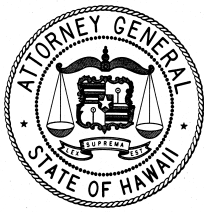




LATE

SB2632

Measure Title:	RELATING TO CARGO INSPECTIONS.
Report Title:	Department of Public Safety; Sheriff Division; Department of Transportation; Shipping Container Inspection Program; Illegal Fireworks; Explosives; Fees; Penalties; Appropriation (\$)
Description:	<p>Increases fines for violations of the fireworks control law. Authorizes the department of public safety, sheriff division, to inspect shipping containers for explosives and illegal fireworks. Requires DPS, in collaboration with DOD, DOT, and other federal and state agencies, to establish a shipping container inspection program to randomly inspect shipping containers for illegal fireworks and explosives using explosive-sniffing dogs. Requires DOT to assess a fee of \$1 on all shipping containers for FY 2016-2017 and a fee of \$2 thereafter to fund the program. Establishes the shipping container inspection program special fund. Makes an appropriation.</p>
Companion:	HB2485
Package:	None
Current Referral:	PSM/TRE, WAM
Introducer(s):	ESPERO, GALUTERIA, HARIMOTO, NISHIHARA, SHIMABUKURO, L. Thielen



TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-EIGHTH LEGISLATURE, 2016

ON THE FOLLOWING MEASURE:

S.B. NO. 2632, RELATING TO CARGO INSPECTIONS.

BEFORE THE:

SENATE COMMITTEES ON TRANSPORTATION AND ENERGY AND ON
PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

DATE: Tuesday, February 16, 2016

TIME: 1:50 p.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): WRITTEN COMMENTS ONLY. For more information, call
Richard W. Stacey, Deputy Attorney General

Chairs Inouye and Nishihara and Members of the Committees:

The Department of the Attorney General appreciates the intent of this bill, but provides comments relating to legal and constitutional concerns.

The bill addresses the problem of illegal fireworks, as set forth in the Report of the Illegal Fireworks Task Force to the Legislature for the Regular Session of 2011, prepared in accordance with Act 170, Session laws of Hawaii 2010. The bill provides that the Sheriff Division of the Department of Public Safety would "in its discretion," inspect shipping containers to "confiscate any material constituting a threat directly or indirectly to the security of life or property in Hawaii, including explosives, but excluding fireworks regulated under chapter 132D" of the Hawaii Revised Statutes. (p. 3, lines 11-17). The bill acknowledges that the Department of Public Safety would have to collaborate with the state Department of Transportation and Department of Defense, as well as federal agencies, including any of the United States armed services. In addition, the bill allows that the Hawaii National Guard may be utilized to assist in the random inspection of shipping containers. (p. 6, lines 7-9).

The Department supports the intent of the bill but notes the following concerns:

1. The bill's references to random and/or discretionary searches raise potential issues with the fourth amendment of the Constitution of the United States and article I, section 7, of the Constitution of the State of Hawaii, which forbid search and seizure without probable cause or warrants, with some exceptions. This may compromise any criminal prosecution expected to result from these searches;

2. The bill places the Sheriff Division in the harbors, which are already under the purview of the Department of Transportation, according to chapter 266, Hawaii Revised Statutes;

3. The bill states that the "section shall supersede any labor work rules or contracts that are contrary to the intent of this section" (p. 4, lines 3-4), which implicates labor laws and contracts without the input of those affected;

4. Use of the National Guard may be in violation of the Posse Comitatus Act, 18 USCA § 1385, which restricts the use of military personnel for non-federal law enforcement purposes; and

5. The bill implements far-reaching changes to the harbors, the various agencies, and the stakeholders of the cargo industry. It requires interaction with federal agencies and the United States military, yet takes effect upon approval, except for certain sections (p. 9, lines 1-3), and no later than October 1, 2016 (p. 4, lines 12-13). It also requires the adoption of administrative rules (p. 6, lines 14-15), a time frame that is not realistic in light of the many concerns presented;

We recommend more time be given to allow stakeholders to address the concerns and to suggest solutions. To that end, further work by a newly convened task force on the wording of the bill is suggested.

