



Massachusetts Association of Conservation Commissions

protecting wetlands, open space and biological diversity through education and advocacy

April 29, 2020

Via Electronic Mail

Senator Joanne M. Comerford, Chair
Joint Committee on Public Health
24 Beacon Street, Room 413-C
Boston, MA 02133

RE: Modification Needed in H.4650 to Avoid Overreach, Provide Coordination with other Agencies, and Other Clarifications

Dear Senator Comerford:

On behalf of the Massachusetts Association of Conservation Commissions (MACC), I submit these comments to H.4650 “An Act to Mitigate Arbovirus in the Commonwealth”. The Governor has filed this bill to “empower the State Reclamation and Mosquito Control Board to engage in mosquito control activities across Massachusetts when the Commissioner of Public Health determines that an elevated risk of arbovirus exists or may exist for the following year. MACC opposes this legislation as written because it has broad overreach, does not provide for coordination with other agencies, and lacks other clarifications.

MACC is a statewide non-profit 501(c)(3) organization that supports more than 2,000 conservation commissioners in their mission of preserving wetlands, open space, and environmental protection. MACC assists conservation commissions and other members through our efforts in education and advocacy. Our conservation commissions are the “boots on the ground” who implement the Wetlands Protection Act Regulations (310 CMR 10.00) and manage conservation land across the state. We have heard from our members, Board of Directors, and other non-profit associations that there are concerns with this legislation related to increased chemical applications that impact insects other than mosquitoes, including pollinators, and other human health and ecosystem impacts.

We understand the intent of this legislation is to combat diseases transmitted by mosquitoes, but we have the following concerns:

- **This legislation is overly broad.** H.4650 essentially gives *carte blanche* to the State Reclamation and Mosquito Control Board whenever the Commissioner of Public Health determines that an elevated risk of arbovirus exists or may exist in a future year. The *carte blanche* has no end date. The lack of oversight and transparency in this bill is a throwback to the 1950’s when more chemical usage and draining of swamps were believed to be a good thing. As written, there will be no input from MassDEP, Fish & Wildlife, or the environmental community about the chemicals the State Reclamation and Mosquito Control Board plan to use, the frequency of chemical usage, or potential impacts to the environment.

The bill overrides all other existing statutes including the Pesticide Control Act (MGL Ch. 132B) and the Wetlands Protection Act (MGL Ch. 131 S. 40). While the Reclamation Board is already exempt from the Wetlands Protection Act, this would extend that exemption to municipalities that have explicitly voted not to participate in the antiquated system of mosquito districts. Among

protections that would be removed are the rights of communities to decide to not join or to withdraw from a mosquito district and the rights of landowners to have their properties excluded from pesticide applications. The state already can step in and overrule those rights by declaring public health emergencies, but this bill would greatly expand those powers to include any time when the Department of Public Health thinks there *might be* an elevated risk of mosquito disease in the next year. No parameters are set for how such risk should be measured or what triggers would need to be reached for a determination to be made. There is no sunset clause in this bill.

- **Notifications should be required before spraying.** Prior to use of “mosquito control activities”, the State Reclamation and Mosquito Control Board should notify municipalities and the public to minimize exposure to these chemicals. Currently, this bill does not have any notification requirements to residents, municipalities, public water supplies, farmers, and other landowners. As a result, there could be increased exposure to chemicals by residents throughout the Commonwealth. Municipalities and landowners should retain their current rights to “opt out” of spraying except in cases where the state declares that an actual public health emergency exists (not a future, speculative risk).
- **There is no transparency on the decision-making process.** There is no discussion about the “triggers” for requiring spraying and there is little evidence of the efficacy of the spraying in previous years for minimizing EEE risk. In addition, there is no documentation on the potential impacts to other species or public health as a result of the spraying. Checks and balances on the State Reclamation and Mosquito Control Board are needed but are completely absent in this bill.
- **Inadvertent impacts from spraying are not considered.** There is no information on the efficacy of the widespread spraying to stop the spread of arbovirus or consideration of the negative impacts to pollinators and other beneficial species. The use of mosquito control pesticides is a documented concern on MassDEP’s website for the 1,600 public water supplies in Massachusetts. <https://www.mass.gov/service-details/west-nile-virus-massachusetts-public-drinking-water-systems> This bill as written would overrule public water supply protection regulations. The Toxicity of Pesticides to Pollinators and Beneficials is documented by UMASS Amherst (<https://ag.umass.edu/fruit/ne-small-fruit-management-guide/appendices-resource-material-listings-conversion-tables-0>)

Many people grow their own food, with an increasing emphasis on organic methods. Landowners should not be subjected to pesticides sprayed on their homes and gardens without their knowledge or consent. Chemicals used for adult mosquito control are also highly toxic to fish. Furthermore, these chemicals also present public health risks. People with respiratory illnesses such as asthma, as well as the elderly and young children, are particularly susceptible to adverse reactions from such chemicals.

The State Reclamation and Mosquito Control Board should be required to confirm that the pesticides used for mosquito control activities do not contain per- and polyfluoroalkyl (PFAS) compounds, chemicals that are being detected in more and more Massachusetts’ water supplies every year. https://www.mass.gov/info-details/per-and-polyfluoroalkyl-substances-pfas#what-are-pfas-and-why-are-they-a-problem?_- PFAS compounds may be included in the “inert ingredients” used in pesticides to aid in dispersal. The State Reclamation and Mosquito Control Board should be required to confirm that the chemicals used to combat arbovirus will not contain PFAS compounds. Without oversight, transparency or coordination with other agencies, this bill could do more harm than good.

Rather than rushing to impose broad powers over municipalities and landowners, the state should update

the antiquated laws governing mosquito control.

MACC urges the Committee to modify the wording in this bill to require:

- Adding the Department of Public Health and Department of Fish and Game to the Reclamation Board (see H. 400 from the 2017-18 session, and attached to this letter);
- A 48-hour notification to communities (and to a state website) prior to spraying for mosquitoes;
- Transparency in this process by requiring annual reporting of mosquito control plans, programs, and results and an annual public review process. (MACC suggests including the requirements outlined in H.850 in the current legislative session);
- Requiring the use of Integrated Pest Management Plan, including an emphasis on surveillance, public education, and ecologically based methods (<https://xerces.org/publications/scientific-reports/ecologically-sound-mosquito-management-in-wetlands>) as preferable to repeated, broad applications of pesticides via ground or aerial application; and
- Enabling communities to receive surveillance services to monitor for mosquito-borne diseases without having to sign up for pesticide applications. The inability or unwillingness of some mosquito districts to tailor services to the desires of local communities is why many communities are not members of existing districts. Rather than overriding these valid local concerns, the Legislature should implement a solution that provides services that communities actually want and need.

Thank you for your time and consideration of this matter.

Sincerely,
Massachusetts Association of Conservation Commissions



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cc: Senator Nick Collins, Vice Chair
Representative John J. Mahoney, Chair
Representative Chynah Tyler, Vice Chair