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Governor

JOSH GREEN
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture

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State of Hawaii
DEPARTMENT OF AGRICULTURE
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TESTIMONY OF PHYLLIS SHIMABUKURO-GEISER
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL
PROTECTION

FEBRUARY 13, 2020
8:30 A.M.
CONFERENCE ROOM 325

HOUSE BILL NO. 1854
RELATING TO LITTLE FIRE ANTS

Chairperson Lowen and Members of the Committee:

Thank you for the opportunity to testify on House Bill 1854, relating to little fire ants. The bill proposes to require the use of best practices, as identified by the Hawaii Department of Agriculture and the Hawaii Ant Lab (HAL), for the treatment of little fire ants by pest control operators; authorizes the Department and the Pest Control Board (PCB) to adopt rules to carry out the requirement; and requires the posting of the best practices, and any rules that may be adopted by the Department and the PCB on their respective websites. The Department opposes this measure and offers comments.

Invasive species are a primary threat to Hawai'i's agriculture and economy. The little fire ant is a significant pest of Hawaii's natural resources, agriculture, economy, and to the health and lifestyle of Hawaii's residents and visitors. The Department is a funder and partner of HAL, a project of the University of Hawaii Pacific Cooperative Studies Unit. The Department also works with the county invasive species committees on response to little fire ants as necessary.



This measure would mandate insect control by statute. This would restrict pest control operators to only using “approved” pesticides, thereby prohibiting the use of other pesticides that may be registered in Hawaii for the same purpose. The implementation of this measure would necessitate that the Department and HAL evaluate every single pesticide product that is labelled for ant control to produce a list of those allowed to be used by pest control operators for little fire ant. This would be burdensome and could result in challenges by the makers of those products which do not get approved. Different properties, whether residential, commercial, or undeveloped, have their own unique set of situations, and restricting the application options of pest control operators could inhibit an operators’ creativeness in designing the most effective plan for that particular property. Finally, technology is constantly changing, insects can evolve and change over time, and repeated exposure to the same chemicals can lead to the development of resistance in little fire ant populations, so locking in a limited array of options by statute is neither desirable nor prudent.

By and large, it is in the vested interest of pest control operators to service their customers with the most effective tools possible; otherwise, unsatisfied customers will look elsewhere the next time they need services. As an alternative, the Department suggests amending this measure to mirror SB2474 SD1, a draft which reflects consensus between DCCA and HDOA. SB2474 SD1:

- Allows HDOA in conjunction with the Hawaii Ant Lab (HAL) to establish best management practices (BMPs) for little fire ants (LFAs);
- Requires that HDOA post the BMPs on their public website; and
- Grants the pest control board the authority to subject pest control operators to penalties for non-adherence to BMPs established by HDOA and HAL

Thank you for the opportunity to testify on this measure.

Harry Kim
Mayor



Roy Takemoto
Managing Director

Barbara J. Kossow
Deputy Managing Director

County of Hawai'i Office of the Mayor

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February 10, 2020

Representative Nicole E. Lowen, Chair
Representative Tina Wildberger, Vice Chair
Committee on Energy and Environmental Protection

Dear Chair Lowen, Vice Chair Wildberger, and Committee Members:

RE: HB 1854 Relating to Little Fire Ants

The little fire ant (LFA), for those who have experienced it, is a horrific species. It causes great pain in humans and has been reported to cause blindness in pets and horses. It has proliferated so widely that some have given up on eradication and may even be ready to throw in the towel on control efforts. That is not acceptable. We must fight back, and that is why I appreciate the opportunity to testify on HB 1854.

I do not have the expertise to judge the most effective way to treat this menace, but if there is a scientific consensus that the Ant Lab approach is best, then I endorse the specific provisions of HB 1854. More broadly, whether you pass this bill or not, I ask that you please provide as much funding for an anti-LFA initiative as you can justify in your budget recommendations for the coming fiscal year. In that way, government efforts to control, and even eliminate, LFA from Hawai'i can be maximized. The threat is great and warrants your much-appreciated attention.

Respectfully Submitted,

Harry Kim
MAYOR

Testimony of the Pest Control Board
Before the
House Committee on Energy & Environmental Protection
Thursday, February 13, 2020
8:30 a.m.
State Capitol, Conference Room 325

On the following measure:
H.B. 1854, RELATING TO LITTLE FIRE ANTS

Chair Lowen and Members of the Committee:

My name is Lei Ana Green, and I am the Executive Officer of the Pest Control Board (Board). The Board opposes this bill.

