



GOV. MSG. NO. 633

EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

June 23, 2010

The Honorable Colleen Hanabusa, President  
and Members of the Senate  
Twenty-Fifth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on June 23, 2010, the following bill was signed into law:

SB2523 SD2 HD2

A BILL FOR AN ACT  
RELATING TO AGRICULTURAL INSPECTIONS.  
**ACT 173 (10)**

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

Approved by the Governor  
on JUN 23 2010

**ACT 173**

THE SENATE  
TWENTY-FIFTH LEGISLATURE, 2010  
STATE OF HAWAII

**S.B. NO.** 2523  
S.D. 2  
H.D. 2

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

4           (1) Exempts aggregate bulk freight, cement bulk freight,  
5 coal bulk freight, and liquid bulk freight from the  
6 pest inspection, quarantine, and eradication service  
7 fee;

8           (2) Imposes fines for failure to timely pay, bill, or  
9 remit the past inspection, quarantine, and eradication  
10 service fee;

11           (3) Clarifies and expands the purposes for which funds may  
12 be expended from the pest inspection, quarantine, and  
13 eradication fund;

14           (4) Requires the deposit of fees and fines relating to  
15 agricultural inspections into the pest inspection,  
16 quarantine, and eradication fund;

17           (5) Repeals the permit revolving fund and microorganism  
18 import certification revolving fund and transfers



1 moneys in those funds into the pest inspection,  
2 quarantine, and eradication fund; and

- 3 (6) Directs the department of agriculture to adopt or  
4 amend rules to impose or increase fees under chapter  
5 150A, and sets a fee schedule to go into effect if the  
6 department fails to do so in a timely manner.

7 SECTION 2. Chapter 150A, Hawaii Revised Statutes, is  
8 amended by adding a new section to be appropriately designated  
9 and 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 fails to pay the fee;

17 or

- 18 (2) A transportation company that fails to:

19 (A) Bill the fee, within fifteen days of the delivery  
20 of the freight, to the person responsible for  
21 paying the freight charges to the transportation  
22 company; or



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

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

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

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

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



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

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

9       SECTION 4. Section 150A-4.5, Hawaii Revised Statutes, is  
10 amended to read as follows:

11       "§150A-4.5 Pest inspection, quarantine, and eradication  
12 fund. (a) There is established in the state treasury the pest  
13 inspection, quarantine, and eradication fund, into which shall  
14 be deposited:

- 15       (1) Legislative appropriations for biosecurity and  
16 inspection, quarantine, and eradication services;  
17       (2) Service fees, charges, and penalties collected under  
18 section 150A-5.3 [7];  
19       (3) Fees imposed for services pursuant to this chapter or  
20 rules adopted under this chapter;  
21       (4) Fines for violations of this chapter;



1        [~~3~~] (5) Federal funds received for biosecurity, pest  
2                    inspection, control, management, quarantine, and  
3                    eradication programs;

4        [~~4~~] (6) Grants and gifts;

5        [~~5~~] (7) All interest earned or accrued on moneys  
6                    deposited in the fund; and

7        [~~6~~] (8) Any other moneys made available to the fund.

8            (b) The moneys in the pest inspection, quarantine, and  
9        eradication fund shall be expended by the department for the  
10       operation of biosecurity and pest inspection, quarantine,  
11       eradication, [~~biosecurity,~~] and monitoring programs, related  
12       facilities, [~~and~~] the execution of emergency remedial measures  
13       when pests are detected in the course of inspection and  
14       quarantine activities by the department [~~-~~], training of  
15       inspectors, education of the agricultural industry, permit and  
16       certificate holders, and the general public as to import  
17       requirements, and for any other purposes deemed necessary to  
18       carry out the purposes of this chapter. In addition, the moneys  
19       shall be expended to facilitate the processing and issuance of  
20       permits and microorganism import documents and for the  
21       operations, activities, and monitoring of permitted and  
22       certified plants, animals, and microorganisms."



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

3 "§150A-5.3 Inspection, quarantine, and eradication service  
4 fee and charge. (a) There is imposed a fee for the inspection,  
5 quarantine, and eradication of invasive species contained in any  
6 freight, including [~~but not limited to~~] marine commercial  
7 container shipment, air freight, or any other means of  
8 transporting freight, foreign or domestic, but not including  
9 aggregate bulk freight, cement bulk freight, coal bulk freight,  
10 or liquid bulk freight, that is brought into the [State-] state.  
11 The transportation company shall bill the fee to the person  
12 responsible for paying the freight charges to the transportation  
13 company within fifteen days of the delivery of the freight. The  
14 fee shall be paid by the person responsible for paying the  
15 freight charges to the transportation company [~~who~~] within  
16 forty-five days of receipt of the bill. The transportation  
17 company shall collect the fee from the person responsible and  
18 forward the payment to the department at the port of  
19 disembarkation [~~+~~] within forty-five days of receipt of the fee;  
20 provided that the transportation company shall not be liable for  
21 any fee that is not paid by the person responsible for paying  
22 the freight charges to the transportation company.



