

JAN 20 2023

A BILL FOR AN ACT

RELATING TO ENVIRONMENTAL PROTECTION.

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

1 SECTION 1. Chapter 27, Hawaii Revised Statutes, is amended
2 by adding a new part to be appropriately designated and to read
3 as follows:

4 **"PART**

5 **SUBSTANCES APPLIED ON STATE PROPERTY**

6 **§27-A Definitions.** As used in this part, unless the
7 context requires otherwise:

8 "Fertilizer" means any substance containing one or more
9 recognized plant nutrients that is used for its plant nutrient
10 content and that is designed for use or claimed to have value in
11 promoting plant growth or health.

12 "Pesticide" has the same meaning as in section 149A-2.

13 "State property" means any real property owned or under the
14 control or management of the State, including any state highway,
15 drainageway, right of way, park, building, or facility.



1 **§27-B Pesticide and fertilizer use on state property.** (a)

2 The following substances are allowed for use on state property
3 as pesticides or fertilizers:

4 (1) Pesticides and fertilizers listed as "allowed" on the
5 National List of Allowed and Prohibited Substances as
6 listed in title 7 Code of Federal Regulations 205.601,
7 205.603, 205.605, and 205.606;

8 (2) "Minimum risk pesticides" exempt from registration
9 under the Federal Insecticide, Fungicide, and
10 Rodenticide Act (40 C.F.R. 152.25(f)); and

11 (3) The following, when used in compliance with
12 manufacturer specifications:

13 (A) Disinfectants, germicides, bactericides,
14 miticides, and virucides;

15 (B) Insect repellents;

16 (C) Rat and rodent extermination products;

17 (D) Swimming pool supplies;

18 (E) General use paints, stains, and wood
19 preservatives and sealants; and

20 (F) Citric acid.



1 (b) Unless a waiver is approved under section 27-D, the
2 use of substances not allowed under subsection (a) as pesticides
3 and fertilizers on state property is prohibited; provided that
4 substances not allowed under subsection (a) may be used as
5 pesticides to control:

6 (1) Mosquitoes;

7 (2) Animals or insects, including fire ants and termites,
8 that may cause damage to buildings and structures; and

9 (3) Invasive species whose introduction causes, or is
10 likely to cause, economic or environmental harm or
11 harm to human health.

12 **§27-C Exemptions.** This part shall not apply to:

13 (1) State agricultural parks or state property used for
14 agricultural purposes; and

15 (2) Whole structure fumigation on school property pursuant
16 to section 149A-28.

17 **§27-D Waiver.** (a) A state department or agency may apply
18 to the department of agriculture for a waiver from section 27-B
19 prior to the use of a substance prohibited by section 27-B as a
20 pesticide or fertilizer on state property owned, controlled, or



1 managed by the applying department or agency. The waiver
2 application shall include:

- 3 (1) A location map for the proposed area of use;
- 4 (2) A landscape plan;
- 5 (3) Photographs of the proposed area of use and vegetation
6 on the area;
- 7 (4) A summary of the existing plants, soils, and
8 environmental conditions for the area;
- 9 (5) A history of vegetation management practices,
10 including pesticide and fertilizer application amounts
11 and frequency;
- 12 (6) Cost estimates and a timeline;
- 13 (7) Information on how the public's health and safety is
14 threatened;
- 15 (8) An evaluation and list of the results of alternative
16 methods and materials; and
- 17 (9) An explanation of how the application of a substance
18 prohibited by this part as a pesticide or fertilizer
19 will, to the greatest extent practical, minimize the
20 impact of the application on abutting properties,
21 human health, and the environment.



1 (b) The department of agriculture may approve a waiver
2 application or waiver extension request in writing upon finding
3 that:

4 (1) A situation exists that threatens the public's health
5 and safety;

6 (2) Alternative control methods and allowed substances
7 have been evaluated and determined to be insufficient;
8 and

9 (3) The application of a substance prohibited by section
10 27-B will, to the greatest extent practical, minimize
11 the impact of the application on abutting properties.

12 (c) A waiver may be granted for a period of up to two
13 years and may include conditions such as signage to protect
14 public health and safety.

15 (d) A waiver extension request shall be submitted at least
16 ninety days prior to the expiration of the waiver. The
17 extension request shall include the same information as the
18 initial application.

19 (e) If the department of agriculture fails to approve or
20 disapprove a waiver application or waiver extension request in



1 writing within one hundred eighty days, the application or
2 request shall be deemed approved.

3 **§27-E No conflict with federal law.** Nothing in this part
4 shall be interpreted or applied so as to create a requirement or
5 duty in conflict with any federal law."

