

LINDA LINGLE
Governor



SANDRA LEE KUNIMOTO
Chairperson, Board of Agriculture

DUANE K. OKAMOTO
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 Fax: (808) 973-9613

TESTIMONY OF SANDRA LEE KUNIMOTO
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEES ON
AGRICULTURE AND HAWAIIAN AFFAIRS,
ENERGY AND ENVIRONMENT
AND
TRANSPORTATION AND INTERNATIONAL AFFAIRS
MONDAY, MARCH 17, 2008
1:15 P.M.
ROOM 224

HOUSE BILL NO. 2843, H.D. 2
RELATING TO INVASIVE SPECIES

Chairpersons Tokuda, Menor and English and Members of the Committees:

Thank you for the opportunity to testify on House Bill No. 2843, H.D. 2. The purpose of this bill is to fund the department of agriculture's biosecurity program by expanding the items subject to the inspection, quarantine, and eradication service fee to include any freight brought into the State. The Department supports this measure.

The department of agriculture has formulated and has begun to implement a new biosecurity program for the state consisting of preclearance programs, port-of-entry inspections, post-entry control and eradication programs, and initiatives to spur the growth of agriculture in Hawaii to reduce the state's dependency on imported agricultural products.

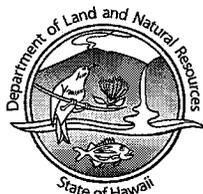
Several major projects key to the implementation of the biosecurity program are underway at this time. Specifically, we have initiated the planning and installation of joint-use inspection facilities at the airports and harbors to mitigate environmental

concerns for the improvements to the transportation infrastructure at ports statewide; and are currently developing coordinated federal-state programs incorporating risk assessments, diagnostics, detection, control and suppression, and emergency management programs.

CIP proposals have been submitted and are under review in the department. Consultants are involved in scoping the project and identifying the needs of state and federal agencies, the airlines, freight carriers and growers in Hawaii.

Funds from the fees generated would be used to operate port facilities to increase inspection of high-risk commodities while minimizing inconvenience to transportation carriers and importers; and also to provide more efficient and effective prevention programs for invasive species. This fee will replace the fee based on \$1.00 per 20 foot equivalent unit per container that was passed into law in a previous legislative session.

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**TESTIMONY OF THE CHAIRPERSON
OF THE BOARD OF LAND AND NATURAL RESOURCES**

on House Bill 2843, House Draft 2 – RELATING TO INVASIVE SPECIES

**BEFORE THE SENATE COMMITTEES ON
AGRICULTURE AND HAWAIIAN AFFAIRS,
ENERGY AND ENVIRONMENT
and
TRANSPORTATION AND INTERNATIONAL AFFAIRS**

March 17, 2008

House Bill 2843, House Draft 2 authorizes the Department of Agriculture (DOA) to assess a service fee of 50 cents for every one thousand pounds of freight brought into the state for the inspection, quarantine and eradication of invasive species. The designation by this measure of the transportation company as the entity who shall collect the fee from importers may improve the implementation of this measure. While the Department of Land and Natural Resources (Department) appreciates the Legislature's attention to this matter, the Department nonetheless believes that there needs to be further discussions to develop an equitable and adjustable cost recovery mechanism to implement the Hawaii Biosecurity Program.

Preventing new invasive species from establishing in Hawaii provides the greatest long-term protection for Hawaii and the Department supports strong import quarantine measures. Invasive species inspections and quarantine are needed for all types of commercial freight. Providing an equitable and comprehensive system for inspection of all commercial freight, enforcement authority and having the staff and needed airport and harbor facilities to allow for efficient cargo quarantine inspections and processing will protect Hawaii's economy and environment from invasive species.

As a co-chair of the Hawaii Invasive Species Council, the Department approved a resolution on January 19, 2006 in support of the invasive species recommendations of the Governor's Economic Momentum Commission (Commission). The first of the two recommendations by the Commission was to review user fees from importers/shippers to ensure these fees are adequate to properly fund the needed prevention and quarantine programs.

Other island nations are dealing with the problem of invasive species with similar approaches and it is clear that a reasonable service charge to fund an adequate quarantine program will not place an undue burden on transport or visitors. For example in New Zealand, the assessment of a \$3 per passenger service fee generates approximately \$25,000,000 to support a comprehensive

quarantine program that includes X-ray screening, inspector dogs and targeted inspections of high risk goods.

Under the schedule proposed by House Bill 2843, House Draft 2, and based on the Department of Business, Economic Development, and Tourism Data Book for 2005 which notes that 38,431,961 pounds of cargo arrive daily, a total of \$7,000,000 per year would be raised if all freight, both air and marine was subject to the 50 cent per 1000 pound schedule. It is not clear if empty containers arriving in Hawaii would be subject to the fee. These structures provide a high risk of introducing ants if they have been stored on the ground and have also been shown to harbor brown tree snakes on Guam. Ensuring that cost recovery to inspect these as well as the vessels themselves will be an important part of a comprehensive cost recovery program.

