

TESTIMONY
SB 2236

LINDA LINGLE
Governor



SANDRA LEE KUNIMOTO
Chairperson, Board of Agriculture

DUANE K. OKAMOTO
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 Fax: (808) 973-9613

TESTIMONY OF SANDRA LEE KUNIMOTO
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEES ON
WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS
AND
TRANSPORTATION, INTERNATIONAL AND INTERGOVERNMENTAL AFFAIRS
MONDAY, FEBRUARY 8, 2010
2:45 P.M.

SENATE BILL NO. 2236
RELATING TO INVASIVE SPECIES

Chairpersons Hee and English and Members of the Committees:

Thank you for the opportunity to testify on Senate Bill No. 2236. The purpose of this bill is to establish fines for failing to pay, bill, or remit the inspection, quarantine and eradication fee, as well as providing exemptions for liquid bulk freight and cement bulk freight from the fee. The department supports this measure and would like to provide comments on this bill.

When Act 3 passed in the 2008 special session, it broadened the imposition of a fee for the inspection, quarantine, and eradication of invasive species contained in any freight to include not only commercial container shipments, but air freight, or any other means of transporting freight, whether foreign or domestic, that is brought into the State. However, the 2008 legislation did not provide for the enforceability of collecting these fees from the person responsible for paying the freight charges, nor did it address the collection of said fees to the transportation company and the failure by the transportation company to forward them to the department. By providing for a penalty for failure to pay or remit the service fee as proposed in this bill, accountability is

established for the collection and remittance of said fees to the department. Therefore, the proposed provisions in this bill should assure the proper collection and deposit of the inspection, quarantine, and eradication service fee for incoming commercial freight, except as provided for in this measure.

The department also agrees with the proposed definitions under Section 2 of this measure as it pertains to bulk freight that is unpackaged, homogenous, and without mark or count, that are usually free-flowing and bought and sold by weight or volume. As proposed in this bill, the department is supportive of the exemption from the fee for any liquid bulk freight or cement bulk freight; however, the department would like to state for the record that although the afore-mentioned bulk freight may pose a very low-risk for invasive species entry, the surface vessel transporting these items may pose as a vector of invasive species, such as mosquitoes, rodents, and other human-related disease pathogens and; therefore, the Department would like to clearly state that although exempted from the fee by this measure, the Department still maintains the authority to inspect exempted commodities.



COORDINATING GROUP ON
ALIEN PEST SPECIES

The Senate
Committee on Water, Land, Agriculture, and Hawaiian Affairs
Committee on Transportation, International and Intergovernmental Affairs
Monday, February 8, 2010
2:45 p.m., Conference Room 229
State Capitol

Testimony in Support of the Intent of SB 2236

Aloha Chairs Hee, and English, Vice Chairs Tokuda, and Gabbard, and Members of the Committees,

The Coordinating Group on Alien Pest Species (CGAPS) **supports the intent of SB 2236, *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.

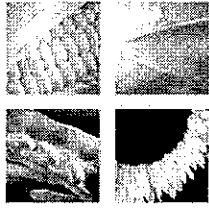
SB 2236 proposes amendments to Chapter 150A, Hawaii Revised Statutes, to include a late fee of \$100 per 1,000 lbs. of unpaid cargo. Although there are 15 and 45 day deadlines specified in this bill after which the late fee is levied, the bill does not include a penalty for non-payment of the original fees beyond that point, no deadlines are listed for payment of the fee, and no repercussions for non-payment of the fee.

CGAPS suggests adding wording for 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, or whatever is easiest for shipping companies to bill), 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 is also uncomfortable with exempting certain types of cargo. In reality, if Hawai'i were to start importing cement and liquid bulk freight via Guam, inspections of the conveyances would be required, and inspections come at a cost. 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.

Thank you for your consideration.

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



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Hawaii Crop Improvement Association

Growing the Future of Worldwide Agriculture in Hawaii

Testimony By: Alicia Maluafiti

SB 2236, Relating to Invasive Species

The Senate Committee on Water, Land, Agriculture, and Hawaiian
Affairs and the Committee on Transportation, International
and Intergovernmental Affairs

Monday, February 8, 2010

Room 229, 2:45pm

Position: Strongly Oppose

Aloha Chair Hee and English, Vice Chair Tokuda and Gabbard and members of the
Committee:

My name is Alicia Maluafiti, Executive Director of the Hawaii Crop Improvement Association. HCIA is a nonprofit trade association representing the agricultural seed industry in Hawaii. Now the state's largest agricultural commodity, the seed industry contributes to the economic health and diversity of the islands by providing high quality jobs in rural communities, keeping important agricultural lands in agricultural use, and serving as responsible stewards of Hawaii's natural resources.

