

HB 1568,  
HD2



STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

March 21, 2011

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION  
HOUSE BILL NO. 1568, HD2

COMMITTEE(S) ON  
TRANSPORTATION AND INTERNATIONAL AFFAIRS & AGRICULTURE

The Department of Transportation supports the intent of House Bill No. 1568, HD2 which establishes biosecurity and inspection facilities at major airports and harbors in the state to strengthen and support Hawaii's agricultural industry and protect Hawaii's environment from invasive species.

However, the responsibility to conduct inspections at ports-of-entry to Hawaii is inherently not an airport nor harbor function but one assigned to the Department of Agriculture.

As such, we hope you consider deleting Sections 2-4 and adding the following amendment to read as follows:

SECTION 2. Chapter 206J, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

(a) The department is authorized to reimburse in full the department of transportation and the Aloha Tower development corporation, as applicable, for the design and construction of biosecurity and inspection facilities, and appropriate rent for use of space for such facilities, at their airport and harbor facilities.

~~§206J— Biosecurity and inspection facilities. The development corporation shall provide space, planning and design support, and other infrastructure at the Aloha Tower complex to the department of agriculture for biosecurity and inspection facilities to provide for the inspection, consolidation, deconsolidation, and treatment of agricultural commodities to meet the various needs of Hawaii's agricultural industry.~~

SECTION 3. Chapter 261, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

~~§261— Biosecurity and inspection facilities. (a) The department shall provide space and other infrastructure at Honolulu International Airport, Hilo International Airport, Kona International Airport at Keahole, Kahului Airport, and Lihue Airport for biosecurity and inspection facilities to provide for the inspection, consolidation, deconsolidation, and treatment of imported and exported agriculture and other inspected commodities to meet the various needs of each island and to facilitate the safe movement of enplaned and deplaned air cargo through the airport.~~

~~(b) The department shall design, construct, and operate the biosecurity and inspection facilities at the airports and coordinate with other departments in the planning, design, and operation of these facilities to ensure the effectiveness and efficiency of their operation.~~

~~(c) The department may charge appropriate rent for the use of the facilities."~~

~~SECTION 4. Chapter 266, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:~~

~~"266. Biosecurity and inspection facilities. (a) The department of transportation shall provide space, planning and design support, and other infrastructure at Honolulu Harbor, Hilo Harbor, Kawaihae Harbor, Kahului Harbor, and Nawiliwili Harbor to the department of agriculture for biosecurity and inspection facilities to provide for the inspection, consolidation, deconsolidation, and treatment of agricultural commodities to meet the various needs of each island's agricultural industries.~~

~~(b) The department of transportation shall design, construct, and operate the biosecurity and inspection facilities at the harbors and coordinate with other departments in the planning, design, and operation of these facilities to ensure the effectiveness and efficiency of their operation.~~

~~(c) The department of transportation may charge appropriate rent for the use of the facilities."~~

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$ \_\_\_\_\_ or so much thereof as may be necessary for fiscal year 2011-2012 and the same sum or so much thereof as may be necessary for fiscal year 2012-2013 for the department of agriculture to reimburse in full the department of transportation and the Aloha Tower development corporation, as applicable, for their assistance and support to the department of agriculture in establishing biosecurity and inspection facilities at the locations described in sections 2, 3, and 4 of this Act.

The sums appropriated shall be expended by the department of agriculture for the purposes of this Act.

SECTION 6. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2011.

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
WILLIAM J. AILA, JR.  
Chairperson**

**Before the Senate Committees on  
TRANSPORTATION AND INTERNATIONAL AFFAIRS  
and  
AGRICULTURE**

**Monday, March 21, 2011  
1:17 PM  
State Capitol, Conference Room 224**

**In consideration of  
HOUSE BILL 1568, HOUSE DRAFT 2  
RELATING TO AGRICULTURE**

The Department of Land and Natural Resources (Department) supports the intent of House Bill 1568, House Draft 2 to establish adequate biosecurity and inspection facilities at major airports and harbors in the State to strengthen and support Hawaii's agricultural industry, but defers to the Department of Agriculture and the Department of Transportation to find the best solutions for funding and implementation.

Because transportation by air and sea have been identified as the risk pathways for invasive species into the State of Hawaii, appropriate inspection facilities and consistent inspection activities are crucial to protecting the health, safety, and welfare of the public. These facilities are a "need to have", not just "nice to have" component of the program. By initiating and continuing the implementation of biosecurity facilities, House Bill 1568, House Draft 2 reduces the likelihood of and economic loss associated with additional invasive species introductions and a quarantine on Hawaii's exported goods. The Department supports the intent of House Bill 1568, House Draft 2 and urges an expeditious resolution of the issues.

**WILLIAM J. AILA, JR.**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**GUY H. KAULUKUKUI**  
FIRST DEPUTY

**WILLIAM M. TAM**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
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March 18, 2011

TO: Honorable Kalani English, Chair  
on Agriculture

FROM: Mike White   
Council Member

SUBJECT: **IN SUPPORT OF HB1568 HD2 RELATING TO AGRICULTURE**

Thank you for the opportunity to testify in support of this important measure. The purpose of this measure is to establish biosecurity and inspection facilities at major airports and harbors in the state to strengthen and support Hawaii's agricultural industry and protect Hawaii's environment from invasive species.

I am testifying as an individual member of the Maui County Council and as Chair of the Council's Committee on Economic Development, Agriculture and Recreation.

I support this measure for the following reasons:

1. The bill recognizes the crucial need to protect Hawaii's environment and prevent economic losses by reducing the threat of invasive species being introduced through our airports and harbors. With aircraft, ships, passengers and goods arriving from origination points around the globe, it is imperative that steps are taken to mitigate potential threats to Hawaii.
2. The bill emphasizes the importance of proper inspection and treatment of incoming and outgoing commodities in reducing the likelihood of new agricultural and environmental pests being introduced, which helps reduce the possibility of an economically devastating quarantine being imposed on Hawaii's exported goods.
3. The bill addresses the long-term viability of Maui County's and Hawaii's agricultural industry and overall economy by taking proactive measures to establish, operate or participate in operating port-of-entry facilities.

For the foregoing reasons, I support this measure.



Testimony of the Maui Invasive Species Committee  
Supporting H.B. 1568 SD 2 Relating to Agriculture  
Before the Senate Committee on Transportation & International Affairs  
and the Senate Committee on Agriculture  
Conference Room 224

March 21, 2011, 1:17PM

The Maui Invasive Species Committee (MISC) supports H.B. 1568 SD 2. This bill will help ensure that the Hawaii Department of Agriculture (HDOA) has the necessary space and facilities to conduct inspections at our airports and harbors. A strong inspection system is vital to protecting our agriculture and environment from unwanted pests. Hawaii remains overwhelmingly dependent on imported food, a situation that has become increasingly precarious given recent events elsewhere in the world. Healthy, intact native forests – the source of our life-sustaining water supply – are also at risk from the constant introduction of invasive species. The Hawaii Department of Agriculture is our front line of defense and must have adequate inspection facilities to carry out its statutory responsibilities.

The need for these facilities is based on the Maui experience. Development of state-of-the-art facilities at the Kahului Airport have provided important data about just how susceptible Hawaii is to new pests arriving on our shores. The Kahului cargo inspection facility allows HDOA staff to conduct inspections in enclosed areas, helping ensure that pests do not escape from containers when they are opened. Product viability is enhanced at Kahului by conducting inspections in temperature-controlled areas. HDOA is able to take appropriate action at Kahului when pests are discovered because it has necessary equipment for handling pest species. The Kahului facility was built in part to resolve a conflict over proposed expansion of the airport, but received (and still receives) strong local buy-in among Maui citizens and is the only one of its kind in the state. It is critical that we learn from HDOA's experience on Maui and start creating a statewide system that will detect and appropriately handle the invasive plants and other pest species that are arriving via air and sea transportation.

The legislature previously recognized the need for interagency cooperation on invasive species when it created the Hawaii Invasive Species Council. HRS § 194-2.

HB 1568 SD 2 will enhance interdepartmental cooperation on invasive species without imposing a fiscal burden on the Hawaii Department of Transportation. The bill also will increase the state's ability to better coordinate with federal partners on inspection and detection activities.

Thank you for your consideration.



