THE THIRTY-SIXTH LEGISLATURE OF AMERICAN SAMOA

Third Regular Session

Begun and held at Fagatogo, Tutuila, American Samoa
on Monday, the thirteenth day of January
two thousand and twenty

AN ACT EARMARKING FUNDS FOR DEBT SERVICE ON THE AMERICAN SAMOA GOVERNMENT ECONOMIC AUTHORITY SERIES 2018 BONDS; AMENDING SECTIONS 11.1002, 20.1607, AND 27.1018 A.S.C.A.

Preamble:

WHEREAS, the American Samoa Government Economic Development Authority recently issued its Series 2018 Bonds; and

WHEREAS, these Bonds were necessary to fund important government projects including the completion of the Fono building and the purchasing of an interest in the Hawaiki Submarine cable; and

WHEREAS, the funds allocated in this bill have not yet been allocated in the current budget. including scanner fees, a portion of which was previously used for the FAA cost match; and

WHEREAS, it is appropriate to establish earmarks that will sufficiently fund debt service to ensure that ASG does not default on the bonds; and

WHEREAS, in order to necessitate timely fund payments on the Series 2018 Bonds, this bill should have an immediate effective date.

BE IT ENACTED BY THE LEGISLATURE OF AMERICAN SAMOA:

Section 1. 11.1002 is amended to read:

"11.1002 Amount of tax on certain items.

(a) The tax on each item is:

(1) beer, malt extract, alcoholic beverage, tobacco products and smoking accessories:

(A) thirty-five(0.35) cents per twelve (12) fluid ounces, or fraction thereof, of beer as defined in 27.0501(6), and malt extract to be applied to the measure of the container in which it is offered for sale by the importer, except that any person 21 years of age or over may bring into American Samoa tax free an amount of any

alcoholic beverage as defined in 27.0501(1) or 27.0501(6) not to exceed 1 liter per trip if such alcoholic beverage is for his personal use and consumption and not for resale; and except further that any alcoholic beverage and tobacco products brought into American Samoa for export at the duty free shop at Pago Pago International Airport is also tax free; twenty (0.20) cents per twelve (12) fluid ounces, or fraction thereof, of beer or malt extract shall be deposited in the general fund and shall be available for appropriation by the Legislature; and fifteen (0.15) cents per twelve (12) fluid ounces, or fraction thereof, of beer or malt extract shall be deposited in the general fund in an account earmarked for and dedicated to the American Samoa Economic Development Authority for the repayment of its Series 2015 Bonds. Upon full repayment of said bonds, collection of this tax shall be deposited into the general fund and shall be available for appropriation by the Legislature;

(B) alcoholic beverages as defined in 27.0501(1) shall be taxed as follows: fifteen (0.15) cents per one percent (1%) of alcohol by weight per liter, with a minimum tax of two dollars ($2.00) per liter.

Of the revenues collected from the tax on alcoholic beverages, fifty percent (50%) shall be appropriated to fund the Feleti Barstow Public Library; twenty-five percent (25%) shall be appropriated to fund the Office of Administrative Law Judge; and twenty-five percent (25%) shall be deposited in the general fund in an account earmarked for and dedicated to the American Samoa Economic Development Authority for the repayment of its Series 2015 Bonds. Upon full repayment of said bonds, collection of this tax shall be deposited in the general fund and shall be available for appropriation by the Legislature.

(C) Thirty three cents per cigarette, per cigar, or per 10 grams of smoking tobacco, except that any person 21 years of age or over may bring into American Samoa tax free tobacco products not to exceed either 200 cigarettes or 100 cigars and or 2 kilograms of smoking tobacco per trip if such tobacco products are for his personal use and consumption and not for resale; thirty-nine percent (39%) of the basis of tobacco products shall be deposited in the general fund and shall be available for appropriation by the Legislature; 11 percent shall be earmarked for the operation of the American Samoa Community College; and fifty percent (50%) shall be earmarked for and dedicated to the American Samoa Economic Development Authority for the repayment of its Series 2015 Bonds. Upon full repayment of said bonds, collection of this tax shall be deposited in the general fund and shall be available for appropriation by the Legislature.

