

SB 594

Testimony

NEIL ABERCROMBIE
Governor



RUSSELL S. KOKUBUN
Chairperson, Board of Agriculture

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

TESTIMONY OF RUSSELL KOKUBUN
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEES ON AGRICULTURE
January, 29, 2013
Room 229
2:45 P.M.

SENATE BILL NO. 594
RELATING TO AGRICULTURE

Chairperson Nishihara and Members of the Committee,

Thank you for this opportunity to provide testimony on Senate Bill 594 relating to agriculture. Unfortunately, I will not be able to represent the Department of Agriculture at the hearing today. This is due to my responsibilities as Chair of the Board of Agriculture to convene the Board of Agriculture meeting which has been planned for many weeks to address several important issues that require board action.

This bill exempts from the general excise tax amounts received for the slaughter and processing of poultry and livestock under Section 237-24.3, Hawaii Revised Statutes. Hence, as you are aware there are currently no commercial poultry slaughterhouses in Hawaii, this bill would only affect amounts received from the slaughterhouses that process locally produced livestock that are consumed in the State. While the Department recognizes the importance of livestock slaughterhouses to the industry, we defer to the Department of Taxation on taxation matters contained in this bill that are under their jurisdiction. We also defer to the Department of Budget and Finance regarding the fiscal impacts of any tax exemption.



Thank you, again, for the opportunity to provide testimony on this measure.



**TESTIMONY OF "RECOMMEND WRITTEN ONLY"
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:
S.B. NO. 594, RELATING TO AGRICULTURE.

BEFORE THE:
SENATE COMMITTEE ON AGRICULTURE

DATE: Tuesday, January 29, 2013 **TIME:** 2:45 p.m.
LOCATION: State Capitol, Room 229
TESTIFIER(S): David M. Louie, Attorney General, or
Hugh R. Jones, Supervising Deputy, Tax & Charities Division, or
Jodi K. Yi, Deputy Attorney General, Tax & Charities Division

Chair Nishihara and Members of the Committee:

The Department of the Attorney General offers the following comments on this bill because it could be challenged as violating the Commerce Clause of the United States Constitution.

This bill creates a general excise tax exemption to exclude from taxation "amounts received from the slaughter and processing of poultry and poultry carcasses or meat to be consumed in the State, which have been produced in the State, or livestock and livestock carcasses or meat to be consumed in the State, which have been produced 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's 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 and products made exclusively from local ingredients, 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.

NEIL ABERCROMBIE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



FREDERICK D. PABLO
DIRECTOR OF TAXATION

JOSHUA WISCH
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

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

Date: Tuesday, January 29, 2013
Time: 2:45 P.M.
Place: Conference Room 229, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: S.B. 594, Relating to Agriculture

The Department of Taxation (Department) appreciates the intent of S.B. 594, and provides the following information and comments for your consideration.

S.B. 594 exempts from Hawaii's General Excise Tax, amounts received for the slaughter and processing of poultry and livestock, if the poultry and livestock are slaughtered and/or processed within the State and were produced in the State.

This Department defers to the Department of the Attorney General for an analysis of the constitutionality of the bill, but notes that there may be constitutional issues with the requirement that the poultry or livestock be produced in the State. The Hawaii Supreme Court, in In re: Tax Appeal of Hawaiian Flour Mills, Inc., 76 Haw. 1 (1994), ruled that a similar exemption from the general excise tax—in that case for food sold to common carriers—violated the Commerce Clause of the United States Constitution by requiring that the food subject to the exemption be grown within the State. The Department therefore recommends that the limitation to in-state producers be reconsidered.

Thank you for the opportunity to provide comments.

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

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

BILL NUMBER: SB 594; HB 747 (Identical)

INTRODUCED BY: SB by Nishihara and 2 Democrats; HB by Onishi, Awana, Cheape, Hanohano, McKelvey, Morikawa, Tokioka, Tsuji, Ward, Wooley and 5 Democrats

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, 2013; 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 1/25/13



Hawaii's Agricultural Partnership

SENATE COMMITTEE ON AGRICULTURE

Tuesday January 29, 2013 2:45 pm Room 229

SB 594 RELATING TO AGRICULTURE

Exempts from the general excise tax amounts received for the slaughter and processing of poultry and livestock.

Chair Nishihara, Vice Chair Kouchi and Members of the Committees

4 Ag Hawaii strongly supports SB 594

If we were to portend the future both food and energy prices will rise faster than family income and Hawaii will need to become increasingly self-sufficient by producing locally grown livestock and by harnessing the potential of renewable energy sources.