Testimony of The Nature Conservancy of Hawai'i  
Supporting H.B. 1568 HD 2 Relating to Agriculture  
Senate Committee on Transportation and International Affairs  
Senate Committee on Agriculture  
Monday, March 21, 2011, 1:17PM, Rm. 224

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*The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of Hawaii'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 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 strongly supports H.B. 1568 HD 2 and its purpose to provide support for State Department of Agriculture biosecurity and inspection facilities at major air and sea ports throughout the state to facilitate the movement of both incoming and outgoing cargo and to protect the islands from new pest introductions.

Invasive weeds, insects, diseases, snakes, and other pests are one of the greatest threats to Hawaii's economy, agriculture, natural environment, and the health and lifestyle of its people. The HDOA has developed a multi-faceted Biosecurity Plan to enhance its invasive species prevention efforts at air and sea ports with more inspectors, more efficient and effective inspection services, improved inspection facilities, and agreements with importers and producers for improved sanitary protocols before items are shipped to Hawai'i.

Having proper, enclosed inspection and quarantine facilities at all major air and sea ports, similar to the one at Kahului airport, is one of the most important components of this Plan. The Legislature's ongoing policy and financial support of the Biosecurity Plan has been essential to its implementation, and supporting the Department of Agriculture with proper facilities at all of the State's major ports of entry is one of the most highly leveraged and cost effective things that can be done to help prevent new pests from becoming established in our islands. Evidence from Hawai'i and around the world shows that preventing new pest establishment is exponentially more economical than eradicating a pest or, even worse, controlling it indefinitely once it becomes established.

**Finally, questions have been raised about the use of airport revenue or charging airport users or tenants for the costs of constructing and operating agriculture inspection facilities at airports. The attached legal memo provides an analysis of the federal law and policy in this regard, concluding that such funding mechanisms are not prohibited.**

Attachment

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March 17, 2011

MEMORANDUM

To: Mark Fox and Jeff Benz  
From: Evan Cox  
Re: Use of Airport Revenues for the Construction and Operation of Biosecurity Inspection Facilities

This memorandum considers the legality under federal law of using airport revenue to design, construct, and operate biosecurity and agricultural inspection facilities at Hawaii airports (“inspection facilities” and “inspections”).

Section I of this memorandum provides a legal and factual background of this issue, including brief summaries of the most recently proposed laws and most recent views expressed by a Federal Aviation Administration (“FAA”) representative. Section II concludes that while there is very little clear-cut precedent, inspections in Hawaii airports could reasonably be considered permitted operating costs of the airport under applicable law and FAA guidance and, therefore, be supported by airport revenue. Finally, Section III describes the requirement that airports’ rates and rentals be as financially self-sustaining as possible and concludes that this might require Hawaii airports to recover the costs associated with the proposed inspection facilities.

We conclude that there is nothing in the applicable laws or FAA policies that specifically prohibits the use of revenues for biosecurity and agricultural inspection facilities, particularly if the costs of such facilities are recovered or offset by a combination of rental fees and benefits provided to the airport.

**I. Legal and Factual Background**

Proposed legislation would require the Hawaii Department of Transportation (“HDOT”) to provide space and infrastructure at Hawaii airports for inspection facilities. One version would authorize HDOT to use airport revenues.<sup>1</sup> A second version would instead allow HDOT to charge appropriate rent for the use of the facilities and would allocate state funds to the Hawaii Department of Agriculture (“HDOA”) to reimburse HDOT for necessary costs.<sup>2</sup> HDOT testified with respect to proposed legislation that inspections are inherently a “state function that falls outside the scope of permitted airport activities,” and HDOT therefore is prohibited from using airport revenues for these purposes.<sup>3</sup>

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<sup>1</sup> See H.B. No. 1567 H.D. 2., available at [http://www.capitol.hawaii.gov/session2011/Bills/HB1567\\_HD1\\_HTM](http://www.capitol.hawaii.gov/session2011/Bills/HB1567_HD1_HTM)

<sup>2</sup> See H.B. No. 1568 H.D. 2., available at [http://www.capitol.hawaii.gov/session2011/Bills/HB1568\\_HD2\\_HTM](http://www.capitol.hawaii.gov/session2011/Bills/HB1568_HD2_HTM)

<sup>3</sup> Testimony of the Department of Transportation, House Committee on Transportation, House Bill No. 1567, available at [http://www.capitol.hawaii.gov/session2011/Testimony/HB1567\\_TESTIMONY\\_TRN\\_02-14-11.pdf](http://www.capitol.hawaii.gov/session2011/Testimony/HB1567_TESTIMONY_TRN_02-14-11.pdf); see also Testimony of the Department of Transportation, Committees on Transportation and Agriculture, House Bill No. 1568, available at [http://www.capitol.hawaii.gov/session2011/Testimony/HB1568\\_TESTIMONY\\_TRN\\_02-14-11\\_PDF](http://www.capitol.hawaii.gov/session2011/Testimony/HB1568_TESTIMONY_TRN_02-14-11_PDF).



By federal law, airport revenues “may not be expended for any purposes other than the capital or operating costs of (1) the airport; (2) the local airport system; or (3) any other local facility that is owned or operated by the person or entity that owns or operates the airport that is directly and substantially related to the air transportation of passengers or property.”<sup>4</sup> Federal law instructs the U.S. Department of Transportation (“USDOT”) to establish policies and procedures that would enforce these requirements and specifically prohibit certain airport revenue “diversions.”<sup>5</sup> The Secretary, through the FAA, met this obligation and interpreted applicable law by issuing its 1999 document entitled Policy and Procedures Concerning the Use of Airport Revenue (“Revenue Use Policy”).<sup>6</sup> The FAA Airport Compliance Manual (“Compliance Manual”), issued in 1999, provides additional guidance for FAA personnel in interpreting and administering these financial responsibilities imposed on airports.<sup>7</sup>

Federal law further requires that airports maintain as financially self-sustaining a fee and rental structure as possible.<sup>8</sup> This requirement is contained in the FAA’s 1999 Revenue Use Policy and its 1996 Policy Regarding the Establishment of Airport Rates and Charges (“Airport Rates Policy”),<sup>9</sup> with additional guidance in the Compliance Manual.

Neither applicable law nor the relevant FAA guidance explicitly permits or prohibits the use of airport revenue for biosecurity inspections or facilities. The FAA has communicated mixed messages on this issue to HDOT. In a July 31, 1998, letter to HDOT, the FAA opined that “infrastructure” for inspections, including construction and equipage of a facility with specialized equipment for inspections at Kahalui airport could be funded 100% with airport revenue provided the facilities are used “exclusively by airport inspectors for airport facilities.”<sup>10</sup> In 2006, the FAA advised that this prior position was strictly limited to the specific circumstances of the earlier Kahalui airport invasive species plan, and advised that “uncircumscribed” use of airport funds for HDOA inspectors at all Hawaii airports would be outside the revenue use policies. At the same time, however, it suggested that it would be permissible to “allocate the cost of the inspection facilities and operations to airport tenants as a common area cost or as a form of cost allocation.” In the most recent e-mail, an FAA representative in the Honolulu office stated that the “Revenue Use policy determination has been re-confirmed by Headquarters,” and that payments by HDOT for biosecurity inspection or inspection facilities “would represent a prohibited use of airport revenue because such expenditures would not represent a capital or operating cost of the airport or airport system.”<sup>11</sup> HDOT in turn cited the FAA’s position in opposing H.B. 1567, which would use airport funds, and raising concerns about, if not outright opposing, H.B. 1568, which would provide HDOA with state funds to reimburse HDOT.

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<sup>4</sup> 49 U.S.C. § 47133(a); *see also* 49 U.S.C. § 47107(b) (requiring assurances of the same from airports receiving federal grants).

<sup>5</sup> 49 U.S.C. § 47107(l)(2).

<sup>6</sup> 64 Fed. Reg. 7696 (Feb. 16, 1999).

<sup>7</sup> FAA Airport Compliance Manual, Order 5190.6B (Sept. 2009), *available at* [http://www.faa.gov/airports/resources/publications/orders/compliance\\_5190\\_6/](http://www.faa.gov/airports/resources/publications/orders/compliance_5190_6/).

<sup>8</sup> 49 U.S.C. § 47107(a)(13)(A), (l)(3).

<sup>9</sup> 61 Fed. Reg. 31994 (June 21, 1996).

<sup>10</sup> Letter from Mr. Barry L. Molar, FAA, to Mr. Kazu Hayashida of HDOT (July 31, 1998).

