

HB747HD1SD1

Testimony



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:

H.B. NO. 747, H.D. 1, RELATING TO AGRICULTURE.

BEFORE THE:

SENATE COMMITTEE ON AGRICULTURE

DATE: Tuesday, March 19, 2013

TIME: 2:45 p.m.

LOCATION: State Capitol, Room

TESTIFIER(S): David M. Louie, Attorney General, or
Damien Elefante, Deputy Attorney General

Chair Nishihara and Members of the Committee:

The Department of the Attorney General offers the following comments on this bill. This bill may be challenged as violating the Commerce Clause of the United States Constitution because it could be found to discriminate against interstate commerce.

The stated purpose of this bill is to “[e]xempt from the general excise tax amounts received for the slaughter and processing of poultry and livestock.” However, the exemption is only applicable to poultry and livestock “which have been produced in the State.” Based on this preferential language, 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 At issue in Bacchus was the Hawaii liquor tax, which was originally enacted in 1939 to defray the costs of police and other governmental services.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

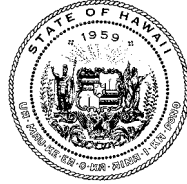
violated the Commerce Clause because the exemption had both the purpose and effect of discriminating in favor of local products.

The general excise tax exemption for poultry and livestock “which have been produced in the State”, as created by this bill, appears to have similar purpose and effect as the exemption that violated the Commerce Clause in Bacchus.

Thus, we recommend that the “which have been produced in the State” requirement be deleted from this bill.

NEIL ABERCROMBIE
GOVERNOR

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To: The Honorable Clarence K. Nishihara, Chair
and Members of the Senate Committee on Agriculture

Date: Tuesday, March 19, 2013

Time: 2:45 P.M.

Place: Conference Room 229, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: H.B. 747 H.D. 1, Proposed S.D.1, Relating to Agriculture

The Department of Taxation (Department) **appreciates the intent** of H.B. 747 H.D. 1, Proposed S.D.1 and provides the following information and comments for your consideration.

H.B. 747 H.D. 1, Proposed S.D.1 provides an exemption from Hawaii's general excise tax for amounts received from the slaughter and processing of poultry or livestock which have been produced in the State and are to be consumed in the State. Part III of this measure creates a general fund appropriation for the purchase of certain agricultural lands.

The Department defers to the Department of the Attorney General for an analysis of the constitutionality of this bill, but notes that the holding in Bacchus Imports Ltd. v. Dias, 468 U.S. 263 (1984) indicates that provisions that result in taxation that is discriminatory against products imported from outside the State would likely violate the Commerce Clause of the United States Constitution. This bill's requirement that the poultry or livestock or carcasses or meat thereof be produced within the State may be discriminatory against interstate commerce. The Department therefore suggests removing the requirement that the poultry or livestock be produced in the State.

Thank you for the opportunity to provide comments.



STATE OF HAWAII
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TESTIMONY OF JAMES J. NAKATANI
EXECUTIVE DIRECTOR
AGRIBUSINESS DEVELOPMENT CORPORATION

BEFORE THE SENATE
COMMITTEE ON AGRICULTURE

Tuesday, March 19, 2013
2:45 p.m.
Conference Room 229

HOUSE BILL NO. 747 HD1, Proposed SD1
RELATING TO AGRICULTURE

Chairperson Nishihara and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 747 HD1, Proposed SD1. The purpose of this bill is to increase the agribusiness development corporation's (ADC) limit on investments in qualified securities of any one enterprise. ADC supports Parts II & III of this bill.

Increasing the limit on investments in the Hawaii Agricultural Development Revolving Fund would allow ADC to have more flexibility to make grants, loans, and provide other monetary forms of assistance and purchase qualified securities to carry out its mission which is to acquire, and manage in partnership with farmers, ranchers, and aquaculture groups, selected high-value lands, water systems, and infrastructure for commercial agricultural use and to direct research into areas that will lead to the development of new crops, markets, and lower production costs.

Currently, many of Hawaii's small farmers are struggling to stay in business due to the high cost of fuel, the inability to access land, high overhead cost of operations, and the lack of capital to improve and modernize their facilities to meet federal food safety standards. To help the State address these pressing issues, it is imperative to have the available capital to make the necessary investments.

Part III of this bill makes an appropriation for the agribusiness development corporation (ADC) to purchase agricultural land. ADC supports the intent of this bill.