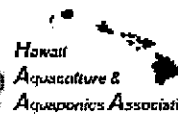
Hawaii's processing facilities need to decrease their operating costs and to better utilize resources so we can inch closer to the day when Hawaii will not need to rely on food supply chains based overseas. This exemption from the G.E.T. will help to reduce the operating costs of these local businesses and eventually provide for increased availability of local poultry and meats. Funding for this measure can come from a very modest reallocation of the barrel tax.

It is estimated that the cost of such an exemption would be less than \$50,000 per year, a small amount for the State but a large step for our local livestock producers and Hawaii's consumers.

4 Ag Hawaii is a non-profit 501[c] [3] corporation established as a public-private partnership focused on goals that include: promoting the agricultural economic welfare of Hawai'i and its counties; conducting agricultural economic; educational & media programs, and fostering statewide interest for responsible agricultural economic development of our islands.

"Buy Local, It Matters".

Thank you for the opportunity to provide testimony on this matter.



Local Food Coalition

SENATE COMMITTEE ON AGRICULTURE
Tuesday January 29, 2013 2:45 pm Room 229

SB 594 RELATING TO AGRICULTURE

Exempts from the general excise tax amounts received for
the slaughter and processing of poultry and livestock.

Chair Nishihara, Vice Chair Kouchi and Members of the Committees:

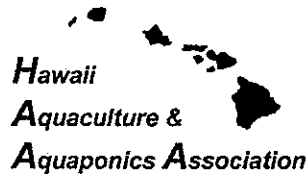
My name is Alan Gottlieb, and I represent the Local Food Coalition on this matter.

The Local Food Coalition (LFC) brings together farmers, ranchers, livestock producers, investors and other leading organizations, who collectively manage more than 1 million acres of land, and produce the majority of food in our state. Solving our challenge of increasing the local food supply — putting more local food on local plates — can best be accomplished by bringing people and organizations together who can work on the entire food value chain in a systematic way.

The Local Food Coalition strongly supports SB 594 which exempts from the General Excise Tax the slaughter and processing of meat and poultry.

This exemption from the G.E.T. will help to reduce the operating costs to these local industries and eventually help reduce the cost of purchasing local meat by local consumers.

We appreciate this opportunity to provide testimony on this matter.



THE SENATE
THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2013

COMMITTEE ON AGRICULTURE
Senator Clarence K. Nishihara, Chair
Senator Ronald D. Kouchi, Vice Chair

DATE: Tuesday, January 29, 2013
TIME: 2:45 p.m.
PLACE: Conference Room 229
State Capitol
415 South Beretania Street

RE: Testimony in strong support of SB 594 RELATING TO AGRICULTURE
Exempts from the general excise tax amounts received for
the slaughter and processing of poultry and livestock.

Chair Nishihara, Vice Chair Kouchi and Members of the Committees:

The Hawaii Aquaculture and Aquaponics Association strongly supports SB 594 which exempts from the General Excise Tax the slaughter and processing of meat and poultry. However, we ask that this bill be amended to include the processing of locally-grown aquaculture products which are another important source of healthy animal protein.

This exemption from the G.E.T. will help to reduce the operating costs to these local industries and eventually help reduce the cost of purchasing local livestock, meat, and farm raised seafood to local consumers. Funding for this measure can come from a very modest reallocation of the barrel tax.

There is currently very limited local processing capacity for locally-grown aquaculture products, but such capacity is being planned. If we can help improve the economics of such animal protein production in Hawaii, we can increase our production capacity and help the State with its Bio-Security mandates for local food production.

We appreciate this opportunity to provide testimony in support of this matter.

Ron Weidenbach
HAAA President



Hawaii Cattlemen's Council, Inc.

P O Box 437199 Kamuela HI 96743
Phone (808) 885-5599 • Fax (808) 887-1607
e-mail: HCattlemens@hawaii.rr.com

SENATE COMMITTEE ON AGRICULTURE
Tuesday January 29, 2013 2:45 pm Room 229

SB 594 RELATING TO AGRICULTURE

Exempts from the general excise tax amounts received for
the slaughter and processing of poultry and livestock.

Chair Nishihara, Vice Chair Kouchi and Members of the Committees:

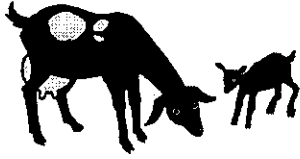
My name is Alan Gottlieb, and I am the Government Affairs Chairperson of the Hawaii Cattlemen's Council. The Hawaii Cattlemen's Council, Inc. (HCC) is the Statewide umbrella organization comprised of the five county level Cattlemen's Associations. Our 130+ member ranchers represent over 60,000 head of beef cows; more than 75% of all the beef cows in the State. Ranchers are the stewards of approximately 25% of the State's total land mass.