Should this measure be enacted, the Department defers to DOA as to the magnitude, structure and mechanism of the funding necessary to carry out their vital quarantine functions as outlined in their Biosecurity Plan.

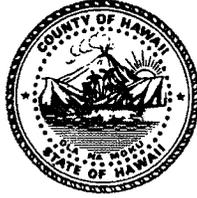
BOB JACOBSON

Councilmember

Chair, Environmental Management Committee

Vice-Chair, Finance Committee

Vice-President Hawai'i State Association of Counties



333 Kīlauea Avenue, Second Floor
Ben Franklin Building, Hilo, Hawai'i 96720

Mailing Address: 25 Aupuni Street, Suite 200

Phone: (808) 961-8263

Fax: (808) 961-8912

E-Mail: bjacobson@co.hawaii.hi.us

HAWAI'I COUNTY COUNCIL

County of Hawai'i

March 13, 2008

Committee on Agriculture and Hawaiian Affairs

Senator Jill N. Tokuda, Chair

Senator J. Kalani Edwards, Vice Chair

And, Members

Committee on Energy and Environment

Senator Ron Menor, Chair

Senator Gary L Hooser, Vice Chair

And, Members

Committee on Transportation and International Affairs

Senator J Kalani English, Chair

Senator Mike Gabbard, Vice Chair

And, Members

Hearing Monday, March 17, 2008 at 1:15 p.m.

Conference Room 224

Re: HB 2834, HD 2 RELATING TO INVASIVE SPECIES

I strongly support HB 2834 HD 2. The state needs to expand the items subject to the inspection, quarantine, and eradication service fee (inspection fee) to include any freight brought into the state. It also requires that the inspection fee to be assessed based on net weight of imported freight. I support legislation that will support agriculture inspections to control or prevent invasive species from devastating Hawai'i's environment or agriculture.

I urge you to pass HB 2834 HD 2.

Aloha,

Bob Jacobson

**HAWAII FARM BUREAU FEDERATION
2343 ROSE STREET
HONOLULU, HI 96819**

March 11, 2008

**HEARING BEFORE THE
SENATE COMMITTEE ON ENERGY AND ENVIROMENT
AND
SENATE COMMITTEE ON TRANSPORTATION AND INTERNATIONAL AFFAIRS**

**TESTIMONY ON HB 2843, HD 2
RELATING TO INVASIVE SPECIES**

Chair Menor and Chair English and Members of the Committee:

My name is Alan Takemoto, Executive Director, of the Hawaii Farm Bureau Federation, which is the largest non-profit general agriculture organization representing approximately 1,600 farm and ranch family members statewide.

The Hawaii Farm Bureau Federation supports HB 2843, HD 2, which expands the items subject to the inspection fee and makes other amendments.

Invasive species have become one of the most devastating problems impacting Hawaii's agricultural industry. Invasive species have negatively impacted both Hawaii's environment and economy. The demise of the native wili wili tress, the recent infestation of imported Christmas trees, coqui frog, and others pests and diseases chronically devastate our agricultural crops. DOA's biosecurity program is a comprehensive plan to address our food security and invasive species control in Hawaii.

Thank you for allowing us to testify on this measure.



Maui County Farm Bureau

*An Affiliate of the American Farm Bureau Federation and Hawaii Farm Bureau Federation
Serving Maui's Farmers and Ranchers*

TESTIMONY

HB 2843 HD2 RELATING TO INVASIVE SPECIES

HEARING BEFORE THE COMMITTEE ON AGRICULTURE AND COMMITTEE ON TRANSPORTATION

Chair Tokuda, Chair Menor, Chair English and Committee Members:

My name is Warren Watanabe, Executive Director of the Maui County Farm Bureau, a non-profit general agriculture organization and an affiliate of the Hawaii Farm Bureau Federation.

MCFB strongly requests your SUPPORT of HB 2843 HD2 imposing fees on all types of cargo entering the State.

Last year's legislature imposed a fee on marine containers. This measure includes all other types of cargo that are equally subject to carrying invasive species. Subjecting all types of cargo to this fee requirement brings fairness into the system.

As we look to address invasive species, our farmers and ranchers are facing a near crisis situation in the area of transportation. Improvements in Harbor infrastructure will be critical for expansion of Hawaii's agriculture. Recent experiences with the Hawaii Superferry and now the Kahului Harbor 2030 Draft EIS gives strong testament to the delay tactics that will be used by some to slow down the improvement process. This measure is an important piece to help fund the programs needed to ensure that concern of invasive species does not get used to slow down the much needed harbor improvement plans.

