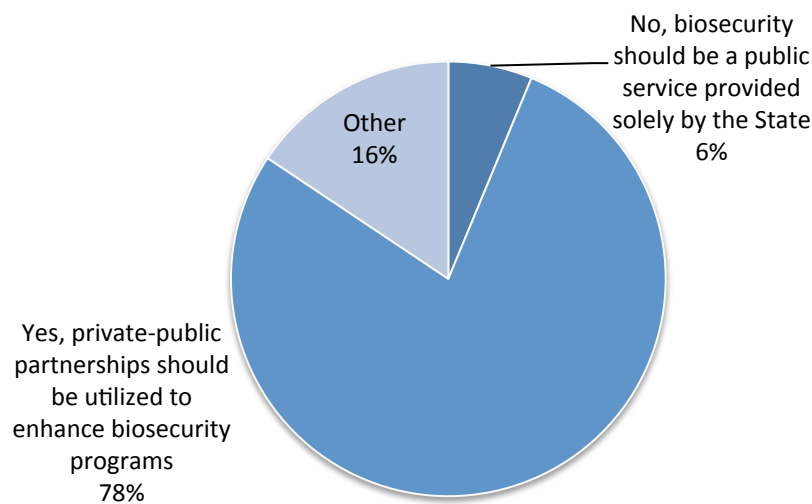
Summary of "Other" Responses:

- Not familiar enough, but I suspect authorities for enforcing biosecurity need to be strengthened, especially to allow rapid response to new invasions without delay.
- Need enforcement.
- There are "pukas" in our current regulations that continue to allow invasive and other threatening species to come in and go intra-island.
- Statutes would need to be expanded (or additional rules drafted) to include aquatic organisms and to create an effective intrastate biosecurity program.
- We first need to have a clear definition of intrastate biosecurity and what will be the goals and projected cost.
- Yes, amendments or a new section of the law are needed. Many statutes that look as though they offer protections for transport are under 151-A, and are limited only to import. A resident has been trying to get DOA to stop a nursery from bringing a steady stream of coqui frogs from one part of the state to another, but they won't step in because it's technically not an import unless it comes from outside the state.

Question 3: Private-Public Partnerships

“In the 2014 legislative session, HB1932 would have authorized the Hawaii Department of Agriculture to enter into private-public partnerships to provide inspection facilities, consolidation and deconsolidation facilities, transition facilities, and other enhancements to the biosecurity program, provided that actual inspections were carried out only by department employees. Should the State of Hawaii utilize private-public partnerships to enhance biosecurity?”

No, biosecurity should be a public service provided solely by the State	4	6%
Yes, private-public partnerships should be utilized to enhance biosecurity programs	50	78%
Other	10	16%



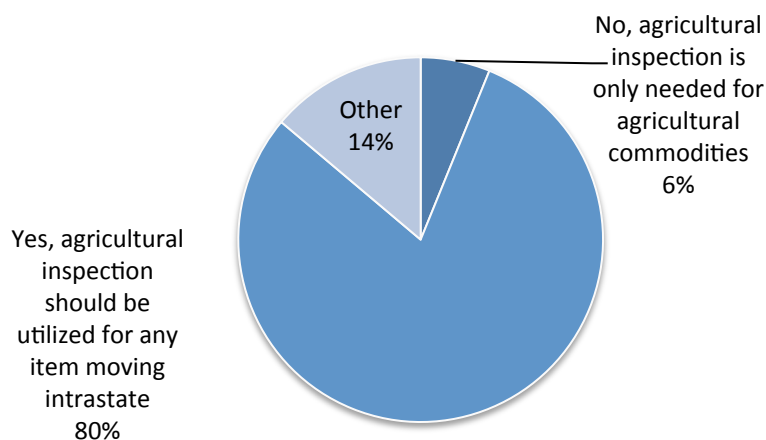
Summary of “Other” Responses:

- BOTH public and private, with public service being essential, as in New Zealand.
- Depends on the economic advantage. Many times perceived savings from private-public partnerships end up costing the taxpayers more for the same service. In other instances these partnerships work very well.
- This depends upon the actual oversight of the program.
- I am open to both public and private options as long as standards are the same and upheld.

Question 4: Pests as "regulated articles": Inspections of agricultural and non-agricultural items

"HB1994 and SB2607 would have defined reproducing colonies of little fire ant and coqui frogs as "regulated articles" under HRS150A and prohibited their movement. This could have potentially expanded the scope of inspections under the Hawaii Department of Agriculture from focusing on potentially infested agricultural materials (e.g., nursery stock, fruits and vegetables) to any item capable of hosting a regulated article (e.g. vehicles, household goods, luggage). Should all items moving intrastate be subject to agricultural inspection?"

No, agricultural inspection is only needed for agricultural commodities	4	6%
Yes, agricultural inspection should be utilized for any item moving intrastate	52	80%
Other	9	14%

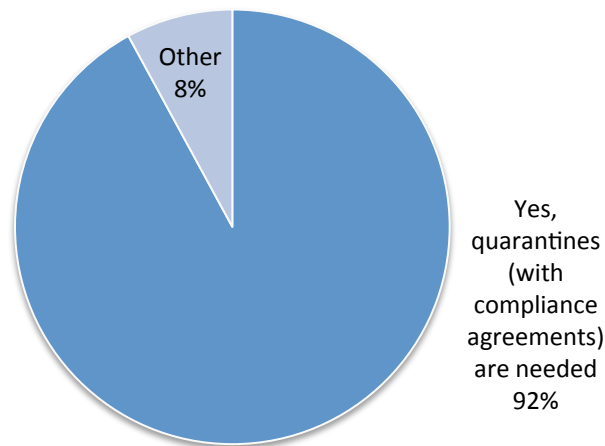
**Summary of "Other" Responses:**

- A broader inspection process should be utilized for interstate AND inter-island biosecurity.
- Inspection should be risk-based and consider the likelihood of infestation based on the nature of the vector and it's pathway (origin and movement details).
- HDOA should have authority to inspect all items determined to be "at risk." This is different from the way this question is phrased, which says "all items moving intrastate," in which case my answer would be "no" because that would be too sweeping and unnecessary.
- Yes, with more inspectors. They can't be expected to do this with the numbers they have now.
- Items potentially containing invasive species should be inspected.
- Yes, HDOA should have the authority inspect any items moving intrastate and to exercise that authority based on assessments of high-risk pathways.
- The cost of inspecting all interisland commerce will be prohibitive. A list of high-risk commodities for important invasive species should be developed and added to statutes. If possible, inspectors should also have power to inspect containers where there is probable cause for detecting such species.
- I don't believe that the term "agricultural inspection" is the correct terminology that should be used, more appropriately it should be "invasive species inspection." If we are trying to stop the spread of invasive species intrastate, everything should be inspected.

Question 5: Quarantines

“HB1994, SB2607, and SB2347 SD2 HD1 would have provided the authority for the Department of Agriculture to establish quarantine areas, from which no regulated article (e.g., soil, mulch, any article capable of hosting little fire ants or coqui frog) would be allowed to move, without a certificate or compliance agreement. Do you feel that the ability to establish quarantines (with associated compliance agreements to allow movement of uninfested material from quarantine areas) is needed for effective biosecurity in Hawaii?”

No, quarantines are not needed	0	0%
Yes, quarantines (with compliance agreements or certificates allowing movement from quarantined areas) are needed	58	92%
Other	5	8%



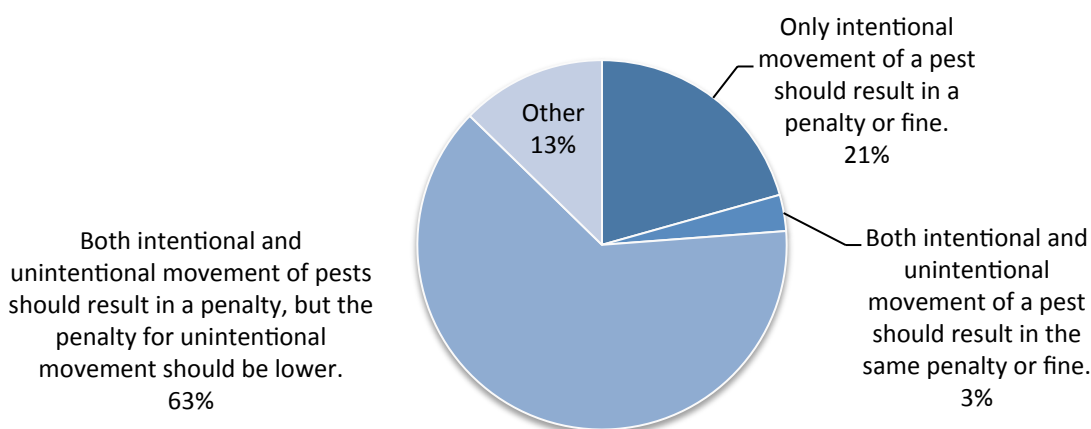
Summary of “Other” Responses:

- Yes to certificates, but quarantine on the originating island in a pest free zone. We already have examples of HDOA and DOFAW sites infested by importing intransland plant materials.
- Quarantines may be needed but the scope of how invasive species move needs to be determined first and then solutions to address the issues can be developed.
- Yes. “Quarantine” will need to be clearly defined.

Question 6: Intentional vs. Unintentional Movement

“When regulating the movement of pests, should fines and penalties only apply to the intentional movement of a pest? For example, HRS 150A-14(c)(3) prohibits the intentional transfer, possession, or movement of a pest and establishes the violation of this prohibition as a felony associated with a fine. HB1513/SB2347 would have amended this section such that movement of a pest, whether intentional or not, would have been considered a felony associated with a fine.”

Only intentional movement of a pest should result in a penalty or fine.	13	21%
Both intentional and unintentional movement of a pest should result in the same penalty or fine.	2	3%
Both intentional and unintentional movement of pests should result in a penalty, but the penalty for unintentional movement should be lower	40	63%
Other	8	13%



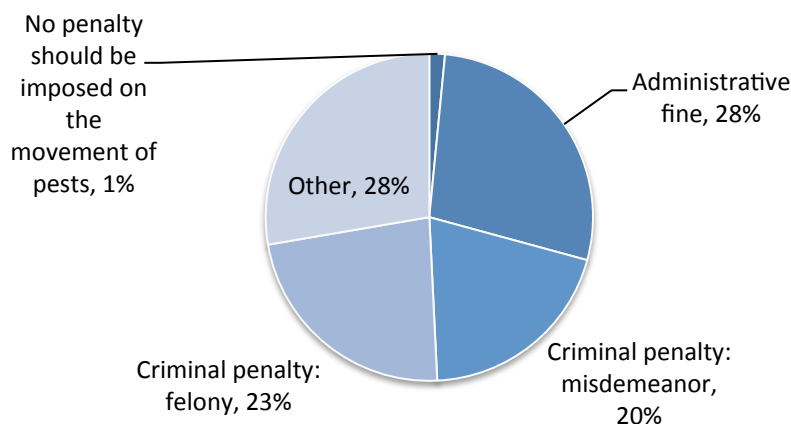
Summary of “Other” Responses:

- Fine intentional movement and require individuals to have their plants, lei material, fruits inspected and cleared at an easily accessible place before they fly or take a ferry; broaden education outreach in newspapers, schools, halau, civic clubs, community mtgs, etc.
- Intentional movement should be dealt with much more strictly. Unintentional movement should be fined only in repeat offences or in other situations where violators should know better. Unintended movement should really be used as an opportunity for education rather than penalizing.
- This would have to be paired with an aggressive outreach campaign.
- The penalty for unintentional movement of pests should be much lower. However, moving the nursery or other plants that these pests are associated with from areas known to have infestations of the pest may qualify as something intermediate to intentional and unintentional movement, and should be penalized at an intermediate rate.
- If inspection certification programs and procedures are put into place and required for everyone, then only intentional movement should be penalized.
- Is it possible to reframe it as negligence, i.e. unintentional movement of a pest by a resident may be pure ignorance, whereas unintentional movement of a pest by a nursery is negligent? How does one prove "intent" to move little fire ants interisland?
- Focus for unintentional movement should include the concept of "negligent," for example, the violator should have known or reasonable person would know.

Question 7: Criminal penalties and administrative fines for the movement of pests

“Much of the testimony regarding biosecurity bills in the 2014 session dealt with the severity of proposed penalties. HB1513 and SB2347 (in its original form) would have established criminal penalties for the movement of pests (a class C felony, with a fine between \$50,000 and \$200,000). SB607 would have established an administrative fine equal to the value of the shipment or \$10,000, whichever was greater. What do you feel is the most appropriate penalty for the movement of pests?”

No penalty should be imposed on the movement of pests	1	1%
Administrative fine	18	28%
Criminal penalty: misdemeanor	13	20%
Criminal penalty: felony	15	23%
Other	18	28%



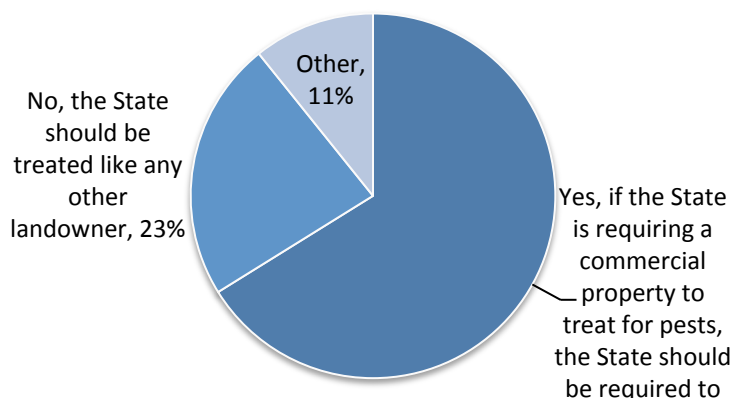
Summary of “Other” Responses:

- There should be a tiered penalty section that would impose both administrative and criminal penalties based upon the severity of the infraction.
- Both can be used, but this is too complex to respond to in a multiple-choice question.
- Turn back shipments at the pier on their island not when it arrives on the receiving end. Repeated violations should carry a heavier penalty.
- Criminal penalties should apply to deliberate actions (such as moving deer), or repeat/gross negligence (such as regularly shipping ants or coqui. Minor or unintentional violations should result in accelerated civil fines (develop a penalty schedule).
- Depends on intent and severity of consequences, etc. Judges need to have flexibility to judge and apply appropriate penalties - up to very severe if warranted.
- Again it depends on both the level of intentional movement and knowledge of the risk of moving the pests. Intentional movement should probably be penalized at a felony rate, as the public costs associated with the movement of the pest are sometimes several orders of magnitude higher than the worth of the shipment.
- No penalty, but required payment for trainings/surveys for prevention in the future (if such things are allowed), otherwise administrative fine with \$ going to inspections/trainings
- Penalties and fines should be implemented only after adequate inspection procedures are in place. Then, goods can simply be embargoed as penalty. Nursery certifications and licenses should be revoked until the operation can pass an inspection.

