
A BILL FOR AN ACT

RELATING TO SECTION 266-17, HAWAII REVISED STATUTES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 266-17, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§266-17 Rates, how fixed. (a) The department of
4 transportation shall adjust, fix, and enforce the rates
5 assessable and chargeable by it in respect to dockage, wharfage,
6 demurrage, and other rates and fees pertaining to harbors,
7 wharves, and properties managed and operated by it so as to
8 produce from the rates and fees, in respect to all harbors,
9 wharves, and other properties, except those that are principally
10 used for recreation or the landing of fish, revenues sufficient
11 to:

12 (1) Pay when due the principal of and interest on all
13 bonds and other obligations for the payment of which
14 the revenue is or has been pledged, charged, or
15 otherwise encumbered, or which are otherwise payable
16 from the revenue or from a special fund maintained or
17 to be maintained from the revenue, including reserves



1 therefor, and to maintain the special fund in an
2 amount at least sufficient to pay when due all bonds
3 or other revenue obligations and interest thereon,
4 which are payable from the special fund, including
5 reserves therefor;

6 (2) Provide for all expenses of operation and maintenance
7 of the properties, including reserves therefor, and
8 the expenses of the department in connection with
9 operation and maintenance; and

10 (3) Reimburse the general fund of the State for all bond
11 requirements for general obligation bonds which are or
12 have been issued for harbor or wharf improvements, or
13 to refund any of the improvement bonds, excluding
14 bonds, the proceeds of which were or are to be
15 expended for improvements which are or will be neither
16 revenue producing nor connected in their use directly
17 with revenue producing properties.

18 ~~[(b) When weather, road closures due to special events, or~~
19 ~~road repairs do not permit the loading or unloading of~~
20 ~~passengers at Kewalo Basin, cruise boats holding a Kewalo Basin~~
21 ~~sublease approved by the State shall be allowed to use Honolulu~~



1 ~~Harbor facilities on a space available basis, and the fees for~~
2 ~~the use of facilities shall be in accordance with the Hawaii~~
3 ~~administrative rules of the department of transportation~~
4 ~~relating to fees for use of facilities for private gain.]~~

5 (b) The department of transportation shall discount
6 by _____ per cent the rates and fees pertaining to the use of
7 harbors, wharves, and properties managed and operated by it for
8 shipment of Hawaii-grown agricultural products, regardless of
9 destination. For purposes of this subsection, the term
10 "agricultural products" shall have the same meaning as in
11 section 237-5."

12 SECTION 2. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 3. This Act shall take effect upon its approval.

15

INTRODUCED BY: Cindy Evans
JAN 23 2015

H.B. NO. 534

Report Title:

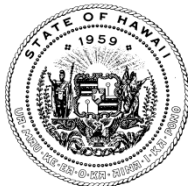
Commercial Harbors; Fees; Discount; Agricultural Products

Description:

Provides discounted rates and fees for the use of harbors, wharves, and properties managed and operated by the DOT for shipment of Hawaii-grown agricultural products. Makes a housekeeping amendment relating to Kewalo Basin.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.





Testimony of
FORD N. FUCHIGAMI
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STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
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IN REPLY REFER TO:
(808) 587-1965

February 18, 2015
10:05 AM
State Capitol, Room 309

H.B. 534
RELATING TO SECTION 266-17, HAWAII REVISED STATUTES

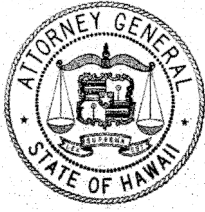
House Committee on Transportation

The Department of Transportation (DOT) **supports the intent** of H.B. 534 which proposes to discount rates and fees pertaining to the use of harbor wharves, and properties managed and operated by the DOT regarding the shipment of Hawaii-grown agricultural products. The bill also proposes a housekeeping measure to remove Kewalo Basin from section 266-17, HRS.

The Harbors Division supports providing an incentive to the agricultural industry to develop agricultural products. Currently, the DOT Harbors discounts its wharfage rates for the shipment of agricultural products (see <http://hidot.hawaii.gov/harbors/updated-self-reporting-forms-wharfage-pipeline-tolls-and-passenger-7-01-14-to-6-30-15/>). For example, lumber is assessed \$3.98 per ton. Timber logs are considered as "forestry", an agricultural product as provided in HRS §237-6, and is assessed a fee of \$1.25 per ton under the category of "overseas domestic". The bill extends the yet to be determined discount for the use of harbor property. The discount would be applied to the appraised value of the leasing of the property pursuant to HRS Chapter 171.

To promote overseas export of agricultural products, the Harbors Division supports the intent of the bill (note that the amount of the discount is not identified) and proposes the following amendments: a) replace the term "discount" with "incentive"; b) limit the incentive to the use of property and for out-of-state exports of agricultural products only; c) insert that the current discounted rates for wharfage will remain unchanged; and d) provide for a sunset date of the incentive or a stepped approach to lowering the incentive over time.

Thank you for the opportunity to provide testimony.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2015**

ON THE FOLLOWING MEASURE:

H.B. NO. 534, RELATING TO SECTION 266-17, HAWAII REVISED STATUTES.

BEFORE THE:

HOUSE COMMITTEE ON TRANSPORTATION

DATE: Wednesday, February 18, 2015 **TIME:** 10:05 a.m.

LOCATION: State Capitol, Room 309

TESTIFIER(S): Russell A. Suzuki, Attorney General, or
Marjorie A.Lau, Deputy Attorney General

Chair Aquino and Members of the Committee:

The Department of the Attorney General provides the following comments on this bill.