MCFB respectfully requests passage of this measure **as amended**. The viability of our farmers and ranchers is at stake. Thank you.

P.O. Box 148
Kula, HI 96790

ph: 808 2819718
email:mauicountyfb@hotmail.com



HAWAII FOOD INDUSTRY ASSOCIATION

820 Millilani St., Suite 810, Honolulu, Hawaii 96813
Phone (808) 533-1292 - Fax (808) 599-2606 - Email LISHawaii@aol.com
Direct (808) 479-7966



March 17, 2008

**To: Senate Committee on Agriculture and Hawaiian Affairs
Senator Jill N. Tokuda, Chair / Senator J. Kalani English, Vice Chair**

**Senate Committee on energy and Environment
Senator Ron Menor, Chair / Senator Gary L. Hooser, Vice Chair**

**Senate Committee on Transportation & International Affairs
Senator Kalani J. English, Chair / Senator Mike Gabbard, Vice Chair**

By: Richard C. Botti, Pres. or Lauren Zirbel, Gov't Relations

Re: HB 2843 HD2 RELATING TO INVASIVE SPECIES

Chairs & Committee Members:

While we support the purpose and intent of this measure, and the inequities that it addresses by expanding the definition of freight to include everything entering the state, we oppose the inequity that will be created with the new taxing method of 50 cents for every one thousand pounds of freight. This increase will be from \$1.00 per 20 foot container to \$1 per ton of cargo. The fees per container will go as high as \$20 per container if the weight of the goods is 35,000 pounds as it often is. We would estimate that the revenues that would be generated by this bill reach to over \$10 million dollars when taking all imported freight into consideration.

Because the definition of freight is defined as any cargo transported for pay, this bill will be taxing firms that have little or no risk of invasive species tagging along with the imported container. A good example is frozen prepared foods coming from a major food processing plant on the Mainland. A second example is a local warehouse that receive imported containers that already has a policy and procedure for checking containers for invasive species, along with proper documentation.

While we do not oppose the intent of this measure. There just has to be much more work on establishing where the risk is, and targeting that risk.

We request that the department be required to adopt Rules that would provide exemptions, or credits against fees to firms that act as the gatekeeper by having a policy, procedure, and plan for accepting and inspecting cargo, with documentation to back up their inspections. We have firms now doing this because they feel it is their responsibility. They should be rewarded for their efforts, not further penalized.

We do not want this to be another tax assessment on all shipments in order to address those that import containers with little regard for their responsibility.

Yes, everyone should pay, and yes, those with a significantly higher risk should pay more. Frozen processed foods should be exempt, since everything inside is dead and frozen.



For the Protection of Hawaii's Native Wildlife

HAWAII AUDUBON SOCIETY

850 Richards Street, Suite 505, Honolulu, HI 96813-4709

Phone/Fax: (808) 528-1432; hiaudsoc@pixi.com

www.hawaii-audubon.com

EMAIL: testimony@capitol.hawaii.gov

TO: Committee on Energy and Environment
Senator Ron Menor, Chair and Senator Gary Hooser, Vice Chair

Committee on Transportation and International Affairs
Senator J. Kalani English, Chair and Senator Mike Gabbard, Vice Chair

HEARING: Tuesday, March 11, 2008; 2:45 P.M., Conference Rm. 414

Re: HB2843, HD2, Relating to Invasive Species

TESTIMONY IN SUPPORT

Chair Menor and Chair English, and members of the Committee on Energy and Environment and the Committee on Transportation and International Affairs. My name is George Massengale, and I am the Legislative Analyst for the Hawaii Audubon Society. Thank you for the opportunity to submit our testimony in support of HB2843, HD2, which establishes a fee on freight that is transported into the State that is not in a commercial marine container.

The Hawaii Audubon Society was founded in 1939, and is the oldest conservation organization in Hawaii. The Society has over 1,500 dedicated members statewide working together to further the Society's primary mission is the protection of Hawaii's native wildlife and habitats. This includes protecting our ecosystems from invasive species. The sad fact is that Hawai'i has the highest number of listed threatened and endangered species in the nation.

This measure, if passed, would provide an ongoing funding stream which could be used to expand eradicating efforts on such invasive species such as the kariba weed, coqui frog and armored catfish. These invasive pests harm not only our bird habitats, but the habitats other species as well. The coqui frog eats insects in direct competition with our endemic birds. The kariba weed, which can quickly cover the surface of lakes or slow-flowing streams with mats over 2 feet thick devastates our native aquatic life by blocking sunlight and starving them of oxygen. The armored catfish, also competes with native fish and bird species for food and contributes to erosion and sedimentation by burrowing into the banks of streams and reservoirs.

These and other invasive must be contained and eradicated. Hawaii Audubon Society strongly urges the committees to pass HB2843, HD2 thus creating an ongoing funding stream that can be used for invasive species purposes.

