

LINDA LINGLE
Governor



SANDRA LEE KUNIMOTO
Chairperson, Board of Agriculture

DUANE K. OKAMOTO
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
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TESTIMONY OF SANDRA LEE KUNIMOTO
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON AGRICULTURE
FRIDAY, FEBRUARY 5, 2010
9:00 A.M.
ROOM 312

HOUSE BILL NO. 2500
RELATING TO THE ENVIRONMENT

Chairperson Tsuji and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 2500. The purpose of this bill is 1) to set a penalty for failure to pay or remit the freight inspection service fee; 2) to establish private cause of action to enforce the provisions of chapter 150A, Hawaii Revised Statutes (HRS); and 3) to exempt liquid bulk freight and cement bulk freight from the pest inspection, quarantine, and eradication service fee and charge.

The department has one major concern which we would like to be addressed but is generally supportive of this bill.

When Act 3 passed in the 2008 special session, it broadened the imposition of a fee for the inspection, quarantine, and eradication of invasive species contained in any freight to include not only commercial container shipments, but air freight, or any other means of transporting freight, whether foreign or domestic, that is brought into the State. However, the 2008 legislation did not provide for the enforceability of collecting these fees from the person responsible for paying the freight charges, nor did it address the collection of said fees to the transportation company and the failure by the transportation company to forward them to the department. By providing for a penalty for failure to pay or remit the service fee as proposed in this bill, it will instill accountability in the collection and remittance of said fees to the department. Therefore, the Department supports this portion of the bill but suggests that this language be incorporated into H.B. 2294.

House Bill 2500 proposes to provide for a private cause of action to enforce the provisions of chapter 150A, Hawaii Revised Statutes, and allows for the award of attorney's fees and costs to plaintiff. The Department opposes this portion of the bill. This provision would expose the department of agriculture to lawsuits based on any disagreement on how the department is handling its duties and obligations under chapter 150A. Especially with the financial crisis facing the state which requires the prioritization of the department's resources, people may not be satisfied with the manner in which the department is handling its many obligations under the chapter. In addition, the Department feels that any private litigation as authorized under this new section may pose additional burdens on the department in the form of personnel resources taken away from inspection needs to research, compile, and photocopy court-required records and documents. With the department's recent budget reduction, which has resulted in a reduction in force and furlough of personnel, the main mission in preventing the introduction of invasive species will be further impacted. Accordingly, the department advises that this provision be deleted from House Bill 2500.

Under Section 2 of this measure, the department agrees with the proposed definitions as they pertain to dry or liquid bulk freight that is unpackaged, homogenous, and without mark or count, that are usually free-flowing and bought and sold by weight or volume. As proposed in this bill, the department is supportive of the exemption from the fee for any liquid bulk freight or cement bulk freight; however, the department would like to state for the record that although the afore-mentioned bulk freight may pose a very low-risk for invasive species entry, the surface vessel transporting these items may pose as a vector of invasive species, such as mosquitoes, rodents, and other human-related disease pathogens, and therefore, the Department would like to clearly state that although exempted from the fee by this measure, the Department still maintains the authority to inspect exempted commodities.



Hawaii Farm Bureau
F E D E R A T I O N

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TESTIMONY

HB 2500 RELATING TO THE ENVIRONMENT

Chair Tsuji and Members of the Committee

HFBBF on behalf of our member farm and ranch families and organizations **supports** the penalties for failure to remit payment for inspection services however **opposes** the establishment of private cause of action to enforce chapter 150.

HFBBF believes that the protection of Hawaii from invasive species requires sound technical knowledge along with a network of State and Federal agencies that can collaborate in the regulatory and information arena. We also believe control of invasive species cannot just be from an environmental point of view but must also pragmatically look at impacts on agriculture in the islands. HDOA has a history of balancing these two arenas. Without agriculture, Hawaii cannot achieve increase self sufficiency and without environmental stewardship, agriculture cannot happen. Therefore it is imperative for the success of agriculture that we also be good stewards of the land. As such, it is reasonable that the responsibility of invasive species management remain within the Department of Agriculture. The Biosecurity Plan developed by the department is an example of long range initiatives that are pragmatic and inclusive of taking care of Hawaii for future generations.

There have been many bills introduced this session on this matter. We respectfully urge that this bill be held and support of HB 2294 including the penalty section from this bill.

Thank you.



HAWAII FOOD INDUSTRY ASSOCIATION (HFIA)

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February 5, 2010 @ 9:00 a.m. in CR 312

To House Committee on Agriculture
Rep. Cliff Tsuji, Chair
Rep. Jessica Wooley, Vice Chair

By: Richard C. Botti, President
Lauren Zirbel, Government Relations

Re: HB 2500 RELATING TO THE ENVIRONMENT

Chairs & Committee Members:

We support SECTION 1 of HB 2500, while we oppose SECTION 2 & SECTION 3 of HB 2500.

