



TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SIXTH LEGISLATURE, 2011

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ON THE FOLLOWING MEASURE:

H.B. NO. 286, RELATING TO AGRICULTURE.

BEFORE THE:

HOUSE COMMITTEE ON AGRICULTURE

DATE: Wednesday, February 2, 2011 TIME: 9:40 a.m.

LOCATION: State Capitol, Room 312

TESTIFIER(S): David M. Louie, Attorney General, or  
Cynthia M. Johiro, Deputy Attorney General

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Chair Tsuji, Vice-Chair Hashem, and Members of the Committee:

The Department of the Attorney General has concerns about this bill, because it may be challenged as violating the Commerce Clause of the United States Constitution.

The stated purpose of this bill is to establish a preference for "local agricultural products." For this purpose, this bill creates a general excise tax exemption to favor products that are raised or produced exclusively in the State.

A cardinal rule of Commerce Clause jurisprudence is that "[n]o State, consistent with the Commerce Clause, may 'impose a tax which discriminates against interstate commerce . . . by providing a direct commercial advantage to local business.'" Bacchus Imports, Ltd. v. Dias, 468 U.S. 263, 268 (1984), citing Boston Stock Exchange v. State Tax Comm'n, 429 U.S. 318, 329 (1977).

In Bacchus, the United States Supreme Court found that an exemption similar to the exemption proposed in this bill violated the Commerce Clause. At issue in Bacchus was the Hawaii liquor tax, which was originally enacted in 1939 to defray the costs of police and other governmental services. Because the Legislature sought to encourage development of the

Hawaiian liquor industry, it enacted an exemption from the liquor tax for okolehao (a brandy distilled from the root of the ti plant, an indigenous shrub of Hawaii) and for certain fruit wine manufactured in Hawaii. The United States Supreme Court concluded that the exemption violated the Commerce Clause because the exemption had both the purpose and effect of discriminating in favor of local products.

The general excise tax exemption for local agricultural products, as created by this bill, appears to have similar purpose and effect as the exemption that violated the Commerce Clause in Bacchus.

We recommend that this bill be held.