

HB 865

HD 2,SD1

NEIL ABERCROMBIE
Governor



State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512

RUSSELL S. KOKUBUN
Chairperson, Board of Agriculture

JAMES J. NAKATANI
Deputy to the Chairperson

**TESTIMONY OF RUSSELL S. KOKUBUN
CHAIRPERSON, BOARD OF AGRICULTURE**

BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS

**WEDNESDAY, March 30, 2011
9:30 A.M.
CONFERENCE ROOM 211**

**HOUSE BILL NO. 865 HD2, SD1
RELATING TO INSPECTION FEES**

Chairperson Ige and Members of the Committee:

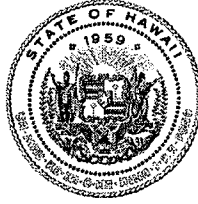
Thank you for this opportunity to provide testimony on House Bill No. 865 HD2, Relating to Inspection Fees.

The purpose of this Act is to increase the fee assessed for the inspection, quarantine, and eradication of invasive species contained in any freight from 50 cents to 75 cents for every 1,000 pounds of freight brought into the State. The Plant Quarantine Branch's inspection and Biosecurity program is the only mitigation at the ports statewide for invasive pest introductions. While the Department is inclined to support further discussion about the intent of this bill, we decline to comment at this time due to on-going litigation.

Thank you for the opportunity to testify on this measure.



NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

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

**Before the Senate Committee on
WAYS AND MEANS**

**Wednesday, March 30, 2011
9:30 AM
State Capitol, Conference Room 211**

**In consideration of
HOUSE BILL 865, HOUSE DRAFT 2, SENATE DRAFT 1
RELATING TO INSPECTION FEES**

House Bill 865, House Draft 2, Senate Draft 1 increases the fee assessed for the inspection, quarantine, and eradication of invasive species from 50 cents to 75 cents for every 1,000 pounds of freight brought into the State. While the Department of Land and Natural Resources (Department) prefers the original version of this measure which proposed a fee increase to \$1 and an effective date "upon approval", the Department nonetheless strongly supports supplementing funding for the Department of Agriculture's (DOA) Inspection Program. The Department defers to DOA on the effect the proposed fee increase in this version of the measure will have in relation to their program and funding needs.

The State's authority to adequately finance inspection of incoming cargo is critical to protecting Hawaii residents, resources, air passengers, and airport facilities against harmful cargo arriving in the State. This fee and funding mechanism is increasingly important and critical as other funding sources diminish, to support the basic core inspector program and provide salaries to retain inspectors within DOA. A proposed fee increase is reasonable as it is imposed on marine commercial container shipment, air freight, or any other means of transporting freight, foreign or domestic, but does not include aggregate bulk freight, cement bulk freight, coal bulk freight, or liquid bulk freight, that is brought into the State.

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
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

TAXBILLSERVICE

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TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, Increase invasive species inspection fee

BILL NUMBER: HB 865, SD-1

INTRODUCED BY: Senate Committee on Agriculture

BRIEF SUMMARY: Amends HRS section 150A-5.3 to increase the invasive species inspection fee from 50 cents to 75 cents for every 1,000 pounds of freight brought into the state.

EFFECTIVE DATE: July 1, 2020

STAFF COMMENTS: The legislature by Act 9, SSLH 2007, adopted an inspection fee of \$1 for each 20-foot equivalent per maritime container for the inspection, quarantine, and eradication of invasive species in any marine commercial container shipment. In 2008, the legislature by Act 3, SSLH 2008, replaced the \$1 fee charged for each 20-foot equivalent unit per marine commercial container with a fee of 50 cents for every 1,000 pounds of freight brought into the state. This measure would increase the fee to 75 cents for every 1,000 pounds of freight brought into the state.

It should be remembered that since Hawaii is an island state, all goods must either be transported by air or water making the cost of transporting those goods more costly as compared to the lower 48 states where goods may be transported by ground transportation. Any additional cost imposed on the transportation of goods into the state will be passed on and be reflected in the higher prices of goods.

