

HB 36 HD1

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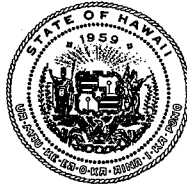
TESTIMONY BY GEORGINA K. KAWAMURA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEE ON ENERGY AND ENVIRONMENT
ON
HOUSE BILL NO. 36, H.D. 1

March 19, 2009

RELATING TO HEALTH

House Bill No. 36, H.D. 1, changes the name of the Environmental Health Education Fund to the Sanitation and Environmental Health Special Fund and increases the threshold from which money from the Sanitation and Environmental Health Special Fund is transferred to the general funds from \$300,000 to an unspecified amount. In Fiscal Year 2006, \$432,028 was transferred from the Environmental Health Education Fund to the general fund and \$92,083 in Fiscal Year 2007.

We are opposed to this bill. Given the State's current fiscal situation, we believe it is poor fiscal policy to propose legislation to further erode general fund revenues for specific purposes. While we do support the Department of Health's sanitation program, program funding requirements should be reviewed on a statewide basis and allocated to programs based on statewide priorities within available resources.



STATE OF HAWAII
DEPARTMENT OF HEALTH
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In reply, please refer to:
File:

Committee on Energy and Environment

H.B. 36, HD-1, RELATING TO HEALTH

**Testimony of Chiyome Leinaala Fukino, M.D.
Director of Health**

**March 19, 2009
3:45 p.m.**

1 **Department's Position:** The Department has strong concerns regarding this bill's impact on the
2 General Fund and recommends amendments.

3 **Fiscal Implications:** The Environmental Health Education Fund (EHEF) is capped at \$300,000; any
4 funds collected above this amount must be transferred from the EHEF to the general fund. H.B. 36,
5 HD1 identifies an unspecified amount for the special fund's cap. The Department recommends that this
6 provision be deleted.

7 **Purpose and Justification:** This bill seeks to increase resources for the Department's Sanitation
8 Branch's program operations, in part by increasing the amount of money the fund may retain, and by
9 amending the purposes for which the fund may be used. The premise of the bill is that the majority of
10 fees for the fund are collected by the Department's sanitation program, and the references to a "clear
11 nexus" show the bill's intent that a corresponding allocation of funds should be spent on sanitation.

12 The Department would like to propose several amendments to the bill (amendments attached).

13 In summary, we are recommending the following:

14 (1) Restore the \$300,000 cap in the following provision: (c) Any amount in the fund in excess of
15 [~~\$300,000~~] \$_____ on June 30 of each year shall be deposited into the general fund.

16 (2) Amend the name of the fund to "Environmental Health Special Fund". The overall purpose of

1 the fund is to enhance and improve programs within the Environmental Health Services
2 Division, which includes the Sanitation Branch and three other branches. This fund also
3 supports the State Laboratory Division who generates fees from clinical laboratory personnel
4 licenses.

- 5 (3) Expand the authorized use of the fund to include operating costs of program activities and
6 functions, such as permitting, monitoring, investigations, and enforcement. Currently, the fund
7 limits its use to education, training and outreach activities only. The proposed amendment would
8 greatly improve the programs' capabilities in providing professional government services to the
9 regulated industries. The regulated industries, particularly within the area of food services, have
10 expressed concerns of lack of adequate visibility by our inspectors. Greater visibility within this
11 area of environmental health is essential to ensure adequate protection to the general public from
12 food-borne illnesses and other environmental diseases and injuries. Program priorities will be
13 evaluated in order that funding for appropriate program functions will remain within current budget
14 allocations.

15 The department has submitted its annual report on the fund to the legislature, and it is also
16 available to all at <http://gen.doh.hawaii.gov/sites/LegRpt/2009/default.aspx>, report #3.

17 We would like to also propose a new Section 4 of the bill. This new section is to amend Section
18 321-4.5, HRS, "Inspection of food establishments", to remove the requirement for "registered"
19 sanitarian to perform inspections. Previously, section 321-13, HRS, "Regulation of certain other
20 occupations," required the specified occupations, including sanitarians, be licensed. The legislature, in
21 its 1999 amendments to section 321-13, HRS, removed the licensure requirement for sanitarians by
22 repealing the specific reference to sanitarians. This nullified the department's authority to license or
23 register sanitarians. The department is still allowed to employ a class of employees known as
24 sanitarians so it is appropriate to leave "sanitarians" in HRS Section 321-4.5.

25 Thank you for the opportunity to testify.

Attachment
H.B. No. 36, H.D. 1
Relating to Health

The purpose of this bill is to

- (1) Change the name of the environmental health education fund to the sanitation and environmental health special fund; and
- (2) Allow the use of fund monies for sanitation program activities, including permitting, inspections, other monitoring, and enforcement.

SECTION 2. Section 321-11.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Other than the fees collected under subsection (b), all other fees collected under this section and section 321-15 shall be deposited into the environmental health ~~[education]~~ special fund established under section 321-27.”

