

**SB2930**



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. Box 3378  
HONOLULU, HAWAII 96801-3378

In reply, please refer to:  
File:

COMMITTEE ON HEALTH

S.B. 2930, RELATING TO NUISANCES

Testimony of Chiyome Leinaala Fukino, M.D.  
Director of Health

February 5, 2010  
2:55 P.M.

1 **Department's Position:** The Department of Health respectfully opposes this bill due to the  
2 subjectivity of smell and its broad implications to a wide variety of sources.

3 **Fiscal Implications:** Additional manpower and funding would be required for the odor  
4 investigations, air pollutant identification and quantification, risk assessment, and litigation.

5 **Purpose and Justification:** This bill requires the Department of Health to order the suspension  
6 of operations causing foul or noxious odors, gases, or vapors until examination determines they  
7 are not dangerous or injurious to health.

8 The Department opposes this bill because (1) the determination of foulness and  
9 noxiousness is overly broad in scope and often subjective; (2) proof that something is not  
10 dangerous or injurious can be very resource intensive, if even possible; (3) suspending an  
11 operation before giving the opportunity for a hearing raises due process issues; and (4) existing  
12 law and practice can already deal with emergency cases.

13 We start by noting that the Department already investigates odor complaints, and if the  
14 source of the odor is shown to cause an "imminent peril to the public health and safety", the  
15 Department has the emergency authority, for example, under HRS 342B-43 to issue an order for  
16 the suspension of operations and provide a hearing within 24 hours. Our existing laws provide  
17 that anyone affected by an enforcement action receives a chance to contest that action, a due  
18 process requirement. In the case of an emergency, the opportunity for hearing must quickly  
19 follow the enforcement action.

1           However, proving that a nuisance odor poses a health risk is often very difficult because  
2 odor sensitivity differs from person to person, and often, the odor is transient in nature. Odors  
3 can alert people that something may be harmful, but generally, a person can smell many  
4 chemicals before they are at levels that are harmful to your health. Odors from some sources  
5 may cause health symptoms depending upon the individual and specific environmental factors.  
6 Furthermore, the odor's composition may be unknown, and quantitative exposure information is  
7 often lacking. Proving that an odor is not dangerous or injurious to health may be even more  
8 difficult and time consuming because of the need to rule out all possible substances and sources  
9 that could cause the odor.

10           Because of these complexities, the Department believes that the odor complaints should  
11 continue to be handled on a case-by-case basis, and any recommended sampling, lab analysis,  
12 and risk assessment be conducted by and at the expense of the source with oversight by the  
13 Department.

14           We request that the bill be held.

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

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LINDA LINGLE  
Governor



SANDRA LEE KUNIMOTO  
Chairperson, Board of Agriculture

DUANE K. OKAMOTO  
Deputy to the Chairperson

State of Hawaii  
DEPARTMENT OF AGRICULTURE  
1428 South King Street  
Honolulu, Hawaii 96814-2512

WRITTEN TESTIMONY OF SANDRA LEE KUNIMOTO  
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEE ON HEALTH  
FRIDAY, FEBRUARY 5, 2010  
2:55 p.m.  
Room 016

SENATE BILL NO. 2930  
RELATING TO NUISANCES

Chair Ige, Vice Chair Green, and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill No. 2930. The Department of Agriculture is opposed to this measure because of its potential to restrict farming operations. Should it move forward, we suggest one amendment.

This bill amends Section 322-1 (removal and prevention of nuisances) by authorizing the Department of Health to "...immediately order the suspension of the operation of the source of the (foul or noxious) odor, gas, or vapor and shall continue the suspension until the examination by the department of health determines that the odor, gas, or vapor is not dangerous or injurious to health."

We recommend the inclusion of the following amendment that protects the normal daily activities of farming operations from nuisance complaints.

Page 2, after line 4, add the following new paragraph -  
"This section shall not apply to farming operations that are protected from nuisance complaints pursuant to chapter 165."

