

# S .B. NO. 2955

JAN 22 2008

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## A BILL FOR AN ACT

RELATING TO AGRICULTURAL INSPECTIONS.

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

1           SECTION 1. In 2005, the legislature passed Act 64, Session  
2 Laws of Hawaii 2005 (Act 64), relating to agricultural  
3 inspections. As to the problem of invasive species (pests), Act  
4 64 declared that imported commodities that are considered high  
5 risk for pests should receive the level of attention necessary  
6 to protect Hawaii from pests, regardless of their point of  
7 origin or means of transportation. To better address the  
8 problem of invasive species, Act 64 authorized the department of  
9 agriculture to adopt rules that require shipping documents to  
10 identify specific articles. However, the current statutory  
11 language does not suffice, as the department of agriculture  
12 lacks rulemaking authority over articles not related to  
13 agriculture, such as furniture, building materials, or rocks,  
14 which, in the department's recent experience, are also known to  
15 harbor pests. Further, the department of agriculture has found  
16 the point of origin of imported articles to be highly relevant  
17 to the risk of pest entry into the State and interisland  
18 movement within the State. In order to allocate appropriate

1 inspection resources according to the risk level of the article  
2 being imported or moved interisland, the department of  
3 agriculture needs advance notice of the identification of  
4 specific articles or commodities being imported or moved  
5 interisland and their points of origin.

6 The purpose of this Act is to expand the department of  
7 agriculture's inspection and quarantine authority to reach non-  
8 agricultural materials that may harbor pests and to authorize  
9 the department of agriculture to require shipping and  
10 transportation companies to provide advance notification of the  
11 identification of specific articles, whether agricultural or  
12 non-agricultural, that are transported for entry into the State  
13 or moved interisland within the State, and of the point of  
14 origin of the articles.

15 SECTION 2. Section 150A-5, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 "§150A-5 Conditions of importation[-] or interisland  
18 movement. The importation into the State or movement from one  
19 island within the State to another island therein of any of the  
20 following articles, viz., nursery-stock, tree, shrub, herb,  
21 vine, cut-flower, cutting, graft, scion, bud, seed, leaf, root,  
22 or rhizome; nut, fruit, or vegetable; grain, cereal, or legume

1 in the natural or raw state; moss, hay, straw, dry-grass, or  
2 other forage; unmanufactured log, limb, or timber, or any other  
3 plant-growth or plant-product, unprocessed or in the raw state;  
4 soil; microorganisms; live bird, reptile, nematode, insect, or  
5 any other animal in any stage of development (that is in  
6 addition to the so-called domestic animal, the quarantine of  
7 which is provided for in chapter 142); box, vehicle, baggage, or  
8 any other container in which such articles have been transported  
9 or any packing material used in connection therewith, or any  
10 non-agricultural article capable of harboring pests, including  
11 but not limited to, rocks, building materials, or furniture,  
12 shall be made in the manner hereinafter set forth:

13 (1) Notification of arrival. ~~[Any]~~ Except as provided in  
14 paragraph (2), any person who receives for transport  
15 or brings or causes to be brought to the State or  
16 transports between islands as freight, air freight,  
17 baggage, or otherwise, for the purpose of debarkation  
18 or entry therein, or as ship's stores, any of the  
19 foregoing articles, shall, ~~[immediately upon the~~  
20 arrival thereof,] at a minimum of twenty-four hours  
21 prior to arrival thereof for a marine vessel or four  
22 hours prior to arrival thereof for an aircraft, notify

1 the department, in writing, of the arrival, giving the  
2 waybill number, container number, name and address of  
3 the consignor, name and address of the consignee or  
4 the consignee's agent in the State, marks, number of  
5 packages, description of contents of each package,  
6 country, state, or territory and locality therein of  
7 the contents' origin, port at which laden, and any  
8 other information that may be necessary to locate or  
9 identify the same, and shall hold such articles at the  
10 pier, airport, or any other place where they are first  
11 received or discharged, in such a manner that they  
12 will not spread or be likely to spread any infestation  
13 or infection of insects or diseases that may be  
14 present until inspection and examination can be made  
15 by the inspector to determine whether or not any  
16 article, or any portion thereof, is infested or  
17 infected with or contains any pest. [~~The department~~  
18 ~~may adopt rules to require identification of specific~~  
19 ~~articles on negotiable and non-negotiable warehouse~~  
20 ~~receipts, bills of lading, or other documents of title~~  
21 ~~for inspection of pests. In addition, the department~~

1 ~~shall adopt rules to designate restricted articles~~  
2 ~~that shall require:~~

3 ~~(A) A permit from the department in advance of~~  
4 ~~importation; or~~

5 ~~(B) A department letter of authorization or~~  
6 ~~registration in advance of importation.]~~

7 A department inspector may order the quarantine of, or  
8 hold for examination any freight, air freight, or  
9 baggage, transported for the purpose of debarkation or  
10 entry, or as ship's stores, when any person fails to  
11 comply with any of the above-mentioned notification  
12 requirements.

