

**DAVID Y. IGE**  
Governor

**JOSH GREEN**  
Lt. Governor



**PHYLLIS SHIMABUKURO-GEISER**  
Chairperson, Board of Agriculture

**MORRIS M. ATTA**  
Deputy to the Chairperson

State of Hawaii  
**DEPARTMENT OF AGRICULTURE**  
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**TESTIMONY OF PHYLLIS SHIMABUKURO-GEISER  
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE SENATE COMMITTEES ON AGRICULTURE AND ENVIRONMENT  
AND TRANSPORTATION**

February 10, 2021  
1:00 P.M.  
VIA VIDEOCONFERENCE

**SENATE BILL NO. 491  
RELATING TO INSPECTION FEES**

Chairpersons Gabbard, Inouye and Members of the Committees:

Thank you for the opportunity to testify on Senate Bill 491, relating to inspection fees. The bill seeks to authorize the increase in the inspection, quarantine, and eradication service fee and charge from 75 cents to \$1.50 for every 1,000 pounds of freight or part thereof brought into the State.

The Department appreciates the intent of the measure. It is well documented that preventing the entry of invasive species, as opposed to control or management, is an excellent investment of resources. The Hawai'i Interagency Biosecurity Plan (HISA) supports a coordinated path forward for the protection against invasive species. Programs such as the Department's Brown Tree Snake Interdiction program have been successful in this regard. The invaluable groundwork for reducing the threats invasive species pose to the State established by HISA remains effective. However, the COVID-19 pandemic has placed the Department and Hawaii's diverse agricultural industries in serious economic jeopardy. The Department is concerned that added cost increases to production inputs, supplies, and commodities, such as animal feed, fertilizer, or planting media, which are already higher than elsewhere in the continental United States, could further inhibit or prevent the State from reaching its sustainability goals.



The Department agrees and recognizes the need to protect the State from invasive species, however we are concerned that doubling the fee at this time may adversely impact the economic recovery of farmers and small businesses. Once the COVID-19 pandemic is under control and there is more economic security, the Department would welcome the opportunity to increase its capabilities to protect the State from the threat of invasive species.

Thank you for the opportunity to testify on this measure.

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, Increase Freight Pest Inspection Fee

BILL NUMBER: SB 491; HB 100

INTRODUCED BY: SB by GABBARD, ACASIO, CHANG, KEITH-AGARAN, MISALUCHA, NISHIHARA, Baker, Shimabukuro; HB by TARNAS, HASHIMOTO, KAPELA, KITAGAWA, LOPRESTI, LOWEN, MARTEN, MATAYOSHI, MORIKAWA, NAKAMURA, NAKASHIMA, PERRUSO, TAM, WILDBERGER, WOODSON, YAMASHITA, Okimoto

EXECUTIVE SUMMARY: Increases the inspection, quarantine, and eradication service fee and charge from 75 cents to \$1.50 for every 1,000 pounds of freight or part thereof brought into the State.

SYNOPSIS: Amends section 150A-5.3, HRS, to change the fee specified from 75 cents to \$1.50 per thousand pounds of freight, or part thereof, brought into the State.

EFFECTIVE DATE: Upon approval.

STAFF COMMENTS: Hawaii is an island state that is home to a unique set of flora and fauna. It's vulnerable to invasive species not only from foreign countries but also from the mainland United States, and our Department of Agriculture has traditionally worked hard to keep the bad stuff out. Little fire ants? Brown tree snakes? We don't want them, but we do want tons and tons of goods from the mainland and from foreign lands. That's why DOA has had in place a rigorous inspection program to scrutinize those shipments and, hopefully, catch any undesirable hitchhikers before they have a chance to damage our island ecosystem.

In 2008, our lawmakers thought, sensibly enough, that the importers of freight should defray the costs of these inspections. They passed a bill imposing a fee of 50 cents per thousand pounds of freight (increased in 2011 to 75 cents) that goes into a special fund called the "Pest Inspection, Quarantine, and Eradication Fund." The fee is paid by the shipper, collected by the transportation company, and then paid over to the State. The fund pays for operating costs of pest inspection, quarantine, eradication, and monitoring programs and related purposes.

But the fee is collected only on shipments by water.

Why?

In mid-2010, the Air Transport Association sued in federal court and petitioned the U.S. Department of Transportation to rule that the inspection fee was preempted by federal law, specifically the Airline Deregulation Act of 1978, 49 U.S.C. §41713, and the Anti-Head Tax Act, 49 U.S.C. §40116. (Because of the latter act, the U.S. Supreme Court felled the Hawaii Public Service Company Tax in 1983 as it applied to income from air transportation of passengers and cargo.)

In 2012, the USDOT ruled (<https://www.regulations.gov/document?D=DOT-OST-2010-0243-0029>) that the inspection fee was indeed preempted. The State settled with the airline industry association and refunded the fees that had been collected. But then it looks like the State just gave up on the fees as they related to air freight.

