
From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 02, 2011 8:40 AM
To: AGRtestimony
Cc: konanuij001@hawaii.rr.com
Subject: Testimony for HB286 on 2/2/2011 9:40:00 AM

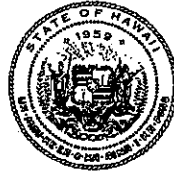
Testimony for AGR 2/2/2011 9:40:00 AM HB286

Conference room: 312
Testifier position: support
Testifier will be present: No
Submitted by: Jerry Konanui
Organization: Individual
Address: 15-1648 Akeakamai Loop Paho, HI
Phone: 8089658394
E-mail: konanuij001@hawaii.rr.com
Submitted on: 2/2/2011

Comments:

NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1530
FAX NO: (808) 587-1584

FREDERICK D. PABLO
INTERIM DIRECTOR OF TAXATION

RANDOLF L. M. BALDEMOR
DEPUTY DIRECTOR

HOUSE COMMITTEE ON AGRICULTURE

TESTIMONY OF THE DEPARTMENT OF TAXATION REGARDING HB 286 RELATING TO AGRICULTURE

TESTIFIER: FREDERICK D. PABLO, INTERIM DIRECTOR OF
TAXATION (OR DESIGNEE)
COMMITTEE: AGR
DATE: FEBRUARY 2, 2011
TIME: 9:40AM
POSITION: OPPOSED; CONCERN WITH COSTS

This measure exempts local agricultural products from the general excise tax (GET).

The Department of Taxation (Department) **opposes** this measure because of its potential unconstitutionality, as well as its unbudgeted costs.

Department generally supports the intent of ensuring a diversified local agriculture industry in Hawaii.

OPPOSED BECAUSE POTENTIALLY UNCONSTITUTIONAL—The Department's primary opposition to this measure relates to its potential unconstitutionality.

The US Constitution is quite clear that out-of-state persons cannot be taxed less favorably than in-state taxpayers.

A US Supreme Court tax case involving the Hawaii taxation of certain drinks containing local okolehao was found unconstitutional. In that case, Hawaii exempted locally grown okolehao beverages from the liquor tax. The Supreme Court affirmed that the "cardinal rule of Commerce Clause

jurisprudence" is that states cannot discriminate in imposing taxes. See *Bacchus Imports v. Dias*, 468 US 263 (1984).

The Department fears this measure would be found likewise unconstitutional; however defers to the Attorney General on the final analysis.

In light of *Bacchus Imports*, the Department suggests this bill be held.

ADD A SUNSET DATE—The Department suggests adding a sunset date for this provision. Adding a sunset date is effective tax policy to ensure that tax incentives that become unnecessary or unwarranted in the future do not remain on the books.

NOT FACTORED INTO BUDGET—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 a revenue loss of approximately \$19.1 million per year starting in FY 2012.