



**Hawaii Farm Bureau**  
F E D E R A T I O N

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**TESTIMONY**

**HB 2949 RELATING TO INVASIVE SPECIES**

Chair Tsuji and Members of the Committee

HFBF on behalf of our member farm and ranch families and organizations **supports** the intent of HB2949 establishing penalties for failure to pay pest inspection service fees and exemptions for certain dry cargo..

There have been many bills introduced this session on this matter. We respectfully urge that this bill be held and support of HB 2294 HD1.

Thank you.



Protecting nature. Preserving life.™

The Nature Conservancy of Hawai'i  
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Honolulu, Hawai'i 96817

Tel (808) 537-4508  
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nature.org/hawaii

Testimony of The Nature Conservancy of Hawai'i  
Supporting the Intent of H.B. 2949 Relating to Invasive Species  
House Committee on Agriculture  
Friday, February 5, 2010, 9:00am, Rm. 312

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*The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of Hawai'i's native plants, animals, and ecosystems. The Conservancy has helped to protect nearly 200,000 acres of natural lands for native species in Hawai'i. Today, we actively manage more than 32,000 acres in 11 nature preserves on O'ahu, Maui, Hawai'i, Moloka'i, Lāna'i, and Kaua'i. We also work closely with government agencies, private parties and communities on cooperative land and marine management projects.*

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The Nature Conservancy of Hawai'i supports the intent of H.B. 2949 and submits the following comments:

- **We strongly support reasonable service fees and meaningful fines for failure to pay such fees** for the Hawai'i Department of Agriculture's (HDOA) invasive species inspection, quarantine and eradication activities. This is an appropriate way to support the critical functions of the HDOA to protect our economy, environment, health, and lifestyle from the introduction and spread of pests and diseases. We are not certain that the level of fines proposed in H.B. 2949 is sufficient to ensure timely payment or deter repeated or ongoing failure to pay fees.
- **We are very concerned about creating a variety of precedent setting exemptions to the service fees** collected by the HDOA for invasive species inspections. While the proposed exemptions as currently written in H.B. 2949 appear to attempt to cover cargo that is perceived as low-risk pathways for invasive species, HDOA's inspectors still may need to conduct inspections of this cargo or its means of conveyance depending on its point of origin to ensure that indeed no pests are present. Furthermore, sand, gravel and crushed stone, especially from international sources, are well-known pathways for insects, spiders, weed seeds, and nematodes.

**Our preference is that there are no exemptions to the inspection fee, but if the cement bulk freight and liquid bulk freight exemptions are not removed from the bill, we suggest the addition of the phrase "pre-processed, and pre-inspected" to their definitions. We should not, however, delude ourselves into thinking that pre-processing and pre-inspection, especially in foreign countries, will always be a safe substitute for inspection by our own State Department of Agriculture.**

Invasive insects, diseases, snakes, weeds, and other pests are one of the greatest threats to Hawai'i's economy, natural environment, and the health and lifestyle of its people.

The Hawai'i Department of Agriculture (HDOA) is responsible for the inspection of arriving cargo and interisland cargo shipments to protect the state from introduction and movement of unwanted plant and animal pests and diseases. The Department developed a multi-faceted Biosecurity Plan to enhance its efforts with more inspectors, more efficient and effective inspection services, joint state-federal inspection facilities, and agreements with importers and producers for improved sanitary protocols before items are shipped to Hawai'i. Unfortunately, the current general fund budget conditions in the State have caused drastic—and potentially catastrophic—reductions in the Department's capability to inspect incoming cargo. The Department's inspection capacity has dropped so far below anything that can reasonably be expected to be effective that there is a good chance that we won't know what new pest has arrived in Hawai'i until there is an outbreak of some kind. This could include a human disease outbreak.

BOARD OF TRUSTEES

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## **HAWAII FOOD INDUSTRY ASSOCIATION (HFIA)**

1188 Bishop St., Suite 608, Honolulu, Hawaii 96813  
Phone (808)533-1292 - Fax (808)599-2606 - Email: hawaiifoodind@aol.com

February 5, 2010 @ 9:00 a.m. in CR 312

To: House Committee on Agriculture  
Rep. Cliff Tsuji Chair  
Rep. Jessica Wooley, Vice Chair

By: Richard C. Botti, President  
Lauren Zirbel, Government Relations

Re: HB 2949 RELATING TO INVASIVE SPECIES

Chairs & Committee Members:

We support SECTION 1 of the HB 2949, but oppose SECTION 2 at establishing exemptions that may be arbitrary in that we have requested exemption for other commodities that were not considered.

Prior to creating exemptions, we need a total review of all products being shipped into the state to create a category of risk factor. Under current law when it comes to inspections, there is a low priority and a high priority list, yet when it comes to the fee assessment, one size fits all in essence making this a tax.