SECTION 3. Section 321-15, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every person holding a license to practice any occupation specified in section 321-13(a)(1) shall reregister with the department of health every other year in accordance with the rules of the department, before February 1 except where superseded by federal law, and shall pay a reregistration fee. The failure, neglect, or refusal of any person holding such a license to reregister or pay the reregistration fee, after thirty days of delinquency, shall constitute a forfeiture of the person’s license; provided that the license shall be restored upon written application therefore together with a payment of all delinquent fees and additional late reregistration fee that may be established by the director of health. All fees collected pursuant to

this section shall be deposited into the environmental health [~~education~~] special fund established under section 321-27.”

SECTION 4. Section 321-27, Hawaii Revised Statutes, is amended to read as follows:

“§321-27 Environmental health [education] special fund. (a) There is established within the department of health an environmental health [~~education~~] special fund into which shall be deposited all moneys collected from fees for permits, licenses, inspections, various certificates, variances, investigations, and reviews, pursuant to sections 321-11.5(c) and 321-15.

(b) Moneys in the fund shall be expended by the department for the purpose of enhancing the capacity of environmental health programs to:

(1) Conduct program activities including permitting, investigations, other monitoring, and enforcement;

[(1)](2) Improve public outreach efforts and consultations to businesses and industries regulated;

[(2)](3) Educate the public, staff, regulated businesses and industries [regulated thereunder];

[(3)](4) Plan for future growth and expansion to meeting emerging needs; and

[(4)](5) Provide training opportunities to ensure the maintenance of professional competence among [~~sanitation and~~] environmental health staff and administrators; provided that for environmental health programs, not more than \$90,000 of the fund may be utilized during any fiscal year [for] to fund administration, including the hiring of not more that two full-time equivalent personnel, and the purchase of office and electronic equipment.

(c) Restore the \$300,000 cap in the following provision: (c) Any amount in the fund in excess of \$300,000 on June 30 of each year shall be deposited into the general fund.

(d) The department of health shall submit a report to the legislature concerning the status of the environmental health [~~education~~] special fund, including, but not limited to, the amount of moneys taken in by and expended from the fund, and the sources of receipts and uses of expenditures, not less than twenty days prior to the convening of each regular session.”

SECTION 5. Section 321-4.5, Hawaii Revised Statutes, is amended to read as follows:

“**§321-4.5 Inspection of food establishments.** Inspections of food establishments may be performed by a [~~registered~~] sanitarian or a food and drug inspector.”

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, 2009.

Testimony for H.B. 36 Relating to Health (FOOD SAFETY BILL)

Senator Mike Gabbard, Chair, Committee on Energy and Environment
Senator Kalani English, Vice-Chair, Committee on Energy and Environment.
And Members of the Energy and Environment Committee

Aloha and Mahalo for allowing me to submit this testimony:

The Sanitation Branch is one of the core programs of public health that affects the broadest range of health-related activities.

The function of the Sanitation Branch is to promote and maintain a sanitary and healthful environment for the people and visitors of Hawaii by implementing legally required programs for:

- (1) Food protection;
- (2) Assessing and assuring that hospitals and medical facilities meet sanitation requirements;
- (3) Inspection of tenement houses, lodging houses, boarding houses, and hotels;
- (4) Licensing of tattoo artists and embalmers; and
- (5) Regulating barber shops, beauty parlors, massage parlors, tattoo shops, mortuaries, public swimming pools, and public laundries.

The Sanitation Branch focuses on its food protection program which has evolved into a complex program focusing on public health practices through education, partnerships, prevention, assessment and compliance.

Food is a significant element of Hawaii's multi-ethnic culture and is a principal attraction for visitors to Hawaii. Food contamination presents the greatest risk to public health. The Sanitation Branch protects residents and visitors from exposure to food borne illnesses by conducting inspections and assessments of food service establishments to ensure that the food they serve is safe to eat. Inspections are discussed later in this report. The branch issues approximately 9000 permits to restaurants and other food establishments state-wide.

In addition, the Branch promotes food protection through education. The Food Safety Consultation and Education Program plays a vital role in preventing food borne illnesses by developing and implementing food safety surveillance and control plans, and conducting educational activities to assist the food service industry and food handlers.

The million dollar question – How Much is this going to cost the State and what are the fiscal implications for the Food Service industry and the residents and visitors of Hawaii?

The impact on the State of Hawaii's General fund is \$0

The program will raise the roughly two million five hundred thousand dollars (\$2,445,000) through an increase in the existing user fee charged to food establishments for their Dept. of Health Food Establishment Permit. These monies are currently collected through a special fund authorized by 321-27(a), HRS called the Environmental Health Education Fund explained below.

The current average fee paid by the State's approx 9000 food establishments is about fifty two dollars \$52.00 per year.

The range of current fees are \$50, \$100, or \$150 collected every two years. The difference in the fees are due to risk rankings of low (small mom & pop markets, liquor and convenience stores, shave ice and candy stores), medium (limited menu establishments with potentially hazardous foods [PHF]), and high (hotel, institutional kitchens, complex restaurants with extensive and various menus with PHF's) risk food establishments.

Raising the current permit fee to an average of \$300 annually for all 9000 establishments would generate approximately \$2,700,000 per year.