While the fee is deposited into the pest inspection, quarantine, and eradication fund, it represents yet another "tax" to fund a special program as opposed to using general funds to fund such a program. Thus, in one sense, attacking this problem with a fee is an indication that this is not a problem of high priority so as to garner general fund financing, it is also a way for lawmakers to avoid being held accountable for growing government even larger and allowing government to grow beyond its means and the ability of the taxpayer to afford government in Hawaii. Note well, that the new fee is imposed on freight coming into the state and, as such, the cost of the fee will be buried in the cost of all goods and services purchased by consumers and businesses in Hawaii. The marked propensity of the legislature to resort to user fees when programs that are of a general benefit should be funded with general funds is an indication that this program is not of a high priority to most lawmakers.

Finally, it should be noted that while the proposed increase in the fee will perpetuate the use of non-general fund financing of these programs, if the legislature deems this program of great importance then the program should be funded with general funds rather than buried in the gamut of special funds out of view of the general public.

That said, based on the testimony presented to the subject committee there does not seem to be an accurate accounting of the amount of revenue generated by the current 50 cents per 1,000 pound fee and the demands of the program. Although the amount of resources is described by some witnesses as

HB 865, SD-1 - Continued

“insufficient” there did not appear to be any public accounting of the current fee until the most recent hearing in the Finance Committee where observers indicated that the current 50 cent fee generates approximately \$3.2 million annually. Other observers believe that to be effective, the program needs approximately \$4.5 million annually. Apparently, the rate of 75 cents is expected to generate the \$4.5 million needed to run this program.

However, this highlights the problem with trying to set a fee for a program for which there is no accurate measure of the demand for the services needed. To that extent, this program should be funded by the general fund appropriation process so lawmakers can evaluate the needs of the program and give it the resources the program needs to carry out its mission and objectives. This is the weakness of special fund financing.

Digested 3/29/11



Hawaii Farm Bureau
F E D E R A T I O N

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

March 29, 2011

TESTIMONY

Re: HB865 SD1 RELATING TO INSPECTION FEES

Chair Ige and Members of the Committee

Hawaii Farm Bureau Federation on behalf of our commercial farm and ranch families and organizations on the island **supports** the increase the inspection fees from 50 cents to seventy five cents.

HFBF appreciates the leadership provided by this body to develop and implement an invasive species program in Hawaii in the form of the Hawaii Biosecurity Plan. Recently, we see the derailment of the program due to lack of funds. There have been a flurry of news articles recently, drops in bee population, lizards that could threaten endangered species if established, mosquitoes that could carry malaria ... could any of this be prevented? Malaria in Hawaii ...what will that do to a tourist driven economy? No bees? So much for increased self sufficiency.

The lost services are impacting our economy, environment as well as future. At the same time, we also are extremely concerned about the impact of this raise in fees to everyone.

The broad impacts of invasive species make it a **logical general funded item but understand the fiscal constraints of the body at this time and support this measure** to ensure continuity of critical functions during these difficult times.

Thank you for this opportunity to provide our opinion on this important matter. If there are questions, please contact Warren Watanabe at 2819718.



The Nature Conservancy of Hawai'i
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Testimony of The Nature Conservancy of Hawai'i
Supporting the Intent of H.B. 865 SD 1 Relating to Inspection Fees
Senate Committee on Ways & Means
Wednesday, March 30, 2011, 9:30AM, Rm. 211

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.

The Nature Conservancy supports the intent of H.B. 865 SD 1 proposing to increase the invasive species cargo inspection fee from 50¢ to 75¢ for every 1,000 lbs. of cargo. We are concerned about both the perception and effect on Hawai'i businesses and consumers by increasing the fee at this time and in this economy. However, according to the Department of Agriculture, the current 50¢ charge is not sufficient to cover inspection costs, particularly if the department's general fund allocation for inspection activities is further reduced in FY12 as proposed by the Administration's budget package.

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 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. The Legislature's ongoing policy and financial support of the Biosecurity Plan has been essential to its implementation.

The Hawai'i Department of Agriculture (HDOA) has indicated that current cargo fee collections of approximately \$3.1 million annually are insufficient to cover the necessary inspection requirements at Hawaii's air and sea ports to prevent pests from entering the state. This shortfall is exacerbated by past and proposed reductions in the department's general fund allocation.

The Nature Conservancy strongly supports reasonable service fees, and meaningful fines for failure to pay such fees, for the HDOA's invasive species inspection, quarantine and eradication activities. This is an appropriate way to support the critical functions of the HDOA to protect our economy, environment, health, and lifestyle from the introduction and spread of pests and diseases.