We respectfully ask the Committees to consider these legal and constitutional concerns.

William P. Kenoi
Mayor



Darren J. Rosario
Fire Chief

Renwick J. Victorino
Deputy Fire Chief

County of Hawai'i
HAWAII FIRE DEPARTMENT
25 Aupuni Street • Suite 2501 • Hilo, Hawai'i 96720
(808) 932-2900 • Fax (808) 932-2928

February 11, 2016

The Honorable Clarence Nishihara, Chair
Committee on Public Safety, Intergovernmental,
and Military Affairs
The Honorable Lorraine Inouye, Chair
The State Senate
State Capitol, Room 204
Honolulu, Hawaii 96813

Dear Chair Nishihara and Chair Inouye:

Subject: SB 2632 Relating to Cargo Inspections
Hearing Date: Thursday, February 11, 2016
Time/Place of Hearing: 3:00 p.m., Conference Room 229

I am Darren J. Rosario, Fire Chief of the Hawaii Fire Department of the County of Hawaii (HCFD). The HCFD support SB 2632, which proposes to increase fines for violations of the fireworks control law and to further authorize the department of public safety, sheriff's division to inspect shipping containers for explosives and illegal fireworks.

In the past 4 years of my tenure as Fire Chief, I have personally witnessed the increasing use of illegal fireworks in Hawaii County. This past year, I was in the Puna District of Hawaii island. The amount of illegal aerial fireworks being lit was the worst I have personally seen. Unfortunately, Public Safety response was not able to effectively catch those responsible in the act. Thus, enforcement measures could not be taken and therefore only adds to the perception that the risk is worth it. The use of illegal fireworks provides an increased public safety risk in the form of Health safety due to respiratory injuries and traumatic injuries as well as the destruction of public and private property due to fire. Public safety and property protection are priorities of the HCFD.

We, therefore, urge your support on the passage of S.B. 2632. Should you have questions, please contact me at 808-932-2903 or darren.rosario@hawaiicounty.gov

Very Truly Yours,

DARREN J. ROSARIO
Fire Chief



Bernard P. Carvalho, Jr.
Mayor



Robert F. Westerman
Fire Chief

Nadine K. Nakamura
Managing Director

KAUA'I FIRE DEPARTMENT
County of Kaua'i, State of Hawai'i
4444 Rice Street, Suite 315, Līhu'e, Hawai'i 96766
TEL (808) 241-4980 FAX (808) 241-6508

February 5, 2016

The Honorable Lorraine Inouye, Chair
Committee on Transportation and Energy
The State Senate,
State Capitol, Room 203
Honolulu, Hawaii 96813

The Honorable Clarence Nishihara, Chair
Committee on Public Safety Intergovernmental
and Military Affairs
The State Senate
State Capitol, Room 204
Honolulu, Hawaii 96813

Dear Chairs Inouye and Nishihara:

Subject: Senate Bill (SB) 2632 Relating to Cargo Inspections

I am Robert F. Westerman, Vice Chair of the Hawaii State Fire Council (SFC) and Fire Chief of the Kauai Fire Department (KFD). The SFC and the KFD support SB 2632, which proposes to curb transportation of illegal fireworks into the State by establishing a shipping container inspection program. It proposes an appropriation into a special fund for costs to establish and administer the container inspection program.

In recent years it is widely apparent of the increase in illegal aerial fireworks in Hawaii. It is also widely known that a large volume of illegal fireworks are being brought into the State through the ports. The SFC and KFD supports any means to reduce the importation of illegal fireworks being brought into the State.

The Honorable Lorraine Inouye, Chair
The Honorable Clarence Nishihara, Chair
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February 5, 2016

In 2011, Act 170 established a task force to investigate and address illegal fireworks problem in the State of Hawaii. The report recommended increased fees and fines and random inspections.

Life, safety, and property protection are priorities of the SFC and KFD. We, therefore, urge your support on the passage of SB 2632.

Please call me at (808) 241-4975 should you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink that reads "Robert Westerman". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

Robert Westerman
Fire Chief, County of Kaua'i

RFW/eld