

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, Exempts interisland transportation of livestock

BILL NUMBER: HB 1144; SB 1253

INTRODUCED BY: HB by YAMASHITA, DECOITE, HASHEM, HASHIMOTO, ILAGAN, MCKELVEY, MORIKAWA, NAKAMURA, NAKASHIMA, ONISHI, TARNAS, TODD; SB by KEITH-AGARAN, ENGLISH, INOUE, MISALUCHA, San Buenaventura

EXECUTIVE SUMMARY: Exempts from general excise tax law amounts received from the interisland transportation and related loading and unloading of livestock. Requires the public utilities commission to authorize preferential water carrier service rates by tariff for ratepayers that operate farms or ranches located in any county with a population equal to or less than 500,000.

SYNOPSIS: Amends section 237-24.3(1) HRS, to broaden the existing exemption for loading, transportation, loading, and unloading of agricultural commodities shipped for a producer or produce dealer so that it applies to any product resulting from agricultural activities as defined in section 269-1, HRS, and that the shipper may be any entity engaged in agricultural activities as defined in section 269-1, HRS.

Amends section 269-26.6, HRS, to require the public utilities commission to authorize preferential water carrier service rates by tariff for ratepayers that operate farms or ranches located in any county with a population equal to or less than 500,000.

EFFECTIVE DATE: 7/1/2021.

STAFF COMMENTS: Our tax system, especially the General Excise Tax, applies to transportation of goods and people. We should seriously consider stopping it, and this bill appears to be a step in that direction. Here's why.

First, we can't tax air transportation. There are federal laws prohibiting us from applying a gross receipts tax (like our General Excise Tax) to transportation charges. Back in the late 70's and early 80's, we tried to tax air carriers by imposing our Public Service Company Tax, which applies to public utilities in lieu of GET. We were very creative. The Hawaii Supreme Court held, and our state told the U.S. Supreme Court, that our tax was actually a tax on real and personal property (which was allowed), but because it was so difficult to value the kinds of property that utilities had, like airspace rights, rights-of-way for power and cable lines, or easements for water pipes, the tax used the gross income of an airline as a proxy for valuing its property.

The U.S. Supreme Court didn't buy the argument. "It's still a tax measured by gross receipts, which is a gross receipts tax under federal law, and we get to interpret that federal law," they

said, in effect, in a unanimous 8-0 decision in 1983. *Aloha Airlines, Inc. v. Director of Taxation*, 464 U.S. 7 (1983).

Despite this ruling, zealous tax auditors still tried to go after helicopter tour companies and those companies pushed back, leading the Department of Taxation to rule, in Tax Information Release 89-10, that those gross receipts were immune both from the Public Service Company Tax and the GET.

There are also federal restrictions on taxing transportation by water. Federal law prohibits anyone other than the federal government to tax a vessel, its passengers, or its crew while the vessel is operating on navigable waters. In 2010, our Intermediate Court of Appeals ruled that the GET as applied to charges for chartering a sport fishing boat was valid because it was a tax on the business and not on the vessel, passengers, or crew. *In re Reel Hooker Sportfishing, Inc.*, 123 Haw. 494, 236 P.3d 1230 (Ct. App. 2010), *cert. denied*, 562 U.S. 1272 (2011). The court reasoned that the federal law was meant to prohibit fees and taxes on a vessel simply because the vessel sails through a given jurisdiction and didn't mean to affect whether sales or income taxes can apply in general. The Hawaii Supreme Court declined to review the case, as did the U.S. Supreme Court. So, GET can be applied to transportation by water, at least for now.

