



May 8, 2020

The Honorable Joanne Comerford, Senate Chair
Joint Committee on Public Health
Massachusetts State House, Room 413-C, Boston MA 02133

The Honorable John Mahoney, House Chair
Joint Committee on Public Health
Massachusetts State House, Room 130, Boston MA 02133

Re: Opposition to H.4650, *An Act to mitigate arbovirus in the Commonwealth*

Dear Chair Comerford, Chair Mahoney and Members of the Joint Committee on Public Health:

Thank you for the opportunity to submit testimony on H.4650, *An Act to mitigate arbovirus in the Commonwealth*. On behalf of Charles River Watershed Association (“CRWA”), we respectfully urge the Committee to report H.4650 out with a study order.

As one of the country’s oldest watershed organizations, CRWA’s mission is to protect, preserve, and enhance the Charles River and its watershed through science, advocacy, and the law. Our initiatives over the last five decades have dramatically improved the quality of water in the watershed, fundamentally changed approaches to water resource management, and protected the Charles River as a public resource for current and future generations. As a science-based organization, we are concerned about the critical implications of this bill for our rivers and streams, fish and wildlife, and human health.

H.4650 proposes to exempt the State Reclamation and Mosquito Control Board (the “Reclamation Board”) from every statute and special law, based on a determination by the Department of Public Health (“DPH”) that there *may* be a threat of mosquito borne disease in a portion of the state in the coming year. This is far too vague a metric to convey such sweeping powers and is a clear overreach of authority.

Of particular concern, the Reclamation Board is responsible for making determinations for aerial spraying for mosquito control in the Commonwealth. The Reclamation Board has yet to make public the chemicals contained in the pesticides used for spraying, and we understand there have been reports of substantial aquatic life being killed shortly following a spraying. Unfortunately, state agency monitoring for these unintended impacts is extremely limited and the results are very rarely made public. **It is important to note that spraying of pesticides to control adult mosquitoes is recognized by the Center for Disease Control (“CDC”) and U.S. Environmental Protection Agency (“EPA”)¹ as the *least* effective and *most* environmentally damaging method of mosquito control.**

¹ Joint Statement on Mosquito Control in the United States from the U.S. Environmental Protection Agency and the U.S. Centers for Disease Control and Prevention (Sept. 2012).

It is particularly concerning that as currently written, this legislation includes no requirements for input from the Massachusetts Department of Environmental Protection (“DEP”), Massachusetts Department of Fish and Game’s Division of Fisheries & Wildlife (“DFW”), local boards of health, or the environmental stakeholder community about: 1) the chemicals the Reclamation Board plans to use in spraying, 2) the frequency of chemical usage, or 3) potential impacts to the environment. There is no requirement in the proposed legislation that the methods employed by the Reclamation Board utilize the best science through Integrated Pest Management (“IPM”), no measurable trigger thresholds for actions to be taken, no opportunity for input from affected communities or landowners, and no sunset clause for these sweeping powers.

By exempting the Reclamation Board from every statute and special law, this legislation would effectively bar public transparency and accountability, as the Reclamation Board would be exempt from critical public accountability laws like the Open Meeting Law (G.L. c. 30A) and Public Records Act (G.L. c. 66). It would also allow a host of other laws protecting human health and the environment to be overridden or ignored without accountability or disclosure, including the Pesticide Control Act (G.L. c. 132B) and the Wetlands Protection Act (G.L. c. 131, § 40).

As currently written, this legislation also would eliminate the rights of landowners to have their properties excluded from unwanted applications of toxic chemicals for nuisance control practices that are often ineffective and may even be counterproductive. This change is unnecessary; the state can already step in and overrule those rights when necessary with a public health emergency declaration. Furthermore, it is currently the case that communities who would prefer to have mosquito surveillance (i.e., trapping and testing) and public education (i.e., personal protection measures) services made available by the state are unable to obtain those services without first joining a mosquito district and *also* accepting routine spraying of chemicals and heavy equipment in their local wetlands and streams, all without any local input or control over those activities.

Municipalities and landowners should be able retain their current rights to “opt out” of spraying except in cases where the state officially declares that an actual public health emergency exists, and the state should be more flexible in offering appropriate alternative services to interested communities. Moreover, this bill does not currently have any notification requirements to alert residents, municipalities, public water supplies, farmers, and other landowners about actions taken by the Reclamation Board. As a result, there could be increased exposure to chemicals during spraying by residents throughout the Commonwealth.

Massachusetts should instead pursue an ecologically based approach to mosquito control that includes:

- Investing in an expansion of public education about local measures for addressing mosquito control such as removing artificial containers of standing water around homes and taking personal protection measures (i.e., wearing protective clothing and mosquito repellent);
- Enhancing habitat for mosquito predators (i.e., restoring fish habitat, removing obsolete dams, improving degraded wetlands, and right-sizing culverts for stream crossings); and

- Improving stormwater management through the adoption of Low Impact Development (“LID”) for all new development and redevelopment. LID offers alternatives to traditional forms of development that often involve standing water (i.e., detention basins) by incorporating solutions that afford high infiltration and inflow (i.e., permeable pavement or rain gardens).

We urge the Committee to send this bill to study so that additional measures for mosquito control can be evaluated and true reform of the Reclamation Board can occur. At the very least, we recommend that the following amendments be made to the legislation:

- Municipalities and landowners should be able retain their current rights to “opt out” of spraying except in cases where the state officially declares that an actual public health emergency exists.
- Communities should be able to receive surveillance services from the state to monitor for mosquito-borne diseases without having to sign up for pesticide applications through the mosquito control district. The inability or unwillingness of some mosquito districts to tailor services to the needs of local communities is the reason that many communities are not members of existing mosquito control districts. Rather than overriding these valid local concerns, the Legislature should implement a solution that provides services that communities want and need.
- An expansion of powers for the Reclamation Board should be limited to surveillance mosquito control measures only. If positive mosquitoes are found in certain regions, DPH can first conduct public education for personal protection, and if other interventions are deemed essential to public health, an emergency can be declared to conduct eradication.
- The Reclamation Board should be required to add the DEP and the DFW to the Board.
- A sunset clause should be included for any emergency exemptions, so that they expire each year with the first frost. Exemptions should be limited to specific laws.
- The Reclamation Board should be required to use Integrated Pest Management for all mosquito control activities. This must include an emphasis on surveillance, public education, and ecologically-based controls as preferable to repeated, broad applications of pesticides via ground or aerial application.
- The Reclamation Board should be required to provide 48-hour notification to communities and post an update to a state website prior to spraying for mosquitoes.
- The Reclamation Board should be required to disclose what chemicals are used in pesticides for mosquito control activities. They should also be required to confirm that these pesticides do not contain per- and polyfluoroalkyl (“PFAS”) compounds, chemicals that are being detected in more and more Massachusetts water supplies every year. PFAS compounds may be currently be included in the “inert ingredients” used in pesticides to aid in dispersal.
- The Reclamation Board should be required to provide annual reporting of mosquito control plans, programs, and results and there should be an annual public review process.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in blue ink that reads "Heather Miller". The signature is written in a cursive style with a large initial 'H'.

Heather Miller
General Counsel & Policy Director