

**TESTIMONY**

**SB 2523**

**LATE**

**LINDA LINGLE**  
Governor



**SANDRA LEE KUNIMOTO**  
Chairperson, Board of Agriculture

**DUANE K. OKAMOTO**  
Deputy to the Chairperson

State of Hawaii  
**DEPARTMENT OF AGRICULTURE**  
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**TESTIMONY OF SANDRA LEE KUNIMOTO  
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE HOUSE COMMITTEE ON AGRICULTURE**

February 5, 2010  
2:45 P.M.

**SENATE BILL NO. 2523  
RELATING TO AGRICULTURAL INSPECTIONS**

Chairperson Hee and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill No. 2523. The purpose of this bill is to exempt dry bulk freight of foreign origin from the pest inspection, quarantine, and eradication service fee and charge.

The department opposes this measure and recommends the wording used in H.B. 2294 to exempt bulk freight.

There are many bills being introduced exempting bulk freight. This particular measure is troublesome because of its interpretation of the Plant Protection Act that is contrary to our current inspectional procedures with the federal agencies. Our concern is that 75 percent of the invasive species that have become established in Hawaii are of foreign origin. Another major concern is that the federal agencies can only take action on "federal actionable plant pests". Hawaii is not just concerned with pests of

importance to America's agriculture. As such, our department's definition of pest is much broader than USDA's and means "any animal, insect disease agent or other organism in any state of development that is detrimental or potentially harmful to agriculture, or horticulture, or animal or public health, or natural resources including native biota or has an adverse effect on the environment as determined by the board."

Once again the department would like to thank you for this opportunity to testify in strong opposition of House Bill No. 2523.

**LATE TESTIMONY**

*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.



COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS  
Senator Clayton Hee, Chair; Senator Jill Tokuda, Vice Chair, and Committee Members  
Public Hearing, February 5, 2010, 2:45 p.m. Conference Room 229

Testimony of William Anonsen, President  
HAWAII SHIP AGENTS ASSOCIATION  
In Support of S.B. 2523  
Relating to Agricultural Inspections

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 strongly support S.B. 2523 which proposes to exempt dry bulk freight of foreign origin from the inspection, quarantine, and eradication services fees and charges 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. The exemption of 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 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



The Nature Conservancy  
Hawai'i Program  
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## LATE TESTIMONY

Testimony of The Nature Conservancy of Hawai'i  
(Provided by Mark Fox, Director of External Affairs)  
Opposing S.B. 2523 Relating to Agriculture Inspections  
Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs  
Friday, February 5, 2010, 2:45pm, Rm. 229

The Nature Conservancy of Hawai'i strongly opposes S.B. 2523. This bill is based on incorrect information and incorrect interpretation of federal law. We recommend that the Committee hold S.B. 2523 in favor of considering other measures like S.B. 2236, which is scheduled to be heard next Monday. We strongly support service fees and meaningful fines for failure to pay such fees for the Hawai'i Department of Agriculture's (HDOA) invasive species inspection 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.

Contrary to Section 1 of S.B. 2523, the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (USDA-APHIS) and the U.S. Department of Homeland Security's Customs and Border Protection (DHS-CBP) are not generally inspecting foreign cargo for pests that are a risk to Hawaii's agriculture and environment. Rather, USDA-APHIS and DHS-CBP are primarily inspecting foreign cargo for threats to national security and a very narrow list of pests to U.S. mainland agriculture.

Also contrary to Section 1 of S.B. 2523, HDOA's inspection and inspection fee on foreign cargo do not rise to the level of impermissible or preempted regulations under the federal Plant Protection Act (7 U.S.C. §7756, attached). Rather, HDOA and the State of Hawai'i have a compelling interest in knowing what is coming into the State, and there are many actions the State can take to work with an importer or shipper that would be allowable under the Plant Protection Act should an inspection of foreign cargo reveal a pest. The fee and the inspection do not "regulate" any article or means of conveyance in order to "control," "eradicate" or "prevent" the specified items, they merely impose a fee to cover the cost of inspection to detect them. The preemption provision in the Plant Protection Act may limit the action that can be taken in response to pest identification, but it does not prohibit the fee or the inspection themselves, any more than the U.S. Constitution does.

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 exemption as currently written in S.B. 2523 appears to attempt to cover cargo that is perceived as a low-risk pathway 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 determine whether pests are present. Furthermore, aggregate, sand and gravel, 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 bulk freight exemptions are included in the law, we suggest the addition of the phrase "pre-processed and certified by a government agency as free of pests" be inserted in any definitions. We should not, however, delude ourselves into thinking that pre-processing and certification, especially in foreign countries, will always be a safe substitute for inspection by our own State Department of Agriculture.