We agree with the proposal that a container of cement should not be paying for inspections for a load of Christmas trees. While a container of sand may have very little risk, so does a frozen food container, or a container of automotive parts from the manufacturer. Yet, one proposes an exemption, while exemptions for the others are not under consideration.

With information based on risk, we can come up with a sliding scale, where the high risk products pay a higher fee, and little or no risk items pay a lower fee. We don't believe anyone should get by with a free ride, but there should be a nexus between risk and fee.

**HB 2949  
RELATING TO INVASIVE SPECIES**

**PAUL T. OSHIRO  
MANAGER – GOVERNMENT RELATIONS  
ALEXANDER & BALDWIN, INC.**

**FEBRUARY 5, 2010**

Chair Tsuji and Members of the House Committee on Agriculture:

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin, Inc. (A&B) and Matson Navigation Company, Inc. (a subsidiary of A&B) on HB 2949, "A BILL FOR AN ACT RELATING TO INVASIVE SPECIES."

In 2008, amendments were enacted to broaden the scope of the invasive species user fee from one that assessed fees only on freight brought into Hawaii by maritime containers to one that assessed fees on all modes by which commercial freight is brought into the State, including air and maritime containerized and non-containerized freight. We understand that at present this invasive species user fee is utilized to fund the agricultural inspection and biosecurity programs, which includes invasive species inspection services for both maritime and air freight entering into the State. We support the present broad based application of the invasive species user fee that requires all shippers to pay for these inspection services through the payment of this fee.

Matson has dedicated a considerable amount of time, effort, and expense to implement the assessment, collection, and disbursement of this new fee by the effective date of August 1, 2008. We were successful in starting up the collection of this new fee by the effective date and have since been diligently proceeding with its implementation.

Section 1 of this bill incorporates provisions specifying deadlines within which the transportation company must collect the fee from the shipper/importer and transmit the fee to the State. Matson generally has two categories of freight shipments, freight shipments on a cash basis and freight shipments on a credit basis. With payments for both Matson service charges and the invasive species user fee generally being paid by credit based freight shipments 30 to 45 days after the arrival of the freight, the implementation of the proposed provisions to require the transportation company to collect the fee from the shipper/importer within 15 days of the delivery of the freight will be problematic. We respectfully suggest that this section be amended to instead establish a 15 day deadline within which the transportation company must bill the fee to the shipper/importer and a 45 day deadline within which the shipper/importer must pay the fee to the transportation company. We have attached the following suggested language for your consideration:

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

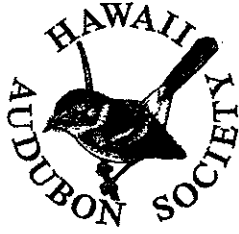
- (1) A person responsible for paying the freight charges to the transportation company who fails to pay the fee to the transportation company within forty-five days of receipt of the bill shall be assessed a fine of 50 cents for every one thousand pounds of freight or part thereof; and
- (2) A transportation company that fails to:
  - (A) Bill the fee to the person responsible for paying the freight charges to the transportation company within fifteen days of the delivery of the freight; or
  - (B) Remit the fee to the department within forty-five days of collecting the fee from the person responsible for paying the freight charges to the transportation company,

shall pay a fine of 50 cents for every one thousand pounds of freight or part thereof.

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

This above mentioned section also establishes fines for a transportation company who fails to bill the person responsible for paying the freight charges and for a transportation company who fails to remit the invasive species user fees collected to the State. Matson is very much aware of the importance of our role in the billing, collection, and the remittance to the State for the invasive species user fee and we have set as a priority our compliance with these statutory provisions. Matson supports the general intent of this bill to enhance and strengthen the enforcement of the invasive species user fee. We would sincerely appreciate your consideration to ensure that these fines are appropriate for the violations to which they are imposed, in particular for entities who exhibit a concerted effort to comply with these statutory provisions in a timely manner.

Thank you for the opportunity to testify.



*For the Protection of Hawaii's Native Wildlife*

## **HAWAII AUDUBON SOCIETY**

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www.hawaii Audubon.com

February 3, 2010

**TO: Committee on Agriculture  
Representative Clift Tsuji, Chair  
Representative Jessica Wooly, Vice Chair**

**HEARING: February 5, 2010; 9:00 A.M., Conference Rm. 312**

**Re: HB2949, Relating to the Invasive Species**

### **Testimony in Support**

Chair Tsuji, Vice Chair Wooly and members of the Committee on Agriculture. Thank you for the opportunity to submit our testimony in support of HB2949, which establishes fines for failing to pay, collect, or remit the inspection, quarantine, and eradication fee. This measure also exempts bulk freight liquids, cement, coal and aggregate from the fee.

