



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

**BEFORE THE HOUSE COMMITTEE ON FINANCE
THURSDAY, FEBRUARY 25, 2010
11:00 A.M.
ROOM 308**

**HOUSE BILL NO. 2775, H.D. 1
RELATING TO AGRICULTURE**

Chairperson Oshiro and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 2775, H.D. 1. The purpose of this bill is to recover some of the costs incurred by the department for permits for plants and animals allowed entry into the State, as well as for permits, letters of authorization, and registration for microorganisms allowed entry into the State. The department acknowledges the industry support for this bill and would like to take this opportunity to provide general comments and suggested revisions for your consideration.

Under its current administrative rules for import of animals, and microorganisms, the department charges user fees for the processing and issuance of permits, as well as for issuance of a letter of authorization for certain types of microorganisms or the registration of microbial products. However, only certain animals or microorganisms are currently assessed these user fees under Hawaii Administrative Rules Chapter 4-71 (Non-Domestic Animal Import Rules) and Chapter 4-71A (Microorganism Import Rules). This bill will expand the assessment of a user fee to include import of plants, as well as any request for a permit for plants, animals, or microorganisms that requires a rule amendment to change the listing of an organism to allow importation or possession.

The proposed user fees will provide much needed funding support for the department which currently absorbs much of the cost of evaluating import requests. Our decision to issue a permit is based upon available information on the organism requested for import, its intended use, and adequate safeguards and protocols to prevent escape or theft of the permitted species. This is a time consuming, labor intensive effort which industry and academia relies on to obtain research grants, patents, and diagnostic tools essential for public health and safety.

The department recognizes that this bill's requirement that the user fees collected shall be deposited into the pest inspection, quarantine, and eradication fund will strengthen the department's ability to (1) facilitate the processing and issuance of permits; (2) conduct post-entry monitoring activities; (3) provide for training and workshops, including educational materials and equipment; and (4) carry out other purposes deemed necessary to accomplish departmental goals with regard to the processing and issuance of permits, letters of authorization, or registration.

The department offers a number of revisions to the bill to: (1) reflect the need to preserve the department's discretion regarding the number of shipments allowed for certain types of imports; (2) clarify that the user fee at subsection 150A-___ (c)(9) will be applicable to a permit that requires a rule amendment to change the listing of an organism to either allow importation or possession of the organism or otherwise accommodate the permit request; (3) provide for waiver of user fees for not-for-profit organizations, universities, schools or government agencies; and (4) provide for the transfer of any moneys in the permit revolving fund under §150A-6.7, Hawaii Revised Statutes, which is proposed for repeal at Section 4, to the pest inspection, quarantine, and eradication fund under §150A-4.5, Hawaii Revised Statutes, consistent with Section 2's requirement regarding deposit of user fees to be established.

As to the first revision offered above, the department recommends that, in the proposed new subsections at Section 2, pertaining to permits for multiple shipments, the phrase "unlimited shipments" be changed to "up to an unlimited number of shipments, as provided by permit." This would be added at the following: at page 4, 150A-___ (c) (2)

at line 1; 150A-__ (4) at line 6; 150A-__ (6) at line 12; and at page 5, 150A-__ (11) at line 8. This change is necessary to assure that the Department retains the discretion to limit the number of shipments to less than "unlimited" if it is deemed appropriate to do so. There may be circumstances where it is preferable to control the number of shipments allowed under a permit. Under the current language in H.D. 1, the department will only be able to issue permits for either a single shipment or an unlimited number of shipments.

As to the second revision proposed above, broader language is proposed to subsection 150A-__ (c)(9) at Section 2, under page 5, line 4, so that the user fee will apply to not only permits that require a list amendment to allow the requested organism's import, but also when a list amendment is required to accommodate the permit request in other ways, such as to accommodate an import purpose not recognized under current rules.

These proposed revisions are included in the attachment to the department's testimony identified as HD1a.