The seed industry appreciates – and has testified in support – of most legislative solutions to generate revenue and address the loss of the agricultural inspectors and other staff at the Hawaii Department of Agriculture. Our dialogue with the HDOA these past few months as well as our role at the state legislature demonstrates our sincere commitment to seek out solutions that are fair and balanced. We do this in recognition of the growth of the seed industry in Hawaii, our responsibility to support the regulatory authority of the HDOA, and our collective ability to absorb some of the financial burden on behalf of the agricultural industry - as best we can.

However – we must strongly oppose SB 2236. The seed industry has always supported payment of the inspection fees and in fact, we were only made aware that the transportation companies were derelict in payment of those fees to the HDOA when the seed industry initiated meetings in the fall to discuss the impact of the reduction in force and furloughs on the department. The fees for inspection are traditionally included in the freight charges when the transportation company invoices the seed company. Those fees are then transmitted directly to the HDOA by the transportation company. SB 2236 unfairly penalizes the transportation company's customer when the kuleana for charging the fees and then paying the HDOA lies with the transportation company. Businesses already have legal remedy for customer's that fail to pay their bills, so penalizing the "person responsible for paying the freight charges to the transportation company" in this bill is unnecessary.

Mahalo for the opportunity to comment.

SENATE COMMITTEE ON
WATER, LAND, AGRICULTURE AND HAWAIIAN AFFAIRS

and

SENATE COMMITTEE ON
TRANSPORTATION, INTERNATIONAL, AND INTERGOVERNMENTAL
AFFAIRS

February 8, 2010

Senate Bill 2236 Relating to Invasive Species

Chair Hee, Chair English, members of the Senate Committee on Water, Land, Agriculture and Hawaiian Affairs, and members of the Senate Committee on Transportation, International, and Intergovernmental Affairs, I am Rick Tsujimura, representing AES Hawaii, Inc (“AES”). AES requests amendments to Senate Bill 2236 Relating to Invasive Species.

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.

While the state may impose regulations consistent with and which do not exceed federal regulations for *interstate commerce* and may also seek exceptions from the

federal government for *interstate commerce*, the imposition of any regulations on *foreign commerce* is strictly and expressly prohibited as shown above. Therefore an amendment to Chapter 150A, Hawaii Revised Statutes, is necessary to make state law consistent with federal law.

Senate Bill 2236 exempts cement and liquid bulk freight but fails to include coal which is imported from foreign sources as provided in federal law. We request that the language contained in Senate Bill 2523 which exempts all foreign dry bulk freight inspected by the USDA be inserted in section 3 of this bill. Or, in the alternative, the insertion of a definition of "coal bulk freight" as contained in House Bill 2949 be inserted with a commensurate exemption in section 3 of this bill.

We support these requested amendments to Senate Bill 2236 which should resolve the problem with the preemption provisions contained in the federal law.

Thank you for the opportunity to present this testimony.



Conservation Council for Hawai'i

Testimony Submitted to the Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs and
Senate Committee on Transportation, International and Intergovernmental Affairs

SB 2236 Relating to Invasive Species
Hearing: Monday, February 8, 2010 2:45 pm Room 229

Support and Concerns SB 2236

Aloha. Conservation Council for Hawai'i supports penalties for failing to pay, bill, or remit the inspections, quarantine, and eradication fee. The fees and penalties are much needed for an important public purpose, and should be used to support inspections at ports of entry to keep invasive species out of Hawai'i. The inspection program is seriously understaffed and underfunded. Keeping invasive species out of Hawai'i is a very good thing for the people, environment, Native Hawaiian culture, and economy.

We do not support any exemptions from the inspections, quarantine, and eradication fee or penalties. Such exemptions are not in the public interest, nor are they good public policy because we would forego much needed funds for the inspection of cargo to Hawai'i. We also oppose exemptions because they set dangerous precedent, and will likely result in additional requests for exemptions. With regard to the proposed exemption for cement, sand, gravel, and rock, they are pathways for invasive species.

Please amend SB 2236 by eliminating the exemptions. Mahalo nui loa for the opportunity to testify.