ADC's primary mission is to transition former plantation land and water systems for diversified agriculture. Dole Foods Company has recently announced that it plans to sell over 19,000-acres of agricultural lands in Central Oahu and North Shore. Funding from this bill would go towards acquiring these lands to ensure that it is kept in agriculture for perpetuity. In addition, ADC can provide opportunities for farmers to access agricultural land by offering a long term lease through its licensing process pursuant to chapter 163D. The ability to enter into a long term lease allows the farmer to obtain the necessary capital to make investments and achieve the economies of scale. In addition, ADC's comprehensive plan that leverages existing infrastructure and proximity to resources such as support services and workforce housing, can drastically reduce the overhead cost for the farmer and provide greater opportunities for the integration and development of new and diversified agricultural products.

ADC wants to emphasize the necessity of acquiring arable lands for agricultural operations. While some initial steps have been taken towards acquiring the Dole properties for agricultural uses, it is simply not enough to satisfy the growing demand.

Thank you for the opportunity to testify.

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SUBJECT: GENERAL EXCISE, Exempt amounts received from the slaughter and processing of poultry or livestock produced and consumed in the state

BILL NUMBER: HB 747, Proposed SD-1

INTRODUCED BY: Senate Committee on Agriculture

BRIEF SUMMARY: Amends HRS section 237-24.3 to exempt from the general excise tax, the amounts received from the slaughter and processing of poultry, poultry carcasses, livestock, livestock carcasses or meat processed and consumed in the state.

EFFECTIVE DATE: July 1, 2050; provided that the amendments made to HRS section 237-24.3 of this act shall not be repealed when that section is reenacted on December 31, 2014, pursuant to Act 239, SLH 2007, as amended by Act 196, SLH 2009, and Act 91, SLH 2010.

STAFF COMMENTS: This measure proposes a general excise tax exemption to encourage the slaughter and processing of poultry and livestock in the state provided that they are also consumed in the state. It should be remembered that the use of the tax system for such purposes is an inefficient means to accomplish such goals. Exemptions from the excise tax recognize that the imposition of the tax would impose an unusual burden or would otherwise cause the taxpayer to do business in an inefficient manner just to circumvent the tax. Exemptions from the general excise tax are also granted because the entity is a nonprofit or if the tax imposed would have a severe economic impact on the state's economy. The proposed exemption from the general excise tax meets none of these criteria.

It should be noted that the general excise tax rate imposed on producing and processing is set at the lesser 0.5% rate. Thus, the exemption being proposed in this bill will have little, if any, impact or consequence. The other point to remember is that the lesser rate does provide economists, planners, and industry officials with important information about the industry, the size, economic impact, and growth statistics. All of this information would be lost should the exemption in this measure be adopted. It should be noted that in 1977 the department of taxation discontinued asking taxpayers to allocate their general excise income by industry and activity. As a result, a year's worth of information was lost which, in turn, handicapped forecasters of the state's economy. Given the lesser rate and the fact that the tax does not appear to be an insurmountable barrier to the success of these select businesses, this proposed exemption cannot be justified.

That said, lawmakers need to take a good look and see that, on one hand they are scrounging for money attempting to raise new funds with everything from user fees to taxes on specific groups of people and, on the other hand, introduce measures like this one. If all of the tax give-aways that have no rational basis were adopted, they would probably bankrupt the treasury. It should be repeated over and over again that the tax system is not designed to provide some sort of lure to attract taxpayers into doing or acting in some sort of unusual way, but the tax system exists to raise the funds necessary to operate

government. Lawmakers may want to propose various tax breaks for their constituents while continuing to squander the tax resources on more public programs and personnel. However, doing so raises the question of whether or not elected officials have any clue about what their fiduciary responsibility is. This is indeed sad as the voting public has entrusted these elected officials with their hard-earned tax dollars.

Instead of attempting to give away the state treasury with such myopic tax breaks, lawmakers need to pay more attention to the overall economic climate of the state which currently suffers from a continuing burden of taxes and regulations. Lawmakers should remember, giving a tax break to one type of activity comes at a cost to all other taxpayers not so favored unless they are willing to effect a commensurate decrease in state spending. So one has to ask what is the unusual burden of taxes borne by this particular industry or activity or is this proposal nothing more than pandering to the fad industry of the day? There is literally no justification for this proposal.

Finally, from a technical and administrative, if not compliance perspective, the exemption is granted only if the products slaughtered are consumed in the state. There is no reasonable way a slaughterhouse business will know where the products they processed will be consumed - on a Hawaii table or in another country or state or for that matter in transit on a ship or a plane. Thus, this proposal, as drafted, is unworkable.

Digested 3/14/13