The Hawaii Cattlemen's Council strongly supports SB 594 which exempts from the General Excise Tax the slaughter and processing of meat and poultry.

This exemption from the G.E.T. will help to reduce the operating costs to these local industries and eventually help reduce the cost of purchasing local meat by local consumers.

Several slaughterhouses and processors around the State are already exempt from the General Excise tax because they are either a coop (which was exempted from G.E.T. years ago) or are in an Enterprise Zone. We estimate that the cost of such an exemption would be less than \$50,000 per year, a very small amount for the State but a big amount for local livestock producers. In the future, if we can help improve the economics of livestock production in Hawaii, we hope to increase our production, and help the State with its agricultural self sufficiency and improve our food security.

We appreciate this opportunity to provide testimony on this matter.



Kauai Kunana Dairy
4552 Kapuna Road – Kilauea, Kaua'i, Hawai'i 96754
(808) 828-0095

January 27, 2012

Senate Agriculture Committee
Conference Room 229
Hawaii State Capitol
Honolulu, HI

RE: Senate Bill 594

To Hon. Senators:

Our family is writing in strong support of this legislation to support the livestock industry in our state. One of the largest challenges we face is the current situation with our slaughterhouse facilities in the state. On our island, we have two facilities and both are older establishments with limited capabilities to support the growth of home grown meat production.

We hope you will support this Bill 594 for our local farmers and ranchers.

Sincerely yours,

M. Louisa Wooton

Louisa Wooton on behalf of
Bob Wooton
Ryan Wooton
Sarah Wooton
Kauai Kunana Dairy



From: mailinglist@capitol.hawaii.gov
To: [AGL Testimony](#)
Cc: akaai2674@hotmail.com
Subject: Submitted testimony for SB594 on Jan 29, 2013 14:45PM
Date: Monday, January 28, 2013 11:07:21 AM

SB594

Submitted on: 1/28/2013

Testimony for AGL on Jan 29, 2013 14:45PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Lani's Goats	Lani's Goats	Support	No

Comments: Please include susidiaries for goats and for feeding ducks. We sell thousands of island grown grassfed goats and most recently we are giving away free ducks with purchase. However the ducks need to be fed bread and better foods than what we can provide. We are fortunate that we have lots of grass that grows like crazy at our lication. And we are fortunate that we have the Waimalu River to keep our ducks happy. But feeding the ducks is always our concern in addition buying powder goat milk to feed hge young baby goats that we occasionally get. We run and operate a goat distribution facility in central Oahu. An ideal location and we are established on privately owned lands distributing thousands of island grown grassfed goats each year. Providing employment to our workers- ranchers- and cowboys and supplying an awesome food source "delicacy" for thousands of hawaii's people. However- we dont bother anyone yet out 2 neighboring squakers and stalkers are determined to stop our distribution operation. The Newtown Association have complained that we are in violation of their codes and covenants claiming that we have non-domesticated farm animals in kennels. Yet we have hundreds running around on property because our property is part of a forest and mixed zoning urban/conservation exists surrounded by Agriculture. The association claims we are in violation. This kind of mentality jeopardizes the efforts of new laws and wastes legislatures efforts and times. Perhaps a fine should be implemented to those who contradicts our states efforts in sustaining agriculture. I support this bill and any other bills that will help to ensure Hawaii's food safety and help to utilize our islands resources. Lani Kaaihue Lani's Goats Located in Waimalu Valley- Aiea [Www.waimaluvallyranch.com](http://www.waimaluvallyranch.com) 808-852-9663Yee- Haw!

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov
To: [AGL Testimony](#)
Cc: kalamahina@gmail.com
Subject: Submitted testimony for SB594 on Jan 29, 2013 14:45PM
Date: Monday, January 28, 2013 10:51:16 AM

SB594

Submitted on: 1/28/2013

Testimony for AGL on Jan 29, 2013 14:45PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Sarah Townsend	Individual	Support	No

Comments: Please pass this and all bills that will make it easier for farmers in our state to stay in business. Hawaii's isolation and the cost of shipping make this type of financial support very important.

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Cc: cochonlibre@gmail.com
Subject: Submitted testimony for SB594 on Jan 29, 2013 14:45PM
Date: Monday, January 28, 2013 2:37:40 PM

SB594

Submitted on: 1/28/2013

Testimony for AGL on Jan 29, 2013 14:45PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Cathy Goeggel	Animal Rights Hawai'i	Oppose	Yes

Comments: Animal Rights Hawai'i opposes this end run around the taxpayer- why should slaughter be exempt from the GET! I am also a small business owner. I resent your favoritism to an industry that contributes nothing to our economy and produces pollution and unhealthy food.

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