Marjorie Ziegler

Marjorie Ziegler



Hawai'i's Voice for Wildlife – Ko Leo Hawai'i no na holoholona lohiu

Telephone/Fax 808.593.0255 • email: info@conservehi.org • web: www.conservehi.org
P.O. Box 2923 • Honolulu, HI 96802 • Office: 250 Ward Ave., Suite 212 • Honolulu, HI 96814
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**SB 2236
RELATING TO THE ENVIRONMENT**

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

FEBRUARY 8, 2010

Chair Hee, Chair English, and Members of the Senate Committees on Water, Land, Agriculture & Hawaiian Affairs and Transportation, International & Intergovernmental Affairs:

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin, Inc. (A&B) and Matson Navigation Company, Inc. (a subsidiary of A&B) on SB 2236, "A BILL FOR AN ACT RELATING TO INVASIVE SPECIES."

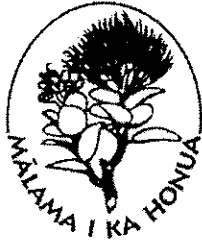
In 2008, amendments were enacted to broaden the scope of the invasive species user fee from one that assessed fees only on freight brought into Hawaii by maritime containers to one that assessed fees on all modes by which commercial freight is brought into the State, including air and maritime containerized 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.

This bill 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 the 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.



Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803
808.538.6616 hawaii.chapter@sierraclub.org

SENATE COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS

February 8, 2010, 2:45 P.M.

(Testimony is 1 page long)

TESTIMONY IN SUPPORT OF SECTION ONE OF SB 2236

Aloha Chair Hee, Chair English, and Members of the Committees:

The Hawai'i Chapter of the Sierra Club is in support of section one of SB 2236, which ensures companies will pay the inspection, quarantine, and eradication service fee enacted two years ago.

Adequate funding for the control and prevention of invasive species has been lacking for too long. Hawai'i's residents, businesses, and agricultural operations wind up footing the bill, instead of the businesses that profit from importing and selling products. Estimates by one state biologist show that alien pests cost residents and the agriculture industry upwards of \$400 million annually.

Even though this legislature took the positive step of setting up an inspection, quarantine, and eradication fee, this measure has not been implemented well. In contravention of the intent of the law, businesses are deliberately avoiding this fee without consequence. As a result, we lack funding to pay for agricultural inspectors and our environment and economy are put at risk.

Invasive pests from the Asia and the US mainland wreck havoc on native ecosystems. The cost—both economic and environmental—of introduced species in Hawai'i is astronomical. Tourism, agriculture, native species, and citizens' way of life are threatened with each new introduction. Sufficient funding to reduce introductions is clearly warranted; this is one area where an ounce of prevention is worth many pounds of cure.

With respect to section two and three of this bill, we are concerned about creating exemptions to the service fees collected by the Department of Agriculture. While the proposed exemptions may cover cargo that may not be a high-risk pathway for invasive species, the Department's inspectors still may need to conduct inspections of this cargo or its means of conveyance, which costs money and time. Further this creates a slippery slope -- what stops other industries from similarly seeking exemptions in the future?

Thank you for this opportunity to provide testimony.



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

Monday, February 8th, 2010 at 2:45 P.M. in CR 229

To: Senate Committee on Water, Land, Agriculture, and Wawaiian Affairs
Senator Clayton Hee, Chair
Senator Jill N. Tokuda, Vice Chair

Senate Committee on Transportation, International and Intergovernmental Affairs
Senator J. Kalani English, Chair
Senator Mike Gabbard, Vice Chair

By: Richard C. Botti, President

Re: SB 2236 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 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



The Nature Conservancy
Hawai'i Program
923 Nu'uauu Avenue
Honolulu, HI 96817

tel (808) 537-4508
fax (808) 545-2019
www.nature.org/hawaii

Testimony of The Nature Conservancy of Hawai'i
(Provided by Mark Fox, Director of External Affairs)
Supporting the Intent of S.B. 2236 Relating to Invasive Species
Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs
Senate Committee on Transportation, International and Intergovernmental Affairs
Monday, February 8, 2010, 2:45pm, Rm. 229

The Nature Conservancy of Hawai'i supports the intent of S.B. 2236 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 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 S.B. 2236 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, though not yet in this measure, unprocessed or untreated sand, gravel and aggregate, 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. We suggest a much lower fee, e.g., 10¢/1000lbs., to account for the significant weight of certain bulk cargo, that it is somewhat easier to inspect than containerized cargo, and if pre-processed may be a lower risk for pest introduction. However, if bulk freight exemptions are included in the bill, we suggest the addition of the phrase "pre-processed and certified by a government agency as free of pests" 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.

In recent years, the Hawai'i Department of Agriculture (HDOA) developed a multi-faceted Biosecurity Plan to enhance pest prevention 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. Sufficient funding for inspectors and related prevention services is critical.

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TESTIMONY
SB 2236
(END)