

EACP Committee

From: Nakamura, Gayle M <Gayle.M.Nakamura@hawaii.gov>
Sent: Tuesday, September 08, 2020 1:08 PM
To: EACP Committee
Subject: RUSH-DOA's testimony for 1:30pm Council hearing today.
Attachments: HDOA testimony - EACP-1.pdf

Importance: High

Aloha,

Attached is the Department of Agriculture's testimony for the Environmental, Agricultural, and Cultural Preservation Committee hearing today at 1:30pm today.

Mahalo!

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture

MORRIS M. ATTA
Deputy to the Chairperson

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

TESTIMONY OF PHYLLIS SHIMABUKURO-GEISER
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE MAUI COUNTY COUNCIL
COMMITTEE ON ENVIRONMENTAL, AGRICULTURAL, AND CULTURAL
PRESERVATION

SEPTEMBER 08, 2020
1:30 PM
Online Only

BILL NO. [unassigned, designated EACP-1]
RELATING TO PESTICIDE AND FERTILIZER USE ON COUNTY PROPERTY

Chairperson Sinenci and members of the Committee:

Thank you for the opportunity to provide comment on this unassigned Bill No., designated as EACP-1. This bill seeks to ban certain uses of synthetic pesticides and fertilizers used on most County lands. The Hawaii Department of Agriculture (HDOA) offers comments on this bill.

The provisions of this bill are arguably impliedly preempted by the State law, specifically the Hawaii Pesticides Law under Chapter 149A, HRS.

The Department asks the County to take into consideration the regulatory structure for such prohibition of pesticides that are licensed in the State of Hawaii for the uses described in this bill. The Department is provided funding by the US Environmental Protection Agency (EPA) to conduct enforcement activities for pesticides that have been registered in the U.S. under the provisions of the Federal Insecticide Fungicide Rodenticide Act (FIFRA) as well as by the State's General Fund and its own Pesticide Use Revolving Fund. It is unclear how the County of Maui intends to conduct



enforcement of the proposed pesticide law. The Department has the authority to enforce only for Federal and State pesticide laws and rules, under Chapter 149A, HRS, and the Hawaii Administrative Rules, Chapter 4-66. The Department is granted this authority to enforce federal pesticide laws by FIFRA and through our cooperative agreement with EPA. Maui County does not have that same authority and would be unable to enforce State and Federal pesticide laws. The conflicts or inconsistencies created by this measure jeopardize the cooperative agreement the Department has with EPA and could potentially impact the Department's statewide enforcement capacity adversely. If the Department's agreement and enforcement are jeopardized, the Department will have no choice but to challenge the legality of this measure.

The Department has full time pesticide enforcement and education staff on Maui, dedicated to that county. The staff has decades of experience with pesticide law and regulation in the State and are more than capable of enforcing existing State and Federal pesticides laws, as well as conducting outreach and education to help applicators use products in accordance with these laws.

Notwithstanding these serious concerns, the Department notes that while bill considers exemptions to its prohibitions, the following additional situations are not considered:

1. The need for protecting native species from presently established pests:
 - Controlling invasive weeds that threaten to outcompete native plants, or that may harbor invasive pests that are a threat to Maui's ecosystem;
 - Application of insecticides, fungicides, and other pesticides to control pests that harm Maui's native plants either through physical destruction or through spreading disease;
2. Allowing for all pesticide use to eliminate harborage areas for harmful pests that threaten agricultural crops, and other Maui ecosystems. For example, if there are diseases within the plant population, the preferred method to protect other plants is to treat the plant for any vector (like with an insecticide), then actually kill the plant in place, using an herbicide (e.g. Banana Bunchy Top

Virus). This method is used to minimize the spread of any disease to other plants.

If the intent of the Bill is to protect Maui, then it fails to include the protection of its native ecosystems and agriculture. Pesticides are useful tools, especially when managing disease, invasive species management, and reestablishing native ecosystems.

Lastly, the bill's provisions regarding signage does not consider exemptions in areas where signage may cause more of a hazard or hindrance than it would a benefit. For example, if the land does not lend itself to traverse by humans, and posting a sign may be hazardous to the poster, have no reasonable method of being placed, and/or create a hazard in a roadway, allowing no alternative except the requirement of signage threatens health and human safety without benefit.

Finally, the Department would like to also address that section 20.50.080 of this bill holds county employees responsible for violations of this chapter. Please note that this provision does not negate HRS Section 149A-41(d) (which arguably preempts the bill's provisions) which provides: **Liabilities.** When construing and enforcing the provisions of this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person shall in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed." Similar language should be included, as any employee of the county violating this proposed ordinance would likely be doing so at the direction of their employer, and it would be consistent with state and federal pesticide laws.

Thank you for the opportunity to testify on this measure.