The Hawai'i Audubon Society was founded in 1939, and it is Hawai'i oldest conservation organization. The primary missions of the Society is to foster community values that result in the protection and restoration of native ecosystems and conservation of natural resources through education, science and advocacy in Hawai'i and the Pacific.

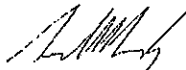
The society strongly supports measures that protect our ecosystems from invasive species. Once established, invasive plants crowd out endemic (native) plants. The sad fact is that Hawai'i has the highest number of listed threatened and endangered species in the nation. There are 394 threatened and endangered species in the State of Hawai'i, of which 294 are plants. Invasive plants have led to the extinction of 55 species of plants in the State with another 42 possibly extinct. This extinction, along with the introduction of non-endemic animals has lead to the extinction 24 bird species and is endangering another 32.

The Hawai'i Audubon Society believes that HB2949 is a good measure as it deposits the amount paid by fine into the pest inspection, quarantine, and eradication fund. **As you know in the past, funding for eradication of invasive species has been problematic and funds were often obtained from a variety of sources and agencies. Sometimes there were gaps in funding thus eradication efforts could not be sustained.** Hopefully depositing all fines into the pest inspection, quarantine, and eradication fund, will help address the problems caused by not being able to fully undertake eradication measures when needed.

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In closing we would offer comment with respect the exemption of bulk freight shipments from the fee, and we acknowledge that none has been found to be significant pest risk pathway for invasive pests.

Thank you for the opportunity testify here today.  
Sincerely,



George Massengale, JD  
Legislative Analyst





COORDINATING GROUP ON  
ALIEN PEST SPECIES

The House of Representatives  
Committee on Agriculture  
Friday, February 5, 2010  
9:00 a.m., Conference Room 312  
State Capitol

### Testimony in Support of the Intent of HB 2949

Aloha Chair Tsuji, Vice Chair Wooley, and Members of the Committee,

The Coordinating Group on Alien Pest Species (CGAPS) **supports the intent of HB 2949, *Relating to Invasive Species***, and submits the following suggestions for consideration.

First, thank you for continuing to discuss the cargo fee and to look for ways to balance necessary invasive species prevention activities with commerce. Recent budget cuts have shown the wisdom in transitioning funding for these crucial inspection and quarantine services from dependence on unpredictable general funds towards a fee-for-service model.

HB 2949 proposes amendments to Chapter 150A, Hawaii Revised Statutes, to include a late fee of 50 cents per 1,000 lbs. of cargo. Although there are 15 and 45 day deadlines specified in this bill, the bill does not include a penalty for non-payment of the original fees beyond that point, no deadlines listed for payment of the fee, and no repercussions for non-payment of the fee.

One suggestion might be to add wording reflecting a penalty fee that is compounded with time (beyond the 45 days already listed), based on and including the original amount owed. For example, payment must be made within a specified time period (say, 30 days), beyond which a fine of a percentage (5%?) of the original fee is owed for every month the payment is not made, in addition to the original fee.

CGAPS has serious concerns regarding the proposed addition of "Aggregate bulk freight" to a list of cargo that would be exempt from the fee. Sand, gravel and crushed stone are known to carry invasive pests, and should not be exempt from the fee. Furthermore, inspections of these materials should be done by federal and state quarantine inspectors, as the list of actionable pests differ between agencies.

We encourage further discussions between legislators, Hawai'i Department of Agriculture and transportation companies to find the solution that best allows this fee-for-service to function as intended, to protect Hawai'i from new invasive species. Mahalo.

CGAPS--Coordinating Group on Alien Pest Species  
Ph: (808) 722-0995

**HOUSE COMMITTEE ON  
AGRICULTURE**

February 5, 2010

House Bill 2949 Relating to Invasive Species

Chair Tsuji and members of the House Committee on Agriculture, I am Rick Tsujimura, representing AES Hawaii, Inc ("AES"). AES supports House Bill 2949 Relating to Invasive Species as it relates to the exemption of "coal bulk freight" as defined in section 2 of the measure.

