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Governor



State of Hawaii
DEPARTMENT OF AGRICULTURE
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SANDRA LEE KUNIMOTO
Chairperson, Board of Agriculture

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Deputy to the Chairperson

**WRITTEN TESTIMONY OF SANDRA LEE KUNIMOTO
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE HOUSE COMMITTEE ON HEALTH
TUESDAY, FEBRUARY 9, 2010
9:30 a.m.
Room 329**

**HOUSE BILL NO. 2917
RELATING TO NUISANCES**

Chair Yamane, Vice Chair Nishimoto, and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 2917. 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."

MAUI CATTLEMEN'S ASSOCIATION

**Maui Cattlemen's
Association**

PO Box 473

Kula, HI 96790

**Board of Directors
and Officers**

Brendan Baltazar

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Jimmy Gomes

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Mike Murakami

Amber Starr

Toni Thompson

**Sustaining
ranching
communities in
Hawaii**

TESTIMONY

February 7, 2010

Submitted via email: HLTtestimony@Capitol.hawaii.gov

FROM: Maui Cattlemen's Association

TO: House Committee on Health

HEARING DATE: Tuesday February 9, 2010

HEARING TIME: 9:30 am. Conference Room 329 State Capitol

MEASURE #: HB 2917 RELATING TO NUISANCE

Rep. Ryan I, Yamane, Chair
Rep. Scott Y. Nishimoto, Vice Chair
Committee on Agriculture,

The Maui Cattlemen's Association is a non-profit organization representing small and large Livestock producers in Maui County.

We **RESPECTFULLY OPPOSE HB 2917 RELATING TO NUISANCES**, in the language the Bill is proposed. First of all, we believe it is a County issue, and legislation is not necessary. In addition, the language of the bill is very broad, and can lead to many false responses. At times, Agriculture can experience various organic orders that are harmless to the community. This bill could also cause unnecessary delays in production and hinder timing for harvest dates.

Thank you for the opportunity to provide comment on this House Bill.
You may reach Maui Cattlemen's Association through the address provided above.

Sincerely,

William Jacintho, President

Amber Starr, Vice President



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
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February 9, 2010

TESTIMONY
before the
HOUSE COMMITTEE ON HEALTH

HB 2917 Relating to Nuisances

Chair Yamane, Vice Chair Nishimoto, and Members of the Committee:

I am Janet Ashman, testifying on behalf of 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. We wonder how a farm can be temporarily shut down...what would a farmer do with his animals, crops while awaiting the results of an investigation?

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 any 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 odors. 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.