1       The department shall deposit the fee into the pest  
2 inspection, quarantine, and eradication fund under section 150A-  
3 4.5.

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

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

10       " ~~[+] §150A-21~~ ~~[+]~~ Certification for shipment. The  
11 department may certify as to the pest condition or post  
12 treatment of shipments when officially required. Fees may be  
13 charged for certificates in certain instances ~~[.]~~ and shall be  
14 deposited into the pest inspection, quarantine, and eradication  
15 fund."

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

18       " ~~[+] §150A-23~~ ~~[+]~~ Nursery stock certificate. The department  
19 may issue and authorize the use of nursery stock certificates by  
20 any shipper complying with its regulation for nursery  
21 inspection. Shipments accompanied by these certificates may  
22 move to other localities within the county or to other counties





1 without inspection at destination. Nursery stock certificates  
2 may be issued for interstate shipments. Fees may be charged for  
3 nursery certification[-] and shall be deposited into the pest  
4 inspection, quarantine, and eradication fund. Nursery stock  
5 certificates shall not be altered or misused.

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

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

12 "[+]§150A-31[+] Certificate for shipment. The department  
13 may certify as to the pest condition of honey bee shipments when  
14 health certificates are officially required. Fees to cover the  
15 department's certification costs may be charged for health  
16 certificates as provided by rule[-] and shall be deposited into  
17 the pest inspection, quarantine, and eradication fund. Health  
18 certificates shall not be altered or misused."

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

21 "(b) Fees may be assessed for the processing and issuance  
22 of a certificate and for inspections related to the certificate,



1 as established by rule and shall be deposited into the pest  
2 inspection, quarantine, and eradication fund. Fees may vary  
3 according to the type of certification issued and the costs  
4 incurred for inspections."

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

7 ~~["§150A-6.7 Permit revolving fund. (a) There is~~  
8 ~~established in the state treasury a revolving fund to be known~~  
9 ~~as the permit revolving fund to be administered by the~~  
10 ~~department. The permit revolving fund shall consist of:~~

- 11 ~~(1) Legislative appropriations;~~  
12 ~~(2) User fees as authorized by rule;~~  
13 ~~(3) All interest earned on or accrued to moneys deposited~~  
14 ~~in the permit revolving fund;~~  
15 ~~(4) Grants and gifts; and~~  
16 ~~(5) Any other moneys made available to the permit~~  
17 ~~revolving fund from other sources.~~

18 ~~(b) The department shall expend moneys in the permit~~  
19 ~~revolving fund to:~~

- 20 ~~(1) Facilitate the processing and issuance of permits;~~  
21 ~~(2) Amend lists of creatures prohibited or allowed for~~  
22 ~~import;~~



- 1       ~~(3) Comply with monitoring activities;~~  
2       ~~(4) Train personnel, and provide educational workshops,~~  
3       ~~materials, and equipment; and~~  
4       ~~(5) For any other purpose deemed necessary to carry out~~  
5       ~~the purposes of this part." ]~~

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

8       ~~["§150A-48] Microorganism import certification revolving~~  
9       ~~fund. (a) There is established in the state treasury the~~  
10       ~~microorganism import certification revolving fund which shall be~~  
11       ~~administered by the department for the purposes of this~~  
12       ~~section. The microorganism import certification revolving fund~~  
13       ~~shall consist of:~~

- 14       ~~(1) Legislative appropriations to the microorganism import~~  
15       ~~certification revolving fund;~~  
16       ~~(2) Certification and inspection fees, as authorized by~~  
17       ~~rule;~~  
18       ~~(3) All fines collected pursuant to this part;~~  
19       ~~(4) Reimbursements for any costs paid by the department to~~  
20       ~~remediate any impending danger or actual emergencies~~  
21       ~~involving microorganisms imported pursuant to~~  
22       ~~certificate;~~



1       ~~(5) All interest earned on or accrued to moneys deposited~~  
2           ~~in the microorganism import certification revolving~~  
3           ~~fund;~~

4       ~~(6) Grants and gifts to the microorganism import~~  
5           ~~certification revolving fund; and~~

6       ~~(7) Any other moneys made available to the microorganism~~  
7           ~~import certification revolving fund from other~~  
8           ~~sources.~~