Sections 2 and 3 propose establishing exemptions that may be arbitrary in that in that we have requested exemptions for other commodities that were not considered.

Prior to creating exemptions, we need a total review of all products being shipped into the state to create a category of risk factor. Under current law when it comes to inspections, there is a low priority and a high priority list, yet when it comes to the fee assessment, one size fits all, in essence making this a tax.

We agree with the proposal that a container of cement should not be paying for inspections for a load of Christmas trees. While a container of sand may have very little risk, so does a frozen food container, or a container of automotive parts from the manufacturer. Yet, one proposes an exemption, while exemptions for the others are not under consideration.

With information based on risk, we can come up with a sliding scale, where a high risk product pays a higher fee, and a little or no risk item pays a lower fee. We don't believe anyone should get by with a free ride, but there should be a nexus between risk and fee.

The Energy Values Of Different Materials When Incinerated*

Material	**BTU per pound
Plastics	11,000 - 20,000
Rubber	10,900
Newspaper	8,000
Corrugated Boxes (paper)	7,000
Yard Wastes	3,000
Food Wastes	2,600
Average for MSW	4,500 - 4,800

HB 2500
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**HB 2500
RELATING TO THE ENVIRONMENT**

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

FEBRUARY 5, 2010

Chair Tsuji and Members of the House Committee on Agriculture:

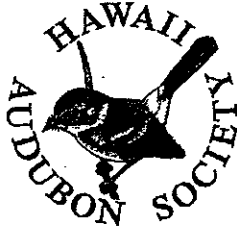
I am Paul Oshiro, testifying on behalf of Alexander & Baldwin, Inc. (A&B) and Matson Navigation Company, Inc. (a subsidiary of A&B) on HB 2500, "A BILL FOR AN ACT RELATING TO THE ENVIRONMENT."

In 2008, amendments were enacted to broaden the scope of the invasive species user fee from one that assessed fees only on freight brought into Hawaii by maritime containers to one that assessed fees on all modes by which commercial freight is brought into the State, including air and maritime containerized and non-containerized freight. We understand that at present this invasive species user fee is utilized to fund the agricultural inspection and biosecurity programs, which includes invasive species inspection services for both maritime and air freight entering into the State. We support the present broad based application of the invasive species user fee that requires all shippers to pay for these inspection services through the payment of this fee.

Matson has dedicated a considerable amount of time, effort, and expense to implement the assessment, collection, and disbursement of this new fee by the effective date of August 1, 2008. We were successful in starting up the collection of this new fee by the effective date and have since been diligently proceeding with its implementation.

This bill establishes fines for a transportation company who fails to bill the person responsible for paying the freight charges and for a transportation company who fails to remit the invasive species user fees collected to the State. Matson is very much aware of the importance of our role in the billing, collection, and the remittance to the State for the invasive species user fee and we have set as a priority our compliance with these statutory provisions. While Matson supports the general intent of this bill to enhance and strengthen the enforcement of the invasive species user fee, we do have a concern regarding the level of the fines as included in the present draft of this bill. We would sincerely appreciate your consideration to ensure that these fines are appropriate for the violations to which they are imposed, in particular for entities who exhibit a concerted effort to comply with these statutory provisions in a timely manner.

Thank you for the opportunity to testify.



For the Protection of Hawaii's Native Wildlife
HAWAII AUDUBON SOCIETY

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February 3, 2010

**TO: Committee on Agriculture
Representative Clift Tsuji, Chair
Representative Jessica Wooly, Vice Chair**

HEARING: February 5, 2010; 9:00 A.M., Conference Rm. 312

Re: HB2500, Relating to the Environment

Testimony in Support

Chair Tsuji, Vice Chair Wooly and members of the Committee on Agriculture. Thank you for the opportunity to submit our testimony in support of HB2500, which sets penalties for failure to pay or a remit freight inspection fee.

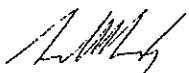
The Hawai'i Audubon Society was founded in 1939, and it is Hawai'i oldest conservation organization. The primary missions of the Society is to foster community values that result in the protection and restoration of native ecosystems and conservation of natural resources through education, science and advocacy in Hawai'i and the Pacific.

The society strongly supports measures that protect our ecosystems from invasive species. Once established, invasive plants crowd out endemic (native) plants. The sad fact is that Hawai'i has the highest number of listed threatened and endangered species in the nation. There are 394 threatened and endangered species in the State of Hawai'i, of which 294 are plants. Invasive plants have led to the extinction of 55 species of plants in the State with another 42 possibly extinct. This extinction, along with the introduction of non-endemic animals has lead to the extinction 24 bird species and is endangering another 32.