The coal which AES uses at its Kalaeloa plant is imported from foreign sources. The federal Agriculture Risk Protection Act of 2000 specifically preempts the states from regulating items in foreign commerce. In pertinent part the act states:

**SEC. 436. PREEMPTION.**

**(a) REGULATION OF FOREIGN COMMERCE.—No State or political subdivision of a State may regulate in foreign commerce any article, means of conveyance, plant, biological control organism, plant pest, noxious weed, or plant product in order—**

- (1) to control a plant pest or noxious weed;**
- (2) to eradicate a plant pest or noxious weed; or**
- (3) prevent the introduction or dissemination of a biological control organism, plant pest, or noxious weed.**

In addition federal regulations also preempt state regulation of items in foreign commerce. U.S. Code of Regulations, Title: 7 Agriculture, § 360.400 Preemption of State and local laws states in pertinent part:

**(a) Under section 436 of the Plant Protection Act (7 U.S.C. 7756), a State or political subdivision of a State may not regulate in foreign commerce any noxious weed in order to control it, eradicate it, or prevent its dissemination.**  
\*\*\* [74 FR 53400, Oct. 19. 2009]

We believe that Chapter 150A as applied to the importation of dry bulk freight from foreign sources is inconsistent and preempted by the federal government. Therefore an amendment to Chapter 150A, Hawaii Revised Statutes, is necessary to make state law consistent with federal law.

The proposed measure is strictly and narrowly limited to "unpackaged, homogenous coal, without mark or count and usually free-flowing, bought and sold by weight or volume, used as a fuel."

For these reasons we believe the proposed bill should resolve the problem with the preemption provisions contained in the federal law. We urge passage by the committee.

Thank you for the opportunity to present this testimony.

20F2  
HB 2949

# ***SAH - Subcontractors Association of Hawaii***

***1188 Bishop St., Ste. 1003\*\*Honolulu, Hawaii 96813-2938***

***Phone: (808) 537-5619 ✦ Fax: (808) 533-2739***

February 5, 2010

Testimony To: House Committee on Agriculture  
Representative Clift Tsuji, Chair

Presented By: Tim Lyons  
President

Subject: H.B. 2949 - RELATING TO INVASIVE SPECIES

Chair Tsuji and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii and we oppose this bill. Our testimony today represents the collective thoughts of nine separate and distinct subcontracting associations:

ELECTRICAL CONTRACTORS ASSOCIATION OF HAWAII

HAWAII FLOORING ASSOCIATION

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

SHEETMETAL CONTRACTORS ASSOCIATION OF HAWAII

TILE CONTRACTORS PROMOTIONAL PROGRAM

We are opposed to this bill because we are having a hard time understanding why cement bulk freight and liquid bulk freight should be exempt from the tax.

In theory, when this tax was adopted, it was our understanding that it was in order to offset fees for inspections of containers against the intrusion of invasive species. Why cement would be exempt and not containers full of prepackaged pesticides or roofing material or drywall material or other items when invasive species also have no interest in "hitching a ride" in those containers, we have no idea however, we do know that we think it is inherently unfair to start exempting certain types of materials without looking at all materials that perhaps ought to be exempt.

Based on the above, we are opposed to the passage of this bill.

Thank you.

*Hawaii Ship Agents Association  
Pier 32, Honolulu Harbor  
Honolulu, Hawaii, 96817-4558*

February 5, 2010

**EXACT COPY**

I certify that this is an exact copy of the original.

*WFA*

COMMITTEE ON AGRICULTURE

Rep. Clift Tsuji, Chair; Rep. Jessica Wooley, Vice Chair, and Committee Members  
Public Hearing, February 5, 2010, 9:00 a.m. Conference Room 312

Testimony of William Anonsen, President  
HAWAII SHIP AGENTS ASSOCIATION  
In Support of Provisions included in H.B. 2949  
Relating to Invasive Species

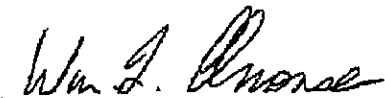
My name is William Anonsen and I am the President of the Hawaii Ship Agents Association and respectfully submit this testimony on behalf of the membership. We support the provisions included in H.B. 2949 which proposes to exempt liquid, cement, coal, aggregate bulk freight from the invasive inspection fee on the basis that the inspection is under the authority and federal jurisdiction of the United States Department of Agriculture which currently performs this federal mandated process.

On behalf of our memberships, who represent global ship owners/charterers whose ships import dry bulk commodities, we feel these inspection fees are redundant and a duplication of the USDA's inspection process. The exemption of liquid and dry bulk freight of foreign origin as proposed in this measure would serve to clarify the role and responsibilities for the agricultural inspection of imported liquid and dry bulk cargoes, and is in keeping with the federal "Agriculture Risk Protection Act of 2000, which preempts states from controlling, eradicating, or preventing the introduction or dissemination of a plant pest from any foreign origin.

As a multi-island state that is largely dependant on waterborne transportation, we have a fiduciary duty to ensure we do not impose a greater than necessary burden on imported items that possess an inherently low and insubstantial risk to our island ecosystem due to various safeguards and inspection processes in place.

**We strongly urge your favorable consideration of this proposed measure.**

Sincerely,



William F. Anonsen  
President  
Hawaii Ship Agents Association