The USDOT ruling, however, suggested that it might be possible to structure the fees to fix the problem. An article published in 2013 in the American Bar Association's Air and Space Lawyer, furthermore, outlined one possible fix. The fee would have to be (1) imposed by the airport operator, in this case the State; (2) wholly used for airport or aeronautical purposes; and (3) reasonable, nondiscriminatory, and not unreasonably burdensome to interstate commerce. Element (1) is already satisfied. Element (2) can be satisfied if a separate air cargo inspection program, different from the marine cargo inspection program, is established and paid for by the air carrier fees. DOA already has the air cargo inspection program in place, so establishing a separate fund to pay for it would seem to be an easy fix. Element (3) should be achievable if the DOA doesn't get too greedy and periodically adjusts its fee levels to match costs. The State Auditor's Report No. 18-15 (page 24) observed that the balance in its special fund for these operations has been slowly creeping upward, so some tweaks may be necessary to ensure that revenues and expenses are in balance.

Lawmakers should give serious consideration to performing the fixes and working with USDOT and the airlines to pass and implement a legitimate inspection fee. Invasive species need to be caught and eliminated regardless of the means by which the species hitchhikes to Hawaii. It doesn't seem fair that only one part of the transportation industry is paying to protect our islands while another part gets a free ride.

Digested 2/5/2021



Email: [communications@ulupono.com](mailto:communications@ulupono.com)

SENATE COMMITTEES ON AGRICULTURE ENVIRONMENT AND TRANSPORTATION  
Wednesday, February 10, 2021 — 1:00 p.m.

**Ulupono Initiative supports SB 491, Relating to the Inspection Fees.**

Dear Chair Gabbard, Chair Lee, and Members of the Committees:

My name is Micah Munekata, and I am the Director of Government Affairs at Ulupono Initiative. We are a Hawai'i-focused impact investment firm that strives to improve quality of life throughout the islands by helping our communities become more resilient and self-sufficient through locally produced food; renewable energy and clean transportation; and better management of freshwater and waste.

**Ulupono supports SB 491**, which increases the inspection, quarantine, and eradication service fee and charge from 75 cents to \$1.50 for every 1,000 pounds of freight or part thereof brought into the State.

Ulupono supports the Hawai'i's Interagency Biosecurity Plan, which outlines multiple tasks for public, private, and community organizations to address invasive species and their effects on our environment. Particularly, Ulupono supports the State's biosecurity efforts to expand import replacement crops across the islands, in hopes of increasing local food production for local consumption. Supporting local food producers with increased resources to develop local markets is important in meeting the State's food production and food security goals.

We recognize that you face many difficult decisions this year to balance the budget in the midst of this economic crisis, but we hope that this support for local agriculture can be considered.

Thank you for this opportunity to testify.

Respectfully,

Micah Munekata  
Director of Government Affairs

*Investing in a Sustainable Hawai'i*



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February 10, 2021

HEARING BEFORE THE  
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT  
AND  
SENATE COMMITTEE ON TRANSPORTATION

**TESTIMONY ON SB 491**  
RELATING TO INSPECTION FEES  
Via Videoconference  
1:00 PM

Aloha Chairs Gabbard and Lee, Vice Chairs Nishihara and Inouye, and Members of the Committees:

I am Brian Miyamoto, Executive Director of the Hawaii Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,800 farm family members statewide and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic, and educational interests of our diverse agricultural community.

**The Hawaii Farm Bureau supports SB 491**, that would increase the freight import fee to provide additional funding for programs to inspect, quarantine, prevent, and mitigate the impacts of invasive species in Hawaii.

Agriculture in Hawaii has been hard-hit by the spread of invasive species. Coffee Berry Borers, Two-Lined Spittle Bugs, Little Fire Ants, Macadamia Felted Coccid, fireweed, gorse, fruit flies, parakeets, and varroa mites are only a few of the species that have made local farmers' lives and livelihoods that much more difficult. While efforts are being made to double food production to boost Hawaii's self-sufficiency, these destructive invaders are causing some to give up their farms. Can you imagine working on a farm where dozens of nearly invisible ants drop from trees, get inside your clothing, and bite into your flesh, causing welts that last for days? Or dreading the sight and potential consequences of an encounter with a venomous snake as you toil in your field of crops, should snakes not be prevented from entering and becoming rampant throughout the islands.

Although no one wants to see an increase in cargo fees, this measure is necessary as one way to provide the additional resources to combat the damage to farms and ranches and the further destruction of native ecosystems, property values, and our quality of life.

Thank you for your continued support for Hawaii farmers and ranchers.



**TESTIMONY OF TINA YAMAKI, PRESIDENT  
RETAIL MERCHANTS OF HAWAII  
February 9, 2021  
Re: SB 491 Relating to Inspection Fees**

Good afternoon Chairperson Gabbard and Chairperson Lee and members of the Senate Committee on Agriculture & Environment and the Senate Committee on Transportation. I am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

The Retail Merchants of Hawaii was founded in 1901, RMH is a statewide, not for profit trade organization committed to the growth and development of the retail industry in Hawaii. Our membership represents small mom & pop stores, large box stores, resellers, luxury retail, department stores, shopping malls, local, national, and international retailers, chains, and everyone in between.