6 SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended
7 by adding a new part to be appropriately designated and to read
8 as follows:

9 **"PART**

10 **SUBSTANCES APPLIED ON COUNTY PROPERTY**

11 **§46-A Definitions.** As used in this part, unless the
12 context requires otherwise:

13 "County property" means any real property owned or under
14 the control or management of the county, including any county
15 highway, drainageway, right of way, park, building, or facility.

16 "Fertilizer" means any substance containing one or more
17 recognized plant nutrients that is used for its plant nutrient
18 content and that is designed for use or claimed to have value in
19 promoting plant growth or health.

20 "Pesticide" has the same meaning as in section 149A-2.



1 **§46-B Pesticide and fertilizer use on county property.**

2 (a) The following substances are allowed for use on county
3 property as pesticides or fertilizers:

4 (1) Pesticides and fertilizers listed as "allowed" on the
5 National List of Allowed and Prohibited Substances as
6 listed in title 7 Code of Federal Regulations 205.601,
7 205.603, 205.605, and 205.606;

8 (2) "Minimum risk pesticides" exempt from registration
9 under the Federal Insecticide, Fungicide, and
10 Rodenticide Act (40 C.F.R. 152.25(f)); and

11 (3) The following, when used in compliance with
12 manufacturer specifications:

13 (A) Disinfectants, germicides, bactericides,
14 miticides, and virucides;

15 (B) Insect repellents;

16 (C) Rat and rodent extermination products;

17 (D) Swimming pool supplies;

18 (E) General use paints, stains, and wood
19 preservatives and sealants; and

20 (F) Citric acid.



1 (b) Unless a waiver is approved under section 46-D, the
2 use of substances not allowed under subsection (a) as pesticides
3 and fertilizers on county property is prohibited; provided that
4 substances not allowed under subsection (a) may be used as
5 pesticides to control:

6 (1) Mosquitoes;

7 (2) Animals or insects, including fire ants and termites,
8 that may cause damage to buildings and structures; and

9 (3) Invasive species whose introduction causes, or is
10 likely to cause, economic or environmental harm or
11 harm to human health.

12 **§46-C Exemptions.** This part shall not apply to property
13 subject to any state executive order that is not managed or
14 controlled by the county, county agricultural parks, or county
15 property used for agricultural purposes.

16 **§46-D Waiver.** (a) Agencies may apply to the department
17 of agriculture for a waiver from section 46-B prior to the use
18 of a substance prohibited by section 46-B as a pesticide or
19 fertilizer on county property owned, controlled, or managed by
20 the applying agency. The waiver application shall include:

21 (1) A location map for the proposed area of use;



- 1 (2) A landscape plan;
- 2 (3) Photographs of the proposed area of use and vegetation
- 3 on the area;
- 4 (4) A summary of the existing plants, soils, and
- 5 environmental conditions for the area;
- 6 (5) A history of vegetation management practices,
- 7 including pesticide and fertilizer application amounts
- 8 and frequency;
- 9 (6) Cost estimates and a timeline;
- 10 (7) Information on how the public's health and safety is
- 11 threatened;
- 12 (8) An evaluation and list of the results of alternative
- 13 methods and materials; and
- 14 (9) An explanation of how the application of a substance
- 15 prohibited by this part as a pesticide or fertilizer
- 16 will, to the greatest extent practical, minimize the
- 17 impact of the application on abutting properties,
- 18 human health, and the environment.
- 19 (b) The department of agriculture may approve a waiver
- 20 application or waiver extension request in writing upon finding
- 21 that:



1 (1) A situation exists that threatens the public's health
2 and safety;

3 (2) Alternative control methods and allowed substances
4 have been evaluated and determined to be insufficient;
5 and

6 (3) The application of a substance prohibited by section
7 46-B will, to the greatest extent practical, minimize
8 the impact of the application on abutting properties.

9 (c) A waiver may be granted for a period of up to two
10 years and may include conditions such as signage to protect
11 public health and safety.

12 (d) A waiver extension request shall be submitted at least
13 ninety days prior to the expiration of the waiver. The
14 extension request shall include the same information as the
15 initial application.

16 (e) If the department of agriculture fails to approve or
17 disapprove a waiver application or waiver extension request in
18 writing within one hundred eighty days, the application or
19 request shall be deemed approved.



1 **§46-E No conflict with federal law.** Nothing in this part
2 shall be interpreted or applied so as to create a requirement or
3 duty in conflict with any federal law."

