



The Judiciary, State of Hawaii

Testimony to the Senate Committee on Ways and Means

The Honorable Donna Mercado Kim, Chair

The Honorable Shan S. Tsutsui, Vice Chair

Tuesday, February 23, 2010, 10:00 a.m.

State Capitol, Conference Room 211

by

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Deputy Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 2159, Relating to Traffic Abstract Fee.

Purpose: Increases the fee for a traffic abstract from \$7 to \$10 and increases the amount of the fee deposited into the general fund from \$5 to \$8.

Judiciary's Position:

The Judiciary strongly supports this bill, which is part of the Judiciary=s legislative package. This bill would increase the traffic abstract fee by \$3 which would be paid into the general fund.

Since 1996, the Judiciary charges \$7 for a certified traffic abstract. Five dollars (\$5) is deposited into the general fund and \$2 is deposited into the Judiciary Computer System Special Fund. From 1982 to 1994, the traffic abstract fee was \$2. In 1994, the fee was increased to \$5. The current request to increase the traffic abstract fee by \$3 for a total of \$10 is reasonable and would not place an undue burden on individuals, insurance companies and businesses who request the traffic abstract.

In other states around the country a certified traffic abstract ranges from Free to \$26. States specifically in the Pacific region (Washington, Oregon, California, Nevada,



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parts of Idaho) and Alaska, have ranges for a traffic abstract as low as \$3 (Oregon) for a certified court record to \$10 (Washington and Alaska) for a certified traffic abstract. The \$3 increase requested by the Judiciary would put Hawaii on par with states like Washington, Alaska and New Hampshire to name a few and lower than states like Idaho (\$26), Nevada (\$11) and Texas (\$20) to name a few.

Based on abstract statistics for the first half of Fiscal Year 2010, it is expected that about 500,000 traffic abstracts will be created in Fiscal Year 2010 which will generate \$2.5 million into the state general fund. With an increase in the traffic abstract fee of \$3 as proposed by this bill, an additional \$1.5 million could be added to the general fund.

Thank you for the opportunity to testify on Senate Bill No. 2159.

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MEMORANDUM

TO: Senator Donna Mercado Kim
Chair, Committee on Ways and Means
Via Email: WAMTestimony@Capitol.hawaii.gov

FROM: Anne T. Horiuchi

DATE: February 22, 2010

RE: **S.B. 2159 – Relating to Traffic Abstract Fee**
Decision Making: Tuesday, February 23, 2010 at 10:00 a.m., Room 211

Dear Chair Kim and Members of the Committee:

USAA, a diversified financial services company, is the leading provider of competitively priced financial planning, insurance, investments, and banking products to members of the U.S. military and their families. USAA has over 82,000 members in Hawaii.

S.B. 2159 increases the fee for a traffic abstract from \$7 to \$10 and increases the amount of the fee deposited into the general fund from \$5 to \$8. USAA **opposes** this measure.

USAA, like other insurers, must order these abstracts in large numbers in order to conduct our business. USAA gave 14,000 quotes last year and issued 8,100 operator policies in Hawaii, for an internal cost of more than \$160,000 per year in total cost of traffic abstracts.¹ At \$7 per abstract, Hawaii is already one of the highest-charging states in the nation. In light of the volume of abstracts ordered, an increase of \$3 will have a significant impact upon our business. For these reasons, we oppose this measure and respectfully request that it be held in committee.

Thank you for the opportunity to submit comments on this measure.

¹ Traffic abstracts are ordered for all quotes, not just for policies issued. USAA purchases the abstracts from a vendor, who obtains the abstracts from the State.

**SENATE COMMITTEE ON
WAYS AND MEANS**

February 23, 2010

Senate Bill 2159 Relating to Traffic Abstract Fee

Chair Kim and members of the Senate Committee on Ways and Means, I am Rick Tsujimura, representing State Farm Insurance Companies, a mutual company owned by its policyholders. State Farm opposes Senate Bill 2159 Relating to Traffic Abstract Fee.

The increase and structure of section 287-3 may be an unconstitutional tax. The Hawaii Supreme Court in State v. Medeiros, 89 Hawai'i 361, 973 P.2d 736 (1999), articulated the following test as to whether a fee was an unconstitutional tax.

“...whether the charge (1) applies to the direct beneficiary of a particular service, (2) is allocated directly to defraying the costs of providing the service, and (3) is reasonably proportionate to the benefit received.”

In the instant bill, it does not appear that the fee “applies to the direct beneficiary of a particular service, nor is it allocated directly to defraying the costs of providing the service, and is not reasonably proportionate to the benefit received” as articulated by the Supreme Court, because \$8 of the \$10 fee is being diverted immediately to the general fund. Clearly the increase is a revenue generating measure more appropriately described as a tax.

In the instant bill if not the current statute it is clear that the monies are not used to defray the costs of the service, but rather goes into the general fund for the use of the whole taxpaying public, which is violative of the clearly articulated principles stated in Medeiros.

Furthermore we believe that the bill should be amended to clearly fall within the ambit of the Supreme Court’s decision in Medeiros. The Supreme Court in HIC v. Lingle, dealt with the issue of whether monies from a fund made up entirely of “fees” can be transferred to the general fund. The Court stated that, **“We blanch at the State’s basic contention that a user or regulatory fee, if initially assessed as such, can be transferred to a general fund when the same assessment would have been invalid had it been assessed initially with the express understanding that the funds would be transferred to the general fund.”** There is no doubt that the state can impose taxes, but it cannot impose a tax disguised as a fee, especially a fee delegated to the judiciary and collected by the judiciary and paid to the general fund. Moreover in the instant case the fee is not subject to discretion of the judiciary’s agency but mandated an assessment of \$8 for the general fund. This language is violative of the Constitution on two levels as an unconstitutional delegation of taxing authority to the judiciary and a transfer on its face violative of the Supreme Court decision in Lingle which forbade the transfer of funds from the executive to legislative branch, and surely would forbid transferring funds from the judiciary to the legislature.

Without a doubt, the current language of section 287-3 on its face violates the decision of the Supreme Court. We would therefore request that this committee amend this measure by deleting the monies transferred to the general fund because it violates the clearly articulated decision of the Hawaii Supreme Court in HIC.

Thank you for the opportunity to present this testimony.