(2) one hundred fifty percent of the basis of firearms and firearm ammunition;

(3) motor vehicles:

(A) twenty-five percent of the basis of motor bicycles, automobiles, trucks, and vans, to be used for commercial purposes;

(B) notwithstanding the provisions of paragraph (A), the tax levied on motor bicycles, automobiles, trucks, and vans, imported into American Samoa for personal

or family use shall be 10 percent of the basis thereof. If a motor bicycle, automobile, truck or van, are converted to commercial use after being imported for personal or family use, it shall then be subject to the balance of the applicable tax imposed under paragraph (A).

(C) No tax exemption, including that provided by Title 11, Chapter 16, shall be granted for any motor vehicle. All other motor vehicles not taxed under this subsection shall be subjected to the tax under 11.1002(a)(7);

(4) petroleum products:

(A) thirty-five cents a gallon on fuel manufactured for use in motor vehicles, other than diesel fuels, 1.5 cents of this to be used for revenue for law enforcement costs and the driver's training control school and 10 cents of it to be placed in an earmarked revenue fund for road maintenance;

(B) three and one-half cents a gallon on fuel manufactured for use in diesel engines, other than aircraft fuels. An express exception is made for the purpose of extending a full three and one-half cent excise tax credit for fuels which, subject to verification by the Treasurer of American Samoa, were sold to any commercial fishing vessel for the purpose of refueling. For purposes of this section, "Commercial Fishing Vessels" shall be defined as all purse seiners and longliner vessels actively engaged in commercial fishing in excess of five tons dead weight, plus reefers of "Mother Ships" that are used to transship fish products, plus diesel fuel tankers that provide fuel at sea to the commercial fishing vessels;

(C) one and one-half cents a gallon on kerosene and similar petroleum products;

(D) fifteen percent of the basis of lubricating oils;

(E) one cent a gallon on jet and other aircraft fuels, to be placed in the enterprise fund for the operation of Pago Pago International Airport;

(F) three cents a pound of liquified petroleum gas such as butane and propane or mixtures; thereof, and ethane;

(G) thirty-one and one-half cents per gallon, to be collected by the petroleum supplier at the point of sale, on fuel manufactured for use in diesel engines, excluding diesel fuel used by stationary boilers or burners, stationary generators of electric power and marine vessels.

(5) forty percent of the basis of all construction materials, as defined in 26.1501 et seq., which are of a lesser quality than the standard grades established under such chapter;

(6) fifteen cents per 12 fluid ounces or fraction thereof on all soft drinks or nonalcoholic carbonated beverages, to be applied to the measure of the container in which it is offered for sale by the importer.

(7) eight percent of the basis of all items not listed in subsections (a)(1) through (a)(6) of this section or exempted by this section which are imported for commercial use or resale purposes. All revenues collected under this subsection (a)(7) shall be distributed as follows: (a) ~~seventy-five (75)~~ <u>fifty (50)</u> percent shall be deposited in the general fund and shall be available for appropriation by the

Legislature; (b) twenty-five (25) percent shall be deposited in an earmarked fund for the repayment of the American Samoa Economic Development Authority Series 2018 Bonds, upon full repayment of said bonds, these revenues shall be deposited in the general fund and shall be available for appropriation by the Legislature; ~~(b)~~ (c) $1,000,000 is appropriated for the student financial aid provided for in 11.0605; and ~~(c)~~(d) the remainder shall be earmarked for the repairs, renovations and upgrading of all public school facilities and equipment in American Samoa beginning in the fiscal year 2018.

(b) The minimum tax shall be 25 cents.