<sup>11</sup> E-mail from Stephen Wong, Program Manager, FAA, Honolulu Airports District Office to Jeff Chang (February 7, 2011).

## II. Expenses Associated with a Biosecurity Inspection Facility Reasonably Constitute “Capital or Operating Costs of the Airport.”

There are, at the very least, reasonable interpretations of the applicable law and the FAA’s Revenue Use Policy that would permit the use of airport revenue for the costs of designing, constructing, and operating inspection facilities. If the cost of the inspections themselves is a permitted use of airport revenues, as suggested by the FAA in 1998, then it would follow that the design and construction of inspection facilities necessary to carry out these inspections would constitute a permitted use of airport revenue. Expenses associated with inspection facilities would be “operating costs of the airport” on the grounds that the inspections (1) are directly and substantially related to the air transportation of passengers or property and therefore fall under the definition of an aeronautical use, and (2) are analogous to other permitted services that provide benefits to airlines and airline passengers.

The Revenue Use Policy provides that airport operating costs “may include reimbursement to a state or local agency for the costs of services actually received and documented” and that such costs may be both “direct and indirect.”<sup>12</sup> Past USDOT precedent suggests that these services must benefit the airlines or airline customers and not be “more directly concerned with benefiting” the residents of the surrounding municipality.<sup>13</sup>

### A. *Biosecurity inspections are an aeronautical use.*

Biosecurity inspections appear to fit within the FAA’s definition of an aeronautical use of an airport, and at least one FAA report stated that similar agricultural inspections are an aeronautical use. The FAA provides that an aeronautical use is—

any activity that involves, makes possible, is required for the safety of, or is otherwise directly related to, the operation of aircraft. Aeronautical use includes services provided by air carriers related directly and substantially to the movement of passengers, baggage, mail and cargo on the airport.<sup>14</sup>

We understand that the proposed facilities would allow for the inspection, consolidation, deconsolidation, and treatment of air cargo, including its possible quarantine, fumigation, disinfection, destruction, or exclusion.<sup>15</sup> Such on-airport inspections would allow more efficient and safer processing of air cargo for air carriers, shippers of cargo, and passengers carrying cargo. Such services in a literal sense do relate “directly and substantially to the movement of . . . baggage . . . and cargo.”

The FAA has stated in one report, that very similar inspections conducted by the U.S. Department of Agriculture (“USDA”) are considered an aeronautical use of the airport facility. In an audit conducted by the Department of Transportation’s Inspector General’s Office (the “Orlando Report”), the Inspector General determined that the USDA’s use of an airport building for plant inspections was an

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<sup>12</sup> Revenue Use Policy, at § V.A.1; *see also* Compliance Manual, at 15-4.

<sup>13</sup> Second Los Angeles International Airport Rates Proceeding, Docket OST-95-474 (Order 95-12-33 served Dec. 22, 1995) (“LAX Proceeding”) 1995 DOT Av. LEXIS 841, at \*79, \*84.

<sup>14</sup> Airports Rate Policy, at B.

<sup>15</sup> H.B. No. 1567 H.D. 1; H.B. No. 1568 H.D. 1; *see also* HAW. REV. STAT. § 150A-53(2), (4).

aeronautical use.<sup>16</sup> It based this in large part on the airport's finding that having such inspection facilities and capabilities would "significantly enhance its ability to attract and process international air commerce." Significantly, the Orlando Report found the capital costs of building and maintaining (including recurring operating costs such as janitorial services) these USDA inspection facilities to be an aeronautical use, and not an impermissible diversion of airport funds, even though USDA (like HDOA in the current situation) was paying for the inspectors themselves.<sup>17</sup> In the present case, the findings of H.B. 1567 and 1568 recite that the inspection facilities would benefit not just the general public, but airline operators themselves. The USDA inspections differ from the HDOA inspections in at least one important way: they are required by federal law, which allows the USDA to impose fees sufficient to recover the cost of the services.<sup>18</sup> The FAA view might be that, although agricultural inspections generally are not a permitted airport revenue use, the two federal statutes must be interpreted in such a way that they do not conflict with one another. However, USDA inspection facilities are not required at any specific airport, as the Orlando Report indicates. Furthermore, the Orlando Report does not preclude the possibility that an airport could use airport revenues to reimburse the cost of agricultural inspectors themselves, assuming that such payments provide sufficient benefits to the airport and meet the airport's sustainability requirement.

*B. Biosecurity inspections are analogous to other services airports routinely pay for using airport revenues.*

The proposed inspections can also be analogized, although less directly, to other services that provide benefits to airlines and airline passengers and are widely recognized as permitted revenue uses. For example, there is little controversy that the costs of security provided by police and fire services are operating costs of the airport. Some airports provide police protection services through their own police forces, and it appears that these costs are rarely, if ever, challenged as an improper use. Other airports pay external entities, typically local municipalities, to provide police services to the airport. It is a permitted use of airport revenue to pay for the appropriate direct and indirect costs of municipal police services, provided that the levels of reimbursement are not artificially high in relation to the level of services provided and the actual costs of those services.<sup>19</sup> It is not an adequate objection that these police forces, like HDOA, are a state or local agency or that police protection, like HDOA inspections, occurs outside the airport as well as on its grounds.

Appropriate police expenses include, at the very least, those police services that are beyond the basic services provided elsewhere in the municipality and that provide a direct or indirect benefit to overall airport operations.<sup>20</sup> Similarly, it appears likely that expenses for security services to airports are considered

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<sup>16</sup> See The Use of Airport Revenues by The Greater Orlando Aviation Authority, Report No. AV-2006-056 (Aug. 3, 2006) ("Orlando Report"), at 10, available at <http://www.oig.dot.gov/sites/dot/files/pdfdocs/OrlandoFinalReport8-3-06.pdf>.

<sup>17</sup> Having determined that the use of the facilities by USDA inspectors constituted an aeronautical use, the report went on to examine whether the airport was in compliance with separate requirements that airports be as self-sustaining as possible, as discussed further in Section III, below. In that context, the Inspector General questioned whether the \$1 per year lease with USDA was reasonable, given the building's \$1.9 million construction cost and \$36,000 annual maintenance costs. *Id.*

<sup>18</sup> 21 U.S.C. § 136a(a)(1). Currently, international passengers are charged a user fee of \$5 for each arrival in the United States. 7 C.F.R. § 354.3(f).

<sup>19</sup> *E.g.*, Report on Revenue Diversions at San Francisco International Airport, Report No. SC-2004-038 (March 31, 2004), at 8, available at <http://www.oig.dot.gov/sites/dot/files/pdfdocs/sc2004038.pdf>; see also Preamble to the Revenue Use Policy, 64 Fed. Reg. 7706-07.

<sup>20</sup> See, e.g., LAX Proceeding, at \*77, \*79.



more appropriate if the other users that have needs for special services similar to those of airports pay similar expenses to the municipality for these services.<sup>21</sup> The services provided in Hawaii's biosecurity and inspection facilities are certainly specialized to the airport context. However, we understand that, just like police services, HDOA's enforcement efforts also take place outside the airport. Harbors are the only other entities that would use HDOA inspection services in a similarly intense and special way as airports. Notably, harbors and their users pay HDOA for these services and the facilities.

However, USDOT has considerable discretion and can draw very fine distinctions when deciding whether particular outside services are aeronautical and reimbursable or not. For example, in the case concerning reimbursement for police services provided by the City of Los Angeles to Los Angeles International Airport ("LAX"), reimbursement for the costs of a Narcotics Division police unit at LAX was found permissible, while reimbursement for an organized crime intelligence police unit at LAX was disallowed.<sup>22</sup> The decision found that

the narcotics smuggling at the airport is made possible due to the flights operated by the airlines. . . [By contrast,] the work of the organized crime intelligence unit is too remote to be included as a charge to airport users. While airline flights may make it possible for organized crime members to reach Los Angeles, the unit's work seems more directly concerned with benefiting the residents of Los Angeles generally, not with promoting the safety of airport users.<sup>23</sup>

The report then went on to recognize just how narrow this distinction might appear:

We recognize that our findings on this unit and the Narcotics Division . . . do not seem to be entirely consistent. Nonetheless, we think the work of the Narcotics Squad is more directly related with the protection of airport users and a more direct result of the airlines' operations and may therefore be more appropriately billed to the airport than the work of the organized crime intelligence unit.