Thank you for the opportunity to testify here today.

Sincerely,

George Massengale, JD
Legislative Analyst

**HB 2843 HD2
RELATING TO INVASIVE SPECIES**

**PAUL T. OSHIRO
MANAGER – GOVERNMENT RELATIONS
ALEXANDER & BALDWIN, INC.**

MARCH 17, 2008

Chair Tokuda, Chair Menor, Chair English, and Members of the Senate
Committees on Agriculture & Hawaiian Affairs, Energy & Environment, and
Transportation & International Affairs:

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin, Inc. (A&B) and
Matson Navigation Company, Inc. (a subsidiary of A&B) on HB 2843 HD2, “A BILL FOR
AN ACT RELATING TO INVASIVE SPECIES.”

Although invasive species can enter Hawaii through several different means or
pathways, including but not limited to air and marine containerized and non-
containerized freight, the present statutorily imposed invasive species fee is only
imposed upon marine containerized freight. At present, no invasive species fee is
imposed on any other means by which invasive species can enter our State. We
believe that by assessing the present invasive species fee only on marine container
shipments, that this fee is discriminatory and results in an unfair burden and competitive
disadvantage on entities that transport freight to Hawaii via marine container shipments
as opposed to entities that transport freight to Hawaii via other modes of shipment and
other modes of transportation.

This bill proposes to establish a new invasive species fee that is assessed on the net weight of all freight brought into the State. We appreciate the general intent of this bill to broaden the scope of the present invasive species fee to include all modes by which commercial freight is transported into the State.

We would like to request your consideration to incorporate one additional amendment into this bill. As presently written, the bill requires the transportation company shipping the freight into the State to collect the fee from the person importing the freight and to forward the fee to the State. As we envision that there will be significant administrative costs incurred by the transportation shipping company in the collection and processing of this new invasive species fee, we respectfully request your consideration to incorporate appropriate amendments into this bill to authorize the use of a portion of the fees collected to compensate the transportation shipping company for the administrative costs incurred to collect and process this fee.

Thank you for the opportunity to testify.

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, Invasive species inspection fee

BILL NUMBER: HB 2843, HD-2

INTRODUCED BY: House Committee on Finance

BRIEF SUMMARY: Amends HRS section 150A-5.3 to extend the invasive species inspection fee to include air freight or any other means of transporting freight. The fee shall be paid by the person importing the freight. The transportation company shall be responsible to collect the fee and forward it to the department of transportation at the port of disembarkation. The fee shall be deposited into the pest inspection, quarantine, and eradication fund.

Repeals the \$1 fee charged for each 20-foot equivalent unit per marine commercial container and proposes a fee of 50 cents for every 1,000 pounds of freight brought into the state.

EFFECTIVE DATE: July 1, 2020

STAFF COMMENTS: The legislature by Act 9, SSLH 2007, adopted an inspection fee of \$1 for each 20-foot equivalent per maritime container for the inspection, quarantine, and eradication of invasive species in any marine commercial container shipment. This measure would replace this fee with a fee of 50 cents per 1,000 of freight imported into the state by any means

It should be remembered that since Hawaii is an island state, all goods must either be transported by air or water making the cost of transporting those goods more costly as compared to the lower 48 states where goods may be transported by ground transportation. Any additional cost imposed on the transportation of goods into the state will be passed on and be reflected in the higher prices of goods.

While the intent of funding a program to combat invasive species is commendable, the fee represents yet another tax to fund a special program as opposed to using general funds to fund such a program. Thus, in one sense, attacking this problem with a new fee is an indication that this is not a problem of high priority so as to garner general fund financing, it is also a way for lawmakers to avoid being held accountable for growing government even larger and allowing government to grow beyond its means and the ability of the taxpayer to afford government in Hawaii. Note well, that the new fee is imposed on freight coming into the state and, as such, the cost of the fee will be buried in the cost of all goods and services purchased by consumers and businesses in Hawaii. Again yet another contribution to the higher cost of living and doing business in Hawaii.

It is also curious that the often favorite target of lawmakers escapes the hit of this new fee, the visitor or for that matter residents traveling between islands. The SuperFerry controversy highlighted the invasive species issue for travelers going between islands. If there is a more accountable way to assess possible transfer of invasive species into the state or between the islands, it should be travelers into the state or between islands. With nearly 8 million visitors and residents moving between the islands the fee imposed

could be much smaller as the base would be much larger than the couple of million freight containers. Regardless, the marked propensity of the legislature to resort to user fees when programs that are of a general benefit should be funded with general funds is an indication that this program is not of a high priority to most lawmakers.

