

## AIRLINES COMMITTEE OF HAWAII



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

February 27, 2009

Honorable Marcus Oshiro, Chair  
Honorable Marilyn Lee, Vice Chair  
House Committee on Finance

Re: HB 1433 HD1, Relating to Invasive Species – Support intent with Amendments  
Finance Agenda #1, Friday, February 27, 2009, Conference Room 308, 10 AM

Aloha Chair Oshiro, Vice Chair Lee, and Committee Members:

**The Airlines Committee of Hawaii\*, which is made up of 20 signatory air carriers that underwrite the Hawaii State Airport System, supports the intent of HB 1433 HD1, Relating to Invasive Species, and asks that the committee consider inserting language in the bill requiring the Hawaii Department of Agriculture to promulgate administrative rules, pursuant to Ch. 91, Hawaii Revised Statutes, to implement the inspection, quarantine and eradication fee (“fee”) before the penalties and fines proposed in this bill are levied.**

The Airlines Committee of Hawaii supports the intent of the fee and recognizes that preventing the introduction and spread of invasive species is critical to protecting Hawaii’s environment, agricultural industry and economy. However, we believe that Act 3 (Special Session 2008) currently lacks clear administrative rules to collect the fee. Previously, under the Container Fee Act passed in a 2007 Special Session, the Hawaii Department of Agriculture (“HDOA”) promulgated rules in April of 2008 to collect the fee from containerized maritime freight imported into the State. Since the passage of Act 3, no such rules have been formed.

In advance of the passage of Act 3, the Airlines Committee of Hawaii requested that the Hawaii Department of Agriculture (“HDOA”) convene an ad-hoc group of stakeholders, including air cargo carriers, concerns and to make recommendations for a smooth implementation of this new fee. We also asked the HDOA to provide comprehensive written guidelines to transportation companies and freight consolidators to provide information about the department’s expectations for establishing a fee collection system and to address several critical questions about this inspection fee:

1. What is the time frame for the HDOA to establish and implement this new inspection fee? Should we assume a similar pattern for implementing the fee authorizing collection for the \$1 per 20-foot equivalent container fee in July 2007? Although this fee was established in July 2007, the collection of that fee commenced sometime in April 2008.

2. Does HDOA intend to convene a codification working group to come up with a process to establish guidelines for this new fee? If such, who will be invited to participate in this group?
3. How will previous plans to cut back hours of inspection service be impacted by the addition of a new agricultural inspection fee?
4. Can we expect to see enhancements to the current level of service? For example, does HDOA intend to go forward with the implementation of a voluntarily manifest program as discussed earlier this year?
5. What other changes should we expect with the implementation of this fee?
6. Will this inspection fee apply to all freight?
7. Will there be a standard code established for air cargo carriers and consolidators to collect the inspection fee?
8. Are postal services exempt? If so, are similar courtesies being extended to exempt other parties?
9. How does this fee apply to Comat and over-the-counter service for air cargo carriers? If this type of service is exempt from collecting a fee, does that principle still apply if an item is over 1,000 pounds?
10. If a cargo item weighs approximately 2,500 pounds, must a fractional cost be assessed for the fractional weight?
11. If cargo is transiting and not terminating in Hawaii, but does require state agricultural inspection, how will HDOA treat transportation vendors in this situation? Will the fee be exempt because cargo is not terminating in Hawaii? Or will the fee be charged since the transiting goods require state agricultural inspection?
12. How will HDOA determine which entity is responsible for collecting the inspection fee? For example, if an air cargo shipment originates in Sweden traveling on a Lufthansa jet to Narita, where it is transferred onto a Japan Air Lines jet to Honolulu, and then moved onto a Hawaiian Air Cargo jet for final delivery in a neighbor island? If an air cargo consolidator is presented a similar situation for managing the shipment, how will HDOA recognize the role of the freight consolidator?
13. Are any transportation companies or consolidators adding a handling or administrative fee for collecting the inspection fee?
14. Will HDOA establish guidelines and timeframes of how a transportation company should collect a fee from the sender and remit the fee to the department? To which division or office within HDOA should a remittance be sent?