We are **OPPOSED** to SB 491 Relating to Inspection Fees. This measure increases the inspection, quarantine, and eradication service fee and charge from 75 cents to \$1.50 for every 1,000 pounds of freight or part thereof brought into the State.

Retailers cannot afford any more mandated operational cost to doing business in Hawaii. Retail has been one of the hardest hit industries in the state due to the pandemic.

Since last March, many retailers were forced to lay-off staff due to shutdowns. While some have returned to work, others have not been called back and many stores are short staffed. Others are not able to open as their customer base - the visitors to Hawaii - have not fully returned.

The 3<sup>rd</sup> Commercial Lease Rent survey from data collected between December 1 and 31, 2020 revealed:

- One in 10 Hawaii businesses permanently closed over the course of the pandemic, and 67 percent were impacted significantly by government restrictions.
- From April through December 2020, 50 percent of businesses did not pay their rent in full.
- Three in 10 businesses expected to miss three full rent payments between October and December 2020, and more than half expected to miss at least one full rent payment between January and June 2021.
- Tourism accounts for at least one-quarter of the overall revenue of 37 percent of Hawaii businesses.
- 86 percent of businesses saw their annual revenue decrease in 2020, and 82 percent expect a decrease in 2021 as well.

Furthermore, retailers have also taken pay cuts and streamline their operations to keep their doors open and as many of their employees employed. For many retailers, they have seen a 70% decrease in their revenue in 2020 and are operating at 50% capacity to include the total number of customers and employees in the store at any given time. We have also had to endure an almost 50% increase in shipping to and from our neighbor islands and goods and services have increased in price as well. And we are currently anticipating a large increase in unemployment insurance.

The increase incurred with measurers like this would be passed on to the customer and businesses - especially the smaller local businesses - who will not be able to absorb this additional cost. As a result, the cost of living in Hawaii will increase and customers will turn to other online vendors who do not have Hawaii ties. More stores will close and more of our friends, family and neighbors will no longer be employed.

Ever week we see more and more retailers shutting their doors for good because they can no longer afford to do business in Hawaii. We ask that you hold this bill to help businesses recover and survive the affect this pandemic is having on our industry.

Mahalo again for this opportunity to testify.



**LATE**

The Senate  
Committee on Agriculture  
Committee on Transportation  
Wednesday, February 10, 2021  
1:00 p.m., Videoconference  
State Capitol

### Testimony in Support of SB 491

Aloha Chairs Gabbard and Lee, Vice Chairs, and Members of the Committees,

The Coordinating Group on Alien Pest Species (CGAPS) **supports SB 491**, *Relating to Inspection Fees*, and submits suggestions for consideration. Since it was first enacted, the cargo fee has proven a reliable source of steady funds through this fee-for-service model to supplement general funds for these crucial inspection and quarantine services. As HDOA works to implement its new electronic manifest system and database to prioritize inspection on high-risk agricultural commodities, they will likely be able to show the estimated cost of providing inspection services to at least to the highest and medium risk commodities. Once that is done, HDOA could potentially consider adding risk assessments and inspection of other non-agricultural commodities that can also carry pests.

One suggestion for consideration is to look at the steps that could be taken to assess the fee on air cargo as well. As you may recall, the legislature added the authority to assess penalties on air cargo carriers for non-payment of the fee, which triggered a lawsuit that was upheld. The result of that lawsuit found that states cannot make airlines or the air cargo import companies collect or remit the fees (states are preempted by the Airline Deregulation Act and the Anti-Head Tax Act). However, it did not rule against the state charging and collecting the fee on air cargo itself.

Because commodities traveling by air cargo tend to be lighter, and because there is no clear existing way to collect the fee, figuring out how to collect the fee from air cargo had not previously been a priority. However, it is via air that fresh produce, cut flowers, and other goods are imported, and as this bill notes, these are high risk for carrying new invasive species into the state. With the legislature's assistance, this issue can be addressed so that imported goods are treated equally, and inspection services funded by each source, and the fees could support the inspection, quarantine, and other infrastructure and service needs that are unique to sea and air cargo facilities.

Below is a link to a 2019 opinion piece on this very issue from Civil Beat by Tom Yamachika of the Tax Foundation of Hawai'i, which I found spot-on.

<https://www.civilbeat.org/2019/11/tom-yamachika-why-hawaii-needs-an-effective-invasive-species-inspection-fee/>

One last note for consideration, two bills, HB 1298 *Relating to State Funds* which seeks to transfer the balance of the Pest Inspection, Quarantine, and Eradication Fund to the general fund, and HB1299 *Relating to Non-General Funds* which seeks to repeal the special fund, these could potentially endanger this sensible fee-for-service model unless the amounts collected by



source (sea, and possibly in the future, air cargo) and deposited into the general fund are provided back to HDOA for inspection, quarantine, and related services on sea and air cargo, including early detection and rapid response to pests that were likely conveyed through sea or air cargo (which could be where containers are opened, not necessarily on port property).

CGAPS respectfully requests your support of SB 491 and appreciates your consideration of these ideas. Mahalo!

Sincerely,

Christy Martin, CGAPS--Coordinating Group on Alien Pest Species

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