(c) Items otherwise taxable under subsection (a)(1) and (a)(7) of this section are exempted from the taxes imposed by this section when they are brought into American Samoa for export sale for consumption outside American Samoa; provided that importation and sale of these items are made pursuant to rules promulgated by the Treasurer under the Administrative Procedures Act 4.1001 et seq., that require, among other things, separate storage of these items clearly identified for export sale and a system of delivery to the purchaser ensuring their exportation.

(d) Payment of the taxes imposed by this section on items brought into American Samoa for consumption within American Samoa may be postponed pursuant to rules promulgated by the Treasurer under the Administrative Procedures Act, 4.1001 et. seq., that require, among other things, separate storage of those items clearly identified for domestic sale and consumption and a system of delivery to the importer ensuring payment of the taxes at the time of delivery.

(e) The Treasurer shall promulgate rules under the Administrative Procedures Act, 4.1001 et seq., to ensure that the taxes imposed when the exception set forth in subsection (a)(7) of this section is inapplicable are paid."

Sec 2. 20.1607 is amended to read:

"20.1607 Wharfage charges.

(a) The rates for wharfage shall apply per ton of 2,000 pounds weight or 40 cubic feet of measurement, except copra, for which the ton shall be 2,240 pounds and shall be calculated on the same basis (weight or measurement) as used by the owners of the vessel involved in determining freight charges.

(b) Wharfage charges shall be as follows:

(1) for each ton or fraction thereof of cargo loaded or unloaded: $3.40; or for each 40-Cubic Foot or fraction thereof; $3.40, whichever is greater:

(2) for shipments under one ton, the wharfage charge in paragraph (1) is prorated with a minimum charge of $0.85:

(3) in addition to the above per ton charges, for each gallon of petroleum sold, removed or drawn out of the government's petroleum storage facilities, ~~$0.04~~0.06 per gallon, $0.02 to be placed in an earmarked revenue fund solely for the preservation, protection and improvement of the petroleum storage facilities and related costs: $0.02 to be placed in an earmarked revenue fund solely for the

purpose of purchasing drugs, medical supplies for patient care, and diagnostic medical equipment for the Lyndon Baines Johnson Tropical Medical Center; and $0.02 to be placed in an earmarked revenue fund solely for the repayment of the American Samoa Economic Development Authority's Series 2018 Bonds, upon full repayment of said bonds, these revenues shall be deposited in the general fund and shall be available for appropriation by the Legislature. The Governor shall administer the collection and disbursements of these funds. This authority shall not be delegated:

(4) vessels unloading or loading into lighters not alongside the wharf will be charged one-half wharfage unless the lighter discharges or loads at a wharf where wharfage rates apply and in such case full wharfage will be charged on the cargo loaded or unloaded from or to the lighter pursuant to paragraph (1).

(c) Prior to the delivery of imported cargo, goods, or merchandise, or prior to their loading for export, the following charges shall be collected from the owner, or from the master, owner or agent of the carrier, in addition to any other charges that may be due:

(1) tonnage dues per shipping ton or fraction thereof of cargo consigned to or shipped from American Samoa, $1.70; or per 40-cubic feet or fraction thereof, of cargo consigned to or shipped from American Samoa, $1.70 whichever is greater;

(2) tonnage dues per shipping ton or fraction thereof of cargo arriving in American Samoa for transshipment;

(A) per ton or fraction thereof in, $1.00;

(B) per ton or fraction thereof out, $1.00;

(3) provided, however, that tonnage dues on transshipment cargo stored in a government warehouse or other government areas in excess of 72 hours shall be;

(A) per ton or fraction thereof per day or fraction thereof for the first 2 weeks, $1.00;

(B) per ton or fraction thereof per day or fraction thereof in excess of two weeks, $2.00;

(4) goods stored in a government warehouse or other areas in excess of 72 hours, per ton or fraction thereof, per day, or fraction thereof, for the first 3 days, $3.40; after 3 days, the rate shall be $6.80;

(5) (A) containers stored in the port area or other government areas are subject to charges in addition to tonnage dues and other charges as follows:

(i) inbound containers: 120 hours after arrival, $0.85 per day; and $1.70 per day after 30 days.