Question 8: Treatment of State lands abutting commercial entities

“During discussion and testimony for SB2347 SD2 HD1, commercial property owners testified that in areas where infested commercial properties abut infested State lands, the State should not require the commercial property to treat for pests unless the State also treated the abutting land. Do you feel that the State should be required to treat infested lands that abut commercial properties?”

Yes, if the State is requiring a commercial property to treat for pests, the State should be required to treat any infested State lands that abut that property	43	66%
No, the State should be treated like any other landowner and should not be required to treat certain areas due solely to commercial activity on abutting property	15	23%
Other	7	11%



Summary of “Other” Responses:

- It depends on the goal of treatment. If the goal is to eradicate the pest, then treating adjacent lands is appropriate. If the goal of treatment is to remove pest from specific products being exported, then the exporter should treat regardless of the presence of pests on adjacent land. A nursery should not try to avoid treating their products using the excuse that pests may still be present on nearby land.
- The State should support programs to work in partnership with commercial property owners to treat and prevent reinfestation from abutting State land.
- The state should not be required to treat an area for the same pest, but should most definitely work with those commercial landowners to treat for the pest if reintroduction to the commercial property is continual from abutting state lands. This depends on a particular species and area, and state lands can often be so large as to make treatment of the entire abutting parcel unrealistic.
- The State should be treating all of their lands that abut any type of private property and/or lands that would continue the propagation of invasive species.
- Depends on original source of infestation
- Commercial property should definitely be allowed to treat abutting state land if needed to prevent reinfestation

Question 9: Other Input on Biosecurity Legislation (open comment)

28 survey responders provided additional input in a free-form comment box at the end of the survey. Common responses are summarized and organized by category below. Full, unedited comments are provided in Appendix 2.

1. Increased capacity for inspections within Hawaii Department of Agriculture.

Many of the 28 free-form responses highlighted that effective biosecurity requires increased capacity for inspections at HDOA, both in terms of funding and positions. One comment highlighted that an important area to focus on is hiring: funding and positions may be available, but limitations of the State hiring system may prevent those positions from being filled.

2. Increased requirements for inspection and treatments

Several respondents suggested that there be more opportunities or requirements for inspections (e.g., at all air and seaports, at points of sale, etc). Others suggested that pest treatments (e.g. hot water, pesticide) be a requirement of moving goods.

3. Funding for biosecurity services.

A number of responses discussed the need for increased and sustained funding for biosecurity programs. Several pointed out that private industries associated with the movement of goods should contribute to the costs associated with these programs. One commenter suggested utilizing a bond system for the movement of goods to fund potential pest mitigation.

4. Federal Recognition of Hawai'i's Biosecurity Needs, Better Coordination with Federal Government

Though this survey was designed to discuss intrastate biosecurity, a number of the open-ended comments addressed the need for better regulation of goods coming into the State. In particular, several responses highlighted that the U.S. Department of Agriculture should work more closely with the Hawai'i Department of Agriculture to implement better federal policies (e.g., having luggage screened in foreign countries before entering Hawai'i, rather than luggage screened in Hawai'i before continuing to the US Mainland) and facilitate the use of federal funds in protecting Hawai'i as an international trade and transportation hub.

III. Synthesis: Areas of Consensus and Contention

Responses to this survey highlighted a number of interesting areas of agreement among the government, non-profit, commercial, and individual input received. It should be noted that the respondents recording their affiliation as “government agency” may be affiliated with any level of government, including State, County, and Federal offices, the State Legislature, and the University of Hawai‘i. Future surveys of this nature will strive to allow further clarification of this affiliation category.

Legislative Concepts with General Agreement

- **Support for the use of quarantines in limiting the spread of potentially infested material.** No survey respondents opposed the use of quarantines in managing pest infestations. Ninety-two percent of respondents said that quarantines (with compliance agreements allowing for the movement goods) are needed. Eight percent of respondents selected “Other,” and provided further input on the need to define quarantine parameters and understand pathways for pest movement.
- **Authorization to use private-public partnerships in biosecurity functions.** Only 6% of respondents said that biosecurity should be a solely public service. Of the remaining 94%, 78% were in favor of private-public partnerships, and 16% chose “other.” Responses in the “other” category tended to be in favor of the possibility of private-public partnerships, provided that clear standards and oversight were implemented. These partnerships could address facility needs, consolidation or deconsolidation processes, or other enhancements to a biosecurity program. Official inspections of commodities, however, would still be carried out by HDOA employees.
- **Pest inspections for non-agricultural commodities.** Only 6% of respondents felt that only agricultural commodities should be inspected for pests. Eighty percent said that agricultural inspection should be applied for any item moving within the State. Nine respondents (14%) selected “other,” providing additional input that there should be pathway risk analyses that determine what types of items are inspected before moving intrastate.

Legislative Concepts with a Moderate Level of Agreement

- **Treatment of State lands abutting commercial properties.** Most respondents (62%) felt that if the State requires a commercial property, such as a nursery, to treat their property, that the State should also be required to treat abutting State lands for the same pest. Twenty-three percent disagreed, saying that the State should be treated like any other landowner next to a commercial property. Of the 11% of respondents choosing “other,” several said that it depends on whether the infestation originated on the commercial property or not. Others suggested that the State should work collaboratively with commercial property owners, but not be required to treat on State lands based on the presence of an abutting commercial property.
- **Penalties for Intentional vs. Unintentional Movement of Pests.** Most respondents (63%) said that both intentional and unintentional movement of pests should result in a penalty, but that the penalty for unintentional movement should be lower. Two respondents (3%) said that both intentional and unintentional movement should be penalized at the same rate. Twenty-one percent felt that only intentional movement should be penalized, with no penalty for the unintentional movement of pests. Thirteen percent of respondents selected “other,” providing additional input that any penalty or fee schedule should be coupled with an outreach program to reduce unintentional movement and make business owners aware of the penalties. One respondent suggested that instead of using the language “intentional” or “unintentional,” which

can be difficult to demonstrate in legal proceedings, that the term “negligent” be utilized, and a standard be developed for a reasonable expectation of the presence of pests in commodities.

- **Are statutory amendments needed?** Sixty-two percent of respondents said legislative amendments to Hawai‘i’s biosecurity statutes are needed. Eleven percent said amendments were not needed, indicating that either the status quo is sufficient, or enhancements can be made utilizing non-statutory tools (administrative rules or enhancements to capacity or enforcement). Twenty percent of respondents said they weren’t familiar enough with the statutes to comment, and 11% selected “other.” The “other” responses largely indicated that changes to biosecurity efforts were needed at some level.

Legislative Concepts with Disagreement

- **Determining Penalties for the Movement of Pests.** Survey respondents varied on the level of penalty they would associate with the movement of pests. The wording of the survey question asked “What do you feel is the most appropriate penalty for the movement of pests?” This wording does not differentiate between *intentional* versus *unintentional* movement, which was indicated as a potentially divisive concept in responses to question #6. In response to the more general wording presented in question #7, 23% felt that movement of pests should constitute a felony, while 20% felt that it should constitute a misdemeanor. Twenty-eight percent suggested that infractions be penalized by an administrative fine. Just 1 respondent said that there should be no penalty imposed on the movement of pests. Of the 28% of responders who selected “other,” further input was provided that the severity of the penalty should differ for intentional movement versus unintentional movement.

Appendix 1: Survey Form

The survey utilized to prepare this briefing document included the following questions:

1. *What type of agency or organization are you affiliated with?*

- a. Individual
- b. Government agency
- c. Non-profit
- d. Private business: shipping
- e. Private business: farm
- f. Private business: plant nursery
- g. Private business: other

2. *Current statutes vs statutory amendments*

Most of the legislation relating to biosecurity in the 2014 legislative session proposed amendments to two chapters of the Hawaii Revised Statutes: HRS 141 ("Department of Agriculture") and HRS 150 A ("Plant and Non-domestic Animal Quarantine"; you can review existing regulations here: <http://www.capitol.hawaii.gov/hrscurrent/>). Are Hawaii's current statutes sufficient for implementing an effective intrastate biosecurity program, or do you feel that amendments are needed?

- a) No, current regulations described in statute are sufficient
- b) Yes, statutory amendments are needed
- c) I'm not familiar enough with those statutes to comment on their status
- d) Other (text input)

3. *Private-Public Partnerships*

In the 2014 legislative session, HB1932 would have authorized the Hawaii Department of Agriculture to enter into private-public partnerships to provide inspection facilities, consolidation and deconsolidation facilities, transition facilities, and other enhancements to the biosecurity program, provided that actual inspections were carried out only by department employees. Should the State of Hawaii utilize private-public partnerships to enhance biosecurity?

- a. No, biosecurity should be a public service provided solely by the State
- b. Yes, private-public partnerships should be utilized to enhance biosecurity programs
- c. Other (text input)

4. *Pests as "regulated articles": Inspections of agricultural and non-agricultural items*

HB1994 and SB2607 would have defined reproducing colonies of little fire ant and coqui frogs as "regulated articles" under HRS150A and prohibited their movement. This could have potentially expanded the scope of inspections under the Hawaii Department of Agriculture from focusing on potentially infested agricultural materials (e.g., nursery stock, fruits and vegetables) to any item capable of hosting a regulated article (e.g. vehicles, household goods, luggage). Should all items moving intrastate be subject to agricultural inspection?

- a. No, agricultural inspection is only needed for agricultural commodities
- b. Yes, agricultural inspection should be utilized for any item moving intrastate
- c. Other (text input)

5. *Quarantines*

HB1994, SB2607, and SB2347 SD2 HD1 would have provided the authority for the Department of Agriculture to establish quarantine areas, from which no regulated article (e.g., soil, mulch, any article capable of hosting little fire ants or coqui frog) would be allowed to move, without a certificate or compliance agreement. Do you feel that the ability to establish quarantines (with associated compliance agreements to allow movement of uninfested material from quarantine areas) is needed for effective biosecurity in Hawaii?

- a. No, quarantines are not needed
- b. Yes, quarantines (with compliance agreements or certificates allowing movement from quarantined areas) are needed
- c. Other (text input)

6. *Intentional vs unintentional movement*

When regulating the movement of pests, should fines and penalties only apply to the intentional movement of a pest? For example, HRS 150A-14(c)(3) prohibits the intentional transfer, possession, or movement of a pest and establishes the violation of this prohibition as a felony associated with a fine. HB1513/SB2347 would have amended this section such that movement of a pest, whether intentional or not, would have been considered a felony associated with a fine.

- a. Only intentional movement of a pest should result in a penalty or fine.
- b. Both intentional and unintentional movement of a pest should result in the same penalty or fine.
- c. Both intentional and unintentional movement of pests should result in a penalty, but the penalty for unintentional movement should be lower
- d. Other (text input)

7. *Criminal penalties and administrative fines for the movement of pests*

Much of the testimony regarding biosecurity bills in the 2014 session dealt with the severity of proposed penalties. HB1513 and SB2347 (in its original form) would have established criminal penalties for the movement of pests (a class C felony, with a fine between \$50,000 and \$200,000). SB607 would have established an administrative fine equal to the value of the shipment or \$10,000, whichever was greater. What do you feel is the most appropriate penalty for the movement of pests?

- a. No penalty should be imposed on the movement of pests
- b. Administrative fine
- c. Criminal penalty: misdemeanor
- d. Criminal penalty: felony
- e. Other (text input)

8. *Treatment of State lands abutting commercial entities*

During discussion and testimony for SB2347 SD2 HD1, commercial property owners testified that in areas where infested commercial properties abut infested State lands, the State should not require the commercial property to treat for pests unless the State also treated the abutting land. Do you feel that the State should be required to treat infested lands that abut commercial properties?

- a. Yes, if the State is requiring a commercial property to treat for pests, the State should be required to treat any infested State lands that abut that property

- b. No, the State should be treated like any other landowner and should not be required to treat certain areas due solely to commercial activity on abutting property
 - c. Other (text input)
- 9. *Other input on biosecurity legislation*
If you have any other input on biosecurity legislation from the 2014 legislative session or items you would like to see addressed in the 2015 legislative session, please enter it here.
 - a. (text input)

Appendix 2: Full Text of Survey Respondents' "Other" Input

Question #9 on the survey allowed respondents an open-ended opportunity to provide input on the topic of intrastate biosecurity. Those responses are presented here and organized by affiliation. Responders were anonymous and names of individual responders were not solicited.

Response text is provided without editing or correction. Ideas presented in these responses belong to individual responders and do not indicate any positions taken or recommended by the Hawai'i Invasive Species Council.

Question #9: Other input on biosecurity legislation:

If you have any other input on biosecurity legislation from the 2014 legislative session or items you would like to see addressed in the 2015 legislative session, please enter it here."