COST TO INDUSTRY

For an average restaurant that is open 5 days a week and serves 50-100 meals per day, the cost equates to (50 -100) times 260 days times (1-2) CENTS equals more than the \$250 increase in their annual fee.

COST TO THE GENERAL PUBLIC

Assuming that the Food Establishment passes 100% of the fee increase to the consumer. Using the example above, the cost will be 1-2 CENTS per meal. This will mean \$0 cost to industry.

SANITATION BRANCH INITIATIVES 2009

The following initiatives are being undertaken by the Department of Health's Sanitation Branch.

- 1) Obtain Proper Staffing Levels
- 2) Move to a Web Based Inspection and Permitting Process
- 3) Introduce a New Placarding System

OBTAIN PROPER STAFFING LEVELS

For the past few years, the sanitation program has attempted to increase the branch's position count with the following justification:

The Sanitation Branch is responsible for the implementation and enforcement of the statutes, administrative rules, and polices relating to environmental sanitation. The branch regulates food service establishments, public swimming pools, milk, tattoo establishments, barber and beauty establishments, massage establishments, hotels, mortuaries, cemeteries and embalmers. The branch provides educational services for the food industry and the public. The Sanitation Branch is and has proven to be a critical component in any rapid response to environmental emergencies and all hazards disaster relief and assistance. We are the only environmental program in the DOH that required formal training and national certification of our knowledge base in ALL facets of environmental health (Registered Sanitarian License).

Currently the Oahu Sanitation Branch is allotted 23 full time employees. The breakdown is as follows: 1 Program Manager (EM-05), 1 Secretary II, 2 Clerk-Typist II, 1 RS VI, 2 RS V, 15 RS IV and 1 RS III. Of the RS V positions one is a supervisory the other is a non-supervisory Program Specialist position. The RS IV positions are comprised of 11 field sanitarians and 4 Specialists (Milk, Housing, Hospitals/Day Care, and Education).

As of January 22, 2009 there were approximately 5,700 permitted food establishments on Oahu that the sanitation branch has regulatory oversight. With the current staffing of 12 field sanitarians the ratio per sanitarian to food establishments on Oahu is 1:475. The DOH Sanitation branch is participating in the US FDA sponsored and endorsed Voluntary National Retail Food Regulatory Program Standards in which Hawaii's food sanitation program is pursuing to achieve national uniformity in retail food protection. In these Program Standards the US FDA recommends that the ratio for a full time food inspector per food establishment not to exceed 1:150. The US FDA recommendation also stipulates that the food inspector limits his or her activities only to food establishment inspections and responses to complaints. The FDA recommended 1:150 ratio should be the benchmark staffing level.

The Sanitation program is proposing that the number of field sanitarians on Oahu be increased from 12 to 26. This would lower the ratio of sanitarians per food establishments to 1:220. Maui is currently at 1:374 and is poised to receive two additional position to bring their ration down to 1:187. Even though all islands will still be significantly above the recommending workload, (1:150), it will be a significant improvement to existing staffing levels. Kauai's ratio is at 1:181 and the Big Isle is at 1:200. The extra staffing will allow the Sanitation program to make more frequent inspections of the establishments with the greatest number of food-borne illness risk factors. The lower ratio will also improve the sanitarians response to their multi- function role in food safety, community sanitation, and emergency preparation and response.

Keep in mind that Oahu and Maui are presently at the greatest risk, coupled with the fact that the majority of the visitors to our isle will dine on these two islands.

Recent data for Oahu has revealed that of the 2691 routine inspections done in 2008, the Oahu staff has identified 2467 Major Violations. This is approaching a ratio of a foodborne illness risk factor in nearly 100% of our routine inspections on Oahu. The best food safety programs in the United States have numbers in the 10-20% range for major violation occurrence. This poor performance is a direct result of an inspection frequency of once every 2 years. The best run food safety programs in the United States inspect their high risk establishments at least three times/year, medium risk establishments 1-2 times/year and low risk establishments once/year.

With regards to retail food establishments, the staffing increase will allow us to go forward with a new philosophy of increasing the inspection frequency for high risk/high volume establishments while keeping the frequency of inspections for all other establishments to at least one inspection per year. At present, our staffing levels allow one inspection every 2 years for all retail food establishments. This low inspection frequency does not produce any significant long-term improvement in the establishment's food safety practices. The sanitarians workload is further exacerbated by having a myriad of other non-food responsibilities (swimming pools, tattoo, massage, beauty/barber shops, mortuaries, etc.) mixed in with their regular work day. Ideally, the high risk/high volume food establishments should be inspected 3-4 times a year if lasting and consistent public health controls are desired to remain in place. This would give the general public a high level of assurance that the most high risk retail food establishments are inspected at a frequency that can produce tangible and consistent compliance with our rules and regulations that directly impact public health.