This measure should be recognized for what it is, the expansion of government funded by another “user fee.” It should be noted that the proposed fee amounts to nothing more than a replacement for general fund financing. In the long run, the consuming public will pay these fees as the cost will be passed on to those who are subject to these fees. Because the fees will be imbedded in the price of the product, the public will not hold government accountable, rather they will vent their anger at the businesses for increasing the costs. The fees proposed in this measure should be viewed no differently than a tax increase.

Digested 3/7/08

Testimony of The Nature Conservancy of Hawai'i
Supporting H.B. 2843 HD2 Relating to Invasive Species
Senate Committees on Agriculture & Hawaiian Affairs,
Energy & Environment, and Transportation & International Affairs
Monday, March 17, 2008, 1:15PM, Room 224

The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of Hawaii's native plants, animals, and ecosystems. The Conservancy has helped to protect nearly 200,000 acres of natural lands for rare and endangered native species in Hawai'i. Today, we actively manage more than 32,000 acres in 11 nature preserves on O'ahu, Maui, Hawai'i, Moloka'i, Lāna'i, and Kaua'i and also work closely with government agencies and private landowners on cooperative land and marine management projects.

The Nature Conservancy of Hawai'i strongly supports H.B. 2843 HD 2 Relating to Invasive Species.

Invasive insects, diseases, snakes, weeds, and other pests are one of the greatest threats to Hawaii's economy, natural environment, and the health and lifestyle of its people.

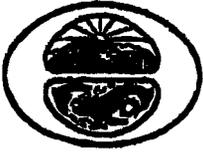
The Hawai'i Department of Agriculture (HDOA) is responsible for the inspection of domestic cargo and passengers arriving at Hawaii's ports to protect the state from introduction of unwanted plant and animal pests and diseases. The HDOA also inspects interisland shipments to prevent movement of pests between islands. Pest risk assessments conducted by the Department at ports of entry across the state have helped the Department identify high-risk pathways for pest introductions and prioritize the allocation of departmental resources. The Department has also developed a multi-faceted Biosecurity Plan to enhance its efforts with more inspectors, more efficient and effective inspection services, joint state-federal inspection facilities, and agreements with importers and producers for improved sanitary protocols before items are shipped to Hawai'i. The financial and personnel support provided by the Legislature, has been essential to implementing this plan.

Providing the HDOA with authority to assess a reasonable service charge on its invasive species inspection, quarantine and eradication activities provides an appropriate and useful source of funds to achieve the goal of enhanced prevention systems at ports of entry for the state. This bill appropriately expands the authority of the Department to assess a reasonable fee on all incoming cargo into the state, including containerized and non-containerized, and both sea and air cargo.

BOARD OF TRUSTEES

S. Haunani Apoliona Peter D. Baldwin Christopher J. Benjamin Zadoc W. Brown, Jr. Carl A. Carlson, Jr. David C. Cole Samuel A. Cooke
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Bill D. Mills Wayne Minami Michael T. Pfeffer H. Monty Richards Jean E. Rolles Scott Rolles James Romig Eric Yeaman

Fax: 596-6659



Conservation Council for Hawai'i

**Testimony Submitted to the Senate Committee on Agriculture and Hawaiian Affairs,
Senate Committee on Energy and Environment,
and Senate Committee on Transportation and International Affairs**

**Hearing: Monday, March 17, 2008
1:15 pm
Room 224**

Support for HB 2843 HD 2 Relating to Invasive Species

Aloha. The Conservation Council for Hawai'i strongly supports HB 2843 HD 2, which imposes a invasive species fee for all incoming non-containerized freight into the State and adding air freight to the inspection fee provision. Currently, only containerized marine shipments are assessed a \$1 fee per 20-foot container.

We recommend that the fee be increased from \$1 to \$10. The \$1 fee is not enough to provide adequate inspections at our ports of entry in order to keep invasive species from entering Hawai'i. Raising the fee is essential to an effective inspection program.

Mahalo nui loa for the opportunity to testify.

Sincerely,
Marjorie Ziegler
Marjorie Ziegler



Working Today for the Nature of Tomorrow!

**Telephone/Fax 808.693.0255 • email: info@conservehi.org • web: www.conservehi.org
P.O. Box 2923 • Honolulu, HI 96802 • Office: 250 Ward Ave., Suite 212 • Honolulu, HI 96814**

Hawai'i Affiliate of the National Wildlife Federation

President: Julie Lelaoha • Vice-President: Nelson Ho • Secretary/Treasurer: Kim Ramoa • Directors: Fred Kraus, Ph.D. • Douglas Lamerson, George Robertson • Claire Shimabukuro • Helene Takemoto • Meshul Waite • Executive Director: Marjorie Ziegler