The purpose of this bill is to provide discounted rates and fees for the use of harbors, wharves, and properties managed and operated by the State of Hawaii, Department of Transportation, for shipment of Hawaii-grown agricultural products.

The bill also makes what is referred to as a housekeeping amendment that deletes the provision for the use of Honolulu Harbor by cruise boats holding a Kewalo Basin sublease when weather, road closures due to special events, or road repairs do not permit the loading or unloading of passengers at Kewalo Basin. We have no comment on this amendment.

As to the proposed discount in rates and fees, such a discount may be challenged based upon the Commerce Clause of the United States Constitution. This is because this bill discriminates against out-of-state commerce and may therefore conflict with the Commerce Clause, article I, section 8, of the United States Constitution which states:

The Congress shall have the Power to . . . regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

This grant of power to the federal government has been held to include “a further, negative command, known as the dormant Commerce Clause that create[s] an area of trade free from interference by the States [and prevents] a State from plac[ing] burdens on the flow of commerce across its borders that commerce wholly within those borders would not bear.”

American Trucking Ass'ns, Inc. v. Michigan Pub. Serv. Comm'n, 545 U.S. 429, 433 (2005)
(some alterations in original, citations and internal quotations marks omitted).

The proposed discount in rates and fees for use of state harbors, wharves, and properties for Hawaii-grown agricultural products discriminates as between locally produced products and products from out of state. The effect of the discount proposed by this bill would allow a harbor rate or fee advantage to Hawaii-grown agricultural products that products from out of state would not have.

As held in Bacchus Imp., Ltd. v. Dias, 468 U.S. 263 (1984), a finding of “economic protectionism” which violates the Commerce Clause may be made on the basis of either discriminatory purpose or discriminatory effect. In Bacchus, the Supreme Court noted that “[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 Imp., 468 U.S. at 268. In Bacchus, the court found that an exemption from the State of Hawaii excise tax for certain locally produced alcoholic beverages violated the Commerce Clause.

If the subject rates and fees are analyzed as user fees relating to the State’s harbors, as distinguished from the type of state tax at issue in Bacchus, the discounting of the rates and fees remains problematic. A user fee is collected by a state as reimbursement for use of state-owned or state-provided services. See Commonwealth Edison Co. v. State of Montana, 453 U.S. 609 (1981). A user fee is generally distinguished from a general revenue tax and may be subject to a lesser scrutiny under the Commerce Clause. However, for a user fee to not violate the Commerce Clause, such fee must be a fair approximation of the cost of using the state facility and not discriminate against interstate commerce. Id. This nondiscrimination rule tends to especially apply to state charges associated with channels of interstate movement, such as waterway improvements, roads, and airports, as distinguished from other state facilities. See generally American Trucking Ass'ns, Inc. v. Scheiner, 483 U.S. 266 (1987); Evansville-Vanderburgh Airport Auth. Dist. v. Delta Airlines, Inc., 405 U.S. 707 (1972).

Additionally, the bill may violate 33 U.S.C. § 5(b). This law originated as section 4 of the Rivers and Harbors Appropriation Act of 1884. Section 5(b) presently reads:

(b) No taxes, tolls, operating charges, fees, or any other impositions
whatever shall be levied upon or collected from any vessel or other

water craft, or from its passengers or crew, by any non-Federal interest, if the vessel or water craft is operating on any navigable waters subject to the authority of the United States, or under the right to freedom of navigation on those waters, except for

...

- (2) reasonable fees charged on a fair and equitable basis that-
 - (A) are used solely to pay the cost of a service to the vessel or water craft;
 - (B) enhance the safety and efficiency of interstate and foreign commerce; and
 - (C) do not impose more than a small burden on interstate or foreign commerce;

A discounted rate for Hawaii grown agricultural products may violate the requirements of paragraph (2) that the fees be charged on a fair and equitable basis. State laws or regulations that conflict with federal laws are preempted and invalid.

We respectfully ask the Committee to hold the bill.



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February 18, 2015

HEARING BEFORE THE
HOUSE COMMITTEE ON TRANSPORTATION

TESTIMONY ON HB 534
RELATING TO SECTION 266-17, HAWAII REVISED STATUTES

Room 309
10:05 AM

Aloha Chair Aquino, Vice Chair LoPresti, and Members of the Committee:

I am Christopher Manfredi, President of the Hawaii Farm Bureau Federation (HFB). Organized since 1948, the HFBF is comprised of 1,932 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interests of our diverse agricultural community.

HFB supports the intent HB 534 which provides discounted rates and fees for the use of harbors, wharves, and properties managed and operated by the DOT for shipment of Hawaii-grown agricultural products.

Viable agriculture in Hawaii is dependent upon an efficient, reliable, and affordable transportation system. With our individual islands separated by vast expanses of water, and given that agricultural production areas are distant from population centers, our State goal of increased self-sufficiency is dependent upon a sound and affordable transportation system. Transportation costs for farmers and ranchers can be significant. HFB continues to pursue methods that will improve shipping and we encourage any dialogue that could result in reduced rates to all farmers and ranchers. Shipping costs for farmers and ranchers are a major component of our cost of goods, which contributes to our challenges of market competitiveness.

Currently, Section 237-5, Hawaii Revised Statutes, defines "agricultural products" as floricultural, horticultural, viticulture, forestry, nut, coffee, dairy, livestock, poultry, bee, animal, and any other farm, agronomic, or plantation products.

We request that the definition be amended by including aquaculture and aquaponic products and by clarifying coffee with the addition of "whether cherry, parchment, or green bean".

Mitigating the cost of transportation for farmers and ranchers will significantly contribute to improving agricultural viability.

Thank you for the opportunity to comment on this measure.