



HAWAII PEST CONTROL ASSOCIATION

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February 6, 2018

Testimony To: House Committee on Intrastate Commerce
Representative Takashi Ohno, Chair

Presented By: Tim Lyons, CAE
Executive Director

Subject: H.B. 2635 – Relating to Pest Control Operators.

Chair Ohno and Members of the Committee:

I am Tim Lyons, Executive Director of the Hawaii Pest Control Association and we have to oppose this bill as it is currently written.

This bill basically is a mess. We are very confused as to its purpose however if we better understood what the proponents were attempting to accomplish, we might be able to assist in that regard. The HPCA represents 96% of all the licensed pest control operators in the State and as such, we have a deep interest in assisting and improving the regulatory scheme of pest control operators.

It is important for the Committee to recognize that the regulation of pest control operators is accomplished in two (2) separate and distinct structures: the first is through Chapter 149A and

the Department of Agriculture. This is accomplished through the certification of individual pest control operators and this is where one finds core exams and category specific exams. You will find that referenced in several places in this bill although the bill is presumably about Chapter 460J. The second regulatory framework for pest control operators is Chapter 460J under the Department of Commerce and Consumer Affairs. The DCCA law is primarily there for the protection of the consumer, whereas Chapter 149 HRS is there in order to regulate the actual application of pesticides, both general use and restricted use pesticides.

The problem with this bill is that it combines terminology and requirements from both chapters into one without doing a very thorough job of eliminating or cross referencing the current requirements in either one. Another example of the confusing nature of this bill appears on page 3 near the bottom in Subsection 5 where it talks about continuing education and training. There is no requirement for continuing education under Chapter 460J, there is however a continuing education requirement under Chapter 149A HRS. In the absence of any further language it would appear to us that with the passage of this bill, continuing education requirements would be required under both chapters imposing yet even more requirements on pest control operators than would appear to be desired under what proponents are likely to be trying to accomplish.

Section 3 of the bill attempts to establish a part time pest control operator application coordinator. That is perhaps one of the things that we can agree with. If there is any area that our members have complained about continuously and constantly, it is the application process. Our members have basically said that the forms are confusing, that the Pest Control Board does

not seem to be asking for the information that they actually want, that because the Board only meets every two (2) months, the application process is lengthy and in the case where an individual is denied, it then turns into at least 120 days plus additional time to take and pass the test.

So, in summary, we have to conclude that someone is not very happy with the application process and we are the first to say that it is not perfect. We are also happy to say that we are available to work with whomever to improve the statute, both 460J and 149A in an effort to provide for a more efficient and fair regulatory system. But, this bill needs a lot of help.

Thank you for this opportunity to testify.

DAVID Y. IGE
Governor

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Chairperson, Board of Agriculture

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**TESTIMONY OF SCOTT E. ENRIGHT
CHAIRPERSON, BOARD OF AGRICULTURE**

BEFORE THE HOUSE COMMITTEE ON INTRASTATE COMMERCE

**FEBRUARY 6, 2018
8:45 A.M.
CONFERENCE ROOM 312**

**HOUSE BILL NO. 2635
RELATING TO PEST CONTROL OPERATORS**

Chairperson Ohno and Members of the Committee:

Thank you for the opportunity to provide testimony on House Bill 2635. While the intent of the bill addresses concerns regarding the testing and continuing education of pest control operators, the Department of Agriculture (HDOA) has reservations about this Bill. The HDOA has the statutory authority to control the use and distribution of pesticides through product registration and classification, product licensing, dealer licensing, recordkeeping requirements, applicator certification, use inspections, sample collection, and enforcement actions.

The Bill proposes to address the examination requirements via Statute in Chapter 560J, HRS. However, it is the Hawaii Pesticides Law, Chapter 149A, that already has this authority via 149A-33, and the Hawaii Administrative Rules, chapter 4-66. Chapter 149A states "The department shall have the authority to carry out and effectuate the purpose of this chapter by rules, including but not limited to the following: (1) To establish fees, procedures, conditions, and standards to certify persons for the use of restricted use pesticides under section 4 of FIFRA; . . ." HDOA has also entered into a cooperative enforcement agreement with United States Environmental Protection Agency (EPA) entitled the "FY2017-2018 EPA-Hawaii Pesticide Consolidated Performance Partnership Grant Enforcement Workplan." Establishing testing and training requirements in chapter 460J contradicts this authority and may jeopardize federal funding to HDOA.

Furthermore, establishing testing and training requirements via Statute would not enable the flexibility to update testing and recertification requirements, as they exist currenting in our rules, HAR 4-66. These Rules are currently before the Board of Agriculture to be revised. In addition, testing and recertification standards are



determined by Chapter 40, Code of Federal Register, which HDOA has the authority to enforce via HRS 149A. Defining these elements in Statute risks to contradict Federal requirements.

This authority is granted to us by EPA and our Authorization Agreement. Establishing these requirements in 560J risks to contradict this authority. This Authorization Agreement is what allows the Pesticides Branch Inspectors to inspect certified applicators, as well as other users and distributors of pesticides. HDOA has had a Performance Partnership Grant with EPA for decades. This Grant, renegotiated by the Department every two years had education and certification of applicators as a key piece of our workplan. Most importantly, after receiving any kind of enforcement action, violators are subject to compliance verification. Having our education staff in house allows them to work with the violators, while having access to their violations, to help ensure they will not violate again and to comply with Pesticides Laws. If the Department does not provide certification and training, that part of the Grant will be lost, and we would not be able to justify our education positions. At that point, the users of pesticides would not have access to the experts to help them comply with FIFRA and the Hawaii Pesticides Law.

To address the concerns the Bill raises, the Department is newly staffed with 5 new education employees, who will be able to update testing and training materials, as well as provide classes. Currently, unlimited recertification possibilities are available, as long as interested parties apply to give classes. There are also recertification quizzes available to interested parties at any time. As previously stated, the rules regarding licensing and certification are before the Board of Agriculture and will be open to public testimony. Any and all concerns regarding the rules and requirements for testing and recertification may be addressed at this time.

The concerns raised in HB2635 are currently being addressed by the HDOA, which takes its statutory obligation to protect Hawaii's health and environment very seriously.

Thank you for the opportunity to testify on this measure.