

ACT 173

S.B. NO. 2523

A Bill for an Act Relating to Agricultural Inspections.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to address the issue of agriculture in Hawaii. More specifically, this Act includes the following major amendments:

- (1) Exempts aggregate bulk freight, cement bulk freight, coal bulk freight, and liquid bulk freight from the pest inspection, quarantine, and eradication service fee;
- (2) Imposes fines for failure to timely pay, bill, or remit the past inspection, quarantine, and eradication service fee;
- (3) Clarifies and expands the purposes for which funds may be expended from the pest inspection, quarantine, and eradication fund;
- (4) Requires the deposit of fees and fines relating to agricultural inspections into the pest inspection, quarantine, and eradication fund;
- (5) Repeals the permit revolving fund and microorganism import certification revolving fund and transfers moneys in those funds into the pest inspection, quarantine, and eradication fund; and
- (6) Directs the department of agriculture to adopt or amend rules to impose or increase fees under chapter 150A, and sets a fee schedule to go into effect if the department fails to do so in a timely manner.

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

“§150A- Failure to pay or remit the inspection, quarantine, and eradication service fee; fines. (a) The following fines shall be imposed for failure to pay, bill, or remit the inspection, quarantine, and eradication service fee as provided for in section 150A-5.3:

- (1) A person responsible for paying the freight charges to the transportation company who fails to pay the fee; or
- (2) A transportation company that fails to:
 - (A) Bill the fee, within fifteen days of the delivery of the freight, to the person responsible for paying the freight charges to the transportation company; or

(B) Remit the fee to the department within forty-five days of collecting the fee from the person responsible for paying the freight charges to the transportation company, shall pay a fine of two times the amount of the inspection, quarantine, and eradication service fee or \$50, whichever is higher.

(b) All fines shall be paid to the department and deposited into the pest inspection, quarantine, and eradication fund under section 150A-4.5.”

SECTION 3. Section 150A-2, Hawaii Revised Statutes, is amended by adding four new definitions to be appropriately inserted and to read:

“Aggregate bulk freight” means man-made, unpackaged, pre-processed, inspected and certified, homogenous particulate material, without mark or count, that is usually free-flowing and bought and sold by weight or volume, such as clean sand, gravel, crushed stone, slag, recycled concrete, and geosynthetic aggregates.

“Cement bulk freight” means unpackaged, homogenous cement, without mark or count, that is usually free-flowing and bought and sold by weight or volume.

“Coal bulk freight” means unpackaged, homogenous coal, without mark or count, that is usually free-flowing, bought and sold by weight or volume, and used as a fuel.

“Liquid bulk freight” means unpackaged, homogenous liquid goods, without mark or count, that are usually free-flowing and bought and sold by weight or volume, such as oil, or other complex mixture of petroleum hydrocarbons, bituminous liquids such as asphalt, gasoline, and fuel oils.”

SECTION 4. 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 biosecurity and inspection, quarantine, and eradication services;
- (2) Service fees, charges, and penalties collected under section 150A-5.3[~~]~~;
- (3) Fees imposed for services pursuant to this chapter or rules adopted under this chapter;
- (4) Fines for violations of this chapter;
- [~~(3)~~] (5) Federal funds received for biosecurity, pest inspection, control, management, quarantine, and eradication programs;
- [~~(4)~~] (6) Grants and gifts;
- [~~(5)~~] (7) All interest earned or accrued on moneys deposited in the fund; and
- [~~(6)~~] (8) 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 biosecurity and 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[~~], training of inspectors, education of the agricultural industry, permit and certificate holders, and the general public as to import requirements, and for any other purposes deemed necessary to carry out the purposes of this chapter.~~ In addition, the moneys shall be expended to facilitate the processing and

issuance of permits and microorganism import documents and for the operations, activities, and monitoring of permitted and certified plants, animals, and microorganisms.”

SECTION 5. Section 150A-5.3, Hawaii Revised Statutes, is amended to read as follows:

“§150A-5.3 Inspection, quarantine, and eradication service fee and charge.

(a) There is imposed a fee for the inspection, quarantine, and eradication of invasive species contained in any freight, including ~~[but not limited to]~~ marine commercial container shipment, air freight, or any other means of transporting freight, foreign or domestic, but not including aggregate bulk freight, cement bulk freight, coal bulk freight, or liquid bulk freight, that is brought into the ~~[State.]~~ state. The transportation company shall bill the fee to the person responsible for paying the freight charges to the transportation company within fifteen days of the delivery of the freight. The fee shall be paid by the person responsible for paying the freight charges to the transportation company~~[-, who]~~ within forty-five days of receipt of the bill. The transportation company shall collect the fee from the person responsible and forward the payment to the department at the port of disembarkation~~[-]~~ within forty-five days of receipt of the fee; provided that the transportation company shall not be liable for any fee that is not paid by the person responsible for paying the freight charges to the transportation company.

The department shall deposit the fee into the pest inspection, quarantine, and eradication fund under section 150A-4.5.