13 In addition, the department shall adopt rules to  
14 designate restricted articles that shall require a  
15 permit from the department in advance of importation  
16 and shall designate other articles that shall require  
17 a department letter of authorization or registration  
18 in advance of importation. The restricted articles  
19 shall include but not be limited to certain  
20 microorganisms or living insects. Failure to obtain  
21 the permit, letter of authorization, or registration  
22 in advance is a violation of this section;

1           (2) Individual passengers, officers, and crew.  
2           (A) It shall be the responsibility of the  
3           transportation company to distribute, prior to  
4           the debarkation of passengers and baggage, the  
5           State of Hawaii plant and animal declaration form  
6           to each passenger, officer, and crew member of  
7           any aircraft or vessel originating in the  
8           continental United States or its possessions or  
9           from any other area not under the jurisdiction of  
10          the appropriate federal agency in order that the  
11          passenger, officer, or crew member can comply  
12          with the directions and requirements appearing  
13          thereon. All passengers, officers, and crew  
14          members, whether or not they are bringing or  
15          causing to be brought for entry into the State  
16          the articles listed on the form, shall complete  
17          the declaration, except that one adult member of  
18          a family may complete the declaration for other  
19          family members. Any person who defaces the  
20          declaration form required under this section,  
21          gives false information, fails to declare  
22          restricted articles in the person's possession or

1                    baggage, or fails to declare in cargo manifests  
2                    is in violation of this section;

3                    (B) Completed forms shall be collected by the  
4                    transportation company and be delivered,  
5                    immediately upon arrival, to the inspector at the  
6                    first airport or seaport of arrival. Failure to  
7                    distribute or collect declaration forms or to  
8                    immediately deliver completed forms is a  
9                    violation of this section; and

10                    (C) It shall be the responsibility of the officers  
11                    and crew of an aircraft or vessel originating in  
12                    the continental United States or its possessions  
13                    or from any other area not under the jurisdiction  
14                    of the appropriate federal agency to immediately  
15                    report all sightings of any plants and animals to  
16                    the plant quarantine branch. Failure to comply  
17                    with this requirement is a violation of this  
18                    section;

19                    (3) Plant and animal declaration form. The form shall  
20                    include directions for declaring domestic and other  
21                    animals cited in chapter 142, in addition to the  
22                    articles enumerated in this chapter;

1           (4) Labels. Each container in which any of the above-  
2           mentioned articles are imported into the State shall  
3           be plainly and legibly marked, in a conspicuous manner  
4           and place, with the name and address of the shipper or  
5           owner forwarding or shipping the same, the name or  
6           mark of the person to whom the same is forwarded or  
7           shipped or the person's agent, the name of the  
8           country, state, or territory and locality therein  
9           where the product was grown or produced[7] or where  
10          the non-agricultural article was manufactured or  
11          originated, and a statement of the contents of the  
12          container. Upon failure to comply with this  
13          paragraph, the importer or carrier is in violation of  
14          this section;

15          (5) Authority to inspect. Whenever the inspector has good  
16          cause to believe that the provisions of this chapter  
17          are being violated, the inspector may:

18                (A) Enter and inspect any aircraft, vessel, or other  
19                carrier at any time after its arrival within the  
20                boundaries of the State, whether offshore, at the  
21                pier, or at the airport, for the purpose of  
22                determining whether any of the articles or pests



1 enumerated in this chapter or rules adopted  
2 thereto, is present;

3 (B) Enter into or upon any pier, warehouse, airport,  
4 or any other place in the State where any of the  
5 above-mentioned articles are moved or stored, for  
6 the purpose of ascertaining, by inspection and  
7 examination, whether or not any of the articles  
8 is infested or infected with any pest or disease  
9 or contaminated with soil or contains prohibited  
10 plants or animals; and

11 (C) Inspect any baggage or personal effects of  
12 disembarking passengers, officers, and crew  
13 members on aircraft or vessels arriving in the  
14 State to ascertain if they contain any of the  
15 articles or pests enumerated in this chapter. No  
16 baggage or other personal effects of the  
17 passengers or crew members shall be released  
18 until the baggage or effects have been passed.

19 Baggage or cargo inspection shall be made at the  
20 discretion of the inspector, on the pier, vessel, or  
21 aircraft or in any quarantine or inspection area.