Responses from individuals selecting "No affiliation":

- *"If we don't address inter-island movement of goods, we continue to be in a reactive situation and spend more taxpayer dollars (unnecessarily) addressing threats like LFA than is needed. If we were in a proactive mode, effects to agriculture, human health and safety, tourism, and the environment would not be negatively impacted and less money spent on situations that could have been avoided. Please have the courage to do what is necessary to stop inter-island movement of goods with no proper inspection and sanitization procedures in place."*
- *"Hawai'i Department of Agriculture's Plant Industry Division is committed to regulating interisland spread of LFA to the extent that their rules and manpower allow, supplying legal authority for LFA management as needed (e.g., accessing property), and collaborating with partner agencies as needed with detection surveys and eradication of LFA. In practice, most of their personnel are spread thin with other duties, primarily enforcement of quarantine through inspections at airports and harbors. HDOA is dramatically understaffed and currently suffers from a dearth of leadership, mostly because of retirements and lost positions. This essential agency has traditionally been overwhelmed by the magnitude of invasive species problems, and the situation is not improving. If the situation is not corrected very soon, the result is likely to be not just statewide spread of LFA and coqui but establishment of long-feared pests such as RIFA and snakes."*
- *"Pesticide, hot water or other effective treatments must be required for high risk commerce (potted plants; used nursery supplies etc.) or those items should be prohibited if they cannot be effectively disinfested (e.g. hapu'u logs). Maui now has a well established little fire ant population that will be impossible to eradicate and the ant will surely spread. How many more times will that scenario be repeated with other invasive species on that and other islands? Time to get serious about interisland biosecurity."*
- *"Do a better job! similar to Australia or New Zealand. We are an island and much more vulnerable to pest problems. We need to be more strict than the mainland USA. Hawaii needs to be MORE SERIOUS about protecting our agriculture and environment."*
- *"I don't think the public has any faith in Dept of Ag regarding biosecurity within Hawaii. They aren't all that good at preventing things from coming into the state, but they seem to be even worse at containing things once they come in. DOA exists to promote and support hawaii growers, and have repeatedly values the profits of the growers over the interests of the public. Why else would they refuse to identify which nurseries on Oahu were infested with fire ants? How can we, the purchasing public, avoid buying these plants if they won't tell us which*

nurseries have them? I think the nurseries should be quarantined until proven clear. Yes, it will cost them. maybe enough that they will actually require effective measures to prevent receiving infested products. Growers on Big Island who ship contaminated goods more than once should face huge penalties and possible closure. In order for a punishment to be a deterrent, it has to be painful and costly. It is unfair to expect the public to keep suffering from these policies. When property values and quality of living plummet because we get infested with coqui or LFA, will we tell our grandchildren that their lifestyle must suffer because DOA wasn't willing to take any stances that would be costly to growers? Better to be costly to the public instead? Once these pests establish, we are screwed. Better instead to make biosecurity regulations and enforcement the kuleana of a different agency, like DLNR, who is responsible anyway for safeguarding our natural environment. The growers and shippers are the violators. We can't expect the same agency (DOA) to both promote those businesses while also policing them. It doesn't work."

Responses by individuals selecting "Private Business" as their affiliation:

- *"Invasive pests are destroying quality of life in Hawaii. I think of my home - until three years ago we had quiet evenings. That changed with coqui frogs. Now our evenings are completely degraded by the high volume frogs. Until last year, we could pick fruit from anywhere in the property and wander in the adjacent forests. Now we have to treat our entire property for fire ants, and we are chronically bitten by the fire ants. We don't go into the forest anymore because of the fire ants. I am deeply concerned about what the fire ants will do to agriculture on this Island (Hawaii Island) and on other Islands when it spreads. I am also concerned about the impacts on our native forests - for gathering, for hunting, for hiking. It is CRIMINAL that invasive species concerns have been neglected for so long by high levels of government."*
- *"Would the state be subjected to the same criminal penalties or fines for moving or allowing the movement of pests? Would the military? If private or commercial properties owners are fined absurd amounts for intentional or unintentional movement of pests they would be put out of business, they should have to use their labor force to help with the cleanup. Where would the money from these fines go? To help with the cleanup? Who would go to jail, the owner of the business? That could be a death sentence for that business as well. In todays world of fast travel you will never stop every pest from coming, just slow it down. We need more qualified inspectors, earlier detection, faster response to an infestation, and most importantly more education, not more legislation, or stop sending plants intrastate, again death sentence for some businesses or maybe even a whole islands plant economy."*
- *"ALL Islands shipping plants to neighbors should be inspected by PQ personnel & treating plants leaving their island. Oahu often is the entry port for new pests in to the State, Varroa mite as an example. Maui recently has yet another new pest. There are nurseries on all the islands, not just the Big Island. Protect all the islands, not selected ones."*

Responses from individuals selecting "Non-Profit" as their affiliation:

- *"the success of inspections will only be as good as the number of inspectors and the number of opportunities to inspect. the cost of pro-active education and assistance to growers, nurseries, businesses and the public is likely to be cheaper than increasing the number of DOA inspectors to the truly necessary amount. it is critical that inspection and quarantine facilities are beefed up on the islands of origin to reduce the spread to other islands. detection dogs will increase the capacity of inspectors. it's all about the budget. in addition to biosecurity legislation expand capacity to partner beyond existing agencies and organizations. fund solutions to control and eradicate both conventional and organic. reframing the picture for funding and the legislature - if a farmer loses his livelihood to LFA we lose our capacity for food security and the more we*

have to depend on imports the more at risk we are for new pests, not to mention weakening even further our ability to weather disasters."

- *"recruit and hire more inspectors for each main island; inter-island quarantine, inspection, and penalties should be in place for quick reaction to breeches; in addition to more funding to HDOA, they should be funded to house, train sniffing dogs and handlers. clarity as to jurisdiction of DLNR vs HDOA vs HDOH should be integrated into assigned roles and actions. outreach prior to any legislative lobbying should include info in various languages to not only reach wide ethnic net locally, but those visiting and potentially importing potential food or cultural items that may involve pests"*
- *"Thank you for your work on this survey. I think my main input is related to my comments in the 5th and 6th questions; that intentional movement of pests should be punishable relative to the costs associated with controlling the resulting established pest. Knowingly transporting nursery stock or other materials from areas infested with pests known to move with that stock, such as Coqui frogs and Little Fire Ants, should be punishable such that shipping of the stock becomes a greater potential cost than the potential benefit that is expected. This is similar to, but seems a lesser crime than intentionally moving a pest like Little Fire Ants to another island or area, but because the costs resulting from the movement are just as high regardless of intent, it should still be punished at a high level. If the guilty party participates in some significant way in the effort to combat the new pest in the new area, perhaps the fine for that party could be reduced relative to their contribution. Thank you for the opportunity to provide my input."*
- *"glad you are working on this. it is VERY important"*

Responses from individuals selecting "Government agency" as their affiliation:

(Note: this category is broadly interpreted as any State, County, Federal agency, the State Legislature, the University of Hawai'i system, and any other government entity)

- *"These amendments are sorely needed. Millions of dollars has been spent eradicating, controlling and monitoring infestations brought through interstate transportation. A strong comprehensive program will need significant annual funding, but will save far more money in the long run and let staff working on invasive response concentrate on existing problems instead of constantly fighting off new threats."*
- *"Update plant importation guidelines to reflect crops of importance and of future importance to Hawaii's agriculture. Impose quarantine on all incoming propagative plant material that does not come from a certified source."*
- *"I see universities were not included in the "type of agency or organization"."*
- *"Industries, such as those associated with agriculture, horticulture, landscaping, biofuel feedstock production etc., that profit from activities which increase the risk of introduction, establishment, or spread of plants known to be or identified to be potentially invasive, should be required to pay a bond that could be utilized by state agencies or affiliates as mitigation for current of future management costs incurred in control of such species."*
- *"I think there is much exaggeration about the importance of HISC. One reason I believe this is due to the lack of HISC's focus on coordinating State and Federal activities and priorities. While HISC has done an excellent job in some areas, HISC has been completely ignorant or complacent on the leverage it could provide to move the Federal government to better protect Hawaii. HISC is not aware of effective strategies on leveraging USDA at the HQ level. This is a complete oversight. States that leverage HQ (not at the state level) are much more effective.) It is time for HISC to stop acting like a beat dog with its tail between its legs and start flexing its political and*

public support and compel real change at the NATIONAL level. I also believe it would be more efficient to direct some of the monies allotted to HISC to HDOA."

- *"Luggage should be screened in foreign countries and US mainland prior to entering into Hawaii, just as Hawaii luggage must be screened before allowed to fly to US mainland."*
- *"the process for DOA to establish a quarantine is too cumbersome and takes too long; it should be streamlined and ideally allow them to also prevent infested material from leaving a business in emergency situations"*
- *"Governor needs to work with US Secretary of Agriculture to bring more resources for improving biosecurity of commerce entering the state."*
- *"There needs to be inspections set up at the point of transport (i.e., at the YoungBrothers port, at the airport). During the SuperFerry's short run, they had inspectors searching vehicles and came across several violations. With no inspections currently taking place with Young Brothers or the Airlines, imagine what we are missing now?"*
- *"Inter-island transport is not to be held and less important than inter-state, international movements of pests. Local control at county level should be coauthorized/deputized along with public-private organizations (e.g. ISCs) to best control the issue of biosecurity."*
- *"We need to fund and HIRE more Agriculture inspectors. Also the Ag declaration form is a bit of a joke when you fly into Hawaii. Either flights to Hawaii need an additional video that talks about biosecurity and why it's important or the on board airline employees need a short and sweet spiel that hammers home why you shouldn't blow off that ag declaration form. Even just announcing what the fines associated with not filling it out could help."*
- *"1. Creation of task force to work on improved inter-island and intra-island biosecurity. 2. Consider using the model of food safety for a notification and compliance system. 3. Consider requiring high-risk businesses to be certified as pest free. Need to develop standards. 4. Consider having industry pay for the certification process."*
- *"A clear definition of intrastate biosecurity with stated goals needs to be identified and established as the State's program, and a clear study of how invasive species movements are occurring throughout the state needs to be done so that we understand the problems, issues and cost to implement a statewide intrastate biosecurity program."*
- *"Invasive species inspections, quarantine areas, treatment facilities at ports, and true IPM for invasive species needs extremely high priorities for funding. For example, Hawaii lacks the capacity for heat treatments of non-agricultural commodities, and stored grains and other non-living plant materials within and between islands. Creating special quarantine and treatment areas around ports is a necessity to have the capacity for real action regarding inter-island invasive species mitigation. Also, HDOA needs to have well-educated and well funded inspectors at every port (water and air) with the capacity to share information rapidly with University specialists to correctly assess invasive species risks (pathogens, fungi, roundworms, insects/arthropods). These types of jobs would have immense value for Hawaii, and it boggles the mind that vector control and ag inspectors have not been reinstated, especially with the highly damaging recent records of invasive species (CRB, LFA, Stink Bug, New sulfur butterfly, etc.)"*
- *"Intrastate biosecurity legislation will always be ineffective and inefficient unless a much stronger effort is made to keep invasive species from reaching Hawaii in the first place. Both Australia and NewZealand understand this and are areas that should be looked at closely for viable solutions. We in Hawaii are only addressing the symptoms and not the cause."*
- *"All invasive species programs are hampered by the lack of an enforceable noxious weed and noxious pest rules. The Department of Agriculture must be compelled by the legislature to*

establish rules that are enforceable and set aside a fund for legal costs associated with setting a legal precedent for each rule. This would involve removing the qualification for a cooperative program clause from the noxious weed rule, setting the administrative process for adding weeds to the list (empowered and ordered by HRS 141-3(a)), adding appropriate weeds to the list, and publishing the noxious weed list. Then it must follow through with 141-3.5 and 3.6, establishing a control plan and enforcing eradication. Assume that someone will sue, and ensure the laws are written so that they will win, and let the lawsuit happen so we can establish precedent. There is probably a noxious weed or two on some Invasive Species Committee member's property, who would be happy to sue the state and do a terrible job of it. Second, forget the Poor Nurseryman stereotype. Nursery business is big business, and very profitable. Profiting from the state's and their own negligence is unacceptable and needs to be stopped. There are far more non-growers than growers, and none of them want little fire ants in their back yards. Third, no more bags of organic material shipped into the state until every last albizia tree is chopped into mulch."

Appendix 3a: House Bill 1513 (2014)

RELATING TO INVASIVE SPECIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that coqui frogs are designated as a pest pursuant to section 141-3, Hawaii Revised Statutes. The legislature also finds that the department of agriculture is participating in a multi-agency campaign to stop the spread of coqui frogs in Hawaii. Since the spread of coqui frogs is associated with the movement of household potted plants and leaf litter, one way to control the movement and growth of the coqui frog population is to eradicate them before the sale or transport of nursery stock that may contain pests such as coqui frogs.

The purpose of this Act is to require owners or persons in charge or in possession of certified and non-certified nursery stock to properly treat plants for the eradication of pests before the sale or transport of the nursery stock within the State or intransit.

SECTION 2. Chapter 150A, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

"§150A- Nursery stock treatment requirements. All certified and non-certified nursery stock shall be properly treated for the eradication of pests designated in section 141-3 before the sale or transport of the stock from one island to another island within the State or from one locality to another on the same island. Nurseries or landscapers shall eradicate nursery stock from all infested properties where proof of sale or placement has been made. If proof of sale is not documented, owners or persons who have knowledge of pest infestation on their property must take appropriate measures to begin and maintain eradication efforts. Any expense or loss in connection with eradication efforts shall be borne by the owner or the owner's agent."

SECTION 3. Section 150A-6.5, Hawaii Revised Statutes, is amended to read as follows:

"§150A-6.5 Animals; prohibition against possession, etc.; exception. No person shall possess, propagate, sell, transfer, or harbor any animal included on the list of prohibited animals maintained by the board, except upon a determination that the species:

(1) (A) Was initially permitted entry and later prohibited entry into the State[;] for the sole purpose of scientific research; or

[(2)] (B) Was continually prohibited but unlawfully introduced and is currently [established in the State;] under scientific research; and

[(3)] (2) Is not significantly harmful to agriculture, horticulture, or animal or public health, and the environment. Under the circumstances described in this [section], the board may permit possession of the individual animal through its registration

with the department while still prohibiting the same species of animal from importation, propagation, transfer, and sale."

