

**TESTIMONY**  
**SB 2523**



COORDINATING GROUP ON  
ALIEN PEST SPECIES

The Senate  
Committee on Water, Land, Agriculture, and Hawaiian Affairs  
Friday, February 5, 2010  
2:45 p.m., Conference Room 229  
State Capitol

### Testimony in Opposition of SB 2523

Aloha Chair Hee, Vice Chair Tokuda, and Members of the Committee,

The Coordinating Group on Alien Pest Species (CGAPS) **opposes SB 2523, Relating to Agricultural Inspections.**

In December 2009, CGAPS participants from federal and state agencies (including Customs and Border Protection, USDA Animal and Plant Health Inspection Service and Hawai'i Department of Agriculture) and NGOs collaboratively produced a Vision and Action Plan featuring the top ten issues that stymie efforts to protect Hawai'i from invasive species. One of the ten issues is that pests of quarantine concern for Hawai'i may be intercepted at Hawaiian ports by federal agents but not always acted on by them because they are not regulated under federal mandates, which are generally focused on pests that threaten the U.S. as a whole. Hence, federal protection against species of concern to Hawai'i has historically been limited.

The Hawai'i Department of Agriculture is not prohibited from inspecting foreign cargo, and with the disparity between federal and state pest lists, it would be prudent to ensure that HDOA can inspect any cargo or conveyance entering the state, regardless of origin.

Furthermore, CGAPS is opposed to the exemption of dry bulk freight from the pest inspection, quarantine, and eradication fee. Quarry products such as aggregate, gravel, and sand do pose a risk for carrying pests. For example, some local Hawai'i quarries and cinder pits contain nematodes and miconia seeds, which have been moved with the material to infest new areas. New species can enter Hawai'i with these materials just as easily, regardless of "pre-processing." Finally, pre-inspection of these materials would be done by the exporting nation, not by agencies that are mandated to protect Hawai'i's and the U.S.

For more information on the challenges of border protection and federal/state mandates, see the CGAPS Vision and Action Plan at <http://www.hawaiiinvasivespecies.org/cgaps/whitepapersreports.html> . Thank you for your consideration.

CGAPS--Coordinating Group on Alien Pest Species  
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2523

TESTIMONY

SB 3 RELATING TO AGRICULTURAL INSPECTIONS

Chair Hee and Members of the Committee

HFBB on behalf of our member farm and ranch families and organizations **opposes** on SB 3, exempting dry bulk freight of foreign origin from inspection. 2523

Global trade and resultant movement of invasive species has brought to question the parameters associated with the Plant Protection Act. We believe the preamble to this bill continues in this trend to increase risk to Hawaii of introduction of new invasive species by curtailing our ability to protect ourselves.

We respect global trade ...but it cannot be at the price of reducing our ability to have a viable agricultural industry. Farmers and ranchers cannot continue to spend their time fighting new pests and diseases. We believe this measure will increase the frequency of introduction of new invasives.

HFBB therefore, respectfully requests that this bill be held. Thank you.

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

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February 5, 2010

Testimony To: Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs  
Senator Clayton Hee, Chair

Presented By: Tim Lyons  
President

Subject: S.B. 2523 - RELATING TO AGRICULTURAL INSPECTIONS

Chair Hee 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 dry 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.



**HAWAIIAN  
CEMENT**

A subsidiary of Knife River Corporation

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Senator Clayton Hee, Chair  
Senate Committee on Water, Land, Agriculture & Hawaiian Affairs

Friday, February 5, 2010; 2:45 p.m.  
Hawaii State Capitol, Conference Room 229

**RE: SB 2523 Relating to Agricultural Inspections**

Chair Hee, Vice Chair Tokuda and Members of the Committee:

My name is John DeLong, President of Hawaiian Cement, testifying in strong support of SB 2523 which exempts dry bulk freight of foreign origin from the inspection, quarantine and eradication service fee and charge.

This bill provides a narrow exemption from the fee for dry bulk freight imported from other countries, in order to make state law consistent with federal law. Section 436 of the federal Agricultural Risk Protection Act of 2000, preempts the states from regulating dry bulk freight imported from other countries, among other things.

Hawaiian Cement imports dry bulk cargo including cement, pre-processed aggregate and sand that meet the stringent requirements of the American Society of Testing Materials. These dry bulk commodities typically take up an entire bulk freighter, a ship specially designed to transport unpackaged bulk cargo.

Before leaving for its destination, our pre-processed bulk cargo goes through a sampling and inspection process prior to shipment to ensure clearance by USDA Animal and Plant Health Inspection Service (APHIS) upon arriving into Hawaii.

Cement cargo is not a compatible environment to invasive species. When introduced to moisture, cement develops a high pH, which renders it incapable of sustaining most living organisms.

Thank you for the opportunity to testify. We urge you to pass this measure for the foregoing reasons.

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

February 5, 2010

Senate Bill 2523 Relating to Agricultural Inspections

Chair Hee and members of the Senate Committee on Water, Land, Agriculture and Hawaiian Affairs, I am Rick Tsujimura, representing AES Hawaii, Inc (“AES”). AES supports Senate Bill 2523 Relating to Agricultural Inspections and urges the measure be passed.

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.

The proposed measure is strictly and narrowly limited to “unpackaged, pre-processed and pre-inspected homogenous cement, coal, and quarry products, including

aggregate, gravel and sand, without mark or count and usually free flowing, bought and sold by weight or volume, from any foreign origin that is subject to inspection under federal law.” This exemption only applies to foreign dry bulk cargo, and excludes dry bulk cargo in interstate commerce between states and intrastate commerce between destinations within Hawaii.

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.



**TESTIMONY**  
**SB 2523**  
**(END)**