A similar debate can be had about whether biosecurity inspection activities should be regarded as an aeronautical cost. On the one hand, as found by the legislature in H.B. 1567 and 1568, 80% of the invasive species entering Hawaii are, like the narcotics smuggling, "made possible due to the flights operated by the airlines" and the on-airport inspections benefit airlines, air shippers and passengers by expediting their transit. On the other hand, it could be argued that airlines and airline passengers are no more directly threatened by invasive species than by organized crime suspects, and the real purpose of the inspections is to "benefit the residents [of Hawaii] generally." However, to the extent that the airlines' facilitation of the traffic is viewed as decisive, the legislative findings suggest the need for biosecurity inspections are overwhelmingly a result of airline traffic at the airports.

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<sup>21</sup> *See id.* at \*76-77.

<sup>22</sup> *Id.* at \*83-84.

<sup>23</sup> *Id.*

**III. The financial self-sustainability requirement might require that the airport recovers any costs associated with biosecurity and inspection facilities.**

In addition to the requirement that an airport revenue use be a capital or operating costs of the airport, airports must also set their rental rates and fees to be as financially self-sustaining as possible.<sup>24</sup> This sustainability principle is reflected in the FAA's Policy Statements and Compliance Manual:

- The Airport Rates Policy provides that airports are “encouraged, when entering into new or revised agreements or otherwise establishing rates, charges, and fees, to undertake reasonable efforts to make their particular airports as self-sustaining as possible in the circumstances existing at such airports.”<sup>25</sup>
- The Revenue Use Policy requires that airports generally must charge fair market value rent for nonaeronautical uses, and rent sufficient to recover costs for aeronautical uses.<sup>26</sup>
- The Compliance Manual prohibits the use of airport land “for free or nominal rental rates by the [airport] sponsor for aeronautical purposes . . . except to the extent permitted under the *Revenue Use Policy* section on the self-sustaining requirement.”<sup>27</sup>

This sustainability requirement appears to be the basis for the USDOT Inspector General's concerns about the Orlando Airport's expenditures and rental agreement with the USDA, under which USDA paid a nominal lease rent of one dollar per year. The Orlando Report states that:

The plant inspection station should be generating enough additional commerce to justify the capital and maintenance costs of the facility. Otherwise, the Aviation Authority should find a tenant willing to pay the aeronautical-use rate, the fair market value rate, or a rate at which it can recover its cost, especially since there are other aeronautical users whose Airport leases are at or near fair market value.<sup>28</sup>

However, interpreting the sustainability standard in this manner seems at odds with the conclusion that the airport could itself pay the costs of aeronautical services, as the Inspector General recognized was appropriate in the case of properly proportioned contributions to the City of Orlando's police and firefighter pension funds. The FAA appears to have recognized this inconsistency when it disagreed with the USDOT Inspector General's interpretation and stated it would not require USDA to pay a higher, cost recovery rent, if either (1) the airlines were knowingly covering the costs of the inspection facilities through their rates, or (2) the costs could be covered through other airport income derived from concessions.<sup>29</sup> The FAA's interpretation appears to take the view that the sustainability requirement does not preclude passing on the cost of facilities for agricultural inspections to either the airlines as part of their general airport fees, or to airport concessionaires, rather than to the agency providing and paying the inspectors.

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<sup>24</sup> 49 U.S.C. § 47107(a)(13)(A), (l)(3).

<sup>25</sup> Airport Rates Policy, at 4.1.1. However, this requirement does not permit airports, absent agreement with aeronautical users, “to establish fees for the use of the airfield that exceed the . . . airfield costs.” *Id.* at 4.1.1(a).

<sup>26</sup> Revenue Use Policy, at VI.B.5, VI.C; Compliance Manual, at 17-3 to 17-4.

<sup>27</sup> Compliance Manual, at 15-10.

<sup>28</sup> Orlando Report, at 14.

<sup>29</sup> These conditions are consistent with the FAA requirement that airports use a “transparent (i.e. clear and fully justified) method of establishing” rates for aeronautical users. Airport Rates Policy, at 2.3.

Because of the lack of clarity in this area, the apparent conflict within the FAA's own regulations, and the paucity of prior relevant decisions, the FAA's ultimate conclusion about whether Hawaii's airports need to recover costs for these inspection facilities is unpredictable. At best, its determination might be based on a factor that has not been delineated in its guidance to this point. For example, the FAA could determine that airports must recover costs where the aeronautical services have the ability to receive cost reimbursements independent from the airport. This is certainly true for the USDA inspections (by federal statute) and air carrier use (ticket revenues) and would not be true for airport police services; with respect to Hawaii's inspection services, separate fees are in place but also the subject of a current lawsuit. Alternatively, the FAA might look to common airport practices for guidance.<sup>30</sup>

If it is necessary for Hawaii's airports to recover the costs of the inspection facilities, the FAA's interpretation in the Orlando Report strongly suggests that the airports may do so through (1) additional revenues from airline fees or concessionaire rental rates besides rental charges to HDOA, or (2) offsets from benefits the facility provides to the airport. In the Orlando Report, the FAA and USDOT Inspector General agreed that these benefits potentially included increased commercial activity for the airport due to the USDA facility. Additional benefits of on-airport biosecurity inspections in Hawaii's situation might include increased efficiencies for airlines and passengers, and better and more timely handling of air freight that encourages rather than discourages increased airport traffic.

#### **IV. Conclusion**

There appears to be a principled basis on which FAA could conclude that providing facilities to support biosecurity inspections and paying for the inspectors themselves are aeronautical uses that are appropriately supported by airport revenues. We have been unable to identify anything in applicable law and FAA policies that mandates a conclusion that such uses constitute a prohibited diversion of airport revenues as most recently asserted by the FAA and HDOT. There is an apparent basis for the FAA to insist on a cost recovery approach to recover the up-front capital costs of constructing the facilities, based on the sustainability principle. But the available precedent does not clearly mandate that such cost recovery must come from the HDOA, rather than from sources of airport revenue including airline fees and concessionaire rents.

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<sup>30</sup> Cf. LAX Proceeding, at \*33 ("While airport practices are not binding on us, they do provide guidance on whether a charge included in a fee is reasonable.")



## AIRLINES COMMITTEE OF HAWAII



Honolulu International Airport  
300 Rodgers Blvd., #62  
Honolulu, Hawaii 96819-1832  
Phone (808) 838-0011  
Fax (808) 838-0231

March 21, 2011

Honorable Kalani English, Chair  
Senate Committee on Transportation and International Affairs

Honorable Clarence Nishihara, Chair  
Senate Committee on Agriculture

**Re: HB 1568 HD1 – Relating to Agriculture – CONCERNS**  
**Hawaii State Capitol Room 224**

Aloha Chair English, Chair Nishihara, Vice chairs and members of the committee:

The Airlines Committee of Hawaii\* (ACH), which is made up of 21 signatory air carriers that underwrite the State Airport System has serious concerns with this bill if funds from airport rates and charges are diverted for non-airport uses.

The federal law on Revenue Diversion is clear that revenue derived from airlines must be used for capital and operating costs of the airport and the local airport system. Prohibited uses include: Payments that exceed the fair and reasonable value of services provided to the airport; General Economic Development; Direct subsidies of carriers; Rental or use of facilities for non-aeronautical use at less than market value.

While biosecurity screening for air cargo takes place at the airport, there is no linkage recognized by the FAA for agricultural inspections.

- The FAA considers the aeronautical use of an airport to be any activity that involves, makes possible, is required for the safety of, or is otherwise directly related to, the operation of an aircraft.
- The USDA defines biosecurity as precautions taken to minimize the risk of introducing an infectious disease into an animal population.<sup>1</sup>
- The Hawaii Department of Agriculture (DOA) is responsible for inspecting cargo terminating in the state.
- The Hawaii Department of Transportation (DOT) stated that DOA inspection is not an airport function.

For a number of years, legislation was introduced to have an agricultural inspection facility constructed at Honolulu International Airport at the expense of DOT and airlines. Consequently, the DOA, DOT and the airlines have met several times over the years to discuss this matter and the DOA has been advised that Revenue Diversion issues would arise that could adversely impact eligibility to receive federal funds.

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<sup>1</sup> See: [http://www.usda.gov/wps/portal/usda/usdahome?navid=AI\\_GLOSSARY](http://www.usda.gov/wps/portal/usda/usdahome?navid=AI_GLOSSARY) (Accessed on 3/21/11)



This bill proposes that the DOT be required to provide biosecurity inspection facilities at major airport through out state and appropriates unspecified funds. We would not have any objection to this bill if these funds are from General Funds or non-airport revenue funds. However, we would have serious objections if airport revenues are used for non-airport capital projects or operations.