SECTION 4. Section 150A-14, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Any person who:

(1) Violates section 150A-6(3) or 150A-6(4)[,] with gross negligence, or owns [or intentionally], transports, possesses, harbors, transfers, or causes the importation of any snake or other prohibited animal seized under section 150A-7(b), or whose violation involves an animal that is prohibited or a plant, animal, or microorganism that is restricted, without a permit, shall be guilty of a misdemeanor and subject to a fine of not less than \$5,000, but not more than \$20,000;

(2) [Intentionally transports,] Transports, harbors, or imports [with the intent to propagate, sell, or release] any animal that is prohibited or any plant, animal, or microorganism that is restricted, without a permit, shall be guilty of a class C felony and subject to a fine of not less than \$50,000, but not more than \$200,000; or

(3) [Intentionally imports,] Imports, possesses, harbors, transfers, or transports, including through interisland or intransit movement, [with the intent to propagate, sell, or release,] any pest designated by statute or rule, unless otherwise allowed by law, shall be guilty of a class C felony and subject to a fine of not less than \$50,000, but not more than \$200,000."

SECTION 5. Section 150A-22, Hawaii Revised Statutes, is amended to read as follows:

"[[]§150A-22[[]] Responsibility for treatment. Any treatment of certified and non-certified nursery stock which may be required under the provisions of law shall be at the risk and at the expense of the owner or persons in charge or in possession thereof at the time of treatment, unless otherwise provided."

SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

RELATING TO BIOSECURITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that the unchecked spread of invasive species is one of the greatest threats to Hawaii's economy, natural environment, and the health and lifestyle of Hawaii's people. Invasive pests can cause millions of dollars in crop losses, the extinction of native species, the destruction of native forests, the spread of disease, and the quarantine of exported agricultural crops.

Island ecosystems are particularly vulnerable to the destructive power of invasive pests. On Guam, the accidental introduction of the brown tree snake has resulted in widespread devastation. Without natural predators or competition for food, brown tree snake populations have grown exponentially, causing mass extinctions of endemic birds. Where there were once bird songs, the forests of Guam are now silent and home to as many as fifteen thousand snakes per square mile. The introduction of just one new pest like the brown tree snake could change the ecological character of the Hawaiian Islands forever.

Despite the State's ongoing efforts to detect and eradicate invasive species, Hawaii's fragile island ecosystems are constantly at risk from insects, disease-bearing organisms, snakes, weeds, and other invasive pests. The coqui frog, *Salvinia molesta*, *Miconia calvescens*, ohia rust, nettle caterpillar, and little fire ant are all present in Hawaii, disrupting the delicate balance of island ecosystems, crowding out native species, and reducing the biodiversity of Hawaii.

The department of agriculture has created a biosecurity program to fight invasive species on several fronts by:

- (1) Administering pre-entry measures to minimize the risk of invasive pests entering the State;
- (2) Conducting port-of-entry inspections to detect and quarantine or destroy pests upon arrival; and
- (3) Administering post-entry measures to mitigate the establishment of pests in the State.

The department has also supported the growth of Hawaii's agriculture industry by attempting to reduce the State's dependency on imported agricultural products that may contain pests. The legislature finds that sufficient support for a biosecurity program is vital to the public's health and welfare.

The purpose of this Act is to:

- (1) Reaffirm the legislature's finding that the implementation of the department of agriculture's biosecurity program is vital to the State;
- (2) Appropriate moneys to enable the department of agriculture to complete the implementation of the biosecurity program; and

(3) Authorize the department of agriculture to establish or participate in private-public partnerships to enhance the biosecurity program and quarantine inspection process.

SECTION 2. Section 150A-53, Hawaii Revised Statutes, is amended to read as follows:

"**[[[§150A-53]] General actions to achieve objectives.** To achieve the objectives of the biosecurity program, the department shall plan for and, within available legislative appropriations or through funding from other sources, implement the following:

(1) Work with government agencies and agricultural commodity exporters of other states and countries to establish pre-entry inspection programs under which inbound cargo into the State is inspected at the ports of departure or other points outside the State;

(2) Establish, operate, or participate in operating port-of-entry facilities where multiple government agencies may inspect, quarantine, fumigate, disinfect, destroy, or exclude as appropriate, articles that may harbor pests or exclude articles that are prohibited or restricted without a permit, with the goals of:

(A) Performing inspections in an efficient, effective, and expeditious manner for the government agencies involved and for cargo owners, carriers, and importers; [and]

(B) Providing for the proper and safe storage and handling of cargo, especially agricultural and food commodities, awaiting inspection; and

(C) Establishing or participating in private-public partnerships to enhance the biosecurity program and quarantine inspection process with on-port and off-port facilities, including inspection and treatment facilities, transitional facilities, and consolidation and deconsolidation facilities; provided that actual inspections shall be performed only by department employees and not private contractors or their employees.

(3) Develop, implement, and coordinate post-entry measures to eradicate, control, reduce, and suppress pests and, as appropriate, eradicate or seize and dispose of prohibited or restricted organisms without a permit that have entered the State;

(4) Collaborate with relevant government agencies, agricultural commodity importers, and other persons to examine and develop joint integrated systems to better implement the biosecurity program;

(5) Improve cargo inspection capabilities and methods, including enhancement of the content and submission requirements for cargo manifests and agricultural commodity ownership and movement certificates;

(6) Promote the production of agricultural commodities in the State to reduce cargo shipments of imported commodities into the State; and

(7) Provide public education on the negative effects of pests and prohibited or restricted organisms without a permit, to the environment and economy of the State."

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$ _____ or so much thereof as may be necessary for fiscal year 2014-2015 for the biosecurity program of the department of agriculture; provided that the appropriation shall be used for the following projects:

- (1) An electronic manifest system for maritime cargo inspections;
- (2) Import replacement of high risk crops and the development of systems management to enhance pest management practices;
- (3) Research on new generation pesticides and development of integrated pest management methods;
- (4) Development of quarantine treatment options;
- (5) Development and implementation of diagnostics to quickly and reliably identify new and evolving pests and diseases;
- (6) Improvement of productivity of inspection capacity; and
- (7) Public and agriculture industry education activities.

The sum appropriated shall be expended by the department of agriculture for the purposes of this Act.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2050.

Appendix 3c: House Bill 1994 (2014)

RELATING TO CIVIL LIABILITY FOR THE INTRASTATE TRANSPORT OF INVASIVE SPECIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

PART I

SECTION 1. The legislature finds that immediate action is needed to further protect Hawaii from the movement of invasive species between islands.

Through Act 85, Session Laws of Hawaii 2003, the legislature recognized the silent invasion of Hawaii by alien invasive species as the single greatest threat to Hawaii's economy, natural environment, and the health and lifestyle of Hawaii's people and visitors.

The legislature further finds that the State has spent millions of dollars to control the invasive coqui frog, but control efforts were too late to stop its spread across the island of Hawaii, where it now infests hundreds of thousands of acres, affecting tourism revenues, property values, residents' quality of life, and the environment. The coqui frog has been eradicated from Kauai and eradicated from most of the infested sites on Maui; however, the frog continues to be transported to islands via shipments of landscape materials from infested nurseries and plant providers on the island of Hawaii. Some businesses on the other islands have become "revolving doors" for the reintroduction of coqui frogs, requiring constant expenditure of human and financial resources to detect and control new introductions. Each year, the department of agriculture and local invasive species committees respond to hundreds of new reports of coqui frogs. Coqui frogs have been detected in shipments of plant materials to Molokai on at least four different occasions. Equipment and vehicles may also vector coqui frogs to new locations.

The non-native little fire ant is widespread in the Hilo area and has now been detected in Waipio valley and Kona coffee farms. This little fire ant causes blindness in pets and livestock and threatens ground-nesting wildlife, agricultural production, and human health. The little fire ant has been successfully contained to one location on Kauai and almost eradicated from Maui, but it is known to be moving in inter-island commerce. In December 2013, the little fire ant was detected at several nurseries on Oahu and Maui on hapu'u tree ferns, and as a result, now appears to be established at several locations on Oahu. The little fire ant can be moved via plants, cut flowers, fruit, soil, sand, equipment, and vehicles.

The legislature further finds that the constant reintroduction of these and other harmful and highly invasive species creates an unfair financial burden on islands where such pests are not known to occur or where active detection and control operations exist. The continued reintroduction of invasive species threatens to undermine or destroy ongoing efforts to keep such pests from becoming established. Existing law prohibits the movement of pest species inter-island and authorizes the department of agriculture to inspect

and quarantine any infested materials. However, the department lacks adequate inspection capability, and some pests, such as the little fire ant and coqui frog, are exceptionally difficult to detect. Public reports are the best method to detect new populations of little fire ants and coqui frogs that have breached the State's quarantine system.

The legislature further finds that those residents and businesses on islands where these pests have become widespread are suffering enormous financial losses and decreases to their overall quality of life and that additional support is needed to develop effective control methods.

The purpose of this Act is to:

- (1) Establish an affirmative responsibility on the consignor of any landscape material or products, agricultural goods, construction materials, equipment, vehicles, soil, or sand to prevent the movement of coqui frogs, little fire ants, and other species designated by the department of agriculture;
- (2) Support development of additional tools to stop the movement of invasive species between islands; and
- (3) Provide necessary funds to achieve the objectives of this Act.

SECTION 2. Chapter 150A, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . RESTRICTIONS ON INTRASTATE MOVEMENT OF REGULATED ARTICLES

§150A- Restrictions on intrastate movement of regulated articles. No person shall move any regulated article intrastate from any quarantined area except in accordance with this part.

§150A- Definitions.

"Certificate" means a document in which an inspector affirms that a specified regulated article meets the requirements of this part and may be moved intrastate.

"Compliance agreement" means a written agreement between the department and a person engaged in growing, handling, or moving regulated articles that are moved intrastate, in which the person agrees to comply with this part and any conditions imposed under this part.

"Coqui frog" means living frogs of the species *Eleutherodactylus coqui*.

"Limited permit" means a document in which an inspector affirms that a specified regulated article not eligible for a certificate is eligible for intrastate movement only to a specified destination and in accordance with conditions specified on the permit.

"Little fire ant" means living ants of the species *Wasmannia auropunctata*.

"Management plan" means a plan prepared by the department of agriculture that includes acceptable treatment options for infestations of the little fire ant, coqui frog, or any other species designated by the department.

"Movement" or "moved" means the act of shipping, transporting, delivering, or receiving for movement, or otherwise aiding, abetting, inducing, or causing to be moved.

"Non-compacted soil" means soil that can be removed from an article by brisk brushing or washing with water under normal water pressure.

"Reproducing colony" means:

(1) A combination of one or more little fire ant workers and one or more of the following immature little fire ant forms:

- (A) Eggs;
- (B) Larvae; or
- (C) Pupae;

(2) A male and female coqui frog or a male coqui frog and coqui frog eggs; or

(3) Other forms or species designated by the department.

"Soil-moving equipment" means equipment used for moving or transporting soil, including but not limited to bulldozers, dump trucks, or road scrapers.

"Widespread infestation" means any island where little fire ant colonies, coqui frog colonies, or any other species as designated by the department, are present on more than twenty-five acres and no active control or containment efforts are underway.

§150A- Regulated articles. The following are regulated articles:

(1) Little fire ant queens and reproducing colonies of little fire ants;

(2) Coqui frogs and reproducing colonies of coqui frogs;

(3) Baled hay and baled straw stored in direct contact with the ground;

(4) Non-propagated material related to agriculture, including but not limited to:

- (A) Compost;
- (B) Mulch; or
- (C) Fertilizer;

(5) Used soil-moving equipment, unless removed of all non-compacted soil; and

(6) Any other article or means of conveyance that an inspector determines presents a risk of spreading the little fire ant, coqui frog, or any other species designated by the department due to its proximity to an infestation of the little fire ant, coqui frog, or the designated species.

§150A- Quarantined areas. (a) The department shall quarantine each portion of the State that is infested.

(b) Less than an entire island may be listed as a quarantined area only if the department determines that:

(1) The county of which the island is a part has adopted and is enforcing restrictions on the intrastate movement of the regulated articles listed in this part that are equivalent to the restrictions on intrastate movement imposed by this part; and

(2) Designating less than the entire island as a quarantined area will prevent the spread of the little fire ant, coqui frog, or any other species designated by the department.

(c) The department may include uninfested acreage within a quarantined area due to its proximity to an infestation or inseparability from the infested locality for quarantine purposes, as determined by:

(1) Projections of the spread of little fire ants, coqui frogs, or any other species designated by the department around the periphery of the infestation, as determined by previous years' surveys;

(2) Availability of natural habitats and host materials, within the uninfested acreage, suitable for establishment and survival of populations of the little fire ant, coqui frog, or any other species designated by the department; and

(3) Necessity of including uninfested acreage within the quarantined area in order to establish readily identifiable boundaries.

(d) The department or an inspector may temporarily designate any non-quarantined area as a quarantined area in accordance with the criteria specified in subsections (a), (b), and (c). The department shall give written notice of this designation to the owner or person in possession of the non-quarantined area, or, in the case of publicly owned land, to the person responsible for the management of the non-quarantined area; thereafter, the intrastate movement of any regulated article from an area temporarily designated as a quarantined area is subject to this section. As soon as practicable, either this area shall be added to the list of designated quarantined areas in subsection (e), or the department shall terminate the designation. The department shall give written notice of the termination as soon as practicable to the owner or person in possession of, or, in the case of publicly owned land, the person responsible for the management of, an area for which the designation is terminated.

(e) The designated quarantined areas include the county of Hawaii.