(Attachment – See next page)

A BILL FOR AN ACT

RELATING TO AGRICULTURE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that the safe introduction of plants, non-domestic animals (such as fish, birds, amphibians, and insects), microorganisms, (such as algae, bacteria, fungi, protozoa, and viruses), and soil is managed through permits, letters of authorization, and registrations issued by the department of agriculture.

The framework for permit and other approvals was developed with the concept that plants and domestic animals (e.g., cats, dogs, horses, sheep, and cattle) are generally considered desirable and that non-domestic animals (e.g., snakes, tigers, mosquitoes, and piranha) and microorganisms (pathogens) are generally considered undesirable. While mindful of the potential harm that can result from these introductions, some introductions benefit the State for purposes such as scientific research, businesses, commerce, and other important state interests.

To determine whether a plant, animal, or microorganism is safe or harmful, the department of agriculture evaluates applications based upon available information, the intended use, and the availability of adequate safeguards and protocols with respect to the plant animal or organism. The department also evaluates the reliability of the responsible individual and the risks and benefits associated with the particular introduction. The evaluation also requires a science-based risk assessment of scientific data with respect to the plant, animal, or organism in a thorough, consistent, and logical manner.

The department of agriculture has one permit specialist in each of the fields of plants, insects, land vertebrates, aquatic biota, and microorganisms. Due to the current general fund budget conditions in the state, the department has incurred drastic reductions in the inspection and permitting sections. The reinstatement of twenty-two of the plant inspection positions has postponed the termination of a portion of the permit section temporarily. However, the inspection capacity has dropped to such a low level that the permit specialists must now assume inspections in addition to their permitting duties.

The purpose of this Act is to establish fees for the processing of permits and other requests for the importation or possession of incoming plants, animals, and microorganisms into

the state to provide stable funding for permit specialists and additional resources to allow more timely processing of permits.

SECTION 2. Chapter 150A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§150A- User fees for processing requests for importation and possession; permits, letters of authorization, and registration. (a) There is imposed a fee for the processing of requests for the importation or possession of plants or animals that require a permit or for the importation or possession of microorganisms that require a permit, letter of authorization, or registration under this chapter. The fee shall be paid in full at the time of the submission of the request.

(b) The fees collected under this section shall be deposited into the pest inspection, quarantine, and eradication fund established under section 150A-4.5.

(c) The fee to process requests for importation and possession shall be as follows:

- (1) \$10 for a permit for a single shipment of restricted plants;
- (2) \$200 for a permit for up to an unlimited number of shipments of restricted plants, as provided by permit, occurring within one year of the date of issuance;

- (3) \$10 for a permit for a single shipment of conditionally approved animals;
- (4) \$125 for a permit for up to an unlimited number of shipments of conditionally approved animals, as provided by permit, occurring within one year of the date of issuance;
- (5) \$150 for a permit for a single shipment of restricted animals that require permits for both importation and possession;
- (6) \$200 for a permit for up to an unlimited number of shipments of restricted animals that require a permit for both importation and possession, as provided by permit and occurring within one year of the date of issuance;
- (7) \$700 for a special permit for an unlisted animal in an emergency or disaster situation or for conducting medical or scientific research;
- (8) \$750 for a short-term special permit for an unlisted animal for a film production, performance, or exhibition;
- (9) \$500 for a permit for plants, animals, or microorganisms that require rule amendment to change a list maintained by the Board pursuant to sections 150A-6.1, 150A-6.2, or 150A-6.3 in order to either allow

- importation or possession of the organism or otherwise
accommodate the request for import or possession;
- (10) \$300 for a permit for a single shipment of listed or
unlisted microorganisms that require permits for both
importation and possession;
- (11) \$500 for a permit for up to an unlimited number of
shipments of listed or unlisted microorganisms that
require a permit for both importation and possession,
as provided by permit, and occurring within one year of
the date of issuance or within a specified calendar
year;
- (12) \$150 for a letter of authorization for import of
unlisted microorganisms;
- (13) \$150 for an emergency permit of an unlisted
microorganism or a microorganism on the list of
restricted microorganisms in an emergency or disaster
situation;
- (14) \$150 for registration of a microbial product; and
- (15) \$150 for registration of a laboratory described in
section 150A-6.3(f)(2).

