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

In reply, please refer to:
File:

COMMITTEE ON HEALTH

H.B. 2917, RELATING TO NUISANCES

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

February 9, 2010
9:30 A.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.

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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.

**HB 2917
RELATING TO NUISANCES**

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

FEBRUARY 9, 2010

Chair Yamane and Members of the House Committee on Health:

I am Sean O'Keefe, testifying on behalf of Alexander & Baldwin, Inc. (A&B) on HB 2917, "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.

**West County Farm Bureau
94-403 Ukee Street
Waipahu, Hawaii 96797**

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February 9, 2010

TESTIMONY
before the
HOUSE COMMITTEE ON HEALTH
Representative Ryan Yamane, Chair
Representative Scott Nishimoto, Vice Chair

HB 2917 Relating to Nuisances

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

West County Farm Bureau represents farmers and ranchers from the Waianae Coast, Central Oahu and the North Shore of Oahu. Many of our members raise cattle, chickens and hogs. We strongly oppose HB 2917 because it requires the Department of Health (DOH) 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.

Odor is subjective and frivolous complaints from new residents who relocate to or abut rural communities have been a form of harassment to farmers. We believe that our right to farm would be jeopardized before the investigation of a nuisance complaint is completed. In the case of livestock farming, the odor would be presumed to be dangerous or injurious to health before the DOH can complete its determination. In the meantime, our farming activity would be suspended. Does this mean we cannot feed our animals or irrigate our fields? Would our animals and vegetables starve or perish until the examination is resolved? Farmers will suffer not knowing how much time DOH requires determining the odor is dangerous or injurious to health before resuming their farming practice.

We believe the propose bill's precautionary measures would have an extreme negative impact to agriculture.

Thank you for the opportunity to submit comments in support of agriculture in Hawaii.