

BILL NO. 113

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 14 OF THE HAWAI‘I COUNTY CODE 1983 (2005 EDITION, AS AMENDED), BY ADDING A NEW ARTICLE RELATING TO GENETICALLY ENGINEERED CROPS AND PLANTS.

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAI‘I:

SECTION 1. Findings. The public trust doctrine is memorialized in the Hawai‘i State Constitution, Article XI, Section 1 “Conservation and Development of Resources,” and in the Charter of the County of Hawai‘i, Article XIII, Section 13-29 “Conservation of Natural and Cultural Resources.” Pursuant to the public trust doctrine, our natural resources, including land and water, are entrusted to our care for the benefit of both current and future generations. The Intermediate Court of Appeals in *Kaua‘i Springs Inc. vs. Planning Commission of the County of Kaua‘i*, dated April 20, 2013, underscored the importance of the public trust doctrine and the associated precautionary principle. In *Kaua‘i Springs*, the Intermediate Court of Appeals reaffirmed that the county government in its trustee capacity is subject to the precautionary principle and therefore must exercise a higher level of scrutiny in establishing reasonable measures and making appropriate assessments in order to avoid harmful impacts to our public trust resources. The Council therefore recognizes the right of the people and their government to guard against the intrusion of potential contaminants and prevent the contamination of non-genetically engineered crops, plants and lands by genetically engineered crops and plants without having to first wait for definitive science. As the United States Supreme Court made clear in *Maine vs. Taylor* (1986), the government is not required “to sit idly by and wait until potentially irreversible environmental damage has occurred or until the scientific community agrees on what disease organisms are or are not dangerous before it acts to avoid such consequences.”

The Council finds that its authority to impose restrictions on the cultivation, propagation, and development of genetically engineered crops and plants is granted to it by:

- (1) The Hawai‘i Revised Statutes, Section 46-1.5(13), which states: “Each county shall have the power to enact ordinances deemed necessary to protect health, life, and property, and to preserve the order and security of the county and its inhabitants on any subject or matter not inconsistent with, or tending to defeat, the intent of any state statute where the statute does not disclose an express or implied intent that the statute shall be exclusive or uniform throughout the State.”;

- (2) The Hawai‘i State Constitution, Article XI, Section 9 “Environmental Rights,” which states: “Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources. Any person may enforce this right against any party, public or private, through appropriate legal proceedings, subject to reasonable limitations and regulation as provided by law.”

This ordinance specifically exempts the cultivation, development, and propagation of genetically engineered papaya from prohibition because the genetic modification of papaya over the past decade has become so pervasive across this island that restricting cultivation of genetically engineered papaya would be near impossible at this time, the likelihood of genetically engineered cross pollination of papaya is reduced given the customary controlled manner of propagation, and in light of the substantial investment in controlled testing of this one crop over the past decade as the means of choice to address certain papaya diseases.

SECTION 2. Chapter 14 of the Hawai‘i County Code 1983 (2005 Edition, as amended) is amended by adding a new article to be appropriately designated and to read as follows:

“Article __. Protecting Hawai‘i Island’s Agricultural Heritage and Its Ecosystems from Harm from Genetically Engineered Organisms.

Section 14-__. Purpose.

The purpose of this article is to protect Hawai‘i Island’s non-genetically modified agricultural crops and plants from genetically modified organism cross pollination and to preserve Hawai‘i Island’s unique and vulnerable ecosystem while promoting the cultural heritage of indigenous agricultural practices.

Section 14-__. Definitions.

As used in this article, unless otherwise specified:

“Genetically engineered” means an organism or microorganism whose genetic material has been altered by transgenic manipulation. Such organisms are sometimes referred to as “genetically modified organisms” or “transgenic organisms.” Genetically engineered or genetically modified crops and plants include crops and plants for human consumption or for any other purpose.

“Open air” means a location or facility that is not enclosed in a greenhouse or in another completely enclosed structure.

“Person” includes natural persons, partnerships, joint ventures, societies, associations, clubs, trustees, trusts, or corporations or any officer, agent, employee, or any other personal representative thereof, in any capacity, acting either for himself, his heirs, or for any other person under personal appointment pursuant to law.

“Register” or “Registration” means registration of locations engaged in the cultivation, propagation, or development of genetically engineered crops or plants. Registration shall include: the tax map key of the property or properties; the name of the owner of the property or properties; the lessee or any other party in control of the genetically engineered plant or crop operation or usage; the type of genetically modified organism or transgenic manipulation used; the produce or products involved; the type, frequency, and customary amount of herbicides and pesticides used; a description of any containment procedures employed; and relevant contact information.

Section 14-__. **Prohibition.**

No person shall knowingly engage in the open air cultivation, propagation, or development of genetically engineered crops or plants.

Section 14-__. **Exemption.**

The following persons shall be exempt from the provisions of this article:

- (1) Persons engaged in the cultivation, propagation, or development of genetically engineered crops or plants, other than genetically engineered papaya, in locations where genetically engineered crops or plants have been customarily cultivated, propagated, or developed by that person prior to the effective date of this article, provided that the locations or facilities are registered within ninety days of the effective date of this article; and
- (2) Any person engaged in the cultivation, propagation, or development of genetically engineered papaya, whether prior or subsequent to the effective date of this article, provided that each location or facility wherein cultivation, propagation, or development of genetically engineered papaya occurs or will occur is registered as provided in this article.

Section 14-__. **Registration.**

All persons engaged in any form of cultivation, propagation, or development of genetically engineered crops or plants of any kind shall register annually beginning within ninety days of the effective date of this article, and shall pay an annual registration fee of \$100 per location, payable to the director of finance. All contiguous land shall be treated as a single location. The director of the department of research and development, or the director’s authorized representative(s), shall administer the registration provision of this section.

Section 14-__. **Penalties.**

Any person who knowingly violates this article shall be fined \$1,000 per day as a separate violation for each location in violation and shall be responsible for all costs of investigation, as well as for court and legal costs, including attorneys and witness fees and expenses, and for resulting damages to other non-genetically engineered crops, plants, neighboring properties, or water sources.”

SECTION 3. If any provision of this ordinance, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are declared to be severable.

SECTION 4. This ordinance shall take effect upon approval.

INTRODUCED BY:



Margaret Wille

COUNCIL MEMBER, COUNTY OF HAWAII

_____, Hawai'i

Date of Introduction:

Date of 1st Reading:

Date of 2nd Reading:

Effective Date:

REFERENCE Comm. 393