1           Whenever the inspector has good cause to believe  
2           that the provisions of this chapter are being  
3           violated, the inspector may require that any box,  
4           package, suitcase, or any other container carried as  
5           ship's stores, cargo, or otherwise by any vessel or  
6           aircraft moving between the continental United States  
7           and Hawaii or between the Hawaiian Islands, be opened  
8           for inspection to determine whether any article  
9           prohibited or restricted by or any pest prohibited by  
10          this chapter or by rules adopted pursuant thereto is  
11          present. It is a violation of this section if any  
12          prohibited article or any restricted article without a  
13          permit, or any pest or any plant, fruit, or vegetable  
14          infested with plant pests is found;

15          (6) Request for importation and inspection. In addition  
16          to requirements of the United States customs  
17          authorities concerning invoices or other formalities  
18          incident to importations into the State, the importer  
19          shall be required to file a written statement with the  
20          department, signed by the importer or the importer's  
21          agent, setting forth the importer's desire to import

1 certain of the above-mentioned articles into the State  
2 and:

3 (A) Giving the following additional information:

4 (i) The kind (scientific name), if applicable,  
5 quantity, and description;

6 (ii) The country, state, or territory and locality  
7 therein where same were grown or produced[+]  
8 or where the non-agricultural article was  
9 manufactured or originated;

10 (iii) Certification that all animals to be  
11 imported are the progeny of captive  
12 populations or have been held in captivity  
13 for a period of one year immediately prior  
14 to importation or have been specifically  
15 approved for importation by the board;

16 (iv) The port from which the same were last  
17 shipped;

18 (v) The name of the shipper; and

19 (vi) The name of the consignee; and

20 (B) Containing:

- 1 (i) A request that the department, by its duly  
2 authorized agent, examine the articles  
3 described;
- 4 (ii) An agreement by the importer to be  
5 responsible for all costs, charges, or  
6 expenses; and
- 7 (iii) A waiver of all claims for damages incident  
8 to the inspection or the fumigation,  
9 disinfection, quarantine, or destruction of  
10 the articles, or any of them, as hereinafter  
11 provided, if any treatment is deemed  
12 necessary.

13 Failure or refusal to file a statement, including  
14 the agreement and waiver, is a violation of this  
15 section and may, in the discretion of the department,  
16 be sufficient cause for refusing to permit the entry  
17 of the articles into the State;

- 18 (7) Place of inspection. If, in the judgment of the  
19 inspector, it is deemed necessary or advisable to move  
20 any of the above-mentioned articles, or any portion  
21 thereof, to a place more suitable for inspection than  
22 the pier, airport, or any other place where they are

1 first received or discharged, the inspector is  
2 authorized to do so. All costs and expenses incident  
3 to the movement and transportation of the articles to  
4 such place shall be borne by the importer or the  
5 importer's agent. If the importer, importer's agent,  
6 or transportation company requests inspection of  
7 sealed containers of the above-mentioned articles at  
8 locations other than where the articles are first  
9 received or discharged and the department determines  
10 that inspection at such place is appropriate, the  
11 department may require payment of costs necessitated  
12 by these inspections, including overtime costs;

13 (8) Disinfection or quarantine. If, upon inspection, any  
14 article received or brought into the State for the  
15 purpose of debarkation or entry therein is found to be  
16 infested or infected or there is reasonable cause to  
17 presume that it is infested or infected and the  
18 infestation or infection can, in the judgment of the  
19 inspector, be eradicated, a treatment shall be given  
20 such article. The treatment shall be at the expense  
21 of the owner or the owner's agent, and the treatment  
22 shall be as prescribed by the department. The article

1 shall be held in quarantine at the expense of the  
2 owner or the owner's agent at a satisfactory place  
3 approved by the department for a sufficient length of  
4 time to determine that eradication has been  
5 accomplished. If the infestation or infection is of  
6 such nature or extent that it cannot be effectively  
7 and completely eradicated, or if it is a potentially  
8 destructive pest or it is not widespread in the State,  
9 or after treatment it is determined that the  
10 infestation or infection is not completely eradicated,  
11 or if the owner or the owner's agent refuses to allow  
12 the article to be treated or to be responsible for the  
13 cost of treatment and quarantine, the article, or any  
14 portion thereof, together with all packing and  
15 containers, may, at the discretion of the inspector,  
16 be destroyed or sent out of the State at the expense  
17 of the owner or the owner's agent. Such destruction  
18 or exclusion shall not be made the basis of a claim  
19 against the department or the inspector for damage or  
20 loss incurred;