The Hawai'i Audubon Society believes that HB2500 is a good measure as it deposits the amount paid by fine into the pest inspection, quarantine, and eradication fund. **As you know in the past, funding for eradication of invasive species has been problematic and funds were often obtained from a variety of sources and agencies. Sometimes there were gaps in funding thus eradication efforts could not be sustained.** Hopefully depositing all fines into the pest inspection, quarantine, and eradication fund, will help address the problems caused by not being able to fully undertake eradication measures when needed.

In closing we would offer comment with respect to the exemption of liquid bulk freight and cement bulk freight from the fee. We acknowledge that neither has been found to be a significant pest risk pathway for invasive pests.

Thank you for the opportunity testify here today.
Sincerely,

A handwritten signature in black ink, appearing to read 'G. Massengale', with a stylized flourish at the end.

George Massengale, JD
Legislative Analyst

HB2500
Audubon Society
26F2



The House of Representatives
Committee on Agriculture
Friday, February 5, 2010
9:00 a.m., Conference Room 312
State Capitol

Testimony in Support of the Intent of HB 2500

Aloha Chair Tsuji, Vice Chair Wooley, and Members of the Committee,

The Coordinating Group on Alien Pest Species (CGAPS) **supports the intent of HB 2500, *Relating to Invasive Species***, and submits the following suggestions for consideration.

First, thank you for continuing to discuss the cargo fee and to look for ways to balance necessary invasive species prevention activities with commerce. Recent budget cuts have shown the wisdom in transitioning funding for these crucial inspection and quarantine services from dependence on unpredictable general funds towards a fee-for-service model.

HB 2500 proposes amendments to Chapter 150A, Hawaii Revised Statutes, to include a late fee of \$250 per 1,000 lbs. of unpaid cargo. Although there are 15 and 45 day deadlines specified in this bill, the bill does not include a penalty for non-payment of the original fees beyond that point, no deadlines are listed for payment of the fee, and no repercussions for non-payment of the fee.

The bill also proposes to add a private cause of action where anyone can bring suit on individuals for non-payment. Although this may provide some incentive for paying, lawsuits take time and resources which are in short supply for all. CGAPS suggests adding wording for a penalty fee that is compounded with time (beyond the 45 days already listed), based on and including the original amount owed. For example, payment must be made within a specified time period (say, 30 days), beyond which a fine of a percentage (5%?) of the original fee is owed for every month the payment is not made, in addition to the original fee.

We encourage further discussions between legislators, Hawai'i Department of Agriculture and transportation companies to find the solution that best allows this fee-for-service to function as intended, to protect Hawai'i from new invasive species. Mahalo.

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

Testimony of The Nature Conservancy of Hawai'i
Supporting the Intent of H.B. 2500 Relating to the Environment
House Committee on Agriculture
Friday, February 5, 2010, 9:00am, Rm. 312

The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of Hawai'i's native plants, animals, and ecosystems. The Conservancy has helped to protect nearly 200,000 acres of natural lands for 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. We also work closely with government agencies, private parties and communities on cooperative land and marine management projects.

The Nature Conservancy of Hawai'i supports the intent of H.B. 2500 and submits the following comments:

- **We strongly support reasonable service fees and meaningful fines for failure to pay such fees** for the Hawai'i Department of Agriculture's (HDOA) invasive species inspection, quarantine and eradication activities. This is an appropriate way to support the critical functions of the HDOA to protect our economy, environment, health, and lifestyle from the introduction and spread of pests and diseases.
- **We question the appropriateness of the private cause of action** proposed in this bill. We think that the regulatory functions, including enforcement, of the State's plant, animal and microorganism importation and quarantine laws may be best left to the HDOA as the appropriate regulatory agency.
- **We are very concerned about creating a variety of precedent setting exemptions to the service fees** collected by the HDOA for invasive species inspections. While the proposed exemptions as currently written in H.B. 2500 appear to attempt to cover cargo that is perceived as low-risk pathways for invasive species, HDOA's inspectors still may need to conduct inspections of this cargo or its means of conveyance depending on its point of origin to ensure that indeed no pests are present.

Our preference is that there are no exemptions to the inspection fee, but if the cement bulk freight and liquid bulk freight exemptions are not removed from the bill, we suggest the addition of the phrase "pre-processed, and pre-inspected" to their definitions. We should not, however, delude ourselves into thinking that pre-processing and pre-inspection, especially in foreign countries, will always be a safe substitute for inspection by our own State Department of Agriculture.

Invasive insects, diseases, snakes, weeds, and other pests are one of the greatest threats to Hawai'i'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 arriving cargo and interisland cargo shipments to protect the state from introduction and movement of unwanted plant and animal pests and diseases. The Department 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. Unfortunately, the current general fund budget conditions in the State have caused drastic—and potentially catastrophic—reductions in the Department's capability to inspect incoming cargo. The Department's inspection capacity has dropped so far below anything that can reasonably be expected to be effective that there is a good chance that we won't know what new pest has arrived in Hawai'i until there is an outbreak of some kind. This could include a human disease outbreak.

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