§150A- Intrastate movement of regulated articles from quarantined areas. (a) Any regulated article may be moved intrastate from a quarantined area into or through a non-quarantined area only if moved under the following conditions:

(1) With a certificate or limited permit issued and attached in accordance with this part;

(2) Without a certificate or limited permit; provided that each of the following conditions is met:

(A) The regulated article was moved into the quarantined area from an area that was non-quarantined at the time the regulated article was taken;

(B) The point of origin is indicated on a waybill accompanying the regulated article;

(C) The regulated article is moved through the quarantined area without stopping except for refueling, or for traffic conditions, such as traffic lights or stop signs, or has been stored, packed, or parked in locations inaccessible to the little fire ant, coqui frog, or any other species designated by the department, or in locations that have been treated in accordance with management plans under this part prepared by the department, while in or moving through any quarantined area; and

(D) The article has not been combined or commingled with other articles so as to lose its individual identity; or

(3) Without a certificate or limited permit; provided that the regulated article is a soil sample being moved to a laboratory approved by the department to process, test, or analyze soil samples.

(b) Any treatments shall be in accordance with management plans developed by the department.

§150A- Issuance of a certificate or limited permit. (a) An inspector may issue a certificate for the intrastate movement of a regulated article approved under a compliance agreement if it determines that the regulated article:

(1) Is eligible for unrestricted movement under all other applicable domestic plant quarantine regulations;

(2) Is to be moved intrastate in compliance with any additional conditions deemed necessary under state law to prevent the spread of the little fire ant, coqui frog, or any other species designated by the department; and

(3) Meets at least one of the following criteria:

(A) Is free of infestations of the little fire ant, coqui frog, or any other species designated by the department, based on the individual's visual examination of the article;

(B) Is grown, produced, manufactured, stored, or handled in a manner that would prevent infestation or would destroy all life stages of the little fire ant or coqui frog;

(C) Is treated in accordance with department management plans developed under this part; or

(D) If the article is containerized nursery stock, has been produced in accordance with requirements established under management plans developed under this part.

(b) An inspector shall issue blank certificates to a person operating under a compliance agreement in accordance with this part or authorize reproduction of the certificates on shipping containers, or both, as requested by the person operating under the compliance agreement. These certificates may then be completed and used, as needed, for the intrastate movement of regulated articles that have met all of the requirements of subsection (a).

(c) An inspector may issue a limited permit for the intrastate movement of a regulated article not eligible for a certificate if the inspector determines that the regulated article:

(1) Is to be moved intrastate to a specified destination for specified handling, utilization, or processing, where the destination and other conditions are listed in the limited permit, and this intrastate movement will not result in the spread of the little fire ant or coqui frog because the little fire ant or coqui frog will be destroyed by the specified handling, utilization, or processing; and

(2) Is to be moved intrastate in compliance with any conditions that the department may impose under this part to prevent the spread of the little fire ant, coqui frog, or other species designated by the department.

§150A- Compliance agreements. (a) The department shall develop and implement a comprehensive and effective inter-island quarantine program, including the use of compliance agreements patterned after the United States Department of Agriculture's animal plant health inspection service as set forth in title 7 Code of Federal Regulations section 301.81.

(b) Any person who grows, handles, or moves regulated articles intrastate may enter into a compliance agreement if the person reviews each stipulation of the compliance agreement with an inspector, has

facilities and equipment to carry out disinfestation procedures or application of chemical materials in accordance with management plans developed under this part, and meets applicable state training and certification standards. Any person who enters into a compliance agreement with the department shall agree to comply with this part and any conditions imposed under this part.

§150A- Cancellation of a certificate, limited permit, or compliance agreement. An inspector may cancel, orally or in writing, any certificate, limited permit, or compliance agreement whenever the inspector determines that the holder of the certificate or limited permit, or the person who has entered into the compliance agreement, has not complied with this part or any conditions imposed under this part. If the cancellation is oral, the cancellation shall become effective immediately and the cancellation and reasons for the cancellation shall be confirmed in writing as soon as circumstances allow but within twenty days after oral notification of the cancellation. Any person whose certificate, limited permit, or compliance agreement has been canceled may appeal the decision, in writing, within ten days after receipt of the written cancellation notice. The appeal shall state all of the facts and reasons the department should consider in deciding the appeal. A hearing may be held to resolve any conflict as to any material fact. The department shall adopt rules for the hearing in accordance with chapter 91. As soon as practicable, the department shall grant or deny the appeal, in writing, stating the reasons for the decision.

§150A- Assembly and inspection of regulated articles. (a) Persons requiring certification or other services shall coordinate the services with an inspector at least forty-eight hours before the services are needed.

(b) The regulated articles shall be assembled at the place and in the manner the inspector determines is necessary to comply with this part.

§150A- Attachment and disposition of certificates and limited permits. (a) Any person transporting a regulated article intrastate shall ensure that the certificate or limited permit authorizing intrastate movement of the regulated article is, at all times during intrastate movement, attached to:

- (1) The outside of the container encasing the regulated article;
- (2) The article itself, if it is not in a container; or
- (3) The consignee's copy of the accompanying waybill; provided that any description of the regulated article on the certificate or limited permit, and on the waybill, are sufficient to identify the regulated article.

(b) The consignor shall furnish the certificate or limited permit authorizing intrastate movement of a regulated article or cause the certificate or limited permit to be furnished to the consignee at the shipment's destination.

§150A- Little fire ant and coqui frog detection, control, exclusion, and enforcement program for nurseries producing containerized plants. (a) There is established in the department a little fire ant and coqui frog detection, control, exclusion, and enforcement program for nurseries producing containerized plants. The program is designed to keep nurseries free of the little fire ant and

coqui frog, and provide a basis to certify containerized nursery stock for intrastate movement. Participating nurseries shall operate under a compliance agreement in accordance with this part. Such compliance agreements shall state the specific requirements that a nursery agrees to follow to move plants in accordance with the requirements of the program. Certificates and a nursery identification number may be issued to the nursery for use on shipments of regulated articles.

(b) Participating nurseries shall survey their entire premises twice a month for the presence of little fire ants and coqui frogs using protocols established by the department.

(c) Participating nurseries shall be inspected by an inspector at least twice per year. More frequent inspections may be necessary depending upon little fire ant or coqui frog infestation levels immediately surrounding the nursery, the thoroughness of nursery management in maintaining a little-fire-ant-free or coqui-free premises, and the number of previous detections of little fire ants or coqui frogs in or near containerized plants. Any nurseries determined during nursery inspections to have little fire ant or coqui frog colonies shall be immediately treated to the extent necessary to eliminate the colonies.

(d) Under this program, nursery plants that are transported shall originate in a nursery that meets the requirements of this part. Nurseries shall implement a treatment program with registered bait and contact insecticides for the little fire ant and hot water treatment or other department-approved treatments for coqui frogs. The premises, including growing and holding areas, shall be maintained free of the little fire ant and coqui frog. As part of this treatment program, all exposed soil surfaces, including sod and mulched areas, on property where plants are grown, potted, stored, handled, loaded, unloaded, or sold shall be treated with approved insecticide or pesticide consistent with departmental standards. Follow-up treatments with a contact insecticide in accordance with management plans under this part shall be applied to eliminate all remaining colonies.

(e) For plants grown on the premises of participating nurseries, treatment of soil and potting media in accordance with standards established by management plans developed by the department prior to planting is required.

(f) For plants received by participating nurseries from outside sources, to prevent the spread into a nursery free of the imported fire ant by newly introduced, infested nursery plants, all plants shall be:

(1) Obtained from nurseries in compliance with the requirements of this section and that operate under a compliance agreement in accordance with this part; or

(2) Treated upon delivery in accordance with management plans under this part, and within the specified number of days be either:

(A) Repotted in treated potting soil media;

(B) Retreated in accordance with management plans under this part at the specified interval; or

(C) Transported.

(g) Participating nurseries shall maintain records of the nursery's surveys and treatments for the little fire ant or coqui

frog. These records shall be made available to the department upon request.

(h) If an inspector detects little fire ants or coqui frogs in nursery stock of a participating nursery, issuance of certificates for movement shall be suspended until necessary treatments are applied and the plants and nursery premises are determined to be free of the little fire ant and coqui frog. The department may declare a nursery to be free of the little fire ant and coqui frog upon reinspection of the premises. This inspection shall be conducted no sooner than thirty days after treatment. During this period, certification may be based upon treatments for plants in accordance with management plans developed by the department under this part.

(i) Upon notification by the county that a confirmed little fire ant infestation was found on a shipment from a nursery that had until then been considered free of the little fire ant, the department shall cease its certification of shipments from that nursery. An investigation shall commence immediately to determine the probable source of the problem and to ensure that the problem is resolved. If the problem is an infestation, issuance of certification for movement on the basis of little-fire-ant-free or coqui-free premises shall be suspended until treatment and elimination of the infestation is completed. Reinstatement into the program may be granted upon determination that the nursery premises are free of the little fire ant or coqui frog, and that all other provisions of this part are being followed.

(j) In cases where the issuance of certificates is suspended through oral notification, the suspension and the reasons for the suspension shall be confirmed in writing within twenty days of the oral notification of the suspension. Any nursery whose issuance of certificates has been suspended may appeal the decision, in writing, within ten days after receipt of a written suspension notice. The appeal shall state all of the facts and reasons that the department should consider in deciding the appeal. A hearing may be held to resolve any conflict as to any material fact. The department shall adopt rules for the hearing in accordance with chapter 91. As soon as practicable, the department shall grant or deny the appeal, in writing, stating the reasons for the decision.

§150A- County authority. Unless and until the department implements these provisions, including the adoption of any necessary rules, any county may establish its own requirements by ordinance to prevent the introduction of infested, regulated articles, consistent with the intent of this law and not in conflict with any departmental rules, including but not limited to:

- (1) Development of a little-fire-ant free certification program;
- (2) Development of a coqui-frog-free certification program; and
- (3) Treatment requirements for regulated articles being moved to any island of the county.

§150A- Information sharing. The department shall make available online on a monthly basis the numbers and locations by island of all interceptions of little fire ants and coqui frogs detected by department inspectors.

§150A- Penalties. Any person who moves infested regulated articles intrastate shall be subject to a fine equal to the value of the shipment or \$10,000, whichever is greater."

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2014-2015 to the department of agriculture for enforcing restrictions on intrastate movement of regulated articles and the establishment of an inter-island quarantine program to control intrastate movement of invasive species.

The sum appropriated shall be expended by the department of agriculture for the purposes of this part.

PART II

SECTION 4. (a) There is established within the Hawaii invasive species council an invasive species task force to address the continued movement of invasive plants, plant pests, and vertebrate pests between islands.

(b) The invasive species task force shall:

(1) Consider and propose recommendations to address the continued movement of invasive plants, plant pests, and vertebrate pests between islands;

(2) Gather relevant background data on invasive species that pose a threat to Hawaii;

(3) Assess the current and future impact of invasive species to Hawaii;

(4) Examine and assess existing methods for addressing invasive species in Hawaii;

(5) Examine needed state policies or responses to address the continued movement of invasive species between islands; and

(6) Examine other concerns of the task force regarding invasive species movement in Hawaii.

(c) The invasive species task force shall consist of representatives from the following departments, sectors, and organizations:

(1) Department of land and natural resources;

(2) Department of agriculture;

(3) Department of health;

(4) Department of business, economic development, and tourism;

(5) Department of transportation;

(6) University of Hawaii;

(7) Agriculture;

(8) Horticulture;

(9) Shipping;

(10) Tourism; and

(11) Others as determined by the Hawaii invasive species council.

(d) Members of the task force shall designate a chair from among themselves and serve without compensation for their service on the task force, but may be reimbursed for reasonable expenses, including travel expenses, incurred for serving on the task force.

(e) The invasive species task force shall meet at least four times to develop a comprehensive set of recommendations and shall submit a report of its findings and recommendations to the legislature no later than twenty days prior to the convening of the regular session of 2015.

(f) The invasive species task force shall be dissolved on July 1, 2015.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2014-2015 to establish the invasive species task force to address the continued movement of invasive plants, plant pests, and vertebrate pests between islands, including the use for facilitation or consultant services necessary to gather relevant background data and travel to ensure adequate statewide representation.

The sum appropriated shall be expended by the Hawaii invasive species council for the purposes of this part.

PART III

SECTION 6. This Act shall take effect on July 1, 2014.

RELATING TO INVASIVE SPECIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that coqui frogs are designated as a pest pursuant to section 141-3, Hawaii Revised Statutes. The legislature also finds that the department of agriculture is participating in a multi-agency campaign to stop the spread of coqui frogs in Hawaii. Since the spread of coqui frogs is associated with the movement of household potted plants and leaf litter, one way to control the movement and growth of the coqui frog population is to eradicate them before the sale or transport of nursery stock that may contain pests such as coqui frogs.

The purpose of this Act is to require owners or persons in charge or in possession of certified and non-certified nursery stock to properly treat plants for the eradication of pests before the sale or transport of the nursery stock within the State or intransit.

SECTION 2. Chapter 150A, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

"§150A- Nursery stock treatment requirements. All certified and non-certified nursery stock shall be properly treated for the eradication of pests designated in section 141-3 before the sale or transport of the stock from one island to another island within the State or from one locality to another on the same island. Nurseries or landscapers shall eradicate nursery stock from all infested properties where proof of sale or placement has been made. If proof of sale is not documented, owners or persons who have knowledge of pest infestation on their property must take appropriate measures to begin and maintain eradication efforts. Any expense or loss in connection with eradication efforts shall be borne by the owner or the owner's agent."

SECTION 3. Section 150A-6.5, Hawaii Revised Statutes, is amended to read as follows:

"§150A-6.5 Animals; prohibition against possession, etc.; exception. No person shall possess, propagate, sell, transfer, or harbor any animal included on the list of prohibited animals maintained by the board, except upon a determination that the species:

(1) (A) Was initially permitted entry and later prohibited entry into the State[;] for the sole purpose of scientific research; or

[(2)] (B) Was continually prohibited but unlawfully introduced and is currently [established in the State;] under scientific research; and

[(3)] (2) Is not significantly harmful to agriculture, horticulture, or animal or public health, and the environment. Under the circumstances described in this [section], the board may permit possession of the individual animal through its registration

with the department while still prohibiting the same species of animal from importation, propagation, transfer, and sale."