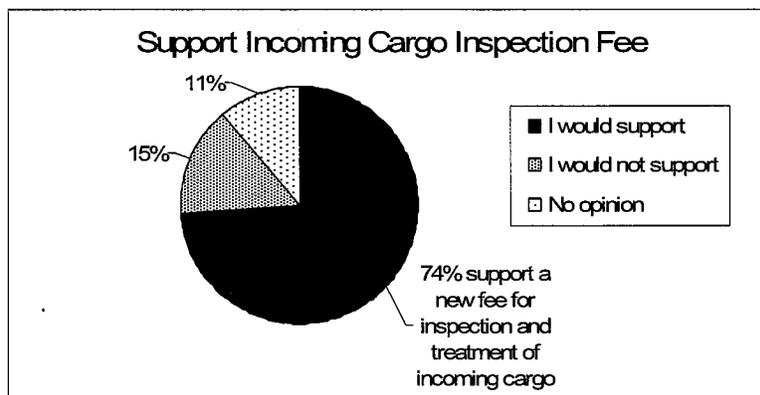
The Senate
Committee on Agriculture and Hawaiian Affairs
Committee on Energy and Environment
Committee on Transportation and International Affairs
Monday, March 17, 2008
1:15 p.m., Conference Room 224
State Capitol

Testimony in Support of HB 2843, HD2

Aloha Chairs Tokuda, Menor, and English, Vice Chairs, and Members of the Committees, The Coordinating Group on Alien Pest Species (CGAPS) **supports HB 2843, HD2, Relating to Invasive Species.**

In February 2007, QMark Research & Polling conducted a statewide public awareness survey via telephone on behalf of CGAPS in an effort to gauge public awareness of invasive species issues and public support for better protection.

One of the questions revealed that 74% of residents support a fee for inspection and quarantine services so that funding for these services can keep up with the rising amount of cargo entering Hawai'i.

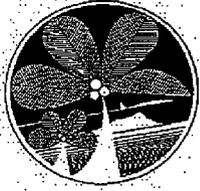


The margin of error for a sample of this size (n=500) is +/- 4.38 percentage-points with a 95% confidence level.

HB 2843, HD2 would expand the inspection fee to be applied to all incoming cargo, not just incoming 20ft. marine container cargo. HDOA's budget for inspection and quarantine actions needs to be commensurate with the amount of cargo coming in every day, every year, regardless of the ups and downs of the State budget. CGAPS respectfully requests your support of HB 2843, HD2. Mahalo.

CGAPS--Coordinating Group on Alien Pest Species
Ph: (808) 722-0995

AIRLINES COMMITTEE OF HAWAII



Honolulu International Airport
300 Rodgers Blvd., #62
Honolulu, Hawaii 96819-1832
Phone (808) 838-0011
Fax (808) 838-0231

**AIRLINES COMMITTEE OF HAWAII
TESTIMONY SUBMITTED BEFORE THE SENATE
COMMITTEES ON AGRICULTURE AND HAWAIIAN AFFAIRS,
ENERGY AND ENVIRONMENT &
TRANSPORTATION AND INTERNATIONAL AFFAIRS
HAWAII STATE CAPITOL ROOM 224; 1:15 P.M.**

March 17, 2008

The Honorable Jill Tokuda
Chair, Senate Agriculture and Hawaiian Affairs Committee

The Honorable Ron Menor
Chair, Senate Energy and Environment Committee

The Honorable J. Kalani English
Chair, Senate Transportation and International Affairs Committee

Re: HB 2843 HD2 – Relating to Invasive Species

Chairs Tokuda, Menor and English and Members of the Committees:

The Airlines Committee of Hawaii* (ACH), which is made up of the signatory air carriers that underwrite the Hawaii state airport system, opposes HB 2843 HD2.

We have serious concerns with regard to practical as well as legal issues with this bill and urge you to hold it. HB 2843 HD2 would require commercial airlines and air freight carriers to collect a fee from persons who import any foreign or domestic freight into the State of Hawaii. We believe it would be more appropriate for the State Department of Agriculture to collect this fee.

As written, the legislation would cover all commercial air freight, including Fedex and UPS shipments, air cargo shipments on foreign and domestic passenger airlines, and U.S. Government shipments, including civilian, military and U.S. mail. First of all, air carriers would not be able to collect any state fees from the Federal government.

Secondly, the requirement that fees be imposed on the "net weight" of the imported freight is problematic. The airline business does not use "net weight" because packaging weight is a factor. Airlines use "gross weight" to calculate and track freight shipments. In addition, we question how the \$0.50 per thousand pound fee could be imposed. Many air freight shipments are small, and a fee of \$0.50 per thousand pounds could be less than a penny. In

short, we believe it would be nearly impossible for the airlines to collect fees based on this legislation.

Thirdly, shippers who ship freight to Hawaii from a foreign country already pay federal inspection fees, including federal Animal and Plant Health Inspection Service fees.

Finally, we understand that this type of legislation may violate Federal law that applies to foreign freight shipped to Hawaii. It could be viewed as an import fee, and states are expressly prohibited from levying import fees by the U.S. Constitution, Article I, Section 10.