When the state accepts federal/state financial grants or property transfers, it agrees to abide by certain binding contractual obligations. One of those rules specifies that all airport-generated revenues should be spent at the airport. Violating any of the grant assurances is like violating the terms of a contract. It can result in losing the privilege to receive grants in the future and can also lead to lawsuits and civil penalties. Congress allows the Secretary of Transportation to withhold transportation funds from any local government that violates the airport revenue retention restriction. This also can lead to costly and protracted litigation. As an example, in a Final Decision and Order on a Revenue Diversion case involving the City of Los Angeles, the Los Angeles City Council on agreed to return more than \$21.2 million to the operator of LAX to settle legal claims that airport funds were misappropriated in violation of federal regulations.

DOT and the airlines have advised DOA that the FAA has advised that Airport Revenue Funds are prohibited to be used to construct an agricultural inspection facility or fund inspectors, and that a single inspection facility at HNL is unacceptable due to the fact that airline cargo facilities are located at opposite ends of the airport. The logistics of such an operation would materially impact the costs associated with air cargo shipments which would ultimately be passed on to consumers.

In closing, we urge you to ensure that funds from airport rates and charges are not diverted for non-airport uses. In addition to Revenue Diversion, the shifting of the burden of capital and/or operational costs from the HDOA to DOT-A will reverberate on a national level as well as create significant adverse financial implications with the Terminal Modernization Program.

As a possible solution to consider, Hawaiian Airlines and United Airlines previously offered DOA space within their respective facilities to accommodate DOA inspectors. Consolidating inspections at these two nodes of the airport, not only saves costs it helps to streamline inspection since cargo transported directly through Honolulu comes either to the Diamond Head or Ewa side of the airport. We continue to offer this as a solution.

We would also like to offer to work together to come up with other solutions, that do not involve Revenue Diversion, to help meet the state control the proliferation of invasive species.

Sincerely,

Lori Peters  
ACH Co-chair

Blaine Miyasato  
ACH Co-chair

*\*ACH members are Air Canada, Air New Zealand, Air Pacific, Alaska Airlines, All Nippon Airways, American Airlines, China Airlines, Continental Airlines, Continental Micronesia, Delta Air Lines, Federal Express, go! Mokulele, Hawaiian Airlines, Japan Airlines, Korean Air, Philippine Airlines, Qantas Airways, United Airlines, United Parcel Service, US Airways, and Westjet.*



Air Transport Association

March 20, 2011

Senator J. Kalani English  
Chair, Committee on Transportation and International Affairs  
Hawaii State Capitol, Room 205

Senator Clarence K. Nishihara  
Chair, Committee on Agriculture  
Hawaii State Capitol, Room 204

*Via Email: [TIATestimony@Capitol.hawaii.gov](mailto:TIATestimony@Capitol.hawaii.gov)*

**Re: H.B. 1568, H.D. 2 – Relating to Agriculture**  
**Hearing: Monday, March 21, 2011 at 1:17 p.m., Room 224**

Dear Chairs English and Nishihara and Members of the Joint Committees:

I am **Melinda Yee Franklin**, testifying on behalf of **Air Transport Association** (“ATA”), the nation's oldest and largest airline trade association. ATA members include all of the major U.S. passenger and cargo airlines,<sup>1</sup> which together carry more than 90% of domestic passenger and cargo traffic. ATA’s fundamental purpose is to foster a business and regulatory environment that ensures safe and secure air transportation and enables U.S. airlines to flourish, stimulating economic growth locally, nationally and internationally.

**ATA submits comments** regarding H.B. 1568, H.D. 2, which requires the Hawaii Department of Transportation to establish biosecurity and inspection facilities at Hawaii’s airports.

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<sup>1</sup> ATA’s Airline Members include the following: ABX Air, Inc., AirTran Airways, Alaska Airlines Inc., American Airlines, Inc., ASTAR Air Cargo Inc., Atlas Air, Inc., Continental Airlines, Inc., Delta Air Lines, Inc., Evergreen International Airlines, Inc., Federal Express Corporation, Hawaiian Airlines, JetBlue Airways Corp., Southwest Airlines Co., United Airlines, Inc., , UPS Airlines, , US Airways, Inc.



ATA appreciates that this measure is intended to protect Hawaii's environment from invasive species, and includes appropriations from the general fund for the purpose of establishing biosecurity and inspection facilities.

While H.B. 1568, H.D. 2 presently purports to fund this program from the general fund, the bill requires divisions within the Department of Transportation to provide "space, planning and design support, and other infrastructure," among other locations, for the Honolulu International Airport, Hilo International Airport, Kona International Airport at Keahole, Kahului Airport, and Lihue Airport.

Given this and other measures that are being considered before this Legislature, ATA would caution the Committee that any funds for establishing such biosecurity and inspection facilities cannot come from airport funds. **Federal law has long prohibited state and local governments from using airport revenues for purposes other than the capital and operating costs of an airport. See 49 U.S.C. § 47133 and 49 U.S.C. § 47107(b).**

In 2006, the Federal Aviation Administration specifically stated that in Hawaii, it would be unlawful under federal law to use airport revenue to fund agricultural inspections at Hawaii's airports because the Hawaii Department of Agriculture inspections are not an airport function.

The consequences of improperly diverting airport revenues are harsh and will jeopardize federal aviation funding, at a time when the State cannot afford to lose this important source of revenue.

ATA is willing to work with the Department of Agriculture to discuss alternatives to assist the State in its endeavors to protect Hawaii's environment from invasive species, but urges the Committee to ensure that airport funds are not diverted for this purpose.

Thank you very much for the opportunity to submit comments regarding this measure.



COORDINATING GROUP ON  
ALIEN PEST SPECIES

Senate  
Committee on Transportation and International Affairs  
Committee on Agriculture  
Monday, March 21, 2011  
1:17 p.m., Conference Room 224  
State Capitol

### Testimony in Support of HB 1568 HB2

Aloha Chairs English and Nishihara, and Members of the Committees,

The **Coordinating Group on Alien Pest Species (CGAPS) supports HB 1568 HB2, Relating to Agriculture.**

There are only two pathways for invasive species to arrive in Hawai'i: air and maritime transportation. Stopping new invasive species at ports of entry saves us hundreds of millions (if not billions) of dollars per year, yet only Kahului Airport has a joint Federal/State cargo inspection facility. All ports of entry must include inspection facilities for State and Federal agencies to conduct their inspection work, yet these facilities do not appear in strategic planning documents. Closer collaboration between agencies is required so that each agency's mandate can be met, while providing for the safe and efficient movement of goods.

This bill would ensure that the Department of Transportation provides the same planning and operational services to Hawai'i Department of Agriculture as it would to other port facility users/tenants.

Mahalo for your consideration.

Aloha,

**Christy Martin**

Coordinating Group on Alien Pest Species (CGAPS)

Ph: (808) 722-0995





2343 Rose Street, Honolulu, HI 96819  
PH: (808)848-2074; Fax: (808) 848-1921

March 19, 2011

## TESTIMONY

### Re: HB1568 HD2 RELATING TO AGRICULTURE

Chair English, Chair Nishihara and Members of the Committee :

Hawaii Farm Bureau Federation on behalf of commercial farm and ranch families and organizations in the State **STRONGLY SUPPORTS HB1568 HD2**, providing a footprint for biosecurity facilities related at airports and harbors across the State.

During prior hearings, there has been doubt cast on FAA's role in biosecurity. The following is a quote from the Secretary of Transportation's policy statement regarding invasive species to comply with Executive Order 13112 signed by President Clinton. The website provides the complete document.

The Federal Aviation Administration cooperates with other federal and state agencies in developing a comprehensive strategy to reduce the risk of introducing invasive species at airports in Hawaii; cooperates in federal research for screening baggage, cargo, and passengers; and protects native species in the management of its facilities and FAA-funded and licensed facilities throughout the country.

[http://www.environment.fhwa.dot.gov/ecosystems/wildlife/inv\\_dot.asp](http://www.environment.fhwa.dot.gov/ecosystems/wildlife/inv_dot.asp)

The above document clearly states that FAA will cooperate and work with State agencies. FAA does not operate independent of State agencies to operate airports in Hawaii. While the Governor addressed airport and harbor improvements under the New Day Work projects, he did not do so in isolation. He mentioned the control of invasive species as a priority.