The Statewide Sanitation staff has also shown to be invaluable during times of disasters. The Registered Sanitarian license requirement ensures that the incumbents must demonstrate a high level of understanding of ALL facets of Environmental Health under the purviews of the [EHSD] Environmental Health Services Division and [EMD] Environmental Management Division. This was clearly shown during post Hurricane Iniki recovery, when Reg. Sanitarians were the preferred disaster worker on Kauai due to the wide scope of their expertise in the field with regards to all environmental programs. The wide scope of expertise also places a lower demand on scarce resources within a post disaster environment. The Reg. Sanitarians are able to do multiple duties that overlap all environmental health programs. Increasing the Sanitation Branch position count also increases the ability of the state to mobilize a staff of highly skilled, multi-disciplined DOH employees to protect public health.

The philosophy of doing the best we can with an understaffed program and lets all take our chances with the final product produced (inadequate surveillance of food establishments) should be changed to doing an excellent job by an appropriately staffed program that can provide the public with an assurance that a reasonable amount of time is spent with retail food establishments that are of the highest risk to their health. Proper staffing of Sanitation Branch will also provide the DOH with a pool of personnel from an environmental health program that has shown in the present and past to be one of the most reliable, quick responding, and multi-disciplined staff when responding to emergency situations or disaster response.

MOVE TO A WEB BASED PERMITTING AND INSPECTION SYSTEM

At present, the program has reviewed the offerings of various vendors in order to establish a web-based permitting and inspection program.

The vendors we have looked at are able to set up a web based system that will bring us up to par with other state and county health departments, by achieving the following goals:

- 1) Allow the regulated community to apply and pay for all permits on-line.
- 2) Allow existing permit holders to access their records. (Permit expiration dates and fees, previous inspection results, etc.)
- 3) Allow the general public to access the most recent inspection results of any of our permitted food establishments.
- 4) Allows the general public to access any legal enforcement results.
- 5) Allows the departments to more efficiently manage and track the work of DOH employees.
- 6) Reduce the volume of clerical work due to the capability of automatically downloading inspection results directly into the database. No keypunch entry needed by the existing clerical staff which will allow them more time towards customer service.

RETAIL FOOD ESTABLISHMENT PLACARDING PROGRAM

Prior to 1996, there was in place a scored, graded inspection system based on a 100 point perfect score. This was combined with a placard system that issued a green card for a score of 70 or above, an amber card if there was an "Intent to Suspend" action, and a red card for a permit suspension. The above system was abandoned in 1996 in favor of an inspection that reflected critical versus non-critical violations, for the following reasons:

- 1) At times, the point system failed to accurately reflect the conditions in the food establishment that may directly affect disease occurrence, growth, and transmission. A restaurant with a score of 90 that has two major violations ("Major Violations" – violations that are considered to be Food-borne Illness risk factors which may contribute to the occurrence of food borne illnesses or harmful contamination), may pose a more serious and immediate health risk when compared to an establishment that received a score of 75 due to many "esthetic" minor violations ("Minor violations" – violations that are not considered to be risk factors in causing illness or contamination). The 100 point scoring system had no direct link to food-borne illness risk factors when broken down into point ranges of 90-100, 80-89, 70-79, etc. with corresponding grades of A, B, C, etc.
- 2) The old placard system did not reflect the importance of keeping major violations to near zero levels. A restaurant could obtain a "Green" (highest level) card with up to SIX existing major violations that are now considered serious food-borne illness risk factors.
- 3) The placards were very dull, drab, and not easily recognizable by the general public as having any significance.
- 4) Recognition that ALL major violations (food borne-illness risk factors) must be corrected within 48 hrs.

We propose the following placard system as a substitution for the 100 point grading system.

Proposed Dept of Health Retail Food Establishment Placard Program

The goals of the placard program are to:

- 1) Reduce the incidence of major violations in the Food Establishment, thus reducing the risk of the public contracting food-borne illnesses or being exposed to harmful contamination.
- 2) Increase compliance w/ food safety laws.
- 3) Convey meaningful inspection results to the public and food service industry using a system that is simple to understand.
- 4) Reward the Food Establishment for “Excellence in Food Safety”

Scope: All retail food establishments will be required to post a placard once issued. Restaurants, liquor establishments, coffee houses, schools, bakeries, markets etc.

Placards: The same criteria are used for all food establishments and except for the Special recognition placard, only one placard will be posted at a time:

A Major violation is one that is recognized by the FDA and the CDC (Centers for Disease Control) as a major contributing cause of food-borne illness, food contamination, or environmental health hazards.

PASS – A GREEN PLACARD is issued when no more than one major violation is observed. The major violation must be corrected or mitigated at the time of the inspection. Minor violations must be corrected within the time frame given on the inspection report. A re-inspection may be conducted if any of the violations are not permanently corrected in a timely matter.

CONDITIONAL PASS – A YELLOW PLACARD – a Yellow Conditional Pass Placard is issued when two or more major violations are observed; when any uncorrected major violation is observed during a follow-up inspection, or when a “Notice of Violation and Order” has been filed. These violations must be corrected or mitigated at the time of inspection. A re-inspection WILL be conducted within 24-72 hours to ensure that ALL major violations remain corrected. Minor violations must be corrected within the time frame given on the inspection report. If all major violations are corrected during the re-inspection, a GREEN PASS placard will be issued at the re-inspection.