Another provision in Federal law, the Anti-Head Tax (AHT) states "...a State, a political subdivision of a State, and any person that has purchased or leased an airport under section 47134 of this title may not levy or collect a tax, fee, head charge, or other charge on...the sale of air transportation... Air transportation includes the transportation of passengers or property by aircraft as a common carrier."

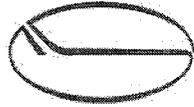
For all of these reasons, we urge you to hold this bill. The ACH welcomes the opportunity to work collaboratively with you and other stakeholders on this issue.

Thank you for the opportunity to provide testimony on HB2843 HD2.

Sincerely,

Rodrick Aoki

*ACH members are Air Canada, Air New Zealand, Air Pacific, Alaska Airlines, All Nippon Airways, Aloha Airlines, American Airlines, ATA Airlines, China Airlines, Continental Airlines, Delta Air Lines, Federal Express, go!, Hawaiian Airlines, Island Air, Japan Airlines, Korean Air, Northwest Airlines, Philippine Airlines, Qantas Airways, United Airlines, United Parcel Service, US Airways, and Westjet.



AIR TRANSPORT ASSOCIATION

DAVID A. BERG, ESQ.

Vice President & General Counsel

202-626-4234

dberg@airlines.org

March 10, 2008

The Honorable Ron Menor
Chairman, Senate Energy and Environment Committee
Hawaii State Capitol, Room 208
415 South Beretania Street
Honolulu, HI 96813

The Honorable J. Kalani English
Chairman, Senate Transportation and International Affairs Committee
Hawaii State Capitol, Room 205
415 South Beretania Street
Honolulu, HI 96813

Re: HB 2843 - Inspection, Quarantine, and Eradication Service Fee and Charge

Dear Chairmen Menor and English:

I write on behalf of the member airlines of the Air Transport Association of America, Inc.¹ to express our concern about HB 2843 that would impose a fee on any air freight for inspection, quarantine, and eradication of invasive species. For practical and legal reasons, we urge your Committees to reject this bill.

HB 2843 would require freight carriers, including aviation and marine, to collect a fee from a person importing any foreign or domestic freight into the State of Hawaii. The fee would be used to fund state inspection, quarantine, and eradication of invasive species in Hawaii. The fee is to be assessed at \$.50 for every one thousand pounds net weight of freight brought into the state.

¹ ATA airline members are ABX Air, Inc., Alaska Airlines, Inc., Aloha Airlines, American Airlines, Inc., ASTAR Air Cargo, Inc., Atlas Air, Inc., Continental Airlines, Inc., Delta Air Lines, Inc., Evergreen International Airlines, Inc., Federal Express Corporation, Hawaiian Airlines, JetBlue Airways Corp., Midwest Airlines, Inc., Northwest Airlines, Inc., Southwest Airlines Co., United Airlines, Inc., UPS Airlines, US Airways, Inc.; ATA Airline Associate Members are: Air Canada, Air Jamaica Ltd., and Mexicana.

Several items in the bill are unclear, which could have significant impact both on the air carrier industry and U.S. Government programs. First, because the bill would apply to “any freight,” it seemingly would cover all commercial freight, including shipments on cargo carriers such as Fedex and UPS, cargo shipments on passenger airlines, and U.S. Government shipments, including civilian, military and U.S. mail. We assume that the U.S. Government’s position would be that air carriers could not collect from the federal government a state levy on U.S. Government shipments. Second, the bill imposes fees based on the “net weight” of the imported freight, which may be an accurate measure for marine carriers; however, air carriers do not track “net weight” because of the varying packaging that could be used to send freight. Air carriers use gross weight to track freight. Therefore, air carrier assessment of the fee and compliance with the statute as drafted would be impossible. Third, individuals that import freight into Hawaii from a foreign country already pay federal inspection fees. For example, the Department of Homeland Security (DHS) currently collects federal Animal and Plant Health Inspection Service fees. It is unclear what authority or role the state inspection service has beyond DHS services. Fourth, it is not clear from the bill how the \$.50 per thousand pound fee was calculated or how it would be administered. For example, a five-pound package sent through Fedex or UPS to an individual in Hawaii would incur a fee of less than \$.01; it is unclear how an air carrier would collect and forward that fee from an importer.

In addition to these practical factors, creating this fee in Hawaii would violate Federal law. First, because the law applies to foreign freight shipped to Hawaii, the law would impose an import fee. As you are aware, states are prohibited from levying import fees by the U.S. Constitution, Article I, Section 10.²

Second, the proposed legislation would be prohibited by the Anti-Head Tax (AHT), which states “...a State, a political subdivision of a State, and any person that has purchased or leased an airport under section 47134 of this title may not levy or collect a tax, fee, head charge, or other charge on...the sale of air transportation...”³ Air transportation includes the transportation of passengers or property by aircraft as a common carrier.⁴ The inspection fee would require air carriers to assess the amount an importer owes based on the freight net weight, collect the fee, and forward the fee to the state.