9       ~~(b) The balance in the microorganism import certification~~  
10       ~~revolving fund shall not exceed \$500,000. All amounts in excess~~  
11       ~~of \$500,000 shall be deposited to the credit of the state~~  
12       ~~general fund.~~

13       ~~(c) The department shall expend moneys in the~~  
14       ~~microorganism import certification revolving fund for the~~  
15       ~~development, administration, and operation of the microorganism~~  
16       ~~import certification program, including but not limited to~~  
17       ~~personnel, training, materials and equipment, compliance~~  
18       ~~monitoring activities, educational workshops for certified~~  
19       ~~importers and applicants for certification, evaluation and~~  
20       ~~remediation of impending threat or actual emergencies related to~~  
21       ~~microorganisms imported pursuant to certificate, and for any~~



1 ~~other purpose deemed necessary to carry out the purposes of this~~  
2 ~~part.~~

3 ~~(d) The department may set fees, by rule, for educational~~  
4 ~~workshops for certified importers or applicants for~~  
5 ~~certification." ]~~

6 SECTION 12. On July 1, 2010:

7 (1) All moneys in the permit revolving fund and  
8 microorganism import certification revolving fund as  
9 of June 30, 2010, shall be transferred to the pest  
10 inspection, quarantine, and eradication fund;

11 (2) All unpaid obligations of the permit revolving fund  
12 and microorganism import certification revolving fund  
13 as of June 30, 2010, shall become payable from the  
14 pest inspection, quarantine, and eradication fund; and

15 (3) The permit revolving fund and microorganism import  
16 certification revolving fund shall cease to exist.

17 SECTION 13. (a) Between July 1, 2010, and September 30,  
18 2010, the department of agriculture shall adopt new or amend  
19 existing rules to impose or increase the fees authorized to be  
20 charged under chapter 150A, Hawaii Revised Statutes, without  
21 regard to the public notice and public hearing requirements of  
22 section 91-3, Hawaii Revised Statutes, the small business impact



1 review requirements of chapter 201M, Hawaii Revised Statutes, or  
2 the limit on fee increases under section 92-28, Hawaii Revised  
3 Statutes. The department shall set the fees at amounts intended  
4 to generate, together with the inspection, quarantine, and  
5 eradication service fee, sufficient revenues to pay the  
6 operation and maintenance costs of implementing the agriculture  
7 inspection and biosecurity programs of chapter 150A, Hawaii  
8 Revised Statutes, and the central services and departmental  
9 administrative expense assessments of section 36-27 and section  
10 36-30, Hawaii Revised Statutes.

11 (b) If, by September 30, 2010, the department of  
12 agriculture has not complied with subsection (a), then the fee  
13 charged for each inspection or certification conducted under  
14 authority of chapter 150A shall be as follows, effective October  
15 1, 2010:

16 (1) A fee for inspection, safeguarding, witnessing  
17 departure, witnessing treatment, or certification  
18 requiring the services of personnel beyond regular  
19 work hours, including pre-shift, post-shift, holidays,  
20 or days off shall be \$50 plus mileage reimbursement,  
21 and an additional fee shall be assessed, which shall



- 1 include applicable charges for overtime wages, fixed  
2 charges for personnel services, and meals;
- 3 (2) A fee for any inspection during regular work hours  
4 conducted away from the port or department office that  
5 is conducted pursuant to requirements for export,  
6 certification, inter-island or intra-island movement,  
7 or disposition other than release at a port of  
8 arrival, such as witnessing departure, destruction, or  
9 treatment, shall be \$50 per hour plus mileage  
10 reimbursement;
- 11 (3) An annual fee for nursery certification shall be \$100;
- 12 (4) A fee for follow-up inspections required to correct  
13 deficiencies found in a certification inspection or  
14 inspections to remedy out-of-state rejections shall be  
15 \$50 per hour plus mileage reimbursement;
- 16 (5) A fee for treatment or destruction of infested  
17 commodities performed by the department's plant  
18 quarantine branch shall be \$50 per parcel;
- 19 (6) A fee for the use of a quarantine house operated by  
20 the department's plant quarantine branch shall be \$50  
21 per room per month; and



1 (7) A storage fee of \$5 per day shall be charged for  
2 commodities stored at any department plant quarantine  
3 branch office, forty-eight hours after written  
4 notification.

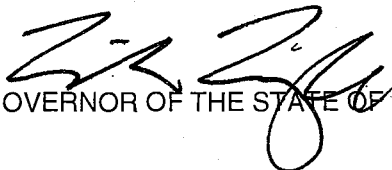
5 The fee shall be deposited into the pest inspection,  
6 quarantine, and eradication fund.

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

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

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

APPROVED this 23 day of JUN, 2010

  
GOVERNOR OF THE STATE OF HAWAII