4 SECTION 3. Section 27-1, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§27-1 Functions of statewide concern.** The purpose of the
7 chapter is to fix responsibility for certain functions, which
8 are of statewide concern, in the state government. These
9 functions which are declared to be state functions are as
10 follows:

11 (1) Planning, construction, improvement and maintenance of
12 public school facilities and grounds and the
13 transportation of school children; provided that
14 nothing in this paragraph shall preclude the several
15 counties from expending their own funds to supplement
16 state funds;

17 (2) Burial of indigents;

18 (3) Planning, construction, improvement, maintenance, and
19 operation of public hospitals and other public health
20 and medical facilities;



- 1 (4) Rendering of medical treatment and hospitalization
- 2 services to state and county pensioners;
- 3 (5) Administration and operation of district courts; ~~[and]~~
- 4 (6) Providing information and services to the public
- 5 through joint cooperation with the several
- 6 counties~~[-]~~; and
- 7 (7) Use or application of substances as pesticides and
- 8 fertilizers on state property."

9 SECTION 4. Section 149A-31, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§149A-31 Prohibited acts.** No person shall:

- 12 (1) Use any pesticide in a manner inconsistent with its
- 13 label, except that it shall not be unlawful to:
- 14 (A) Apply a pesticide at any dosage, concentration,
- 15 or frequency less than that specified on the
- 16 label or labeling; provided that the efficacy of
- 17 the pesticide is maintained; provided further
- 18 that when a pesticide is applied by a commercial
- 19 applicator, the deviation from the label
- 20 recommendations shall be with the consent of the
- 21 purchaser of the pesticide application services;



- 1 (B) Apply a pesticide against any target pest not
2 specified in the labeling if the application is
3 to a crop, animal, or site specified on the label
4 or labeling; provided that the label or labeling
5 does not specifically prohibit the use on pests
6 other than those listed on the label or labeling;
- 7 (C) Employ any method of application not prohibited
8 by the labeling;
- 9 (D) Mix a pesticide or pesticides with a fertilizer
10 when the mixture is not prohibited by the label
11 or labeling; or
- 12 (E) Use in a manner determined by rule not to be an
13 unlawful act;
- 14 (2) Use, store, transport, or discard any pesticide or
15 pesticide container in any manner that would have
16 unreasonable adverse effects on the environment;
- 17 (3) Use or apply restricted use pesticides unless the
18 person is a certified pesticide applicator or under
19 the direct supervision of a certified pesticide
20 applicator with a valid certificate issued pursuant to
21 rules adopted under section 149A-33(1); provided that



1 it shall be prohibited to use or apply a restricted
2 use pesticide for structural pest control uses for a
3 fee or trading of services, unless the user or
4 applicator is a pest control operator or is employed
5 by a pest control operator licensed under chapter
6 460J;

7 (4) Use or apply pesticides in any manner that has been
8 suspended, canceled, or restricted pursuant to section
9 149A-32.5;

10 (5) Falsify any record or report required to be made or
11 maintained by rules adopted pursuant to this chapter;

12 (6) Fill with water, through a hose, pipe, or other
13 similar transmission system, any tank, implement,
14 apparatus, or equipment used to disperse pesticides,
15 unless the tank, implement, apparatus, equipment,
16 hose, pipe, or other similar transmission system is
17 equipped with an air gap or a reduced-pressure
18 principle backflow device meeting the requirements
19 under section 340E-2 and the rules adopted thereunder;
20 [~~or~~]



1 (7) Beginning January 1, 2019, use or apply any pesticide
2 containing chlorpyrifos as an active ingredient;
3 provided that:

4 (A) The department shall grant to any person, upon
5 request, a temporary permit authorizing the
6 person, until December 31, 2022, to use or apply
7 a pesticide containing chlorpyrifos as an active
8 ingredient; and

9 (B) Any person who violates this paragraph shall be
10 subject to a penalty pursuant to section 149A-
11 41[-];

12 (8) Use or apply any substance as a pesticide on state
13 property in violation of section 27-B; or

14 (9) Use or apply any substance as a pesticide on county
15 property in violation with section 46-B."

16 SECTION 5. In codifying the new sections added by sections
17 1 and 2 of this Act, the revisor of statutes shall substitute
18 appropriate section numbers for the letters used in designating
19 the new sections in this Act.



S.B. NO. 1150

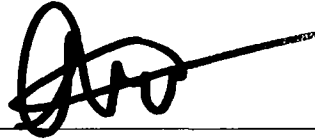
1 SECTION 6. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 7. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 8. This Act shall take effect on July 1, 2023.

7

INTRODUCED BY: _____

A handwritten signature in black ink, appearing to be 'J. H. ...', written over a horizontal line.

S.B. NO. 1150

Report Title:

Pesticides; Fertilizers; State Property; County Property;
Prohibition

Description:

Establishes a list of substances allowed for use as pesticides and fertilizers on state and county property. Provides that the use of substances not specifically allowed as pesticides and fertilizers on state property and county property is prohibited, unless certain exceptions, a waiver, or exemption apply. Requires a state department or agency seeking a waiver to apply to the department of agriculture.

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