Congress intended the AHT to prevent the undue burden on interstate commerce and the economic harm on airlines, passengers and shippers that would be the natural result if state and local governments were to raise revenues through commercial aviation. Only under certain enumerated exceptions to the statute may a state and local authorities impose and collect such taxes and fees. Given the fee is assessed and collected as a result of an air carrier’s sale of air transportation to a customer, providing transportation of property by aircraft as a common

²U.S. Constitution, Article I, Section 10 states “No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it’s inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.” There is no indication that Congress has granted the State of Hawaii authority to collect these fees.

³ 49 U.S.C. § 40116(b).

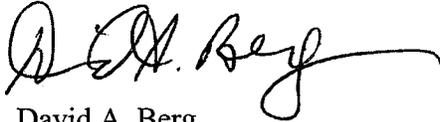
⁴ See definitions of “air transportation” and “interstate air transportation” 49 USC § 40101(a)(5), (a)(25).

Chairs Menor and English
March 10, 2008
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carrier, the statute is prohibited. Moreover, the fee is also prohibited because it would cover “any freight...brought into [Hawaii]...” resulting in an undue burden and does not meet one of the enumerated exceptions under the AHT.

Given the statute implicates several significant practical and legal hurdles, we urge your committees to reject this bill. We would be pleased to meet with you at your convenience to discuss this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "D.A. Berg", with a long, sweeping horizontal stroke extending to the right.

David A. Berg

cc: Energy and Environment Committee
Transportation and International Affairs Committee

**THE UNIVERSITY OF HAWAII ENVIRONMENTAL CENTER IS
PLEASED TO SUBMIT THIS TESTIMONY IN ACCORDANCE
WITH ACT 132 OF 1970 WHICH CREATED THE CENTER.
AUTHORS ARE MEMBERS OF THE UNIVERSITY COMMUNITY.**

RL: 2191

HB 2843 HD2
RELATING TO INVASIVE SPECIES

Senate Committee on Agriculture and Hawaiian Affairs
Senate Committee on Energy and Environment
Senate Committee on Transportation and International Affairs
Joint Public Hearing – March 17, 2008
1:15 p.m., State Capitol, Conference Room 224

By
Peter Rappa, Environmental Center

HB 2843 HD2 expands the items subject to the inspection, quarantine, and eradication service fee to include any freight brought into the state and requires the inspection fee to be assessed based on net weight of imported freight. We emphasize that our testimony on this measure does not represent an official position of the University of Hawaii.

The Environmental Center supports the intent of this bill. Invasive species represent the single biggest threat to Hawaii's economy and natural environment. Pests have already caused millions of dollars in crop losses, the extinction of native species, the destruction of native forests, and the spread of disease. Many more harmful pests, however, currently threaten to invade Hawaii and wreak further damage. Alien species have had a tremendous effect on Hawaii's unique flora and fauna. Due to its isolation, Hawaii originally had thousands of unique species found nowhere else on Earth. It has, however, suffered the highest rates of extinction of any area in the United States and one of the highest rates anywhere in the world, with hundreds or possibly thousands of unique species already extinct. The primary agent of this remarkable loss of native biodiversity has been the massive introduction by humans of alien species to the Hawaiian Islands.

This bill does two things that will help the state's efforts to combat invasive species. It will raise the inspection fee, hence providing more funding for the effort to interdict invasive species such as the brown tree snake that has decimated Guam's bird populations. This increase will bring the funding more in line with the true cost of keeping unwanted species out of Hawaii. An additional important feature of this bill is the application of the container inspection program to air commercial containers. Formerly, the inspection program applied only to marine commercial containers.

Thank you for the opportunity to comment on this bill.

testimony

From: Claire.S.Kodama@hawaii.gov
Sent: Friday, March 14, 2008 4:30 PM
To: Senatetestimony
Cc: Michael.S.Yoshinaga@hawaii.gov
Subject: Testimony on HB 2843, HD2
Attachments: HB2843HD2_LNR_03-17-08_AHW-ENE-TIA.doc

Attached is testimony on HB 2843, HD2 - Relating to Invasive Species to be heard before the joint Senate Committees on Agriculture and Hawaiian Affairs; Energy and Environment; and Transportation and International Affairs on Monday, March 17, 2008, 1:15 p.m. in Conference Room 224.

Should you have any questions, please contact me. Thank you.

Claire Kodama, Secretary
Office of the Deputy Chairperson
Department of Land and Natural Resources
1151 Punchbowl Street, Suite 130
Honolulu, Hawaii 96813
Phone: 808-587-0403
Fax: 808-587-0390