CLOSED – A RED PLACARD – A Red Closed placard is issued when an imminent threat to public health and safety is observed and/or if the Food Establishment Permit has been suspended/revoked. Examples of imminent health hazards include: Food borne illness outbreak determined by State Epidemiologists, presence of surfacing or overflowing sewage within the establishment, no water available, no power available, severe rodent/insect

infestation, or severe unsanitary conditions. The Red CLOSED Placard must remain posted and the facility closed until a re-inspection is conducted to confirm that the imminent health hazard no longer exists or the permit has been re-instated. A GREEN placard will be issued at the re-inspection if all is well.

SPECIAL RECOGNITION PLACARD – “PURPLE POI POUNDER AWARD”

Two Green Placards in a row for routine inspections will result in a special recognition placard issue to the Food Establishment for “Food Safety Excellence” for the year in which the second green placard in a row is earned. The establishment may post this placard permanently.

Posting: A Green, Yellow, or Red Placard will be issued at the end of each routine inspection and re-inspection. The placard must be posted by the Sanitarian at the front door or window at the main entrance, facing outward. If it is posted in a front window, it must be within five feet of the main entrance. If there is no door or window, it must be posted in a location which is clearly visible to the public and approved by the director.

Training

Classes: We will offer training classes at no cost to any operator on “How to Obtain and Maintain a Green Placard”. The specific criteria for the placard program as well as basic food safety training will be reviewed in each class. The statewide sanitation program already has the training component in place as we have two very adaptable full time Registered Sanitarians that presently run the Food Safety Education Training program.

THE STATE OF THE SANITATION PROGRAM

The branch faces a major challenge in adequately handling food protection. The branch ratio of food establishments to inspectors (Oahu, Maui, Kauai and Hawaii) far exceeds the Food and Drug Administration’s (FDA’s) recommendations of 150 food establishments per sanitarian. Oahu has a ratio of 482 food establishments per sanitarian and Maui’s ratio is 374 food establishments per sanitarian. This means that on Oahu, the branch can only inspect a food establishment about **once every 2+ years, a wholly inadequate inspection frequency**. The Nation’s best food protection programs (Maricopa County, Arizona, Sacramento County, CA, Clark County, Nevada) average 3-4 inspections annually for their high risk establishments, 2 inspections annually for the medium risk establishments, and annual inspections for establishments with the least risk. It is imperative that as a world class travel destination, whose local cuisine is at the forefront of the Hawaii travel experience, which range from the Mom & Pop operations in Hilo to 5 Diamond restaurants in Maui and Oahu, has it's food supply and service establishments inspected at a frequency that will ensure reasonable compliance with Hawaii's Administrative Rules (HAR Title 11, Chapter 12, Food Establishment Sanitation) governing food establishments. We must protect the citizens and visitors to our islands with a food safety program that is adequately staffed and funded. In order to reach this optimum

inspection frequency, the Sanitation program would need at least 14 additional inspectors on Oahu and 3 on Maui. In 1988 the Oahu sanitation program had 23 field inspectors. That number has dwindled to 12 for all of Oahu at present.

Staff training also is a significant element for maximizing efficiency and effectiveness of staff in order to satisfy program performance objectives. Mechanisms to provide on-going education continue as the branch updates and cross trains staff in order to keep up with technological and organizational changes.

FEES COLLECTED

Under Section 321-11.5, HRS, the Department collects fees for permits, licenses, inspections, various certificates, variances and investigations and reviews. These fees are deposited into the Environmental Health Education Fund under Section 321-27(a), HRS, which supports training of Environmental Health Services Division staff and food establishment personnel; as well as provides educational outreach to the general public regarding food safety. Revenues from fees collected for fiscal year 2008 and deposited into the fund totaled \$732,883.51. HRS 321-27(c) specifies that any amount in the fund in excess of \$300,000 on June 30 of each year shall be deposited into the general fund. The Department reports separately on HRS 321-27.

NUMBER AND RESULTS OF SANITATION FOOD INSPECTIONS

The Statewide Sanitation Branch conducted 9,395 food inspections during fiscal year 2008 and identified 14,590 violations. Oahu sanitation conducted 5,676 of these inspections. Of these, 2,691 were routine inspections (about 47% of the approx. 5,700 Food Establishments on Oahu. **This equates to an inspection frequency of less than 1 inspection in 24 months**) with 1,901 follow-up inspections. The follow up inspections on Oahu were a result of **2,467 major violations**, which are considered to be food borne illness risk factors as they are identified by the Centers for Disease Control (CDC) and the FDA as major causes of food borne illness incidents.

TABLE 1
FOOD ESTABLISHMENT
INSPECTION COVERAGE & MAJOR VIOLATIONS

| Island/County (Population) | Food Estab. # w/ permits | % FEs inspected | % FE w/ major violn. | # FE/ inspector |
|-------------------------------|-----------------------------|-----------------------|----------------------------|--------------------|
| Hawaii 171,191 | 1399 | 1286/1399=92% | | 200 |
| Kauai 63,000 | 543 | 313/543=58% | | 181 |
| Maui 141,000 | 1122 | 1031/1122=92% | | 374 |
| Oahu 909,863 | 5,796 | 2691//5796=46% 47% | 2467/5700 2467/2691=92% | 482 |
| State total 1,285,000 | 9,395 | 5321/8860=60% | | 354 |

The number for % FE w/ Maj violation if spread over the total inspections which was 2,691. We conducted 2691 inspections and found **2467 major violations**. No breakdown of maj/minor violations. for outer isles.

