

NEIL ABERCROMBIE
Governor



State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
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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 HOUSE COMMITTEE ON AGRICULTURE

FRIDAY, JANUARY 28, 2011

TIME 11:00 AM

CONFERENCE ROOM 312

HOUSE BILL NO. 627
RELATING TO AGRICULTURE

Chairperson Tsuji and Members of the Committee:

Thank you for the opportunity to comment on House Bill No. 627, relating to agriculture. The Department of Agriculture supports the intent of this bill to amend Chapter 205, Hawaii Revised Statutes, by adding two new sections in part I to establish a tax credit for qualified agricultural processing facilities based on its location, gross receipts from processing, sales or increases in full-time employees employed at the facilities.

The Department is a strong advocate for encouraging the development of agriculture processing facilities. As provided in this measure, the Department of Business, Economic Development and Tourism and the Department of Taxation will play prominent roles in the implementation of this bill. Thus, the Department defers to the comments from these two departments and would encourage the exploration of state enterprise zones in Chapter 209E, Hawaii Revised Statutes, as a vehicle to provide such incentives.

Thank you for the opportunity to testify on this bill.

NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR



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HOUSE COMMITTEE ON AGRICULTURE

TESTIMONY OF THE DEPARTMENT OF TAXATION REGARDING HB 627 RELATING TO AGRICULTURE

*****WRITTEN TESTIMONY ONLY*****

TESTIFIER: FREDERICK D. PABLO, INTERIM DIRECTOR OF
TAXATION (OR DESIGNEE)
COMMITTEE: AGRICULTURE
DATE: JANUARY 28, 2011
TIME: 11AM
POSITION: OPPOSED TO CREDIT STRUCTURE; CONCERNED
WITH COSTS

This bill, among other things, provides a general tax credit that may be utilized against any tax due the State for certified agricultural processing facilities. The amount of the credit is a sliding scale ranging from 80% of the tax due, to 20% of the tax due.

The Department of Taxation (Department) **opposes the tax credit structure** in this measure and has **concerns regarding this measure's revenue loss.**

DEFERRAL TO THE DEPARTMENT OF AGRICULTURE AND DBEDT—The Department defers to the Department of Agriculture and the Department of Business, Economic Development & Tourism on the merits of agricultural processing facility incentives.

OPPOSED TO TAX CREDIT STRUCTURE—The Department opposes the tax credit structure in this measure.

The Department does not support a "general" tax credit that can be used to offset "any" tax due the State. Except for the Enterprise Zone tax incentives, each chapter of the Hawaii Revised Statutes has its own respective tax credit to offset the taxes due for that activity.

The Department generally opposes any credit against the general excise tax. The general excise tax is a gross receipts tax for the privilege of doing business in Hawaii. There are no business credits that offset this tax.

The Department points out that agricultural processing facilities are already entitled to the Enterprise Zone tax incentive to the extent processing activity occurs in an Enterprise Zone. See Chapter 209E, HRS. To that end, this measure is then duplicitous.

Also, this measure lacks clarity in subsection (b) of the tax credit. The measure initially refers to the credit as being capable of offsetting "any" tax. However, in subsection (b) there is a reference to the credit being limited to income tax. There are numerous state taxes (i.e., income, general excise, use, transient accommodations, fuel, etc.). The taxes that may be offset by this credit should therefore be clarified.

In addition, the discussion of how the credit would apply in a partnership context needs to be modified as the provision conflicts with the general principles of partnership tax law.

CONCERN FOR REVENUE COST—As with all measures, the Department must be cognizant of the biennium budget and financial plan. This measure has not been factored into either.

REVENUE IMPACT—This measure will result in an indeterminate revenue loss; however potentially decrease \$12 million per year.



LAND USE RESEARCH
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January 28, 2011

**House Committee on Agriculture
Friday, January 28 at 11:00 a.m. in CR 312**

**Comments to HB 627
Relating to Agriculture
(Tax Credit for Qualified Agricultural Processing Facilities)**

The Honorable Chair Clift Tsuji, Vice Chair Mark Hashem, and Members of the House Committee on Agriculture,

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

HB 627. This bill establishes a tax credit for qualified agricultural processing facilities that process agricultural products grown within the agricultural district.

LURF's Position. LURF is generally supportive of the underlying intent of HB 627 to support agriculture and aid agriculture-related businesses, however, the tax credit proposed is inconsistent with, and defeats the purpose of the Important Agricultural Lands (IAL) laws. LURF therefore urges your consideration of the following significant concerns relating to the bill:

➤ **The bill is inconsistent with, and defeats the purpose of the IAL laws.**

The IAL laws were enacted to fulfill the mandate in Article XI, Section 3 of the Hawaii State Constitution, "to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands." After years of hard work and effort by all interested and affected parties, the IAL laws were established as the comprehensive, all-encompassing framework of law applicable to the agriculture industry in Hawaii. One of the major tenets of the IAL laws was to establish a "new paradigm" which focuses on promoting agricultural viability by **providing incentives** for farmers and landowners, including tax credits.

HB 627 now attempts to amend Hawaii Revised Statutes (HRS), Chapter 205, by establishing a tax credit for agricultural processing facilities which do not come within the ambit of the IAL laws. Unlike those farmers and landowners who are entitled to receive tax credits pursuant to the IAL laws **in exchange** for preservation of their land as IAL, beneficiaries under HB 627 would be unfairly afforded tax credits simply by qualifying as an “eligible processing facility” as defined in the bill. Unlike the tax credit established under the IAL laws, the subject tax credit is **NOT an incentive**, and would therefore be inconsistent with, and undermine the intent of the IAL laws.

- **The bill will cause confusion and problems relating to tax credits presently afforded farmers and agribusiness operators pursuant to the existing IAL laws.**

The IAL laws were established based on input by, and consensus amongst LURF, and other agricultural and government stakeholders through a process which lasted over a period of many years. As such, the IAL tax credits and the system through which they are issued, were carefully planned and considered, with factors such as eligibility and amount being thoughtfully devised.

It is the position of LURF and these stakeholders that the tax credit inexactly proposed by HB 627, will cause confusion among farmers and agribusiness operators presently complying with IAL laws, and as a practical matter, would prove extremely problematic.

Understanding the importance of the issues relating to agriculture which are raised by HB 627, LURF respectfully requests that the bill be **deferred** to allow stakeholders, including, but not limited to farmers, agribusiness owners, government agencies, landowners, legal experts and other interested parties to meet and work together to come to a consensus regarding the provisions of HB 627, and its correlation with the IAL laws.

Thank you for the opportunity to express our views on this matter.