SECTION 4. Section 150A-14, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Any person who:

(1) Violates section 150A-6(3) or 150A-6(4)[,] with gross negligence, or owns [or intentionally], transports, possesses, harbors, transfers, or causes the importation of any snake or other prohibited animal seized under section 150A-7(b), or whose violation involves an animal that is prohibited or a plant, animal, or microorganism that is restricted, without a permit, shall be guilty of a misdemeanor and subject to a fine of not less than \$5,000, but not more than \$20,000;

(2) [Intentionally transports,] Transports, harbors, or imports [with the intent to propagate, sell, or release] any animal that is prohibited or any plant, animal, or microorganism that is restricted, without a permit, shall be guilty of a class C felony and subject to a fine of not less than \$50,000, but not more than \$200,000; or

(3) [Intentionally imports,] Imports, possesses, harbors, transfers, or transports, including through interisland or intransit movement, [with the intent to propagate, sell, or release,] any pest designated by statute or rule, unless otherwise allowed by law, shall be guilty of a class C felony and subject to a fine of not less than \$50,000, but not more than \$200,000."

SECTION 5. Section 150A-22, Hawaii Revised Statutes, is amended to read as follows:

"**[~~§~~150A-22] Responsibility for treatment.** Any treatment of certified and non-certified nursery stock which may be required under the provisions of law shall be at the risk and at the expense of the owner or persons in charge or in possession thereof at the time of treatment, unless otherwise provided."

SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

RELATING TO INVASIVE SPECIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

PART I

SECTION 1. The legislature finds that coqui frogs are designated as a pest pursuant to section 141-3, Hawaii Revised Statutes. The legislature also finds that the department of agriculture is participating in a multi-agency campaign to stop the spread of coqui frogs in Hawaii. Since the spread of coqui frogs and other pests are associated with the movement of household potted plants and leaf litter, one way to control the movement and growth of the coqui frog population is to eradicate them before the sale or transport of nursery stock that may contain pests such as coqui frogs.

The purpose of this part is to require owners or persons in charge or in possession of certified and non-certified nursery stock to properly treat plants for the eradication of pests before the sale or transport of the nursery stock within the State or intraisland.

SECTION 2. Chapter 150A, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

"§150A- Nursery stock treatment requirements. (a) Nursery stock infested with little fire ants, coqui frog, or any other pest designated pursuant to section 141-3 for control or eradication shall not be sold or transported from one island to another island within the State or from one locality to another on the same island unless the nursery stock has been subjected to appropriate treatment in accordance with management plans developed by the department pursuant to part of this chapter. This requirement shall apply whether the nursery stock is from a certified or non-certified nursery.

(b) Nurseries or landscapers who fail to treat their nursery stock in accordance with subsection (a) prior to transport shall be responsible for appropriate treatment at their own expense to exterminate the pest from:

(1) Nursery stock on infested properties where proof of sale or placement of their nursery stock has been made; and

(2) Any other nursery stock on the affected properties that has been infested by the transported nursery stock.

(c) For purposes of subsection (b)(1), if proof of sale or placement is not documented, persons with knowledge of pest infestation on their property shall take and maintain appropriate pest control and extermination measures at their own expense.

(d) Nurseries or landscapers with knowledge of pest infestation on their properties shall take and maintain vigilant and appropriate control and extermination measures on their property against any pest designated pursuant to section 141-3 and shall bear the expense of these efforts."

SECTION 3. Section 150A-14, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Any person who:

(1) Violates section 150A-6(3) or 150A-6(4)[,] with gross negligence, or owns [or intentionally], transports, possesses, harbors, transfers, or causes the importation of any snake or other prohibited animal seized under section 150A-7(b), or whose violation involves an animal that is prohibited or a plant, animal, or microorganism that is restricted, without a permit, shall be guilty of a misdemeanor and subject to a fine of not less than \$5,000, but not more than \$20,000;

(2) [Intentionally transports,] Transports, harbors, or imports [with the intent to propagate, sell, or release] any animal that is prohibited or any plant, animal, or microorganism that is restricted, without a permit, shall be guilty of a class C felony and subject to a fine of not less than \$50,000, but not more than \$200,000; or

(3) [Intentionally imports,] Imports, possesses, harbors, transfers, or transports, including through interisland or intransisland movement, [with the intent to propagate, sell, or release,] any pest designated by statute or rule, unless otherwise allowed by law, shall be guilty of a class C felony and subject to a fine of not less than \$50,000, but not more than \$200,000."

SECTION 4. Section 150A-22, Hawaii Revised Statutes, is amended to read as follows:

"**[§150A-22] Responsibility for treatment.** Any treatment of certified and non-certified nursery stock which may be required under the provisions of law shall be at the risk and at the expense of the owner or persons in charge or in possession thereof at the time of treatment, unless otherwise provided."

PART II

SECTION 5. The legislature finds that immediate action is needed to further protect Hawaii from the movement of invasive species between islands.

Through Act 85, Session Laws of Hawaii 2003, the legislature recognized the silent invasion of Hawaii by alien invasive species as the single greatest threat to Hawaii's economy, natural environment, and the health and lifestyle of Hawaii's people and visitors.

The legislature further finds that the State has spent millions of dollars to control the invasive coqui frog, but control efforts were too late to stop its spread across the island of Hawaii, where it now infests hundreds of thousands of acres, affecting tourism revenues, property values, residents' quality of life, and the environment. The coqui frog has been eradicated from Kauai and eradicated from most of the infested sites on Maui; however, the frog continues to be transported to islands via shipments of landscape materials from infested nurseries and plant providers on the island of Hawaii. Some businesses on the other islands have become "revolving doors" for the reintroduction of coqui frogs, requiring constant expenditure of human and financial resources to detect and control new introductions. Each year, the department of agriculture and local invasive species committees respond to hundreds of new reports of coqui frogs. Coqui frogs have been detected in shipments of plant materials to Molokai on at least four different occasions. Equipment and vehicles may also vector coqui frogs to new locations.

The non-native little fire ant is widespread in the Hilo area and has now been detected in Waipio valley and Kona coffee farms. This

little fire ant causes blindness in pets and livestock and threatens ground-nesting wildlife, agricultural production, and human health. The little fire ant has been successfully contained to one location on Kauai and almost eradicated from Maui, but it is known to be moving in inter-island commerce. In December 2013, the little fire ant was detected at several nurseries on Oahu and Maui on hapu'u tree ferns, and as a result, now appears to be established at several locations on Oahu. The little fire ant can be moved via plants, cut flowers, fruit, soil, sand, equipment, and vehicles.

The legislature further finds that the constant reintroduction of these and other harmful and highly invasive species creates an unfair financial burden on islands where such pests are not known to occur or where active detection and control operations exist. The continued reintroduction of invasive species threatens to undermine or destroy ongoing efforts to keep such pests from becoming established. Existing law prohibits the movement of pest species inter-island and authorizes the department of agriculture to inspect and quarantine any infested materials. However, the department lacks adequate inspection capability, and some pests, such as the little fire ant and coqui frog, are exceptionally difficult to detect.

The purpose of this part is to establish an affirmative responsibility on the consignor of any landscape material or products, agricultural goods, construction materials, equipment, vehicles, soil, or sand to prevent the movement of coqui frogs, little fire ants, and other species designated by the department of agriculture.

SECTION 6. Chapter 150A, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . RESTRICTIONS ON INTRASTATE MOVEMENT OF REGULATED ARTICLES

§150A- Restrictions on intrastate movement of regulated articles. No person shall move any regulated article intrastate from any quarantined area except in accordance with this part.

§150A- Definitions.

"Certificate" means a document in which an inspector affirms that a specified regulated article meets the requirements of this part and may be moved intrastate.

"Compliance agreement" means a written agreement between the department and a person engaged in growing, handling, or moving regulated articles that are moved intrastate, in which the person agrees to comply with this part and any conditions imposed under this part.

"Coqui frog" means living frogs of the species *Eleutherodactylus coqui*.

"Infestation" means any island where little fire ant colonies, coqui frog colonies, or any other species as designated by the department, are present on more than twenty-five acres and no active control or containment efforts are underway.

"Limited permit" means a document in which an inspector affirms that a specified regulated article not eligible for a certificate is eligible for intrastate movement only to a specified destination and in accordance with conditions specified on the permit.

"Little fire ant" means living ants of the species *Wasmannia auropunctata*.

"Management plan" means a plan prepared by the department that includes acceptable treatment options for infestations of the little fire ant, coqui frog, or any other species designated by the department.

"Movement" or "moved" means the act of shipping, transporting, delivering, or receiving for movement, or otherwise aiding, abetting, inducing, or causing to be moved.

"Non-compacted soil" means soil that can be removed from an article by brisk brushing or washing with water under normal water pressure.

"Reproducing colony" means:

(1) A combination of one or more little fire ant workers and one or more of the following immature little fire ant forms:

- (A) Eggs;
- (B) Larvae; or
- (C) Pupae;

(2) A male and female coqui frog or a male coqui frog and coqui frog eggs; or

(3) Other forms or species designated by the department.

"Soil-moving equipment" means equipment used for moving or transporting soil, including but not limited to bulldozers, dump trucks, or road scrapers.

§150A- Regulated articles. The following are regulated articles:

(1) Little fire ant queens and reproducing colonies of little fire ants;

(2) Coqui frogs and reproducing colonies of coqui frogs;

(3) Baled hay and baled straw stored in direct contact with the ground;

(4) Non-propagated material related to agriculture, including but not limited to:

- (A) Compost;
- (B) Mulch; or
- (C) Fertilizer;

(5) Used soil-moving equipment, unless removed of all non-compacted soil; and

(6) Any other article or means of conveyance that an inspector determines presents a risk of spreading the little fire ant, coqui frog, or any other species designated by the department due to its proximity to an infestation of the little fire ant, coqui frog, or the designated species.

§150A- Quarantined areas. (a) The department shall quarantine each portion of the State that is infested.

(b) Less than an entire island may be listed as a quarantined area only if the department determines that:

(1) The county of which the island is a part has adopted and is enforcing restrictions on the intrastate movement of the regulated articles listed in this part that are equivalent to the restrictions on intrastate movement imposed by this part; and

(2) Designating less than the entire island as a quarantined area will prevent the spread of the little fire ant, coqui frog, or any other species designated by the department.

(c) The department may include uninfested acreage within a quarantined area due to its proximity to an infestation or inseparability from the infested locality for quarantine purposes, as determined by:

(1) Projections of the spread of little fire ants, coqui frogs, or any other species designated by the department around the periphery of the infestation, as determined by previous years' surveys;

(2) Availability of natural habitats and host materials, within the uninfested acreage, suitable for establishment and survival of populations of the little fire ant, coqui frog, or any other species designated by the department; and

(3) Necessity of including uninfested acreage within the quarantined area in order to establish readily identifiable boundaries.

(d) The department or an inspector may temporarily designate any non-quarantined area as a quarantined area in accordance with the criteria specified in subsections (a), (b), and (c). The department shall give written notice of this designation to the owner or person in possession of the non-quarantined area, or, in the case of publicly owned land, to the person responsible for the management of the non-quarantined area; thereafter, the intrastate movement of any regulated article from an area temporarily designated as a quarantined area is subject to this section. As soon as practicable, either this area shall be added to the list of designated quarantined areas in subsection (e), or the department shall terminate the designation. The department shall give written notice of the termination as soon as practicable to the owner or person in possession of, or, in the case of publicly owned land, the person responsible for the management of, an area for which the designation is terminated.

(e) The designated quarantined areas include the county of Hawaii.

§150A- Intrastate movement of regulated articles from quarantined areas. (a) Any regulated article shall be moved intrastate from a quarantined area into or through a non-quarantined area under the following conditions:

(1) With a certificate or limited permit issued and attached in accordance with this part;

(2) Without a certificate or limited permit; provided that each of the following conditions is met:

(A) The regulated article was moved into the quarantined area from an area that was non-quarantined at the time the regulated article was taken;

(B) The point of origin is indicated on a waybill accompanying the regulated article;

(C) The regulated article is moved through the quarantined area without stopping except for refueling, or for traffic conditions, such as traffic lights or stop signs, or has been stored, packed, or parked in locations inaccessible to the little fire ant, coqui frog, or any other species designated by the department, or in locations that have been treated in accordance with management plans under this part prepared by the department, while in or moving through any quarantined area; and

(D) The article has not been combined or commingled with other articles so as to lose its individual identity; or

(3) Without a certificate or limited permit; provided that the regulated article is a soil sample being moved to a laboratory approved by the department to process, test, or analyze soil samples.

(b) Any treatments shall be in accordance with management plans developed by the department.

§150A- Issuance of a certificate or limited permit. (a) An inspector may issue a certificate for the intrastate movement of a regulated article approved under a compliance agreement if it determines that the regulated article:

(1) Is eligible for unrestricted movement under all other applicable domestic plant quarantine regulations;

(2) Is to be moved intrastate in compliance with any additional conditions deemed necessary under state law to prevent the spread of the little fire ant, coqui frog, or any other species designated by the department; and

(3) Meets at least one of the following criteria:

(A) Is free of infestations of the little fire ant, coqui frog, or any other species designated by the department, based on the individual's visual examination of the article;

(B) Is grown, produced, manufactured, stored, or handled in a manner that would prevent infestation or would destroy all life stages of the little fire ant or coqui frog;

(C) Is treated in accordance with department management plans developed under this part; or

(D) If the article is containerized nursery stock, has been produced in accordance with requirements established under management plans developed under this part.

