SENATE COMMITTEE ON
WAYS AND MEANS

February 23, 2010

Senate Bill 2159 Relating to Traffic Abstract Fee

Chair Kim and members of the Senate Committee on Ways and Means, I am Rick Tsujimura, representing State Farm Insurance Companies, a mutual company owned by its policyholders. State Farm opposes Senate Bill 2159 Relating to Traffic Abstract Fee.

The increase and structure of section 287-3 may be an unconstitutional tax. The Hawaii Supreme Court in State v. Medeiros, 89 Hawai'i 361, 973 P.2d 736 (1999), articulated the following test as to whether a fee was an unconstitutional tax.

> "…"whether the charge (1) applies to the direct beneficiary of a particular service, (2) is allocated directly to defraying the costs of providing the service, and (3) is reasonably proportionate to the benefit received.""

In the instant bill, it does not appear that the fee "applies to the direct beneficiary of a particular service, nor is it allocated directly to defraying the costs of providing the service, and is not reasonably proportionate to the benefit received" as articulated by the Supreme Court, because $8 of the $10 fee is being diverted immediately to the general fund. Clearly the increase is a revenue generating measure more appropriately described as a tax.

In the instant bill if not the current statute it is clear that the monies are not used to defray the costs of the service, but rather goes into the general fund for the use of the whole taxpaying public, which is violative of the clearly articulated principles stated in Medeiros.

Furthermore we believe that the bill should be amended to clearly fall within the ambit of the Supreme Court's decision in Medeiros. The Supreme Court in HIC v. Lingle, dealt with the issue of whether monies from a fund made up entirely of "fees" can be transferred to the general fund. The Court stated that, "**We blanch at the State's basic contention that a user or regulatory fee, if initially assessed as such, can be transferred to a general fund when the same assessment would have been invalid had it been assessed initially with the express understanding that the funds would be transferred to the general fund.**" There is no doubt that the state can impose taxes, but it cannot impose a tax disguised as a fee, especially a fee delegated to the judiciary and collected by the judiciary and paid to the general fund. Moreover in the instant case the fee is not subject to discretion of the judiciary's agency but mandated an assessment of $8 for the general fund. This language is violative of the Constitution on two levels as an unconstitutional delegation of taxing authority to the judiciary and a transfer on its face violative of the Supreme Court decision in Lingle which forbade the transfer of funds from the executive to legislative branch, and surely would forbid transferring funds from the judiciary to the legislature.

Without a doubt, the current language of section 287-3 on its face violates the decision of the Supreme Court. We would therefore request that this committee amend this measure by deleting the monies transferred to the general fund because it violates the clearly articulated decision of the Hawaii Supreme Court in HIC.

Thank you for the opportunity to present this testimony.