The Department of Agriculture is concerned that the amendment proposed in this measure allows the Department of Health to suspend the operation of a farming operation for any degree of nuisance from odors, gases, or vapors until they determine the nuisance is not dangerous. This appears to be contrary to Chapter 165 (the Hawaii Right-to-Farm Law) that limits the circumstances under which a farming operation's normal activities may be declared a nuisance. To ensure the protection of public safety is not compromised by this protection of farming activities, Section 165-2 provides that "...nothing in this chapter shall in any way restrict or impede the authority of the State to protect the public health, safety, and welfare."



**Hawaii Farm Bureau**  
F E D E R A T I O N

2343 Rose Street, Honolulu, HI 96819  
Phone: (808) 848-2074; Neighbor Islands: 1-800-482-1272  
Fax: (808) 848-1921; e-mail: [info@hfbf.org](mailto:info@hfbf.org)

February 5, 2010

**TESTIMONY**  
before the  
**SENATE COMMITTEE ON HEALTH**

**SB 2930 Relating to Nuisances**

Chair Ige, Vice Chair Green, and Members of the Committee:

I am Janet Ashman, representing the Hawaii Farm Bureau Federation (HFBF) which is the largest statewide non-profit general agriculture organization, representing approximately 1,600 farm and ranch family members.

**The Farm Bureau strongly opposes this measure** that would *require* the Department of Health to immediately stop all operations that cause unpleasant smells regardless of whether they cause a health impact. If passed, this law would result in complete chaos as all sources of bad smells would be shut down while DOH investigates whether they may be harmful to health.

The Department of Health (DOH) currently has the authority, and mandate, to stop operations causing odors if, in their discretion, they cause or could cause illness.

This bill would mandate that DOH prove a negative, that the odor will *not* cause a negative health effect. There is no guidance as to how DOH would determine this or what level of health impact would be considered injurious to health. If even one person claims a headache from the smell, would DOH shut the activity down permanently?

Farming operations, as well as many other necessary and desirable activities around the state (sewage treatment plants, traffic, propane delivery vehicles, landfills), generate smells. However, just because something smells does not mean that it is harmful.

We respectfully request that you hold this bill. Thank you for the opportunity to testify.

# Kauai County Farm Bureau

Affiliated with Hawaii Farm Bureau Federation

P.O. Box 3895 • Lihue HI 96766

808-337-9944 (phone/fax) 808-652-3217 (cell)

kcfb@hawaiiantel.net

*The Voice of Kauai's Agriculture*



February 4, 2010

ATTN: Senate Committee on Health  
Senator David Y. Ige (Chair), Senator Josh Green, M.D. (Vice Chair) and  
Members of the Committee

RE: SB2930 – Relating to Nuisances

HEARING DATE: Friday, February 5, 2010 – 2:55pm, Conference Room 016

Chair Ige, Vice Chair Green, and Members of the Committee:

Mahalo for the opportunity to submit testimony on this matter before the committee. Affiliated with the Hawaii Farm Bureau Federation, the Kauai County Farm Bureau is a non-profit organization representing over 300 farm families and farm based businesses on Kauai united for the purpose of analyzing problems and formulating action to ensure the future of agriculture and promoting the well-being of farming.

We are requesting you to **oppose SB2930** which would force a farm to cease operations based upon an odor complaint, prior to investigation.

Current law (HRS Chapter 322, Nuisances; Sanitary Regulations), already requires DOH to take action when activities are dangerous to health, and allows Department of Health to utilize their professional discretion to make that determination based on experience.

The proposed bill as written will require the Department of Health to *immediately* order the suspension of "a source of odor, gas, or vapor", until the DOH determines that it is not dangerous or injurious to health. That means that *any source of odor* could be required to be stopped whether or not the odor source is causing any health effects or is harmful in any way. The odor would be presumed to be "dangerous or injurious to health" until DOH determines otherwise.

There are many source of potential smells on a farm or ranch in operation – animal smells, fertilizers, pesticides, tractor and truck fumes – the vast majority of which are simply a part of doing business. Under the proposed bill, any farm that might cause an odor, however fleeting, could be ordered to stop their business at any time. Farmers could lose their right to operate every time a neighbor complains about a smell, and wait for the Department of Health to make a determination that that smell was not a health threat.

In other words, SB 2930 could put a farmer or rancher out of business before the complaint is even determined to be legitimate.