(b) An inspector shall issue blank certificates to a person operating under a compliance agreement in accordance with this part or authorize reproduction of the certificates on shipping containers, or both, as requested by the person operating under the compliance agreement. These certificates may then be completed and used, as needed, for the intrastate movement of regulated articles that have met all of the requirements of subsection (a).

(c) An inspector may issue a limited permit for the intrastate movement of a regulated article not eligible for a certificate if the inspector determines that the regulated article:

(1) Is to be moved intrastate to a specified destination for specified handling, utilization, or processing, where the destination and other conditions are listed in the limited permit, and this intrastate movement will not result in the spread of the little fire ant, coqui frog, or other species designated by the department because the little fire ant, coqui frog, or other species will be destroyed by the specified handling, utilization, or processing; and

(2) Is to be moved intrastate in compliance with any conditions that the department may impose under this part to prevent the spread of the little fire ant, coqui frog, or other species designated by the department.

§150A- Compliance agreements. (a) The department shall develop and implement a comprehensive and effective inter-island quarantine program, including the use of compliance agreements

patterned after the United States Department of Agriculture's animal plant health inspection service as set forth in title 7 Code of Federal Regulations section 301.81.

(b) Any person who grows, handles, or moves regulated articles intrastate may enter into a compliance agreement if the person reviews each stipulation of the compliance agreement with an inspector, has facilities and equipment to carry out disinfestation procedures or application of chemical materials in accordance with management plans developed under this part, and meets applicable state training and certification standards. Any person who enters into a compliance agreement with the department shall agree to comply with this part and any conditions imposed under this part.

§150A- Cancellation of a certificate, limited permit, or compliance agreement. An inspector may cancel, orally or in writing, any certificate, limited permit, or compliance agreement whenever the inspector determines that the holder of the certificate or limited permit, or the person who has entered into the compliance agreement, has not complied with this part or any conditions imposed under this part. If the cancellation is oral, the cancellation shall become effective immediately and the cancellation and reasons for the cancellation shall be confirmed in writing as soon as circumstances allow but within twenty days after oral notification of the cancellation. Any person whose certificate, limited permit, or compliance agreement has been canceled may appeal the decision, in writing, within ten days after receipt of the written cancellation notice. The appeal shall state all of the facts and reasons the department should consider in deciding the appeal. A hearing may be held to resolve any conflict as to any material fact. The department shall adopt rules for the hearing in accordance with chapter 91. As soon as practicable, the department shall grant or deny the appeal, in writing, stating the reasons for the decision.

§150A- Assembly and inspection of regulated articles. (a) Persons requiring certification or other services shall coordinate the services with an inspector at least forty-eight hours before the services are needed.

(b) The regulated articles shall be assembled at the place and in the manner the inspector determines is necessary to comply with this part.

§150A- Attachment and disposition of certificates and limited permits. (a) Any person transporting a regulated article intrastate shall ensure that the certificate or limited permit authorizing intrastate movement of the regulated article is, at all times during intrastate movement, attached to:

- (1) The outside of the container encasing the regulated article;
- (2) The article itself, if it is not in a container; or
- (3) The consignee's copy of the accompanying waybill; provided that any description of the regulated article on the certificate or limited permit, and on the waybill, are sufficient to identify the regulated article.

(b) The consignor shall furnish the certificate or limited permit authorizing intrastate movement of a regulated article or cause the certificate or limited permit to be furnished to the consignee at the shipment's destination.

§150A- Little fire ant and coqui frog detection, control, exclusion, and enforcement program for nurseries producing containerized plants. (a) There is established in the department a little fire ant and coqui frog detection, control, exclusion, and enforcement program for nurseries producing containerized plants. The program is designed to keep nurseries free of the little fire ant and coqui frog, and provide a basis to certify containerized nursery stock for intrastate movement. Nurseries that agree to participate in the program shall operate under a compliance agreement in accordance with this part. Such compliance agreements shall state the specific requirements that a nursery agrees to follow to move plants in accordance with the requirements of the program. Certificates and a nursery identification number may be issued to the nursery for use on shipments of regulated articles.

(b) Participating nurseries shall survey their entire premises twice a month for the presence of little fire ants and coqui frogs using protocols established by the department.

(c) Participating nurseries shall be inspected by an inspector at least twice per year. More frequent inspections may be necessary depending upon little fire ant or coqui frog infestation levels immediately surrounding the nursery, the thoroughness of nursery management in maintaining a little-fire-ant-free or coqui frog-free premises, and the number of previous detections of little fire ants or coqui frogs in or near containerized plants. Any nurseries determined during nursery inspections to have little fire ant or coqui frog colonies shall be immediately treated to the extent necessary to eliminate the colonies.

(d) Under this program, nursery plants that are transported shall originate in a nursery that meets the requirements of this part. Nurseries shall implement a treatment program in accordance with a management plan developed by the department of agriculture. The premises, including growing and holding areas, shall be maintained free of the little fire ant and coqui frog. As part of this treatment program, all exposed soil surfaces, including sod and mulched areas, on property where plants are grown, potted, stored, handled, loaded, unloaded, or sold shall be treated with approved insecticide or pesticide consistent with departmental standards. Follow-up treatments with a contact insecticide in accordance with management plans under this part shall be applied to eliminate all remaining colonies.

(e) For plants grown on the premises of participating nurseries, soil and potting media shall be treated in accordance with standards established by management plans developed by the department prior to planting.

(f) For plants received by participating nurseries from outside sources, to prevent the spread into a nursery free of the imported fire ant or coqui frog by newly introduced, infested nursery plants, all plants shall be:

(1) Obtained from nurseries in compliance with the requirements of this section and that operate under a compliance agreement in accordance with this part; or

(2) Treated upon delivery in accordance with management plans under this part, and within the specified number of days be either:

(A) Repotted in treated potting soil media;
(B) Retreated in accordance with management plans under this part at the specified interval; or
(C) Transported.

(g) Participating nurseries shall maintain records of the nursery's surveys and treatments for the little fire ant or coqui frog. These records shall be made available to the department upon request.

(h) If an inspector detects little fire ants or coqui frogs in nursery stock of a participating nursery, issuance of certificates for intrastate movement shall be suspended until necessary treatments are applied and the plants and nursery premises are determined to be free of the little fire ant and coqui frog. The department may declare a nursery to be free of the little fire ant and coqui frog upon reinspection of the premises. This inspection shall be conducted no sooner than thirty days after treatment. During this period, certification may be based upon treatments for plants in accordance with management plans developed by the department under this part.

(i) Upon notification by the county that a confirmed little fire ant or coqui frog infestation was found on a shipment from a nursery that had until then been considered free of the little fire ant, the department shall cease its certification of shipments from that nursery. An investigation shall commence immediately to determine the probable source of the problem and to ensure that the problem is resolved. If the problem is an infestation, issuance of certification for movement on the basis of little-fire-ant-free or coqui frog-free premises shall be suspended until treatment and elimination of the infestation is completed. Reinstatement into the program may be granted upon determination that the nursery premises are free of the little fire ant or coqui frog, and that all other provisions of this part are being followed.

(j) In cases where the issuance of certificates is suspended through oral notification, the suspension and the reasons for the suspension shall be confirmed in writing within twenty days of the oral notification of the suspension. Any nursery whose issuance of certificates has been suspended may appeal the decision, in writing, within ten days after receipt of a written suspension notice. The appeal shall state all of the facts and reasons that the department should consider in deciding the appeal. A hearing may be held to resolve any conflict as to any material fact. The department shall adopt rules for the hearing in accordance with chapter 91. As soon as practicable, the department shall grant or deny the appeal, in writing, stating the reasons for the decision.

§150A- County authority. Unless and until the department implements these provisions, including the adoption of any necessary rules, any county may establish its own requirements by ordinance to prevent the introduction of infested, regulated articles, consistent with the intent of this law and consistent with any departmental rules, including but not limited to:

(1) Development of a little-fire-ant free certification program;
(2) Development of a coqui-frog-free certification program; and
(3) Treatment requirements for regulated articles being moved to any island of the county.

§150A- Penalties. Any person who moves infested regulated articles intrastate shall be subject to a fine equal to the value of the shipment or \$10,000, whichever is greater."

PART III

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

Appendix 3f: Senate Bill 2607 (2014)

RELATING TO CIVIL LIABILITY FOR THE INTRASTATE TRANSPORT OF INVASIVE SPECIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

PART I

SECTION 1. The legislature finds that immediate action is needed to further protect Hawaii from the movement of invasive species between islands.

Through Act 85, Session Laws of Hawaii 2003, the legislature recognized the silent invasion of Hawaii by alien invasive species as the single greatest threat to Hawaii's economy, natural environment, and the health and lifestyle of Hawaii's people and visitors.

The legislature further finds that the State has spent millions of dollars to control the invasive coqui frog, but control efforts were too late to stop its spread across the island of Hawaii, where it now infests hundreds of thousands of acres, affecting tourism revenues, property values, residents' quality of life, and the environment. The coqui frog has been eradicated from Kauai and eradicated from most of the infested sites on Maui; however, the frog continues to be transported to islands via shipments of landscape materials from infested nurseries and plant providers on the island of Hawaii. Some businesses on the other islands have become "revolving doors" for the reintroduction of coqui frogs, requiring constant expenditure of human and financial resources to detect and control new introductions. Each year, the department of agriculture and local invasive species committees respond to hundreds of new reports of coqui frogs. Coqui frogs have been detected in shipments of plant materials to Molokai on at least four different occasions. Equipment and vehicles may also vector coqui frogs to new locations.

The non-native little fire ant is widespread in the Hilo area and has now been detected in Waipio valley and Kona coffee farms. This little fire ant causes blindness in pets and livestock and threatens ground-nesting wildlife, agricultural production, and human health. The little fire ant has been successfully contained to one location on Kauai and almost eradicated from Maui, but it is known to be moving in inter-island commerce. In December 2013, the little fire ant was detected at several nurseries on Oahu and Maui on hapu'u tree ferns, and as a result, now appears to be established at several locations on Oahu. The little fire ant can be moved via plants, cut flowers, fruit, soil, sand, equipment, and vehicles.

The legislature further finds that the constant reintroduction of these and other harmful and highly invasive species creates an unfair financial burden on islands where such pests are not known to occur or where active detection and control operations exist. The continued reintroduction of invasive species threatens to undermine or destroy ongoing efforts to keep such pests from becoming established. Existing law prohibits the movement of pest species inter-island and authorizes the department of agriculture to inspect

and quarantine any infested materials. However, the department lacks adequate inspection capability, and some pests, such as the little fire ant and coqui frog, are exceptionally difficult to detect. Public reports are the best method to detect new populations of little fire ants and coqui frogs that have breached the State's quarantine system.

The legislature further finds that those residents and businesses on islands where these pests have become widespread are suffering enormous financial losses and decreases to their overall quality of life and that additional support is needed to develop effective control methods.

The purpose of this Act is to:

(1) Establish an affirmative responsibility on the consignor of any landscape material or products, agricultural goods, construction materials, equipment, vehicles, soil, or sand to prevent the movement of coqui frogs, little fire ants, and other species designated by the department of agriculture;

(2) Support development of additional tools to stop the movement of invasive species between islands; and

(3) Provide necessary funds to achieve the objectives of this Act.

SECTION 2. Chapter 150A, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . RESTRICTIONS ON INTRASTATE MOVEMENT OF REGULATED ARTICLES

§150A- Restrictions on intrastate movement of regulated articles. No person shall move any regulated article intrastate from any quarantined area except in accordance with this part.

§150A- Definitions.

"Certificate" means a document in which an inspector affirms that a specified regulated article meets the requirements of this part and may be moved intrastate.

"Compliance agreement" means a written agreement between the department and a person engaged in growing, handling, or moving regulated articles that are moved intrastate, in which the person agrees to comply with this part and any conditions imposed under this part.

"Coqui frog" means living frogs of the species *Eleutherodactylus coqui*.

"Limited permit" means a document in which an inspector affirms that a specified regulated article not eligible for a certificate is eligible for intrastate movement only to a specified destination and in accordance with conditions specified on the permit.

"Little fire ant" means living ants of the species *Wasmannia auropunctata*.

"Management plan" means a plan prepared by the department of agriculture that includes acceptable treatment options for infestations of the little fire ant, coqui frog, or any other species designated by the department.

"Movement" or "moved" means the act of shipping, transporting, delivering, or receiving for movement, or otherwise aiding, abetting, inducing, or causing to be moved.

"Non-compacted soil" means soil that can be removed from an article by brisk brushing or washing with water under normal water pressure.

"Reproducing colony" means:

(1) A combination of one or more little fire ant workers and one or more of the following immature little fire ant forms:

- (A) Eggs;
- (B) Larvae; or
- (C) Pupae;

(2) A male and female coqui frog or a male coqui frog and coqui frog eggs; or

(3) Other forms or species designated by the department.

"Soil-moving equipment" means equipment used for moving or transporting soil, including but not limited to bulldozers, dump trucks, or road scrapers.

"Widespread infestation" means any island where little fire ant colonies, coqui frog colonies, or any other species as designated by the department, are present on more than twenty-five acres and no active control or containment efforts are underway.

§150A- Regulated articles. The following are regulated articles:

(1) Little fire ant queens and reproducing colonies of little fire ants;

(2) Coqui frogs and reproducing colonies of coqui frogs;

(3) Baled hay and baled straw stored in direct contact with the ground;

(4) Non-propagated material related to agriculture, including but not limited to:

- (A) Compost;
- (B) Mulch; or
- (C) Fertilizer;

(5) Used soil-moving equipment, unless removed of all non-compacted soil; and

(6) Any other article or means of conveyance that an inspector determines presents a risk of spreading the little fire ant, coqui frog, or any other species designated by the department due to its proximity to an infestation of the little fire ant, coqui frog, or the designated species.

§150A- Quarantined areas. (a) The department shall quarantine each portion of the State that is infested.