**Executive Order 13112 specifically states that the Federal Government:**  
"not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere unless, pursuant to guidelines that it has pre-scribed, the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions".



Air transport has been identified as a high risk pathway. As such, the **Executive Order requires that mitigative measures be identified and implemented when expending Federal funds.**

Risk of invasive species introduction can be viewed in two ways. First high risk due to rapidity of transport ...and that is air. Air transport brings cargo from unknown destinations to Hawaii in hours, increasing the probability of survival of invasive species. The second is volume -- where sheer numbers increase the probability of introduction turning it into not a matter of "if" but rather "when" there is an introduction of a new invasive. Global transportation and eclectic tastes of consumers has introduced problems never seen before ..... beetles in fiber used for ceiling material from the Middle East or new scorpions hidden in rocks for landscape from Australia are threats from sea that never existed before. We cannot stop global trade. That means we need to get smarter about protecting ourselves. The Hawaii Biosecurity Plan does just that. In the process, it also addresses issues important to the State's smaller farmers and ranchers.

The mid 2000s saw Hawaii's economy boom and all of the harbors across the state were busy and innovative in their use of space. I visited terminals on Oahu and Maui and was amazed at what Matson and Young Brothers did. I was impressed that they could move cargo so quickly and without accidents. They were forced to go up since groundspace was limited ...and it was impressive that they could find the containers. What would happen if the economy continued to grow? They needed space!!!



The picture above is cargo that sat in the sun waiting to get in containers as workers hustled about. Now, with reduced cargo volume, YB is able to get cargo into refrigerated containers as soon as they are delivered but what if those hectic days return? Will YB have the space or should consolidation/deconsolidation be done at

another location and YB only deal with consolidated cargo? This is why the biosecurity plan is important. We do not think that precious waterfront space needs to be used for consolidation and deconsolidation -- it can be done at another site . However, the process should be integrated and it is in the interest of the harbors to participate in the process.

In addition to cargo handling, we are faced with increased levels of invasive species and challenges to how we handled our products through new food safety certification requirements by our vendors. The Department of Agriculture's Hawaii Biosecurity Plan is a comprehensive plan of how we can address invasive species while protecting and growing agriculture. It has all of the pieces in one picture. This is important when resources are scarce. We cannot afford to duplicate or waste. We must be efficient and identify ways to leverage what we have. We appreciate HHUGS and the maritime companies for supporting our biosecurity efforts thusfar. It shows what cooperation can accomplish.

And finally, we do not want lack of ability to control invasives to delay harbor or airport improvement plans. We need good harbors and airports to provide reliable and affordable movement of goods. **In 2010, all of the Mayors agreed this was a priority for their respective counties. Their testimony is attached. Kauai's position is included in their CEDS document.**

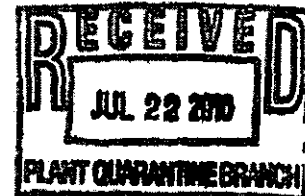
We extend our appreciation to this body for considering this important initiative and request your strong support in moving this measure forward including the attached amendment. If there are any questions, please contact Warren Watanabe at 2819718. Thank you.

OFFICE OF THE MAYOR  
**CITY AND COUNTY OF HONOLULU**  
530 SOUTH KING STREET • HONOLULU, HAWAII 96813  
PHONE: (808) 768-4141 • FAX: (808) 768-4242 • E-MAIL: [mayor@honolulu.gov](mailto:mayor@honolulu.gov)

MUFI HANNEBANN  
MAYOR



July 19, 2010



Ms. Carol Okada  
Plant Quarantine Branch  
Hawaii Department of Agriculture  
1849 Auiki Street  
Honolulu, Hawaii 96819

Dear Ms. Okada:

Thank you for the opportunity to discuss the concerns and needs of the City and County of Honolulu regarding the Hawaii Biosecurity Plan.

Defending our islands from invasive species, while improving the condition of our ports, requires federal, state, and county officials to think and act as one, and work hand-in-hand with our local communities. Biosecurity at the ports will block the entry of harmful invasive species that can threaten our agriculture industry, native ecosystems, tourist-driven economy, and public health and safety. Apart from creating joint-use inspection facilities at our state's ports-of-entry for enhanced screening and prevention, the program also lays the foundation on which creative, community-driven ideas can be developed.

The City and County of Honolulu believes it is vital to implement the biosecurity program if we are to create a more efficient and streamlined infrastructure to deal with the high volume of imported cargo that must be painstakingly inspected for invasive species, while providing for the proper and safe storage and handling of cargo as it moves through the distribution system.

As the Airport and Harbor Modernization Plan moves forward, consideration must be given to the Department of Agriculture's biosecurity requirements and to the City's need to have the system prevent delays and product loss. Honolulu's harbors and ports are critical to the statewide transportation system as the hub of activity for imports and exports. Without timely improvements, the net result to our citizens could be higher costs and reduced quality for those products we import. Congestion at the ports resulting from a lack of infrastructure improvements will have a deleterious effect on local producers and distributors.

With input from a broad range of stakeholders, the City has identified several biosecurity projects as part of our update to the U.S. Economic Development Administration's Comprehensive Economic Development Strategy (CEDS) 2010. We recommend that the following CEDS short-term implementation projects be included in the Hawaii Biosecurity Plan to assist diversified agriculture in food security, research, and industry expansion.

#### **Kunia Village Agri-business Complex**

Renovate agricultural structures in the Kunia area to promote diversified agriculture as part of the Hawaii Agriculture Research Center's development. The project will renovate four structures with a combined area of 53,000 square feet that will be used to promote research and emerging agricultural endeavors, including but not limited to agriculture services and value-added components.

#### **Oahu Farmland Security Initiative**

Design and implement a comprehensive plan to address agricultural security issues on Oahu, with emphases on theft, vandalism, and feral animal incursions.

#### **Integrated Approach to Achieve Food and Fuel Security in Hawaii**

The biofuel and agriculture industries recognize that potential synergies may exist that provide benefits to the state. Given the foresight of the 2007 Legislature in establishing the Energy Feedstock Program within the Hawaii Department of Agriculture, the funds will provide initial implementation costs.

#### **Food Security Action Plan**

Hawaii imports approximately 80 percent of its food, and so we have a two-week supply of food in the state. The action plan is to provide pathways to decrease our reliance on imported food sources and increase the local food supply.

#### **Honolulu Farmers' Market Halls**

Plan, design, and construct permanent farmers' market hall(s) in Honolulu. Oahu will have the largest in-state market, now and in the future, for local-grown agricultural commodities. Moreover, diversified agriculture is alive and well in Hawaii and the movement to "buy local" is rapidly gaining momentum. These new halls would be operational for most of the week and would serve local consumers and tourists.


Ms. Carol Okada  
July 19, 2010  
Page 3

If you have any questions regarding this matter, please contact our Small Business Advocate, Alenka Remec, at (808) 768-4249 or email [aremec@honolulu.gov](mailto:aremec@honolulu.gov).

We look forward to cooperating with you on this plan.

With warm regards and aloha,

Yours truly,

A handwritten signature in black ink, appearing to read "Mufi Hannemann", with a long horizontal line extending to the right.

Mufi Hannemann  
Mayor



CHARMAINE TAVARFS  
MAYOR

200 South High Street  
Wailuku, Hawaii 96793-2155  
Telephone (808) 270 7855  
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**OFFICE OF THE MAYOR**  
County of Maui  
December 6, 2010

Ms. Carol Okada  
Hawaii Department of Agriculture  
Plant Quarantine Branch  
1849 Auiki Street  
Honolulu, Hawaii 96819

Dear Ms. Okada:

**RE: BIOSECURITY ISSUES AND FY 2011 CIP LIST FOR WATER IMPROVEMENTS**

Thank you for the opportunity to comment on the issues of Biosecurity, Transportation and Water issues for Maui County. In order for our island agriculture to remain, viable, we need to have a vision of a Biosecurity Program that entails a number of critical components that are important to ensure a secure environment protected from invasive species treats.

**BIOSECURITY**

Maui County imports and exports thousands of shipping containers each year through Kahului Harbor. About 50% of those containers carry produce, plant material, and other perishables that may pose Biosecurity or safety threats to our community if not properly managed. Invasive species control, food safety, and export viability are our primary concerns.

