

August 26, 2021

MEMO TO: GREAT-4 File

F R O M: Shane M. Sinenci, Councilmember

A handwritten signature in black ink, appearing to read "Shane M. Sinenci", is written over the text "Councilmember".

SUBJECT: **TRANSMITTAL OF LEGISLATIVE PROPOSAL RELATING TO
2022 HAWAII STATE ASSOCIATION OF COUNTIES
LEGISLATIVE PACKAGE** (PAF 21-208)

The attached legislative proposal pertains to Item 4 on the Committee's agenda.

paf:rem:21-208e

Attachment

Resolution

No. _____

APPROVING FOR INCLUSION IN THE 2022
HAWAII STATE ASSOCIATION OF COUNTIES
LEGISLATIVE PACKAGE A STATE BILL TO
ALLOW COUNTY REGULATION OF NOISE
NUISANCES STRICTER THAN DEPARTMENT OF
HEALTH RULES

WHEREAS, noise emanating from mechanized agricultural activities, equipment, or machinery often presents unique challenges to adjacent residential communities; and

WHEREAS, the State Department of Health's administrative rules on agricultural noise stipulate the maximum allowable noise at 70 decibels, both day and night, permitted by agriculture activities; and

WHEREAS, county ordinances regulating agricultural noise, whether stricter or more lenient than the Department of Health's rules, are ineffective under State law; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That the proposed State bill, attached as Exhibit "A," to allow counties to regulate agricultural noise is approved for inclusion in the 2022 Maui County Council Legislative Package; and
2. That certified copies of this Resolution be transmitted to the Hawaii State Association of Counties Executive Committee.

____.B. NO.____

A BILL FOR AN ACT

RELATING TO REGULATION OF CERTAIN PUBLIC NUISANCES.

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

1 SECTION 1. The legislature finds that noises emanating from
2 mechanized agricultural activities, equipment, or machinery, and
3 in particular noises from industrial sized air handling units or
4 fans, may present a unique nuisance to adjacent residential
5 communities, requiring local regulation stricter than the
6 department of health regulations to address the condition.

7 The purpose of this Act is to allow counties to regulate
8 agricultural noise by ordinance in manner more exacting and
9 stricter than rule adopted by the department of health on noise
10 nuisances under authority of chapter 342F.

11 SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended
12 by amending section 46-17 to read as follows:

13 "**§46-17 Regulation of certain public nuisances.** Any
14 provision of law to the contrary notwithstanding, the council of
15 any county may adopt and provide for the enforcement of ordinances
16 regulating or prohibiting noise, smoke, dust, vibration, or odors
17 which constitute a public nuisance. No such ordinance shall be
18 held invalid on the ground that it covers any subject or matter

____.B. NO. _____

1 embraced within any statute or rule of the State; provided that in
2 any case of conflict between a statute or rule and an ordinance,
3 the law affording the most protection to the public shall apply,
4 with the exception that:

5 (1) An ordinance shall not be effective to the extent that
6 it is inconsistent with any permit for agricultural burning granted
7 by the department of health under authority of chapter 342B, or to
8 the extent that it prohibits, subjects to fine or injunction, or
9 declares to be a public nuisance any agricultural burning conducted
10 in accordance with such a permit; and

11 (2) An ordinance shall not be effective to the extent that
12 it is [~~inconsistent with~~] less stringent than any noise rule
13 adopted by the department of health under authority of chapter
14 342F."

15 SECTION 3. Statutory material to be repealed is bracketed
16 and in strikethrough. New statutory material is underscored.

17 SECTION 4. This Act does not affect rights and duties that
18 matured, penalties that were incurred, and proceedings that were
19 begun before its effective date.

20 SECTION 5. This Act shall take effect upon its approval.

21

22 INTRODUCED BY: _____

23 paf:rem:21-208a