It is unclear from the bill how DOH would make that determination and how long it might take before a facility could resume its operations. How would Department of Health determine the source of the odor? Could any level of smell be deemed to be dangerous? What about frivolous or abusive claims? And again, how long would a farmer be out of business before a complaint is even determined to be legitimate?

Especially today when we have become further and further away from the source of our daily food and yet recognize the importance of improving our state's food security, it is critical that we support our farmers and ranchers and not add to the challenges they already face. We request to stay with current law, and maintain an environment where complaints about odors are handled fairly, with determinations based on professional expertise. An odor complaint should not be sufficient to shut down operations of farm – even temporarily – without investigation and proof of a threat to public health.

Farmers already face so many challenges to be able to stay in business – rising input costs, overseas competition, and the loss of many of our precious ag lands to development. **Please do not add this bill to the list of challenges facing farmers and oppose SB2930.**

Thank you for the opportunity to submit testimony.

Sincerely,

Roy Oyama, President  
Kauai County Farm Bureau  
Phone: 808-332-9426  
Email: [oyama\\_farm@yahoo.com](mailto:oyama_farm@yahoo.com)

Melissa McFerrin  
Executive Administrator  
Email: [kcfb@hawaiiantel.net](mailto:kcfb@hawaiiantel.net)



## **Hawaii Cattlemen's Council, Inc.**

P O Box 437199 Kamuela HI 96743  
Phone (808) 885-5599 • Fax (808) 887-1607  
e-mail: [HICattlemens@hawaii.rr.com](mailto:HICattlemens@hawaii.rr.com)

### SENATE COMMITTEE ON HEALTH

Friday February 5, 2010 2:55 pm Room 016

#### **SB 2930 RELATING TO NUISANCES**

Requires Department of Health to order suspension of operation causing foul or noxious odor, gas, or vapor until examination determines not dangerous or injurious to health.

Chairman Ige and Members of the Committee:

My name is Alan G. Ottlieb, and I am the President of the Hawaii Cattlemen's Council. The Hawaii Cattlemen's Council, Inc. (HCC) is the Statewide umbrella organization comprised of the five county level Cattlemen's Associations. Our 130+ member ranchers represent over 60,000 head of beef cows; more than 75% of all the beef cows in the State. Ranchers are the stewards of approximately 25% of the State's total land mass.

The Hawaii Cattlemen's Council **strongly opposes** SB 2930.

This bill could make it impossible to conduct farming or any other business operation which generates smells, since all smells would be presumed to be "dangerous or injurious to health" until proven otherwise. Livestock operations in Hawaii would be especially susceptible.

Unless your intent is to eliminate livestock production in Hawaii, and many other farming operations, we strongly urge you to oppose this bill.

Thank you for giving me the opportunity to testify in favor of this very important issue.



**SB 2930  
RELATING TO NUISANCES**

**SEAN O'KEEFE  
DIRECTOR – ENVIRONMENTAL AFFAIRS  
ALEXANDER & BALDWIN, INC.**

**FEBRUARY 5, 2010**

Chair Ige and Members of the Senate Committee on Health:

I am Sean O'Keefe, testifying on behalf of Alexander & Baldwin, Inc. (A&B) on SB 2930, "A BILL FOR AN ACT RELATING TO NUISANCES." We respectfully oppose this bill.

Currently, Hawaii Revised Statutes Chapter 322, entitled Nuisances; Sanitary Regulations, requires the Department of Health to take action to abate certain nuisances, when, *in the department's opinion*, such nuisances are dangerous or injurious to health. The statute relies upon the professional and technical experience of the department, when investigating nuisance complaints, to determine whether action to abate a nuisance odor is necessary in order to address a potential health hazard. The existing statute also enables the DOH to conduct a detailed investigation when warranted.

