

**NEIL ABERCROMBIE**  
Governor



**RUSSELL S. KOKUBUN**  
Chairperson, Board of Agriculture

**JAMES J. NAKATANI**  
Deputy to the Chairperson

State of Hawaii  
**DEPARTMENT OF AGRICULTURE**  
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**TESTIMONY OF RUSSELL S. KOKUBUN  
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE HOUSE COMMITTEE ON AGRICULTURE  
FRIDAY, FEBRUARY 11, 2011  
9:00 A.M.  
CONFERENCE ROOM 312**

**HOUSE BILL NO. 1598  
RELATING TO THE CACAO INDUSTRY**

Chairperson Tsuji and Members of the Committee:

Thank you for the opportunity to comment on House Bill No. 1598, Relating to the Cacao Industry. The Department of Agriculture supports the intent of this bill to adopt some of the recommendations of the "Report to Expedite the Production and Delivery of Hawaii Cacao to the Marketplace."

The purpose of this bill is to help local cacao producers and processors by amending section 237-24, Hawaii Revised Statutes, to exempt tax for the sale of cacao from a domestic producer or processed cacao from a domestic processor.

The Department is also required to collaborate with the Department of Business, Economic Development and Tourism (DBEDT) and the Department of Land and Natural Resources (DLNR) to determine the best location for a cacao processing facility on Oahu.

Since the implementation of this bill impacts state revenues and requires the input of other state agencies, the Department defers to the comments of the Department of Taxation, DBEDT, and DLNR.

Thank you for the opportunity to testify on this bill.



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

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 1598, RELATING TO THE CACAO INDUSTRY.

**BEFORE THE:**

HOUSE COMMITTEE ON AGRICULTURE

**DATE:** Friday, February 11, 2011 **TIME:** 9:00 a.m.

**LOCATION:** State Capitol, Room 312

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

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Chair Tsuji and Members of the Committee:

The Department of the Attorney General has the following comments on this bill. If enacted this bill may be challenged as violating the Commerce Clause of the United States Constitution.

This bill creates a general excise tax exemption to favor products that are raised or produced exclusively in the State, specifically, domestically produced or processed cacao.

"No 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.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, February 10, 2011 3:04 PM  
**To:** AGRtestimony  
**Cc:** nsato@maliekai.com  
**Subject:** Testimony for HB1598 on 2/11/2011 9:00:00 AM

Testimony for AGR 2/11/2011 9:00:00 AM HB1598

Conference room: 312  
Testifier position: support  
Testifier will be present: No  
Submitted by: Nathan Sato  
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Submitted on: 2/10/2011

### Comments:

I would like to voice my support for the building of a cacao processing facility on the island of Oahu. I believe cacao has the potential to be a "game-changer" for both Hawaiian agriculture and Hawaiian tourism. We know from participation in domestic and international food shows that Hawaii is capable of producing WORLD-CLASS chocolate. This was the opinion of executives from very prestigious chocolate companies (including Godiva, Vosges and Valrhona) who tried our Oahu-grown chocolate. Very few agricultural products have the cache of chocolate. There are legions of chocolate aficionados who follow chocolate as closely as wine connoisseurs study vintages and appellations. I can easily see in a few years new tourists coming to Hawaii for the first time who have no interest Hawaii's traditional leisure activities - visitors whose only interest is in seeing how chocolate is grown and made.

Having talked with several small farmers on Oahu, we know that one of the main reasons they are not planting cacao is that there are no processing facilities here. The processing of cacao from pod to bar is a science and an art - and not something most farmers have any expertise in. It's is very important that cacao processing be done correctly. If not, the result will be bad chocolate, and we will end up killing the industry in it's infancy.

Cacao, unlike commodity crops, has the ability to generate income for the farmer in several ways. The value of the crop on the cacao market is perhaps minimal compared to the value of the ag-tourism activities cacao farming will spawn. A two acre cacao farm may only produce 2,000 lbs of dry cacao/year with a value of maybe \$10,000. But if the farmer were to give tours of his farm, sell the chocolate he produces along with souvenirs and refreshments the two acres of cacao might actually generate 20 or 30 times that amount of revenue.

We are fortunate that Hawaii is the only state that can grow cacao. We need to take advantage of this. If mainland Americans want to see a cacao farm they can go to Mexico, Central America, South America or Africa. These are all fairly daunting places for your average tourist. Visiting Hawaii is comparatively simple - no passport, visa, phrasebook or money changing required.

I suspect the cacao industry in Hawaii will grown on it's own without government help, but it will be a very slow process. A cacao processing facility built by the state would be an enormous shot-in-the-arm for our nascent industry.

Nathan Sato  
President  
Malie Kai Chocolates, Honolulu