(b) The fee shall be assessed and collected on the net weight of the imported freight computed on the basis of 50 cents for every one thousand pounds of freight brought into the ~~[State.]~~ state, or part thereof.”

SECTION 6. Section 150A-21, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~§150A-21~~]]~~ Certification for shipment. The department may certify as to the pest condition or post treatment of shipments when officially required. Fees may be charged for certificates in certain instances~~[-]~~ and shall be deposited into the pest inspection, quarantine, and eradication fund.”

SECTION 7. Section 150A-23, Hawaii Revised Statutes is amended to read as follows:

“~~[[~~§150A-23~~]]~~ Nursery stock certificate. The department may issue and authorize the use of nursery stock certificates by any shipper complying with its regulation for nursery inspection. Shipments accompanied by these certificates may move to other localities within the county or to other counties without inspection at destination. Nursery stock certificates may be issued for interstate shipments. Fees may be charged for nursery certification~~[-]~~ and shall be deposited into the pest inspection, quarantine, and eradication fund. Nursery stock certificates shall not be altered or misused.

The department may revoke or suspend the right to use any nursery stock certificate which is issued to any person who fails to comply with requirements for ~~[their]~~ use of the certificate.”

SECTION 8. Section 150A-31, Hawaii Revised Statutes, is amended to read as follows:

“[H§150A-31H] Certificate for shipment. The department may certify as to the pest condition of honey bee shipments when health certificates are officially required. Fees to cover the department’s certification costs may be charged for health certificates as provided by rule[-] and shall be deposited into the pest inspection, quarantine, and eradication fund. Health certificates shall not be altered or misused.”

SECTION 9. Section 150A-42, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Fees may be assessed for the processing and issuance of a certificate and for inspections related to the certificate, as established by rule and shall be deposited into the pest inspection, quarantine, and eradication fund. Fees may vary according to the type of certification issued and the costs incurred for inspections.”

SECTION 10. Section 150A-6.7, Hawaii Revised Statutes, is repealed.

SECTION 11. Section 150A-48, Hawaii Revised Statutes, is repealed.

SECTION 12. On July 1, 2010:

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

SECTION 13: (a) Between July 1, 2010, and September 30, 2010, the department of agriculture shall adopt new or amend existing rules to impose or increase the fees authorized to be charged under chapter 150A, Hawaii Revised Statutes, without regard to the public notice and public hearing requirements of section 91-3, Hawaii Revised Statutes, the small business impact review requirements of chapter 201M, Hawaii Revised Statutes, or the limit on fee increases under section 92-28, Hawaii Revised Statutes. The department shall set the fees at amounts intended to generate, together with the inspection, quarantine, and eradication service fee, sufficient revenues to pay the operation and maintenance costs of implementing the agriculture inspection and biosecurity programs of chapter 150A, Hawaii Revised Statutes, and the central services and departmental administrative expense assessments of section 36-27 and section 36-30, Hawaii Revised Statutes.

(b) If, by September 30, 2010, the department of agriculture has not complied with subsection (a), then the fee charged for each inspection or certification conducted under authority of chapter 150A shall be as follows, effective October 1, 2010:

- (1) A fee for inspection, safeguarding, witnessing departure, witnessing treatment, or certification requiring the services of personnel beyond regular work hours, including pre-shift, post-shift, holidays, or days off shall be \$50 plus mileage reimbursement, and an additional fee shall be assessed, which shall include applicable charges for overtime wages, fixed charges for personnel services, and meals;

- (2) A fee for any inspection during regular work hours conducted away from the port or department office that is conducted pursuant to requirements for export, certification, inter-island or intra-island movement, or disposition other than release at a port of arrival, such as witnessing departure, destruction, or treatment, shall be \$50 per hour plus mileage reimbursement;
- (3) An annual fee for nursery certification shall be \$100;
- (4) A fee for follow-up inspections required to correct deficiencies found in a certification inspection or inspections to remedy out-of-state rejections shall be \$50 per hour plus mileage reimbursement;
- (5) A fee for treatment or destruction of infested commodities performed by the department's plant quarantine branch shall be \$50 per parcel;
- (6) A fee for the use of a quarantine house operated by the department's plant quarantine branch shall be \$50 per room per month; and
- (7) A storage fee of \$5 per day shall be charged for commodities stored at any department plant quarantine branch office, forty-eight hours after written notification.

The fee shall be deposited into the pest inspection, quarantine, and eradication fund.

(c) Any subsequent amendments to the rules adopted or amended pursuant to subsection (a) or the fees established under subsection (b) shall be subject to all applicable provisions of chapter 91, chapter 201M, and section 92-28, Hawaii Revised Statutes.

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 15. This Act shall take effect on July 1, 2010; provided that section 3 and the exemption in section 5 relating to aggregate bulk freight, cement bulk freight, coal bulk freight, and liquid bulk freight shall take effect retroactive to July 1, 2007.

(Approved June 23, 2010.)

Note

1. Edited pursuant to HRS §23G-16.5.