The purposes of this bill are to: (1) require the use of best practices, as identified by the Department of Agriculture (DOA) and Hawaii Ant Lab, for the treatment of little fire ants by pest control operators; (2) authorize DOA and the pest control board to adopt rules to carry out the requirement; and (3) require DOA and the Board to post any rules and best practices on their respective websites.

The Board appreciates the bill's intent to help mitigate the harmful effects and active spreading of an invasive species. However, the Board has the following concerns regarding this bill: (1) the cost of this additional regulation could be passed onto customers by mandating a sole entity, such as an organization or a government office, to be the approver of best practices, regardless of other government or educational research; and (2) best practices should not be included in statutes and rules. The industry is dynamic and dictates best practices, as not only do the pesticides, technologies, and methodologies change, but the insects themselves change and evolve. An effective method for mitigating an invasive species may exist, but regulating methodology with statutes and rules will make it challenging for the industry to quickly adapt with more effective solutions that may arise through current and future research and application.

For the Committee's information, the Board and the DOA discussed the companion measure, S.B. 2474, and agreed upon consensus language for S.D. 1, which: (1) allows the DOA, in conjunction with the Hawaii Ant Lab, to establish best practices for little fire ants; (2) requires the DOA to post the best practices on its public

website; and (3) grants the Board authority to subject pest control operators to penalties for nonadherence to best practices established by the DOA and the Hawaii Ant Lab.

For the Committee's reference, enclosed is proposed H.D. 1, which includes the agreed-upon language.

Thank you for the opportunity to testify on this bill.

A BILL FOR AN ACT

RELATING TO LITTLE FIRE ANTS.

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

1 SECTION 1. The legislature finds that little fire ants
2 threaten human health, wildlife, agriculture, and tourism.
3 Since first discovered on the island of Hawaii in 1999, little
4 fire ants have been spreading rapidly throughout the State.
5 There are now little fire ant populations on Kauai, Maui, and
6 Oahu.

7 The legislature further finds that the Hawaii Ant Lab's
8 methods for treating little fire ants have been successful in
9 controlling infestations on properties of homeowners and
10 farmers. The Hawaii Ant Lab uses a dual approach of applying
11 insect growth regulators followed by a barrier treatment. This
12 method, which targets the source of the infestation and kills
13 the queen and causes colony collapse, reduces the likelihood
14 that this invasive species will spread.

15 The legislature also finds that pest control operators in
16 the State are not required by law to use the Hawaii Ant Lab's
17 approach when treating little fire ants. There are reports that

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Proposed H.D.1

1 some pest control operators do not employ these methods and opt
2 to spray contact insecticides in lieu of using the Hawaii Ant
3 Lab treatment strategy. By using less effective methods that do
4 not completely eradicate the infestation, pest control operators
5 create permanent customers who continue to require repeat
6 service as more little fire ants return. The legislature
7 recognizes that untreated little fire ant nests can grow and
8 spread to surrounding properties, thereby further exacerbating
9 the problems and creating a much bigger challenge for mitigation
10 efforts.

11 The purpose of this Act is to control the spread of little
12 fire ants in the State by:

13 (1) Requiring the use of best practices, as identified by
14 the department of agriculture and Hawaii Ant Lab, for
15 the treatment of little fire ants by pest control
16 operators;

17 (2) Authorizing the pest control board to discipline a
18 pest control operator if they violate any Hawaii
19 pesticides law or best practices identified by the
20 department of agriculture; and

21 (3) Requiring the posting of the best practices that may
22 be adopted by the department of

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Proposed H.D.1

1 agriculture or Hawaii Ant Lab on the website of the
2 department of agriculture.

3 SECTION 2. Section 141-3.5, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[+]§141-3.5[+] Control or eradication programs. (a) The
6 department of agriculture shall develop and implement a detailed
7 control or eradication program for any pest designated in
8 section 141-3, using the best available technology in a manner
9 consistent with state and federal law.

10 (b) For any pest designated by emergency rule as provided
11 in section 141-3, the department of agriculture shall implement
12 an emergency program using the best available technology in a
13 manner consistent with state and federal law.

