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# A BILL FOR AN ACT

RELATING TO INVASIVE SPECIES.

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

1           SECTION 1. The purpose of this bill is to encourage  
2 compliance with the inspection, quarantine, and eradication  
3 service fee (inspection fee) by assessing fines on persons who  
4 fail to pay the inspection fee and on transportation companies  
5 that fail to remit the inspection fees collected to the  
6 Department of Agriculture.

7           In addition, this bill exempts dry bulk freight and liquid  
8 bulk freight from the inspection fee assessment.

9           The legislature finds that fees for the inspection of  
10 certain dry bulk freight for invasive species are unnecessary  
11 since the United States Department of Agriculture currently  
12 performs this task; and that duplication of this inspection is  
13 violative of the commerce clause and supremacy clause and is  
14 inconsistent with federal law, and is not an appropriate  
15 expenditure of limited state funds and personnel resources.

16           Section 436 of the federal Plant Protection Act (7 U.S.C.  
17 7756) prohibits states from regulating foreign commerce in order  
18 to control, eradicate, or prevent dissemination of any plant,



1 biological control organism, plant pest, noxious weed or plant  
2 product. Senate Concurrent Resolution 72, H.D. 1, (2009)  
3 recognized this preemption: "...the Agriculture Risk Protection  
4 Act of 2000, expressly preempted states from controlling,  
5 eradicating, or preventing the introduction or dissemination of  
6 a plant pest from any foreign origin."

7 It must also be noted that pre-inspected and pre-processed  
8 dry bulk freight from foreign sources, specifically coal,  
9 cement, and fine and coarse aggregate are different from other  
10 types of freight. Chapter 150A, Hawaii Revised Statutes was  
11 created to protect Hawaii from the Brown Tree Snake, *Miconia*  
12 *calvescens*, coqui frog, *Salvinia molesta* and other types of  
13 invasive species which travel in incoming cargo into the state,  
14 including containerized and non-containerized general freight.

15 Pre-inspected and pre-processed dry bulk freight from  
16 foreign sources is not a transporter for such invasive species,  
17 and to date no such invasive species has been found in dry bulk  
18 freight. Accordingly the legislature believes the current fee  
19 schedule should not be applicable to the transport of dry bulk  
20 freight from foreign sources that is inspected by and under the  
21 regulatory jurisdiction of the U.S. Department of Agriculture



1 and the Plant Health Inspection Service (APHIS) rules and  
2 regulations.

3 The legislature also believes that the assessment of the  
4 inspection fee for liquid bulk freight is unnecessary because  
5 this commodity has not been shown to be a significant pest risk  
6 pathway since it is not a habitable environment.

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

10 "§150A- Failure to pay or remit the inspection,  
11 quarantine, and eradication service fee; fines. (a) The  
12 following fines shall be imposed for failure to pay, bill, or  
13 remit the inspection, quarantine, and eradication service fee as  
14 provided for in section 150A-5.3:

15 (1) A person responsible for paying the freight charges to  
16 the transportation company who does not pay the fee  
17 shall be assessed a fine of \$100 for every one  
18 thousand pounds of freight or part thereof; and

19 (2) A transportation company that does not:

20 (A) Bill the fee to the person responsible for paying  
21 the freight charges to the transportation company



1                   within fifteen days of the delivery of the  
2                   freight; or  
3           (B) Remit the fee to the department within forty-five  
4                   days of collecting the fee from the person  
5                   responsible for paying the freight charges to the  
6                   transportation company,  
7                   shall pay a fine of \$100 for every one thousand pounds  
8                   of freight or part thereof.

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

12           SECTION 3. Section 150A-2, Hawaii Revised Statutes, is  
13 amended by adding two new definitions to be appropriately  
14 inserted and to read as follows:

15           "Dry bulk freight" means unpackaged, pre-processed and  
16 pre-inspected homogenous cement, coal and quarry products from  
17 foreign countries including aggregate, gravel and sand, that is  
18 inspected under U.S. Department of Agriculture and Plant Health  
19 Inspection Service (APHIS) rules and regulations, without mark or  
20 count and usually free-flowing, bought and sold by weight or  
21 volume.



1        "Liquid bulk freight" means unpackaged, homogenous liquid  
2 goods, without mark or count and usually free-flowing, bought  
3 and sold by weight or volume, such as oil."

4        SECTION 4. Section 150A-5.3, Hawaii Revised Statutes, is  
5 amended to read as follows:

6        "§150A-5.3 Inspection, quarantine, and eradication service  
7 fee and charge. There is imposed a fee for the inspection,  
8 quarantine, and eradication of invasive species contained in any  
9 freight, including but not limited to marine commercial  
10 container shipment, air freight, or any other means of  
11 transporting freight, foreign or domestic, that is brought into  
12 the [~~State.~~] state, except for liquid bulk freight and dry bulk  
13 freight. The fee shall be paid by the person responsible for  
14 paying the freight charges to the transportation company, who  
15 shall collect the fee and forward the payment to the department  
16 at the port of disembarkation; provided that the transportation  
17 company shall not be liable for any fee that is not paid by the  
18 person responsible for paying the freight charges to the  
19 transportation company. The department shall deposit the fee  
20 into the pest inspection, quarantine, and eradication fund under  
21 section 150A-4.5.



# H.B. NO. 2781

1       The fee shall be assessed on the net weight of the imported  
2 freight computed on the basis of 50 cents for every one thousand  
3 pounds of freight brought into the [~~State,~~] state, or part  
4 thereof."

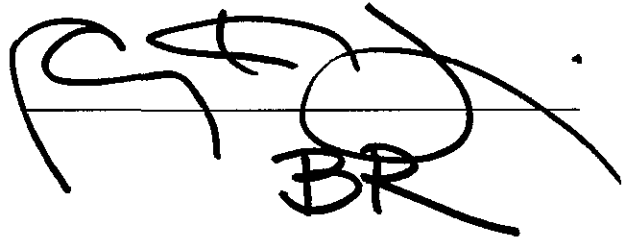
5       SECTION 5. All fees which may have been previously  
6 assessed for the importation of freight under section 150A-3.5,  
7 Hawaii Revised Statutes, are repealed as it relates to dry bulk  
8 freight and liquid bulk freight as defined in section 150A-2.

9       SECTION 6. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11       SECTION 7. This Act shall take effect upon its approval.

12

INTRODUCED BY:

A large, stylized handwritten signature in black ink, appearing to be 'BR' with a large loop and a horizontal line through it.

JAN 26 2010



**Report Title:**

Invasive Species; Fee; Freight

**Description:**

Establishes fines for failing to pay, bill, or remit the inspection, quarantine and eradication fee. Exempts dry bulk freight and liquid bulk freight from the fee.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