The proposed bill would revise HRS Chapter 322 to require the Department of Health to *immediately* order the suspension of "a source of odor, gas, or vapor", and to continue the suspension until examination by the department determines that the odor, gas, or vapor is not dangerous or injurious to health. **That is, *any source of objectionable odor would be subject to suspension without regard to whether or***

**not the odor source causes, or even might cause, any health effects whatsoever. The odor would be presumed to be “dangerous or injurious to health” until proven otherwise. This is analogous to “guilty until proven innocent”.**

This could have an extremely disruptive effect on a number of businesses. For example, farming by its nature can sometimes result in neighbors being subjected to objectionable odors, which are usually transient in nature. Where feasible, farmers take reasonable steps to minimize the impact of their operations on neighbors. However, this bill would make it virtually impossible to conduct farming (or any other business operation) which generates, or could generate, odors, since farming activities would be subject to suspension as a result of any odor complaint. Farmers and others would be required to “prove a negative” – an extremely difficult, and potentially costly, prospect - simply in order to resume their normal operations. Moreover, since no criteria are provided regarding what is considered “dangerous or injurious to health” or what level of proof is necessary in order for the Department of Health to make the required determination, operations could be subjected to indefinite suspensions and/or costly monitoring in support of a determination.

Odors are often transient, and their source is not always readily identified. In some cases, odor sources may be misidentified or odors may be from natural sources (e.g., stinkweed). Odor-causing substances are often complex mixtures of a variety of chemical compounds, and the exact composition of these substances can be extremely difficult to ascertain without sophisticated monitoring. While exposure to high concentrations of certain odor-causing chemicals may in some cases result in health effects, the concentrations actually present in emissions from a particular odor source

may be orders of magnitude lower than any health effect-based threshold. For many compounds, the odor threshold is well below the level at which any discernable health impacts would occur. Under this bill, all of these factors would contribute to the unnecessary, and potentially indefinite, suspension of an odor source that poses no health risk to anyone.

Farmers cannot afford to suspend their operations each time an odor complaint is generated. Neither do farmers have the resources to make the required determinations for each odor that may arise from their operations.

While our primary concern with this bill is its potential to impact farming and farm products processing facilities, similar impacts would be felt by any business activity with the potential to generate odors.

Based on the aforementioned, we respectfully request that this bill be held in Committee. Thank you for the opportunity to testify.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, February 04, 2010 12:27 PM  
**To:** HTHTestimony  
**Cc:** jdmoniz@hawaiiantel.net  
**Subject:** Testimony for SB2930 on 2/5/2010 2:55:00 PM

Testimony for HTH 2/5/2010 2:55:00 PM SB2930

Conference room: 016  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Jason D. Moniz  
Organization: Individual  
Address: P.O. Box 428 Paauilo, HI 96776  
Phone: 8089608409  
E-mail: [jdmoniz@hawaiiantel.net](mailto:jdmoniz@hawaiiantel.net)  
Submitted on: 2/4/2010

**Comments:**

Supports Hawaii Cattlemen's Council's testimony and position on this bill.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 03, 2010 8:11 AM  
**To:** HTHTestimony  
**Cc:** jmattoshbp@aol.com  
**Subject:** Testimony for SB2930 on 2/5/2010 2:55:00 PM

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Testimony for HTH 2/5/2010 2:55:00 PM SB2930

Conference room: 016  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Jill J Mattos  
Organization: Individual  
Address: 46-3675 Mamalahoa Hwy Honokaa, Hawaii  
Phone: 8087761109  
E-mail: [jmattoshbp@aol.com](mailto:jmattoshbp@aol.com)  
Submitted on: 2/3/2010

**Comments:**

This bill is not really clear enough, this can really hurt the agriculture in Hawaii. We need to be self-sustaining, remember those words? In Agriculture there is a lot of smells and it is not dangerous or injurious to the health. With this bill it can shut the business down while awaiting for the Health Dept to do their research, Meanwhile the farmer or Rancher is out of income and business.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, February 05, 2010 9:35 AM  
**To:** HTHTestimony  
**Cc:** kcfb@hawaiiantel.net  
**Subject:** Testimony for SB2930 on 2/5/2010 2:55:00 PM  
**Attachments:** HealthSB2930Feb52010.doc

Testimony for HTH 2/5/2010 2:55:00 PM SB2930

Conference room: 016  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Melissa McFerrin  
Organization: Kauai County Farm Bureau  
Address: Box 3895 Lihue, HI  
Phone: 808-337-9944  
E-mail: [kcfb@hawaiiantel.net](mailto:kcfb@hawaiiantel.net)  
Submitted on: 2/5/2010

Comments:  
Support with AMMENDMENTS