14 (c) The department of agriculture:

15 (1) May identify best practices for the treatment of little
16 fire ants in conjunction with the Hawaii Ant Lab; and

17 (2) Shall post on its website best practices for the
18 treatment of little fire ants.

19 SECTION 3. Section 460J-15, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "**§460J-15 Revocation, suspension, and refusal of renewal of**
22 **licenses; prohibition against certain offenses, etc.** (a) In

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Proposed H.D.1

1 addition to any other actions authorized by law, the board may
2 revoke, suspend, or refuse to renew any license issued
3 hereunder, for any cause authorized by law, including but not
4 limited to the following:

5 (1) Departure from, or disregard of, plans or
6 specifications in the performance of pest control work
7 in any material respect, without consent of the owner
8 or the owner's authorized representative;

9 (2) Violation of any law or rule of the State or any
10 county relating to building, pesticide use, safety, or
11 labor, where the law or rule has a rational
12 relationship to the qualifications, functions, duties,
13 or responsibilities of the pest control operator,
14 including but not limited to a violation of the Hawaii
15 pesticides law[+] or any best practice identified by
16 the department of agriculture;

17 (3) Misrepresentation of a material fact by the applicant
18 in obtaining a license;

19 (4) Failure on the part of a licensee to complete any
20 operation for the price stated in the contract or in
21 any agreed upon modification to the contract;

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- 1 (5) Failure to comply with this chapter, or any rule
2 adopted by the board, or the furnishing of a report of
3 inspection without the making of a bona fide
4 inspection of the premises for termites;
- 5 (6) The commission of any grossly negligent or fraudulent
6 act by the licensee as an operator;
- 7 (7) The negligent handling or use of any poisonous
8 exterminating agent without regard to public safety;
- 9 (8) Fraud or misrepresentation, after inspection, by any
10 licensee engaged in pest control work relating to any
11 infestation or infection of termites found in property
12 or structures, or respecting any conditions of the
13 structure that would ordinarily subject structures to
14 attack by termites whether or not a report was made
15 pursuant to sections 460J-19 and 460J-20;
- 16 (9) Failure of an operator to make and keep all inspection
17 reports, contracts, documents, and records, other than
18 financial records, for a period of not less than two
19 years after completion of any work or operation for
20 the control of termites;
- 21 (10) Wilful failure to pay when due a debt incurred for
22 services or materials rendered or purchased in

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Proposed H.D.1

1 connection with the operator's operations as an
2 operator when the operator has the ability to pay or
3 when the operator has received sufficient funds
4 therefor as payment for the particular operation for
5 which the services or materials were rendered or
6 purchased;

7 (11) The false denial of any debt due or the validity of
8 the claim therefor with intent to secure for the
9 licensee, the licensee's employer, or other person,
10 any discount of the debt or with intent to hinder,
11 delay, or defraud the person to whom the debt is due;

12 (12) Failure to secure or maintain liability insurance or
13 workers' compensation insurance when not authorized to
14 act as a self-insurer under chapter 386, or when not
15 excluded from the requirements of chapter 386; or

16 (13) Knowingly entering into a contract with an unlicensed
17 operator involving work or activity for the
18 performance of which licensing is required under this
19 chapter.

20 (b) During a period of disciplinary sanction, a person
21 shall be prohibited from serving as an officer, director,

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Proposed H.D.1

1 associate, partner, or responsible managing employee of a
2 licensee under the following circumstances:

3 (1) The person's license has been revoked and the person
4 has not been granted a new license;

5 (2) The person's license is under suspension; or

6 (3) The person has been a member, officer, director,
7 associate, or responsible managing employee of any
8 partnership, corporation, firm, or association whose
9 license is revoked or is under suspension, and while
10 acting as such a member, officer, director, associate,
11 or responsible managing employee, the person had
12 knowledge of or participated in any of the prohibited
13 acts for which the license was suspended or revoked.