(b) Less than an entire island may be listed as a quarantined area only if the department determines that:

(1) The county of which the island is a part has adopted and is enforcing restrictions on the intrastate movement of the regulated articles listed in this part that are equivalent to the restrictions on intrastate movement imposed by this part; and

(2) Designating less than the entire island as a quarantined area will prevent the spread of the little fire ant, coqui frog, or any other species designated by the department.

(c) The department may include uninfested acreage within a quarantined area due to its proximity to an infestation or inseparability from the infested locality for quarantine purposes, as determined by:

(1) Projections of the spread of little fire ants, coqui frogs, or any other species designated by the department around the periphery of the infestation, as determined by previous years' surveys;

(2) Availability of natural habitats and host materials, within the uninfested acreage, suitable for establishment and survival of populations of the little fire ant, coqui frog, or any other species designated by the department; and

(3) Necessity of including uninfested acreage within the quarantined area in order to establish readily identifiable boundaries.

(d) The department or an inspector may temporarily designate any non-quarantined area as a quarantined area in accordance with the criteria specified in subsections (a), (b), and (c). The department shall give written notice of this designation to the owner or person in possession of the non-quarantined area, or, in the case of publicly owned land, to the person responsible for the management of the non-quarantined area; thereafter, the intrastate movement of any regulated article from an area temporarily designated as a quarantined area is subject to this section. As soon as practicable, either this area shall be added to the list of designated quarantined areas in subsection (e), or the department shall terminate the designation. The department shall give written notice of the termination as soon as practicable to the owner or person in possession of, or, in the case of publicly owned land, the person responsible for the management of, an area for which the designation is terminated.

(e) The designated quarantined areas include the county of Hawaii.

§150A- Intrastate movement of regulated articles from quarantined areas. (a) Any regulated article may be moved intrastate from a quarantined area into or through a non-quarantined area only if moved under the following conditions:

(1) With a certificate or limited permit issued and attached in accordance with this part;

(2) Without a certificate or limited permit; provided that each of the following conditions is met:

(A) The regulated article was moved into the quarantined area from an area that was non-quarantined at the time the regulated article was taken;

(B) The point of origin is indicated on a waybill accompanying the regulated article;

(C) The regulated article is moved through the quarantined area without stopping except for refueling, or for traffic conditions, such as traffic lights or stop signs, or has been stored, packed, or parked in locations inaccessible to the little fire ant, coqui frog, or any other species designated by the department, or in locations that have been treated in accordance with management plans under this part prepared by the department, while in or moving through any quarantined area; and

(D) The article has not been combined or commingled with other articles so as to lose its individual identity; or

(3) Without a certificate or limited permit; provided that the regulated article is a soil sample being moved to a laboratory approved by the department to process, test, or analyze soil samples.

(b) Any treatments shall be in accordance with management plans developed by the department.

§150A- Issuance of a certificate or limited permit. (a) An inspector may issue a certificate for the intrastate movement of a regulated article approved under a compliance agreement if it determines that the regulated article:

(1) Is eligible for unrestricted movement under all other applicable domestic plant quarantine regulations;

(2) Is to be moved intrastate in compliance with any additional conditions deemed necessary under state law to prevent the spread of the little fire ant, coqui frog, or any other species designated by the department; and

(3) Meets at least one of the following criteria:

(A) Is free of infestations of the little fire ant, coqui frog, or any other species designated by the department, based on the individual's visual examination of the article;

(B) Is grown, produced, manufactured, stored, or handled in a manner that would prevent infestation or would destroy all life stages of the little fire ant or coqui frog;

(C) Is treated in accordance with department management plans developed under this part; or

(D) If the article is containerized nursery stock, has been produced in accordance with requirements established under management plans developed under this part.

(b) An inspector shall issue blank certificates to a person operating under a compliance agreement in accordance with this part or authorize reproduction of the certificates on shipping containers, or both, as requested by the person operating under the compliance agreement. These certificates may then be completed and used, as needed, for the intrastate movement of regulated articles that have met all of the requirements of subsection (a).

(c) An inspector may issue a limited permit for the intrastate movement of a regulated article not eligible for a certificate if the inspector determines that the regulated article:

(1) Is to be moved intrastate to a specified destination for specified handling, utilization, or processing, where the destination and other conditions are listed in the limited permit, and this intrastate movement will not result in the spread of the little fire ant or coqui frog because the little fire ant or coqui frog will be destroyed by the specified handling, utilization, or processing; and

(2) Is to be moved intrastate in compliance with any conditions that the department may impose under this part to prevent the spread of the little fire ant, coqui frog, or other species designated by the department.

§150A- Compliance agreements. (a) The department shall develop and implement a comprehensive and effective inter-island quarantine program, including the use of compliance agreements patterned after the United States Department of Agriculture's animal plant health inspection service as set forth in title 7 Code of Federal Regulations section 301.81.

(b) Any person who grows, handles, or moves regulated articles intrastate may enter into a compliance agreement if the person reviews each stipulation of the compliance agreement with an inspector, has

facilities and equipment to carry out disinfestation procedures or application of chemical materials in accordance with management plans developed under this part, and meets applicable state training and certification standards. Any person who enters into a compliance agreement with the department shall agree to comply with this part and any conditions imposed under this part.

§150A- Cancellation of a certificate, limited permit, or compliance agreement. An inspector may cancel, orally or in writing, any certificate, limited permit, or compliance agreement whenever the inspector determines that the holder of the certificate or limited permit, or the person who has entered into the compliance agreement, has not complied with this part or any conditions imposed under this part. If the cancellation is oral, the cancellation shall become effective immediately and the cancellation and reasons for the cancellation shall be confirmed in writing as soon as circumstances allow but within twenty days after oral notification of the cancellation. Any person whose certificate, limited permit, or compliance agreement has been canceled may appeal the decision, in writing, within ten days after receipt of the written cancellation notice. The appeal shall state all of the facts and reasons the department should consider in deciding the appeal. A hearing may be held to resolve any conflict as to any material fact. The department shall adopt rules for the hearing in accordance with chapter 91. As soon as practicable, the department shall grant or deny the appeal, in writing, stating the reasons for the decision.

§150A- Assembly and inspection of regulated articles. (a) Persons requiring certification or other services shall coordinate the services with an inspector at least forty-eight hours before the services are needed.

(b) The regulated articles shall be assembled at the place and in the manner the inspector determines is necessary to comply with this part.

§150A- Attachment and disposition of certificates and limited permits. (a) Any person transporting a regulated article intrastate shall ensure that the certificate or limited permit authorizing intrastate movement of the regulated article is, at all times during intrastate movement, attached to:

- (1) The outside of the container encasing the regulated article;
- (2) The article itself, if it is not in a container; or
- (3) The consignee's copy of the accompanying waybill; provided that any description of the regulated article on the certificate or limited permit, and on the waybill, are sufficient to identify the regulated article.

(b) The consignor shall furnish the certificate or limited permit authorizing intrastate movement of a regulated article or cause the certificate or limited permit to be furnished to the consignee at the shipment's destination.

§150A- Little fire ant and coqui frog detection, control, exclusion, and enforcement program for nurseries producing containerized plants. (a) There is established in the department a little fire ant and coqui frog detection, control, exclusion, and enforcement program for nurseries producing containerized plants. The program is designed to keep nurseries free of the little fire ant and

coqui frog, and provide a basis to certify containerized nursery stock for intrastate movement. Participating nurseries shall operate under a compliance agreement in accordance with this part. Such compliance agreements shall state the specific requirements that a nursery agrees to follow to move plants in accordance with the requirements of the program. Certificates and a nursery identification number may be issued to the nursery for use on shipments of regulated articles.

(b) Participating nurseries shall survey their entire premises twice a month for the presence of little fire ants and coqui frogs using protocols established by the department.

(c) Participating nurseries shall be inspected by an inspector at least twice per year. More frequent inspections may be necessary depending upon little fire ant or coqui frog infestation levels immediately surrounding the nursery, the thoroughness of nursery management in maintaining a little-fire-ant-free or coqui-free premises, and the number of previous detections of little fire ants or coqui frogs in or near containerized plants. Any nurseries determined during nursery inspections to have little fire ant or coqui frog colonies shall be immediately treated to the extent necessary to eliminate the colonies.

(d) Under this program, nursery plants that are transported shall originate in a nursery that meets the requirements of this part. Nurseries shall implement a treatment program with registered bait and contact insecticides for the little fire ant and hot water treatment or other department-approved treatments for coqui frogs. The premises, including growing and holding areas, shall be maintained free of the little fire ant and coqui frog. As part of this treatment program, all exposed soil surfaces, including sod and mulched areas, on property where plants are grown, potted, stored, handled, loaded, unloaded, or sold shall be treated with approved insecticide or pesticide consistent with departmental standards. Follow-up treatments with a contact insecticide in accordance with management plans under this part shall be applied to eliminate all remaining colonies.

(e) For plants grown on the premises of participating nurseries, treatment of soil and potting media in accordance with standards established by management plans developed by the department prior to planting is required.

(f) For plants received by participating nurseries from outside sources, to prevent the spread into a nursery free of the imported fire ant by newly introduced, infested nursery plants, all plants shall be:

(1) Obtained from nurseries in compliance with the requirements of this section and that operate under a compliance agreement in accordance with this part; or

(2) Treated upon delivery in accordance with management plans under this part, and within the specified number of days be either:

(A) Repotted in treated potting soil media;

(B) Retreated in accordance with management plans under this part at the specified interval; or

(C) Transported.

(g) Participating nurseries shall maintain records of the nursery's surveys and treatments for the little fire ant or coqui

frog. These records shall be made available to the department upon request.

(h) If an inspector detects little fire ants or coqui frogs in nursery stock of a participating nursery, issuance of certificates for movement shall be suspended until necessary treatments are applied and the plants and nursery premises are determined to be free of the little fire ant and coqui frog. The department may declare a nursery to be free of the little fire ant and coqui frog upon reinspection of the premises. This inspection shall be conducted no sooner than thirty days after treatment. During this period, certification may be based upon treatments for plants in accordance with management plans developed by the department under this part.

(i) Upon notification by the county that a confirmed little fire ant infestation was found on a shipment from a nursery that had until then been considered free of the little fire ant, the department shall cease its certification of shipments from that nursery. An investigation shall commence immediately to determine the probable source of the problem and to ensure that the problem is resolved. If the problem is an infestation, issuance of certification for movement on the basis of little-fire-ant-free or coqui-free premises shall be suspended until treatment and elimination of the infestation is completed. Reinstatement into the program may be granted upon determination that the nursery premises are free of the little fire ant or coqui frog, and that all other provisions of this part are being followed.

(j) In cases where the issuance of certificates is suspended through oral notification, the suspension and the reasons for the suspension shall be confirmed in writing within twenty days of the oral notification of the suspension. Any nursery whose issuance of certificates has been suspended may appeal the decision, in writing, within ten days after receipt of a written suspension notice. The appeal shall state all of the facts and reasons that the department should consider in deciding the appeal. A hearing may be held to resolve any conflict as to any material fact. The department shall adopt rules for the hearing in accordance with chapter 91. As soon as practicable, the department shall grant or deny the appeal, in writing, stating the reasons for the decision.

§150A- County authority. Unless and until the department implements these provisions, including the adoption of any necessary rules, any county may establish its own requirements by ordinance to prevent the introduction of infested, regulated articles, consistent with the intent of this law and not in conflict with any departmental rules, including but not limited to:

- (1) Development of a little-fire-ant free certification program;
- (2) Development of a coqui-frog-free certification program; and
- (3) Treatment requirements for regulated articles being moved to any island of the county.

§150A- Information sharing. The department shall make available online on a monthly basis the numbers and locations by island of all interceptions of little fire ants and coqui frogs detected by department inspectors.

§150A- Penalties. Any person who moves infested regulated articles intrastate shall be subject to a fine equal to the value of the shipment or \$10,000, whichever is greater."

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2014-2015 to the department of agriculture for enforcing restrictions on intrastate movement of regulated articles and the establishment of an inter-island quarantine program to control intrastate movement of invasive species.

The sum appropriated shall be expended by the department of agriculture for the purposes of this part.

PART II

SECTION 4. (a) There is established within the Hawaii invasive species council an invasive species task force to address the continued movement of invasive plants, plant pests, and vertebrate pests between islands.

(b) The invasive species task force shall:

(1) Consider and propose recommendations to address the continued movement of invasive plants, plant pests, and vertebrate pests between islands;

(2) Gather relevant background data on invasive species that pose a threat to Hawaii;

(3) Assess the current and future impact of invasive species to Hawaii;

(4) Examine and assess existing methods for addressing invasive species in Hawaii;

(5) Examine needed state policies or responses to address the continued movement of invasive species between islands; and

(6) Examine other concerns of the task force regarding invasive species movement in Hawaii.

(c) The invasive species task force shall consist of representatives from the following departments, sectors, and organizations:

(1) Department of land and natural resources;

(2) Department of agriculture;

(3) Department of health;

(4) Department of business, economic development, and tourism;

(5) Department of transportation;

(6) University of Hawaii;

(7) Agriculture;

(8) Horticulture;

(9) Shipping;

(10) Tourism; and

(11) Others as determined by the Hawaii invasive species council.

(d) Members of the task force shall designate a chair from among themselves and serve without compensation for their service on the task force, but may be reimbursed for reasonable expenses, including travel expenses, incurred for serving on the task force.

(e) The invasive species task force shall meet at least four times to develop a comprehensive set of recommendations and shall submit a report of its findings and recommendations to the legislature no later than twenty days prior to the convening of the regular session of 2015.

(f) The invasive species task force shall be dissolved on July 1, 2015.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2014-2015 to establish the invasive species task force to address the continued movement of invasive plants, plant pests, and vertebrate pests between islands, including the use for facilitation or consultant services necessary to gather relevant background data and travel to ensure adequate statewide representation.

The sum appropriated shall be expended by the Hawaii invasive species council for the purposes of this part.

PART III

SECTION 6. This Act shall take effect on July 1, 2014.