In Summer 2010 Maui County's stakeholders collaborated to identify the current system's challenges, limitations, and potential for improvement. These concerns have been addressed in other forums, as well: Maui's Island Plan, the Comprehensive Economic Development Strategy (CEDS), and the Maui Agriculture Development Plan. Still, while the needs have been discussed, a comprehensive plan has not been funded or executed. This proposal incorporates valuable input from local growers and exporters, transportation providers, importers, and various government agencies so that this need can now be addressed.

To effectively implement Act 236 (Biosecurity Law), Maui County needs immediate funding and expert resources to design, build, and integrate the **Kahului Harbor Inspection, Treatment, & Distribution System**. The overall system design must include facilities, processes, policies, and personnel for Kahului, Lanai, and Molokai. To ensure efficient use of resources, this plan should be added to the current **Harbor Improvement Plan**, with the additional funding required for simultaneous implementation.

We have four key motives for the proposed system:

- ◆ *Reduce invasive species threats (identification, eradication, & control)*
- ◆ *Minimize food contamination risk (i.e. thawed/spoiled products)*

- ◆ *Decrease perishable losses and costs due to weather exposure*
- ◆ *Increase Maui County growers' competitive advantage across Maui and in export markets (i.e. improve quality and "low-risk" exporter rating)*

Maui County's primary goal is to consistently inspect 100% of containers with "high-risk" cargo by December 2013. We will treat or destroy import/export/interisland shipments that carry invasive species. Each year 10% of all shipments through Kahukui Harbor are deemed "high-risk" by virtue of the items, the producer, or the geography from which they originate. Our plan includes:

- ◆ Identifying those "high-risk" shipments to regulate a manageable scope for inspection;
- ◆ Incentives for importers who get shipments pre-inspected at the point of origin, or who use pre-certified "safe" or "low-risk" providers;
- ◆ Treatment & eradication facilities to minimize environmental threat and landfill contamination, including services such as animal dips, equipment wash-down areas, insect and coqui frog treatment, etc.;
- ◆ Consideration of employing a distributed inspection and treatment model as well as use of third-party providers to alleviate congestion and delivery delays; and
- ◆ Innovative technology use to automate, track, and accelerate the process with less staff and overhead.

Our second objective is to provide covered and/or climate controlled freight sheds at the harbor that protect perishables and other products arriving/departing from exposure that could degrade food safety or destroy the shipment. At least three marshalling areas for both imports and exports are necessary: Simple weather exposure protection (covered, not climate controlled), Refrigerated, and Frozen.

The enhanced system we propose must address several challenges. Location of a facility (or a distributed/third-party inspection model) raises space and traffic challenges. Inspection volume and personnel limitations create concerns with bottlenecks and other process delays that can impair competition and freshness (time to market). Additional off-loading and backloading inflates risks of damage and delay, so liability and risk mitigation must be identified.

Widespread adoption of and adherence to the new system involves considerable change management planning and investment. This includes incentives, training, ongoing education, and special assistance enabling business process changes within our local supply chain.

Lastly, fees, tariffs, or taxes that support Biosecurity measures must be reasonable and transparent. Inevitably, these costs will be passed to consumers who have not necessarily bought into the value proposition of the initiative. Competition is negatively impacted if we cannot minimize the cost to market providers.

## TRANSPORTATION

The fact that Hawaii is a multi-island state as well as its position as the world's most isolated location, present major challenges for our harbors and airports. I am thankful that Maui has the Alien Species Action Plan Building (ASAP) to better protect us from invasive species from products being flown to our island. The lack of dock space and the deteriorating conditions of our harbors are affecting the shipping industry that we depend on to support our economy; therefore, I place the Kahului Harbor as my number one priority related to State transportation issues.

- **Implementation of Harbor Master Plan is critical. We need dredging of the Kahului Harbor between piers 1, 2 & 3 and the renovation of piers 1, 2, 3 and 4.**
  - The use of pier 3 for fuel is limited due to the shallow water depth at the pier. The fuel barge needs to be partially unloaded in order to dock at Pier 3, the main fuel pier at Kahului Harbor. This area in particular needs to be dredged to meet the depth requirements of existing and future service. Dredging standards need to meet the OPA 90 requirements for double-hulled petroleum vessels. In addition, as Pier 3 may be out of commission during dredging, alternate docking sites for fuel should be made available; therefore, Pier 4 should be constructed and the Pier 1 fuel lines need to be upgraded.
  - Structural enhancements will be needed to pier 1, 2 and 3 to accommodate the deeper berthing depths. At the same time, pier 2 should be strengthened to accommodate existing and future needs.
- **Acquiring land contiguous to Kahului Harbor**

In order to consolidate and make inspections more efficient, we need to acquire and develop land contiguous to Kahului Harbor to support harbor operations. We need to get food products into a sheltered area so they can be protected from the sun and rain. Currently, these products are out in the open on the docks due to the lack of adequate facilities.
- **Kahului Airport**

The ASAP Building at the Kahului Airport has been very effective in keeping Alien Species from entering our island.

  - We must fund ongoing operations and renovations for the Kahului Airport ASAP Building to help prevent alien species from entering Maui.
- **Kahului Airport cargo and taxiway A extension**

A new cargo apron is needed. Taxiway A could be extended to support the new cargo apron and the proposed new cargo apron extension. Currently, without the taxiway extension, the apron can only be used on a limited basis due to lack of taxiing clearance if an aircraft is parked on the cargo apron.

- **Kahului Airport Access Road**  
We continue to support the Kahului Airport access road construction of the portion from Hana Highway to the Airport, and from the Puunsene/Dairy Road intersection to Hana Highway.

#### **WATER**

##### **Upcountry Maui – Flume Renovation/Replacement**

- The project is a priority for Maui County, as the Commission on Water Resource Management (CWRM) has stated that if the flume is not renovated or replaced, CWRM will shut the flume down. The flume collects water in the upper-reaches of Haleakala and transports the water to the Upcountry water storage system. The flume is over 40 years old and is the primary water distribution from the collection points to the reservoirs. The cost is for the design and construction, and Maui County needs to decide during the design period if it is a renovation or replacement project. A replacement project would cost up to \$10 million.
- **Reservoirs and Dams**  
The upgrading and renovation of the present Upcountry water systems and the construction of new storage reservoirs (300 million gallon capacity), in addition to upgrading of the distribution systems is also a high priority. As you are well aware, the Upcountry area of Maui has suffered through droughts for decades and the storage system and system upgrades are critical to improving the water system in the area.
- **FY 2011 CIP list for Water Improvements for Molokai and Maui**  
Maui County continues to support the State's efforts on Maui and Molokai and concurs with the priorities stated in your proposal. Of great importance to agriculture is the completion of the dual water line in Upcountry Maui.

**Concurrent to the objectives above, it is our intent to support growth of local agriculture as an industry. This year Maui County spent \$800K supporting local agriculture. The steps outlined in this proposal will take an additional step in that effort. More funding and long-term planning and funding are required at the state and county levels to establish youth and adult vocational training and agriculture development. Creating opportunities for K-12 youth exposure to agriculture is critical in establishing the next generation workforce: Student and school gardens, Farm Bureau education and outreach, career pathway awareness, and "Ag in the Classroom" programs are all worth pursuing.**

*Ms. Carol Okada*  
*December 6, 2010*  
*Page 5*

Thank you for your consideration on this matter. If you have any questions, please contact our Agriculture Specialist, Clark Hashimoto at (808)270-8238 or by email at [clark.hashimoto@mauicounty.gov](mailto:clark.hashimoto@mauicounty.gov).

Sincerely,



CHARMAINE TAVARES  
Mayor, County of Maui

CT:CH/gi

c: Clark Hashimoto, Agriculture Specialist



**William P. Kenoi**  
*Mayor*



**William T. Takaba**  
*Managing Director*

**Walter K.M. Lau**  
*Deputy Managing Director*

## **County of Hawai'i**

### **Office of the Mayor**

891 Uluani Street • Hilo, Hawai'i 96720-3982 • (808) 961-8211 • Fax (808) 961-6553  
KONA: 75-5722 Hanama Place, Suite 102 • Kailua Kona, Hawai'i 96740  
(808) 327-3602 • Fax (808) 326-5663

December 3, 2009

**County of Hawaii Agricultural Priorities**  
**Contact: Kevin Dayton, Executive Assistant, Office of the Mayor**  
**(808) 961-8508**

#### **Priority 1**

##### **Kapulena Lands Water Infrastructure, \$3.9 million**

Plans, design and construction to install well, 5mg earthen reservoir with liner and 11,000 linear feet of PVC waterline on 1,739 acres of County-owned land at Kapulena. These lands are being dedicated to sustainable community-based agriculture; school-based agricultural projects to educate future farmers; and research and production to assist the grass-fed beef industry to increase the industry's market share in County of Hawaii.