21 (9) Disposition. Upon completion of inspection, either at  
22 the time of arrival or at any time thereafter should

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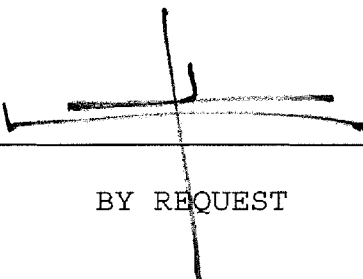
1 any article be held for inspection, treatment, or  
2 quarantine, the inspector shall affix to the article  
3 or the container or to the delivery order in a  
4 conspicuous place thereon, a tag, label, or stamp to  
5 indicate that the article has been inspected and  
6 passed. This action shall constitute a permit to  
7 bring the article into the State; and

8 (10) Ports of entry. None of the articles mentioned in this  
9 section shall be allowed entry into the State except  
10 through the airports and seaports in the State  
11 designated and approved by the board."

12 SECTION 3. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 4. This Act shall take effect on July 1, 2008.

15  
16 INTRODUCED BY:

  
BY REQUEST

17

**Report Title:**

Agricultural Inspections

**Description:**

Grants the Department of Agriculture authority to require advance written notification of arrival of articles transported to the State or from one island within the State to another as freight, air freight, baggage, or otherwise, for the purpose of debarkation. Broadens the range of articles subject to advance notification and possible inspection to include non-agricultural articles capable of harboring pests. Corrects an error that occurred in Act 64, SLH 2005, regarding import of restricted articles so as to be consistent with other parts of the statute.



JUSTIFICATION SHEET

DEPARTMENT: Agriculture

TITLE: A BILL FOR AN ACT RELATING TO AGRICULTURAL INSPECTIONS.

PURPOSE: Requires shippers and transporters to provide advance written notification of arrival of articles transported into the State or from one island within the State to another as freight, air freight, or otherwise, for the purpose of debarkation. Broadens the range of articles subject to advance notification and possible inspection to include non-agricultural articles capable of harboring pests. Corrects an error that occurred in Act 64, SLH 2005, regarding import of restricted articles so as to be consistent with other parts of the statute.

MEANS: Amend section 150A-5, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Because of the increasing amount of invasive species being introduced into the State and spread throughout the State, it is necessary for the department to have authority to require transportation companies to provide advance manifests (lists of cargo) for all articles brought into the State as well as all articles moved from island to island within the State.

The current statutory language authorizing a requirement for identification of specific articles on shipping documents requires implementation through rules. This will not suffice as the department lacks rulemaking authority for articles that are not related to agriculture but which are now known to harbor pests. Lately, the articles on which invasive species have entered the State have included furniture, rocks, building materials, and other materials not related to agriculture. As such, the department

needs to expand its inspection authority to reach non-agricultural materials. For this expanded authority to work more effectively, it is necessary to know beforehand what articles are coming into the State and moving between islands so that the department can allocate appropriate inspection resources according to the risk level of the articles being moved.

This bill at page 5 corrects discrepant wording appearing in section 150A-5(1), HRS, which occurred as a result of an error fixed in earlier versions of the bill that became Act 64, Session Laws of Hawaii 2005, but which reappeared in the conference draft of that bill. Prior to Act 64, section 150A-5(1) provided for permits for importation of restricted articles and recognized that letters of authorization or registrations may be approved for "other" (i.e., nonrestricted, lower risk) items. Act 64's working authorizes the department, by rule, to use permits, letters of authorization, or registrations for restricted articles, deleting the reference to "other" articles, and with it, the distinction that restricted articles, as higher risk articles, may only be imported by permit. This is inconsistent with other parts of the statute and illogical in the statutory scheme.

The bill at page 10, section 150A-5(5), HRS, clarifies that the department's inspections are directed not only to prohibited articles, pests, and pest-infested plants or plant parts, but also to restricted articles without a permit.

Impact on the public: The amendment imposes advance notification requirements that shippers and transporters must meet. For security reasons and in order to properly assess fees, shippers and transporters know in advance the identity of articles they receive for shipment. This notification requirement could add to the cost of

movement of regulated articles into Hawaii and from one island to another. Any increase in costs is likely to be passed on to consumers of transportation and freight services into Hawaii and between islands.

Impact on the department and other agencies:  
Authority to require advance notification of movement of specific articles into the State and from one island to another will enable the department to allocate its resources effectively according to risk level and to provide for more thorough and efficient inspection of shipments for pests of concern to agriculture, the environment, and public health in Hawaii.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: AGR 122.

OTHER AFFECTED  
AGENCIES: Department of Transportation.

EFFECTIVE DATE: July 1, 2008.