TABLE 2
FOOD ESTABLISHMENT INSPECTION DETAILS

| Island/ County | Inspections | | | | | Violations | | |
|-------------------|-------------|---------|-----------------------------|---|------------------------------|------------|-------|--------------------|
| | Total | Routine | Follow- up to routine | Complaint (illness claim subset) | Follow-up to complaint | Total | Major | Minor/ Esthetic |
| Hawaii | 1904 | 1286 | 427 | *172 | 19 | | | |
| Kauai | 689 | 313 | 287 | *81 | 8 | | | |
| Maui | 1528 | 1031 | 204 | *185 | 108 | | | |
| Oahu | 5676 | 2691 | 1901 | 801 (304) | 283 | 5275 | 2467 | 2808 |
| State 8021 | 9797 | 5321 | 2819 | 801 (304) | 283 | 14,590 | | |

*Outer isles do not differentiate between general food complaint and illness complaint. Outer isles also do not report # of violations found or corrected.

Major violations include improper employee hygiene, temperatures, storage, and handling. For examples, there are violations for employees not washing hands after using the restroom, or having open cuts and sores on their hands. They also include temperature violations such as warm refrigerators, cold hot holding units, chicken and pork being served bloody and

undercooked. Contaminated, rotten, or spoiled foods on premises, ready to eat foods stored below raw foods dripping with raw blood and juices, cutting boards used for raw and cooked foods, fruits and salads prepared with unclean cutting boards, knives, or cooks hands are also major violations. Oahu sanitation also identified 2,808 minor or esthetic violations during the same 2,691 routine inspections. There were also 801 complaint inspections which required 283 follow-up inspections. (2,691 + 1,901 + 801 + 283 = 5,676)

Of the 8,021 food establishments inspected state-wide, 1,249 inspections pertained to complaints, of which 304 directly alleged a food borne illness. Alleged food borne illness complaints increased 139 percent from FY 2007 when there were 127 reported food borne illness complaints, but FY 2007 was unusually low compared to 271 complaints in FY 2006, and 267 complaints in FY 2005, based on data collected by the department's Disease Investigation Branch. While prevention of illness remains the branch's ultimate goal, and food borne illness complaints are of interest, those complaints do not adequately measure program effectiveness. Current scientific literature (FDA, Journal of Public Health, Journal of Environmental Health et. al.) states that the reporting rates of food borne illnesses are extremely low, it is typically difficult to confirm the cause of illnesses, and extremely large outbreaks may result from human error which no inspection program could prevent. In these latter cases the Sanitation Branch is charged with finding the source or circumstance that lead to the outbreak and to prevent any reoccurrence of illness.

The current best measure of the effectiveness of a food regulatory program is the occurrence of major violations that are recognized as the major causes of food borne illnesses by the Center for Disease Control and the U.S. Food and Drug Administration. FDA has incorporated this scientific approach in their publication of their voluntary Model Food Code.

On Oahu, of the twelve districts that comprise all of the food establishments on Oahu, ten have major violation rates of approximately 40-80% during surprise routine inspections. That roughly equates to every other restaurant on Oahu is operating with a major condition that may cause a food borne illness or outbreak. This number is very high by any standard and reflects poorly on the state of the food industry here in Hawaii.

CHALLENGES AND STRATEGIES FOR FOOD SAFETY

The Branch conducts extensive informal food safety education in addition to inspections. Because obtaining food safety education is not required to operate a food establishment in the State of Hawaii, restaurant operators rely very heavily on the education provided by the direct contact with our field inspectors. The sanitation program relies heavily on the initial inspection of a new food establishment to educate the owners and managers on the importance of complying with our administrative rules to eliminate all major violations that are food-borne illness risk factors and keep the people of Hawaii healthy. After that initial inspection and a follow up inspection when the establishment is fully operational, most food establishments will not see the sanitarian for another two years.

Maintaining food establishment staff educated in food safety is a huge challenge. The food industry in Hawaii has one of the highest turnovers of employees in the state when

compared with other industries. Additionally, most positions in the food establishment from owner to general manager to chef to food prep workers to dishwashers averages changes every two (2) years or so, thus negating any food safety knowledge or reinforcement of the rules during that period by the Department of Health.

The Statewide Sanitation program has sought and achieved tremendous internal improvements in the past five years from having no standards of inspection and program quality or consistency for inspections, enforcement and education, to having a fully standardized staff, explicit, consistent and documented, protocol in all areas, a uniform statewide food safety education program, and a voluntary FDA pilot project on the Big Island to obtain listing as a successful participant in the voluntary Food Standards program.