#### **Priority 2**

##### **Pa'aulo Rendering Plant, \$1.7 million**

Design and construction of rendering plant space and installation of modern equipment needed to support the grass-fed beef industry and increase the industry's market share in County of Hawaii. Includes architectural work and consultant costs to update plans and specifications for structural repairs to the existing Paaulo plant; electrical, mechanical and plumbing infrastructure improvements to support the new equipment; and installation of new rendering equipment. State of Hawaii has encumbered \$1.034 million to supply and deliver the necessary rendering equipment.

#### **Priority 3**

##### **Growing Media Sterilization Infrastructure, \$100,000**

Purchase equipment for mobile electric-powered steam generator sterilization systems with capacity to treat 30-cubic-yard loads of cinders to be used as growing media for the potted plant, foliage and other export industries. The Hawaii potted export foliage nursery industry is in a "state of paralysis," with California not accepting any *Dracaena* plants in potted volcanic cinder media. California took this action in response to several shipment rejections due to a plant-parasitic reniform nematode (roundworms) discovered in the cinder media. Before allowing any further shipments of *Dracaena* plants to California, the cinder media must be sterilized. After reviewing several options for sterilizing media, Hawaii Export Nursery Association has agreed that the preferred method for media sterilization is steam.

**Priority 4**

**Kohala Ditch Improvements, \$695,000**

**Improvements to the Kohala ditch system to reduce water losses in delivering water to agricultural operations in North Kohala.** Planning, design and construction of repairs to open ditch sections; installation of 12-inch pipe installed between Reservoir #3 and Puakea terminus; construction of Kaneaa Falls stream bridge; design and concrete work for outlet and control structures; and pipe intake structures and screens.

**Priority 5**

**Ka'u Agricultural Water System Improvements, \$8.1 million**

**Design and construct improvements to rehabilitate 30 former sugar plantation agricultural water source tunnels, transmission systems and storage facilities on state lands.** Requires survey of water source tunnels, securing easements and permits, engineering design, environmental reports and construction. Major costs (estimated) are \$1.4 million for tunnel renovation, \$2 million for pipelines, and \$2.4 million for reservoirs.

**Priority 6**

**Agriculture Distribution Center, \$16.9 million**

**Design and construct a 30,000 square-foot Agriculture Distribution Center in Hilo to assist County of Hawaii farmers to establish and expand their market share by marketing to large consumers such as the Defense Commissary Agency West.** The center is planned for a site near the new Hold Cargo and Light Industrial Building now under construction by State of Hawaii at Hilo airport, and will serve Port of Hilo and other surface transportation needs. The Distribution Center will offer cargo consolidation and storage that can house up to 50 containers, and provide refrigerated storage, frozen storage, disinfestation, rinsing and packing areas for both imports and exports. Costs: \$2.1 million planning, design and permitting; \$12 million construction, total \$16.9 million with escalation and contingency.

mauihla

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 21, 2011 8:13 AM  
**To:** TIATestimony  
**Cc:** creimann@mauihla.org  
**Subject:** Testimony for HB1568 on 3/21/2011 1:17:00 PM

Testimony for TIA/AGL 3/21/2011 1:17:00 PM HB1568

Conference room: 224  
Testifier position: support  
Testifier will be present: No  
Submitted by: Carol Reimann  
Organization: Maui Hotel & Lodging Association  
Address:  
Phone:  
E-mail: [creimann@mauihla.org](mailto:creimann@mauihla.org)  
Submitted on: 3/21/2011

Comments:

March 20, 2011

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, March 20, 2011 10:03 AM  
**To:** TIATestimony  
**Cc:** clk@quixnet.net  
**Subject:** Testimony for HB1568 on 3/21/2011 1:17:00 PM

Testimony for TIA/AGL 3/21/2011 1:17:00 PM HB1568

Conference room: 224  
Testifier position: support  
Testifier will be present: No  
Submitted by: Carolyn Knoll  
Organization: Individual  
Address:  
Phone:  
E-mail: [clk@quixnet.net](mailto:clk@quixnet.net)  
Submitted on: 3/20/2011

Comments:  
We need this bill to secure the island from invasive species at entry.



**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, March 20, 2011 9:01 AM  
**To:** TIATestimony  
**Cc:** jbautista619@yahoo.com  
**Subject:** Testimony for HB1568 on 3/21/2011 1:17:00 PM

Testimony for TIA/AGL 3/21/2011 1:17:00 PM HB1568

Conference room: 224  
Testifier position: support  
Testifier will be present: No  
Submitted by: Jerome Bautista  
Organization: Individual  
Address:  
Phone:  
E-mail: [jbautista619@yahoo.com](mailto:jbautista619@yahoo.com)  
Submitted on: 3/20/2011

Comments:

I am writing in support of bill HB1568 and biosecurity facilities at our airports. As a person that works at the Waikiki Aquarium, I am aware of the dangers that invasive species imposes on our local ecosystems. Our reefs are already threatened by invasive seaweeds that are eliminating the seaweed local Hawaiian's have historically used for food. An invasive fish species would be catastrophic to the delicate balance in the reef and we cannot afford to lose our habitats. Having a biosecurity station at our international airports would help to increase our vigilance towards keeping our habitats safe. We do not want another coqui frog infestation in our islands!  
Mahalo for your time.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, March 20, 2011 12:43 PM  
**To:** TIATestimony  
**Cc:** mlspadaro@yahoo.com  
**Subject:** Testimony for HB1568 on 3/21/2011 1:17:00 PM

Testimony for TIA/AGL 3/21/2011 1:17:00 PM HB1568

Conference room: 224  
Testifier position:  
Testifier will be present: No  
Submitted by: Mary Spadaro  
Organization: Individual  
Address:  
Phone:  
E-mail: [mlspadaro@yahoo.com](mailto:mlspadaro@yahoo.com)  
Submitted on: 3/20/2011

Comments:

I strongly support HB1568. Most of Hawaii's environmental deficits can be traced to the introduction of invasive species. The potential threats include endangering our subterranean drinking water reservoir, killing out reefs (erosion and runoff, and alien marine species such as seaweeds), and other damages too numerous to count. The best way to tackle invasive species is through complementary efforts to keep them out (which this bill does at a minimal cost) and to control what is here, which is much more costly - in monetary and human resources - and more difficult. Needless to say, we have not been able to garner sufficient resources to control the species that are here, but we are in a position to do a better job of keeping additional invasive species out. Another bill should be introduced to accomplish similar measures at our harbors.

**Anthony Aalto**  
**Honolulu, Hawai'i 96816**

Aloha Chairs English and Nishihara and members of the committees and thank you for the opportunity to testify.

As an individual concerned about the growing number of invasive species plaguing our state I urge you to pass this bill. We must protect ourselves. And we must have adequate facilities and staff to inspect incoming cargo.

My biggest concern is how we pay for these facilities and inspections.

They should be paid for by the importers. If not, we would be in the extraordinary position of requiring our local farmers to subsidize, through the taxes they pay into the General Fund, the importation expenses of their competitors. This is frankly absurd. Please impose an inspection fee on all imported cargo and use the funds to support a comprehensive bio-security and inspection service.

Mahalo

Anthony Aalto

HB 1568, HDZ



~~Standard Unit~~

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, March 20, 2011 10:38 PM  
**To:** TIATestimony  
**Cc:** merway@hawaii.rr.com  
**Subject:** Testimony for HB1568 on 3/21/2011 1:17:00 PM

Testimony for TIA/AGL 3/21/2011 1:17:00 PM HB1568

Conference room: 224  
Testifier position: support  
Testifier will be present: No  
Submitted by: Marjorie Erway  
Organization: Individual  
Address:  
Phone:  
E-mail: [merway@hawaii.rr.com](mailto:merway@hawaii.rr.com)  
Submitted on: 3/20/2011

Comments:

This bill is absolutely vital! And it needs to be well funded; otherwise forget it.  
Mahalo for your consideration and wise support.