Part of the HDOA's reply to our request is the following:

1. Act 3 provides for the fee to be "computed on the basis of 50 cents for every 1,000 pounds of freight brought into our state, or part thereof" (emphasis added). Thus, freight weighing less than 1,000 pounds would be assessed \$.50, the minimum fee, and freight weighing 1,001 pounds would be assessed \$1.00.
2. It's our understanding that cargo transiting the State and not terminating in Hawaii is not subject to agricultural inspection and not subject to the Act 3 fee. However, HDOA inspectors do inspect and monitor transiting ships of high risk items, such as bees from New Zealand or Australia (suspect for the varroa mite), to assure no escape of the bee cargo is removed from the aircraft to an open cargo area reloading on another aircraft. HDOA absorbs the costs for such inspections.
3. Under Act 3, the entity responsible for collecting the fee is the entity that brings the freight into the State. Air freight consolidators and transportation companies are free to work out their own financial arrangements if they feel they need to make adjustments because of the fee. These are matters outside the HDOA's jurisdiction.

4. Act 3 doesn't authorize HDOA to specify a timeframe for remittance of the collected fee. The responsible transportation company should please send remittance to the Hawaii Department of Agriculture, c/o Plant Quarantine Branch, 1849 Auiki Street, Honolulu, HI 96819. A transmittal letter indicating the period covered by the remittance and the total amount submitted will be appreciated.

Clearly, not all of the concerns regarding the fee have been addressed. Before we begin assessing fines and penalties to freight importers, we ask the State to establish comprehensive written guides through the Hawaii Administrative Rules ("HAR") process, in order to provide all transportation companies freight forwarders with clarity on how this fee will be administered.

The HDOA has a number of Administrative Rules in place under Title 4 of the HAR. In order to promulgate rules to implement the fee, it would be helpful to provide the HDOA with clear legislative authority to do so. These rules can be expanded to provide guidelines for administering penalties and fines.

The Airlines Committee of Hawaii supports the intent of the fee, but we need to address some of the outstanding liability issues we face and have expressed to the legislature and to the administration and we feel that having clear rules in place allows us to accomplish this task.

The Airlines Committee of Hawaii carriers must follow strict federal guidelines and are not subject to the same federal laws as maritime carriers. Member carriers are publicly traded companies that have a fiduciary responsibility to their stockholders and regulators. Therefore, having such administrative rules in place is necessary so that the fee can be legally administered by air transportation carriers.

Again, the Airlines Committee of Hawaii recognizes that preventing the introduction and spread of invasive species is critical to protecting Hawaii's environment, agricultural industry and economy. We do support the intent of the fee, but would like to have a clearly written and comprehensive rules process in place to address the liabilities we see outstanding in the law.

For these reasons, we respectfully ask that the committee consider asking the HDOA to promulgate comprehensive written administrative rules to implement the inspection, quarantine and eradication fee and to ensure that fees, penalties, and fines are not applied retroactively until such written administrative rules are in place.

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

TESTIMONY OF KEONI WAGNER ON BEHALF OF HAWAIIAN AIRLINES  
HB 1433, HD1, RELATING TO INVASIVE SPECIES – SUPPORT WITH AMENDMENTS

February 27, 2009

Chair Oshiro, Vice Chair Lee, and Members of the House Committee on Finance:

My name is Keoni Wagner and I am the Vice President of Public Affairs for Hawaiian Airlines speaking on behalf of Hawaiian in support of the intent of HB 1433 HD1 and requesting an amendment.

Hawaiian places high value on our natural environment in Hawaii and we favor efforts to protect it from harmful invasive species. We also recognize the need for an inspection, quarantine and eradication fee and we intend to comply fully with the new fee.

However, the complexity of applying the fee to airline operations, along with the requirements of federal regulations governing airlines and publicly traded companies, have made collection and reporting of the fee problematic without uniform guidelines provided by the Hawaii Department of Agriculture (“HDOA”).

Therefore, we would request that the committee considers an amendment that would require the HDOA to establish administrative rules to efficiently and uniformly administer the fee before the penalties and fines proposed in this bill go into effect.

For these reasons, we respectfully ask that the committee consider deferring decision on this bill until the HDOA promulgates comprehensive written rules to implement the inspection, quarantine and eradication fee.

Thank you for the opportunity to comment on this measure.