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TO: Senator David Ige
Chair, Committee on Ways and Means
Via Email: 'WAMTestimony@Capitol.hawaii.gov'

FROM: Mihoko E. Ito

DATE: March 29, 2011

RE: **H.B. 865 HD2, SD1 – Relating to Inspection Fees**
Hearing: Wednesday, March 30, 2011 at 9:30 a.m.

Dear Chair Ige and Members of the Committee on Ways and Means:

We submit these comments 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,¹ 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 has also been committed to being a partner with the State of Hawaii, and its members have contributed several hundred million investment dollars into airport modernization for the State.

ATA **strongly opposes** H.B. 865, H.D. 2, S.D. 1, which, if enacted, would increase the State-imposed fee to inspect cargo arriving into Hawaii by aircraft (“Inspection Fee”) from 50 cents to 75 cents for every 1,000 pounds of freight or part thereof brought into the State. As before, air carriers serving Hawaii would be subject to significant and burdensome administrative obligations in connection with the billing,

¹ 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.

March 29, 2011
Page 2

collection and remittance of the fees, and large fines if they failed to undertake these obligations (for which there is no compensation provided in the law).

While ATA is sympathetic to the State's need for revenues, federal law is clear that state and local governments cannot impose fees for the transportation of freight by air. *See* Anti-Head Tax Act, 49 U.S.C § 40116; Airline Deregulation Act, 49 U.S.C § 41713(b)(1). In 2006, the Federal Aviation Administration specifically stated that a State of Hawaii fee for agricultural inspections would be "illegal" as a "violation" of the Anti-Head Tax Act. (Letter of R. Simpson, Manager, FAA Airports District Office, June 7, 2006, at 2)

The Inspection Fee, which was established by Act 3, First Special Session Laws of Hawaii 2008, and amended by Act 173, Session Laws of Hawaii, 2010, is preempted and prohibited by federal law. These fees are placed into a pest inspection, quarantine, and eradication special fund, which is to be used for the operation of "biosecurity and pest inspection, quarantine, eradication, and monitoring programs" and other related purposes. *See* Hawaii Revised Statutes § 105A-4.5. Air carriers are required to invoice and remit the fees generated to the Hawaii Department of Agriculture. The Inspection Fee falls squarely within and violates the Anti-Head Tax Act and Airline Deregulation Act.

The legality of imposing this fee on air carriers is presently the subject of pending legal challenges, both before the Federal District Court for the District of Hawaii and the U.S. Department of Transportation.

ATA is willing to work with the Department of Agriculture and Department of Transportation to discuss alternatives to assist the State in its endeavors to protect Hawaii's environment from invasive species, but urges that increasing the fee upon air carriers is not warranted at this time given the pending legal challenges. In addition, the fee would impose significant additional costs on air carriers that are already subject to substantial cost pressures from operating costs, labor, fuel, landing fees, terminal rents and other airport charges, and could ultimately impact the airlines' services in Hawaii.

We respectfully request that the Committee hold this bill. Thank you for the opportunity to submit comments on this measure.



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**HB 865 SD1
RELATING TO INSPECTION FEES**

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

MARCH 30, 2011

Chair Ige and Members of the Senate Committee on Ways & Means:

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin, Inc. (A&B) and Matson Navigation Company, Inc. (a subsidiary of A&B) on HB 865 SD1, "A BILL FOR AN ACT RELATING TO INSPECTION FEES." We sincerely appreciate the opportunity to provide comments on this bill.

In 2008, amendments were enacted to broaden the scope of the invasive species user fee from one that assessed fees only on freight brought into Hawaii by maritime containers to one that assessed fees on all modes by which commercial freight is brought into the State, including air and maritime containerized and non-containerized freight. We support the present broad based application of the invasive species user fee that requires all transporters to pay for these inspection services through the payment of this fee.

Matson has dedicated a considerable amount of time, effort, and expense to implement the assessment, collection, and disbursement of this new fee by the effective date of August 1, 2008. We were successful in starting up the collection of this new fee by the effective date and have since been diligently proceeding with its implementation.

This bill increases the amount of the invasive species user fee to provide additional funding for the Hawaii Biosecurity Program. We understand that this program consists of several components that are necessary to comprehensively control the infestation of invasive species in the State of Hawaii. In that this multi-faceted program also includes several initiatives outside of port of entry inspections, your continued consideration to provide a broad based source of funding for this program, in addition to funds derived from the invasive species user fee, would be greatly appreciated.

Your consideration is greatly appreciated.