14 SECTION 4. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

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

17 INTRODUCED BY: _____

H.B. NO. 1854

Proposed H.D.1

Report Title:

Little Fire Ants; Hawaii Ant Lab; DOA, Pest Control; Best Practices; Rules; Website Posting

Description:

Authorizes the use of best practices, as identified by DOA and Hawaii Ant Lab, for the treatment of little fire ants by pest control operators. Authorizes DOA and the pest control board to adopt rules to carry out the requirement. Requires DOA and the pest control board to post any rules and best practices on their respective websites.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



HAWAII PEST CONTROL ASSOCIATION

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February 13, 2020

Testimony To: House Committee on Energy & Environmental Protection
Representative Nicole E. Lowen, Chair

Presented By: Tim Lyons, CAE
Executive Director

Subject: H.B. 1854 – RELATING TO LITTLE FIRE ANTS.

Chair Lowen and Members of the Committee:

I am Tim Lyons, Executive Director of the Hawaii Pest Control Association and we are opposed to this bill.

Our opposition lies not in its intent because we, afterall, do recognize the problem of the little fire ants and the horrible situation that our Big Island residents are in as they have to cope with this pest. We also are, of course, not opposed to any efforts and any advice or information from the Hawaii Ant Lab. Our opposition is that the Hawaii Ant Lab is the not the “be all to end all”. It is not the only expert and authority on controlling ants.

Under the terms of this bill the Board at DCCA and the Department of Agriculture would post best practices on its website formulated as offensive rules subject to penalties. The industry is

going to know those best practices far before the Department of Agriculture and the Pest Control Board will know about them and particularly before they could develop any rules in order to implement them. In fact, by the time they did, those "best practices" would probably be out moded. We don't believe you can legislate "best practices".

While to some people controlling pests might seem like just "stomping on them", in fact it is a very scientific industry and huge companies are doing research on all types of household pests including ants and expending millions of dollars doing so. The results of that research are translated to new products that appear on the marketplace on an almost monthly basis and we think the industry should be able to take advantage of those and not have to wait for rules to be developed by the State.

We are not quite sure what section 460J – 3(2)(B)(i) involves when it requires a pest control operator to make reports to the Board that improves enforcement of the Chapter. We are not sure why we don't want to let pest control operators do their job. In short, while this bill is well intentioned, it will accomplish nothing but make information available that is already well known in the industry who will be utilizing it well before the two (2) governmental departments will be able to develop rules to enforce it.

In consideration of the above, we cannot recommend passage of this bill.

Thank you.

HB-1854

Submitted on: 2/7/2020 9:37:54 PM

Testimony for EEP on 2/13/2020 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
John Baraquio	Able Pest Management LLC	Oppose	No

Comments:

I oppose this bill. I have been in the pest control industry for over 30 years. I own and operate a pest control business going on over 20 years. My staff and I are certified by the Dept of Ag and continue our education regarding local and global pest control practices monthly thru online courses, live seminars and attend national and international conventions annually.

I believe the pest control professionals are the best equipped and most knowledgeable resources in handling Little fire ants. We should not have to succumb to the pressure of legislators who know little to nothing about our industry. We are the solution to LFAs, not the problem.

For these reasons I oppose this bill

Thank you.

John Baraquio



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February 13, 2020

HEARING BEFORE THE
HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

TESTIMONY ON HB 1854
RELATING TO LITTLE FIRE ANTS

Room 325
8:30 AM

Aloha Chair Lowen, Vice-Chair Wildberger, and Members of the Committee:

I am Brian Miyamoto, Executive Director of the Hawaii Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,800 farm family members statewide and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interests of our diverse agricultural community.

The Hawaii Farm Bureau supports HB 1854, which requires the use of best practices, as identified by DOA and Hawaii Ant Lab, for the treatment of little fire ants by pest control operators, authorizes DOA and the pest control board to adopt rules to carry out the requirement, and requires DOA and the pest control board to post any rules and best practices on their respective websites.

Invasive species have become one of the most challenging problems impacting Hawaii. Many invasive species are damaging Hawaii's environment and the state's economy. Agriculture has a vested interest in this matter. Agriculture is one of the major casualties when invasive species are introduced. Every year, numerous new pests are introduced into the State, such as the coqui frog, coffee berry borer, axis deer, macadamia felted coccid, little fire ant, coconut rhinoceros beetle, small hive beetle, and varroa mite, to name a few.

HFB recognizes the harm that the little fire ant has caused to farms, businesses, and the quality of life of those affected by this pest. We agree that continued measures must be undertaken to stop its spread to other areas.

Thank you for this opportunity to testify on this important subject.