The program has also increased the use of language neutral handouts on hand washing and temperature controls during food inspections (both are major contributors to food borne illnesses), and have even handed out thermometers to new and existing food establishments as part of our routine inspections along with demonstrating how to properly calibrate the thermometer before use.

The Branch is focusing on reducing major violations at food establishments. This follows the best practices used in numerous jurisdictions across the United States. The current rate of major violations, the key food borne illness risk factors, is at least 40% and as high as 80% of food establishments in certain geographical areas. The occurrence of major violations can be reduced below 20% of establishments inspected if the following is done:

- 1) The food regulatory program is able to identify high, medium and low risk food establishments to prioritize inspection frequencies and maximize staff efficiency. The level of risk is based on the complexity and potential risk of the foods served, and how they are prepared within the establishment;
- 2) The program standardizes the inspections by requiring explicit documentation on all three risk categories of food establishments in order to document the observations of critical operations within the establishment. (food borne illness risk factors such as proper food cooking and holding temperatures, personal hygiene practices by employees, cross contamination issues, etc.); and finally;
- 3) The program inspects high risk establishments three to four times annually, medium risk establishments at least twice a year and low risk establishments annually.

The statewide sanitation program has already completed 1 and 2 above along with the other numerous other program improvements mentioned.

There are other possible measures, such as mandatory food safety education and the posting of placards at establishments with major violations. Mandatory education will require resources for the provision of food safety trainers, for food establishments staff to take the training, and to track whether food establishment have trained staff on duty. Other U.S.

jurisdictions were able to implement a very effective, high profile and successful win-win placard system with the food industry while protecting public health when the jurisdiction committed to proper staffing to allow high risk food establishments to be inspected at least three times annually. This enables establishments with unfavorable placards to be re-inspected in a timely manner so they can demonstrate their return to compliance. For either mandatory education or placards, more resources are needed.

TRAINING FOR INDUSTRY & PUBLIC

The branch retains its current voluntary educational approach to inform the public of proper food safety practices and motivate food establishment operators toward compliance with applicable standards and regulations. In this regard, it is recognized that compliance with rules, not enforcement per se, is the primary objective of the Sanitation Branch. Wide dissemination of information concerning the technical and scientific basis for the program's regulatory requirements should contribute to a clearer understanding of the necessity for compliance. Education is always continuous, especially in areas where technology is constantly evolving, as in the case of food science. An informed public with a clear understanding of the public health rationale of program functions and corresponding regulatory requirements is a fundamental goal in assuring that potential environmental health problems are identified and resolved before actual illness, injury or fatality occurs. This educational philosophy has evolved in part due to Hawaii's high food establishment to sanitarian ratio.

For fiscal year 2008, the Food Safety Consultation and Education Program provided the following:

| | |
|-------------------------------|-------|
| Food Certification Workshops: | 36 |
| Student Attendance: | 733 |
| Students Certified: | 655 |
| Food Safety Classes: | 66 |
| Student Attendance: | 1,303 |

Food Certification Workshops are 16 hour (2 day) classes that deal with the principles of food safety and protection as it pertains to HAR 11-12 Food Establishment Sanitation. Successful completion of the workshop and examination results in the issuance of a Hawaii Department of Health Food Handler's Certificate. This certificate is the equivalent of education typically required for food handlers in states and counties that mandate food safety training for all food handlers within their jurisdictions.

Food Safety Classes are customizable classes that can range from 1 hour or more to address specific needs or problems of the requester. For example, if a food establishment has a problem with employee hygienic practices two to three hour classes concentrating on proper hygienic practices complete with hands on demonstrations and participation could be provided. No certificates are issued for these classes.

COMMUNITY OUTREACH PROJECTS

The Sanitation Branch on Oahu joined in a pilot project with the HGEA to participate in the first "Day To Discover" event at Makakilo Elementary School in August of 2006. The event was designed to showcase the importance and value of public employment to the community through games, activities and interactive informational booths designed for Hawaii's elementary school age children. Various City and County and State employees set up Keiki ID Booths (State Sheriffs), Nutrition and Foods (Public Health Nursing), Fossil Hunting (DLNR), Police Car and Canine Unit Demo (HPD), Fire truck Exhibition (HFD), "Germ City" hand washing booth (DOH – Sanitation Branch), Story telling (DOE), etc.

The Sanitation Branch's Booth consists of a non-toxic solution that glows under UV light applied to the children's hands to mimic germs. They are then instructed to wash their hands with soap and water and then dry them on disposable towels. The effectiveness of their hand washing is tested in a tent that is light proof and their hands are checked with an ultraviolet light. Their hands glow wherever they did not wash their hands. This booth is very popular due to the potential to have a lot of fun with glowing yucky hands. Even the parents get a great experience out of this exercise, and there was no shortage of praise by public health nurses and teachers.

In addition to 4 HGEA sponsored "Day To Discover Events" that were strategically held in west (Makakilo Elem), east (Kaimuki Elem), windward (Ben Parker Elem) and central (Mililani Waena) Oahu communities, the Sanitation Branch has participated in a total of 13 events and health fairs at private (Kamehameha, Hanalani) and Public Elementary Schools throughout Oahu. To date we have instructed over 2000 children and 300 adults in proper hand washing technique using the "Germ City" hand washing booth.