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# LATE TESTIMONY

UNITED STATES CODE  
TITLE 7--AGRICULTURE  
CHAPTER 104--PLANT PROTECTION  
SUBCHAPTER III--MISCELLANEOUS PROVISIONS

Sec. 7756. 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.

(b) Regulation of interstate commerce

(1) In general

Except as provided in paragraph (2), no State or political subdivision of a State may regulate the movement in interstate commerce of any article, means of conveyance, plant, biological control organism, plant pest, noxious weed, or plant product in order to control a plant pest or noxious weed, eradicate a plant pest or noxious weed, or prevent the introduction or dissemination of a biological control organism, plant pest, or noxious weed, if the Secretary has issued a regulation or order to prevent the dissemination of the biological control organism, plant pest, or noxious weed within the United States.

(2) Exceptions

(A) Regulations consistent with Federal regulations

A State or a political subdivision of a State may impose prohibitions or restrictions upon the movement in interstate commerce of articles, means of conveyance, plants, biological control organisms, plant pests, noxious weeds, or plant products that are consistent with and do not exceed the regulations or orders issued by the Secretary.

(B) Special need

A State or political subdivision of a State may impose prohibitions or restrictions upon the movement in interstate commerce of articles, means of conveyance, plants, plant products, biological control organisms, plant pests, or noxious weeds that are in addition to the prohibitions or restrictions imposed by the Secretary, if the State or political subdivision of a State demonstrates to the Secretary and the Secretary finds that there is a special need for additional prohibitions or restrictions based on sound scientific data or a thorough risk assessment.



# LATE TESTIMONY

## Conservation Council for Hawai'i

Testimony Submitted to the Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs  
SB 2523 Relating to Agricultural Inspections  
Hearing: Friday, February 5, 2010 2:45 pm Room 229

### Opposition to SB 2523

Aloha. Conservation Council for Hawai'i opposes SB 2523, which exempts dry bulk freight of foreign origin from the inspection, quarantine, and eradication service fee and charge, retroactive to 7/1/2007.

Invasive species pose the single greatest threat to Hawai'i's economy, culture, environment, and quality of life. The shipment of cement, coals, gravel, and sand from foreign sources is a pathway for introduced and potentially invasive species to enter Hawai'i. This has already happened in the past.

Charging an inspection fee to support the costs of inspecting these materials will help protect Hawai'i from invasive species. These materials should not be exempt from the existing inspection fee. We do not support any exemptions from the inspection fee, and particularly not for materials such as these that are known pathways for introduced species to enter Hawai'i.

Charging an inspection fee and actually inspecting these materials is not prohibited or contrary to federal law.

Please oppose SB 2523. This bill is not in the public interest. 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*

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Executive Director: Marjorie Ziegler

# LATE TESTIMONY

**Grace Pacific**

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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:

I'm Robert Creps, Senior Vice President of Grace Pacific Corporation ("Grace Pacific") testifying in strong support of SB 2523.

For more than 75 years, Grace Pacific has constructed and maintained the road and highways that have become an integral part of Hawaii's transportation infrastructure. We also offer a wide range of construction-related materials and services.

This bill exempts dry bulk freight of foreign origin from the inspection, quarantine and eradication service fee and charge. The United States Department of Agriculture currently performs this task so duplication of this inspection by the state is unnecessary. SB 2523 will make state law consistent with federal law.

Grace Pacific has been importing crushed granite aggregate from British Columbia for use in hot-mix asphalt and manufactured C-33 sand from British Columbia for use in ready-mix concrete and hot-mix asphalt since 2007. The manufacturing process for the C-33 sand involves the excavation of glacial deposits of granite with large scrapers, and then crushing and washing to the finished product specifications. The manufacturing process for the crushed aggregate is similar, with the excavation conducted by drilling and blasting the hard rock granite. Both processes are subject to strict quality control standards of the American Society for Testing and Materials, designed to detect and prevent deleterious and organic material in the finished product.

The sand and aggregate are shipped on bulk freighters with the product being the sole cargo of the voyage. These ships are inspected for cleanliness at the load port by an independent inspector. The ship's cargos are subject to inspection and cleared by the United States Department of Agriculture prior to discharge in Hawaii.

We ask for your support in passing SB 2523. Thank you.



**TESTIMONY**

**SB 2523**

**LATE**

**(END)**