(d) Fees may be waived by the department for research by
not-for-profit organizations, universities, schools or
government agencies."

SECTION 3. Section 150A-4.5, Hawaii Revised Statutes, is
amended to read as follows:

"§150A-4.5 Pest inspection, quarantine, and eradication

fund. (a) There is established in the state treasury the pest inspection, quarantine, and eradication fund, into which shall be deposited:

- (1) Legislative appropriations for inspection, quarantine, and eradication services;
- (2) [~~Service fees,~~] Fees, charges, and penalties collected under [~~section~~] sections 150A-5.3 and 150A- ;
- (3) Federal funds received for pest inspection, quarantine, and eradication programs;
- (4) Grants and gifts;
- (5) All interest earned or accrued on moneys deposited in the fund; and
- (6) Any other moneys made available to the fund.

(b) The moneys in the pest inspection, quarantine, and eradication fund shall be expended by the department for the operation of pest inspection, quarantine, eradication, biosecurity, and monitoring programs, related facilities, and the execution of emergency remedial measures when pests are detected in the course of inspection and quarantine activities by the department. The department shall also expend money in the fund to:

- (1) Facilitate the processing and issuance of permits;
- (2) Amend lists of plants, animals, and microorganisms prohibited or allowed for import;

- (3) Conduct monitoring activities;
- (4) Train personnel and provide educational workshops, materials, and equipment; and
- (5) Accomplish any other purpose deemed necessary to carry out the purposes of part II of this chapter."

SECTION 4. Section 150A-6.7, Hawaii Revised Statutes, is repealed.

~~["§150A-6.7 Permit revolving fund. (a) There is established in the state treasury a revolving fund to be known as the permit revolving fund to be administered by the department. The permit revolving fund shall consist of:~~

- ~~(1) Legislative appropriations;~~
- ~~(2) User fees as authorized by rule;~~
- ~~(3) All interest earned on or accrued to moneys deposited in the permit revolving fund;~~
- ~~(4) Grants and gifts; and~~
- ~~(5) Any other moneys made available to the permit revolving fund from other sources.~~

~~(b) The department shall expend moneys in the permit revolving fund to:~~

- ~~(1) Facilitate the processing and issuance of permits;~~
- ~~(2) Amend lists of creatures prohibited or allowed for import;~~
- ~~(3) Comply with monitoring activities;~~

- ~~(4) Train personnel, and provide educational workshops, materials, and equipment; and~~
- ~~(5) For any other purpose deemed necessary to carry out the purposes of this part."]~~

SECTION 5. (a) The repeal of section 150A-6.7, Hawaii Revised Statutes, shall not rescind any fees authorized or imposed under this section that would have been deposited into the permit revolving fund or the microorganism import certification revolving fund. From July 1, 2010, the fees under this section shall be deposited into the pest inspection, quarantine, and eradication fund.

(b) On the effective date of this Act:

- (1) All moneys in the permit revolving fund on June 30, 2010, shall be transferred to the pest inspection, quarantine, and eradication fund;
- (2) All unpaid obligations of the permit revolving fund on June 30, 2010, shall become payable from the pest inspection, quarantine, and eradication fund; and
- (3) The permit revolving fund shall cease to exist.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2010.

Report Title:

Department of Agriculture; Plants; Animals; Microorganisms; Fee

Description:

Establishes fees for permits; letters, and the registration of plants, animals, and microorganisms allowed entry into the State. (HB2775 HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

Written Statement of
YUKA NAGASHIMA
Executive Director & CEO
High Technology Development Corporation
before the
HOUSE COMMITTEE ON FINANCE
February 25, 2010
11:00 AM
State Capitol, Conference Room 308

In consideration of
HB 2775 HD1 RELATING TO AGRICULTURE.