TRAINING FOR BRANCH PERSONNEL

In addition to on-going workshops conducted by the Food Safety Consultation and Education Program, the following are highlights of personnel training for fiscal year 2008:

1. Two Registered Sanitarians attended the Conference for Food Protection in San Antonio, Texas, April 10 - 17, 2008. Hawaii is an active participant in this national conference and the sanitarians are voting delegates that participate in discussions and proceedings related to issues of food protection and safety. Measures that the delegates adopt are reflected in adoption or amendments of regulations in Federal Food and Drug Administration's (FDA) Food Code.
2. Two Registered Sanitarians whose main responsibilities are regulating the milk industry in Hawaii attended the Pacific/Southwest Regional Milk Seminar in Reno, Nevada, March 31, 2008 to April 4, 2008. This seminar updates the sanitarians on regional trends and issues related to the milk industry including new technologies and trends. The conference attendance is a requirement for state milk rating officers.*
3. Two Registered Sanitarians attended the National Environmental Health Association conference and workshops in Tucson, Arizona on June 19 - 26, 2007. This conference broadly covers the most current issues relating to environmental health and safety.*

4. One sanitarian attended the Southwest and Pacific Regional Milk Conference in Louisville, Kentucky on July 9 -13, 2007. This conference concentrates on regional trends and issues relating to the milk industry and reviews the amendments to FDA Pasteurized Milk Ordinance which were voted on in the 2007 National Conference of Interstate Milk Shippers.
5. A Registered Sanitarian attended the Association of Food and Drug Officials annual conference in Anaheim, California on June 7 – 12, 2008. This conference provided a better insight of how other states responded to and dealt with the past years national recalls of fresh produce, canned goods and other consumer goods.
6. A Registered Sanitarian attended the Train –the –Trainer for Environmental Health Training in Emergency Response in Sacramento, California on February 26-28, 2009. This seminar provided an all emergency response training that the sanitarian provides to all Environmental Health Services Division (EHSD) personnel at their annual Disaster Preparedness Workshop in August 2008.

* Although Hawaii's Dairy Industry is declining, the state is still an active participant in the National Conference of Interstate Milk Shippers (NCIMS) because we still address the safety of milk both brought into and sent from the state. This means Hawaii must maintain certain qualifications and adhere to standards set by the NCIMS. One of the qualifications is to have at least one State Milk Rating Officer to conduct milk rating inspections locally utilizing national standards set by the NCIMS. To maintain certification as a State Milk Rating Officers one must attain NCIMS certification through FDA and attend approved seminars, classes and conferences.

COST OF TRAINING BRANCH PERSONNEL

The cost for branch personnel training totaled \$19,312.32.

CLOSING REMARKS

Despite continued efforts and progress in improving the overall quality and safety of foods produced in this country, food borne illnesses remain a serious national public health problem. This past year pathogenic E. coli, Norovirus and Salmonellosis contamination of food continued to find its way to the news headlines nationally. The CDC has consistently stated that food borne illnesses accounts for nearly 5000 deaths annually in the United States and billions of dollars annually in lost productivity and the cost of medical care for the ill.

Over the past decade we have seen the emergence of serious, illness causing pathogens appearing at an alarming rate. In our state alone we have had to deal with serious Staph, Salmonella, E.coli 0:157, and Norovirus incidences at an increased rate. Numerous people were recently hospitalized on Oahu from an E. coli outbreak linked to a local restaurant.

The Sanitation program directly affects nearly all residents and visitors to Hawaii. Any person in Hawaii who frequents the 9,000+ food eateries, markets, and liquor establishments or

any other food sales or distributions that the Sanitation Branch inspects and permits is directly affected by our regulatory food safety program.

THE SANITATION BRANCH IS RECOGNIZED FOR QUALITY!

In the past four years the Oahu Sanitation Program has produced five departmental Employees of the Year nominees and one Manager of the year nominee. This is over 25% of the staff of 23. The Big Island Sanitation Program has had one employee of the year nominee, and the Acting District Health Officer who for years directly oversaw Big Isle Sanitation is the 2008 State Manager of the Year. The Statewide Sanitation Branch has an extremely well run and tested program with a highly motivated staff that consistently delivers excellent public service with an eye towards constant and creative program improvement.

Continued vigilance in protecting the public from food borne illnesses is a vital function of the Sanitation Branch. Current resources are dedicated toward support of program activities, personnel enhancement, and technology infrastructure advancements. We will continue our efforts to prudently use current resources to protect public health.

However, despite our best efforts, the residents and visitors of Hawaii are exposed to inadequate food safety, and the state may one day be embarrassed and saddened by a high profile food borne related illness or death. The Statewide Sanitation Program is extremely well primed to produce a world-class food regulatory program, but major improvements in food safety depend on it being given adequate staffing levels and resources.

Passage of this bill will lay the foundation for a world class food safety program that is on par with the best food safety programs in the United States.

Aloha and Mahalo Again for allowing me to testify

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