(ii) outbound containers: immediately upon occupying respective areas, $0.85 per day and $1.70 per day after 30 days.

(B) containers stored by or primarily for the use of fish processing facilities are exempt from the charges provided by paragraph (5)(A) if these containers are used within 30 days after arrival or if these containers contain canned fish. After 30 days, a charge of $0.85 per container for the 31st day shall be applied; and beginning on the 32nd day charges shall increase to $1.70 per container per day.

(d) Goods arriving in Pago Pago landing marked or specifically identified as for one of the villages in Manu'a shall be exempt from storage charges. The owner or agent for such goods shall arrange for the transshipment to Manu'a on the first available transportation.

(e) In the event the shipping companies resort to containerization of shipments to American Samoa and the space available in all government warehouses is substantially changed as a result of the use of containers, the Port Director is authorized to amend the storage charges contained in this section so as not to place an unreasonable burden on the government or the shippers until the next meeting of the Legislature.

(f) For the purpose of this section "ton" means 2,000 pounds weight or 40 cubic feet of measurement, except in the case of copra, where a ton means 2,240 pounds.

(g) The charges imposed by this section may be increased, decreased, or supplemented by order of the Governor."

Sec 3. 27.1018 is amended to read:

"27.1018 Customs officers service fees.

(a) Charges shall be collected for services of customs officers from the owner, master or agency of a vessel as follows:

(1) attendance of customs officers, per day, $30.00;

(2) attendance of customs officers outside of regular business hours, per hour, $15.00;

(3) granting clearance to commercial vessels per entry and per departure, $6.00;

(4) granting clearance to noncommercial vessels, per entry and per departure, $50.00.

(5) processing Customs Declaration of Entry forms, ~~$5.00~~ $10.00 per declaration per vessel. This charge shall not apply to passengers. The revenues from this charge shall be deposited in an account earmarked for and dedicated to the American Samoa Economic Development Authority for the repayment of its Series 2015 Bonds. Upon full repayment of said bonds, collection of this charge shall be deposited in the general fund and shall be available for appropriation by the Legislature.

(b) The schedule of charges in paragraph (a)(1) and (a)(2) contemplates that those charges are calculated per man/per hour, or per man/per day, provided that where attendance of customs officers as paragraph (a)(1) is off Tutuila Island, the cost of travel, per diem, or other costs, including overtime, will be charged and collected from whomsoever requires such off-island attendance of customs officers.

(c) X-Ray Scanning fees as described in 27.1003 (i) are as follows:

(1) $200 for a 40 feet or more container;

(2) $200 for less than a 40 foot container (including all 20 foot containers);

(3) $50 for loose cargo pallet;

(4) $50 per vehicle or heavy equipment;

(5) $10 per parcel imported for commercial purposes; and

(6) other scanning fees as determined by customs and enacted by administrative rulemaking.

(7)(A) 50% of revenues from these fees shall be deposited in an account earmarked for and dedicated to the American Samoa Economic Development Authority for the repayment of its Series 2018 Bonds. Upon full repayment of said bonds, these revenues shall be deposited in the general fund and shall be available for appropriation by the Legislature.

(B) 50% of revenues from these fees shall be earmarked and dedicated for the maintenance of all scanner equipment."

Sec 4. Effective date.

In accordance with Article II, Section 19 of the Revised Constitution of American Samoa, in view of the necessity to fund timely payments of the American Samoa Economic Development Authority Series 2018 Bonds, this bill shall have an immediate effective date.

SAVALI TALAVOU ALE
Speaker, House of Representatives

GAOTEOTE PALAIE TOFAU
President of the Senate

Hereby Approved this 6th day of April 2020

Lolo M. Moliga
Governor Of American Samoa