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

The High Technology Development Corporation (HTDC) supports the intent of HB2775 HD1 to establish fees for permits so that businesses may obtain them in a timely manner. To ensure that the assessment of these fees do indeed benefit the private sector, HTDC respectfully offers the following comments, or poses questions which may assist in further exploration of this very important issue:

1. From comments HTDC has fielded, the private sector entities do not generally object to fees for permits, especially if those fees cover expenses for the government entity to hire experts (so the decisions are based on science), and streamline the permitting process to make it more transparent and expeditious.
2. There are already fees assessed by the Dept. of Agriculture. Is legislation the best way to establish additional fees/fee structures? Would it slow down future process should the fees need to be adjusted?
3. The public deserves to know how long the permit process will take, not simply assess fees with the assumption that the process will be shorter. Should the timeframe be stated, there should be specific actions associated when deadlines are not met. (Should there be a standard fee that is relatively low, which promises x days, vs. expedited fee that promises less than x days for a higher fee?)
4. There are time limits listed in the administrative rules (e.g., Ch. 71A for restricted species). We need to make certain that this feature is not endangered, because it is the only assurance (though vague) private sector entities have to predict how long the permit process would take. One of the biggest factors the biotech companies need to take into account is the lead time for obtaining permits. This factor is so significant that it affects their ability to raise funds from potential

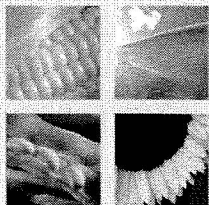
investors. Any future legislation should set the scene for the rules to be further clarified. For example, the administrative rules are currently ambiguous as to what happens when a permit is not responded to within the specified timeline; is it an automatic approval?) These types of ambiguities and lack of transparency of procedure are the fundamental factors underlying concerns the private sector has with the permitting process.

5. We understand the additional collection of the fees would enable the Dept. of Agriculture to employ a microorganism specialist who can expedite the ruling process as well as update the list of qualified species. Currently, these lists are governed by the administrative rules. Therefore, when there is an opportunity to update the qualified species list (e.g., based on a committee ruling of an unlisted species), the Department is not able to simply update the list. The subsequent applicants do not gain the benefit of the committee's work.

While the establishment of permit fees is a step in the right direction, there are missing pieces to this particular bill. In the meantime, we look forward to the affected departments, legislators and private sector entities convening a committee to address permit process reform so that any fees assessed to the businesses will oil a streamlined system rather than merely provide a band aid to meet the needs of new industries such as biotechnology to help diversify Hawaii's economy.

This testimony has not been authorized by the Administration, nor does it reflect the Administration's position. This testimony reflects the position of HTDC only.

Thank you for the opportunity to submit testimony in support.



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Growing the Future of Worldwide Agriculture in Hawaii

Testimony By: Alicia Maluafiti
HB 2775 HD1, Relating to Agriculture
The House Committee on Finance
Thursday, February 25, 2010
Room 308, 11:00 am

Position: Support

Aloha Chair Oshiro, Vice Chair Lee and members of the Committee:

My name is Alicia Maluafiti, Executive Director of the Hawaii Crop Improvement Association. HCIA is a nonprofit trade association representing the agricultural seed industry in Hawaii. Now the state's largest agricultural commodity, the seed industry contributes to the economic health and diversity of the islands by providing high quality jobs in rural communities, keeping important agricultural lands in agricultural use, and serving as responsible stewards of Hawaii's natural resources.

HCIA fully recognize the dire straits of the economic crisis and its impact on the Hawaii Department of Agriculture. We have already seen a number of bills before the legislature that attempt to minimize the unintended consequences of the furloughs and reduction in force on the agricultural industry, including the seed companies. We further understand the need of the DOA to increase – at least temporarily – their fees to ensure that they are able to effectively achieve their mission.

Although we support the need to visit all possible solutions such as fee increases, we believe it would be responsible to consider amending HB 2775 HD 1 – and other bills - to include sunset dates. If and when we begin to see a recovery in our state's economy, the legislature and the Department should revisit and justify the current fee level, and adjust those fees as necessary.

Mahalo for the opportunity to comment.

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