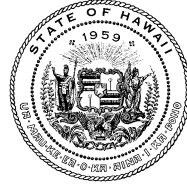
In the meantime, fine distinctions are already being made. In cases involving UPS and Lynden Air Freight, the Hawaii Supreme Court held that when a shipper pays for a shipment to go from your office to your counterpart on the Mainland, GET can apply only to the transportation by ground between your office and the airport. *Kamikawa v. United Parcel Service, Inc.*, 99 Haw. 336, 966 P.2d 648 (1998); *Kamikawa v. Lynden Air Freight, Inc.*, 89 Haw. 51, 968 P.2d 653 (1998), *cert. denied*, 526 U.S. 1087 (1999).

In short, the landscape here is filled with complexity and disparities between transportation industries. Are there good reasons why, as a matter of tax policy, we should tax water and ground transportation when air transportation can't be taxed? (Other than, "Because we can.") We're an island state. One of the reasons often given to explain our astronomical cost of living is that goods and people need to be shipped in and out, and that isn't done for free. So, what would happen if the tax goes away? The industries would compete on a more level playing field, residents would feel some relief in the cost of living department (or at least sellers wouldn't be able to use the tax as an excuse), and the government revenues might not go down because fewer costs may lead to more buying, and thus more total revenue subject to GET taxation.

Digested 2/5/2021

DAVID Y. IGE  
GOVERNOR

JOSH GREEN M.D.  
LT. GOVERNOR



ISAAC W. CHOY  
DIRECTOR OF TAXATION

STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
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To: The Honorable David A. Tarnas, Chair;  
The Honorable Patrick Pihana Branco, Vice Chair;  
and Members of the House Committee on Water & Land

The Honorable Nadine K. Nakamura, Chair;  
The Honorable Troy N. Hashimoto, Vice Chair;  
and Members of the House Committee on Housing

From: Isaac W. Choy, Director  
Department of Taxation

Date: February 9, 2021

Time: 9:15 A.M.

Place: Via Videoconference, Hawaii State Capitol

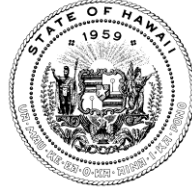
**Re: H.B. 1144, Relating to Agriculture**

The Department of Taxation (Department) offers the following comments regarding H.B. 1144 for your consideration.

H.B. 1144 amends section 237-24.3, Hawaii Revised Statutes (HRS), to exempt from General Excise Tax (GET) amounts received from the loading, transportation, and unloading of agricultural commodities that are shipped interisland for a qualifying entity. "Qualifying entity" means any entity engaged in agricultural activities as defined in section 269-1, HRS. The measure is effective upon approval, with the new GET exemption taking effect on July 1, 2021.

The Department respectfully requests that the effective date of the new GET exemption be postponed until January 1, 2022. Avoiding mid-year changes will level the playing field so that the exemption will apply to all affected taxpayers. The date change will also give the Department additional time to change forms and configure and test any necessary changes to our computer systems.

Thank you for the opportunity to provide comments.



DAVID Y. IGE  
GOVERNOR

JOSH GREEN  
LT. GOVERNOR

**STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

335 MERCHANT STREET, ROOM 310  
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CATHERINE P. AWAKUNI COLÓN  
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
House Committee on Water & Land  
and  
House Committee on Housing  
Tuesday, February 9, 2021  
9:15 a.m.  
Via Videoconference**

**On the following measure:  
H.B. 1144, RELATING TO AGRICULTURE**

Chairs Tarnas and Nakamura and Members of the Committee:

My name is Dean Nishina, and I am the Executive Director of the Department of Commerce and Consumer Affairs' (Department) Division of Consumer Advocacy. The Department offers comments on this bill.

The purposes of this bill are to: (1) exempt the interisland transportation and related loading and unloading of livestock from general excise tax (GET); and (2) require the Public Utilities Commission (Commission) to authorize preferential water carrier service rates by tariff for ratepayers that operate bona fide farms or ranches located in any county with a population equal to or less than 500,000.

Although the bill seeks to provide relief to agricultural communities impacted by the dramatic rate increase in water carrier services and the COVID-19 pandemic, the Department cautions that preferential rates usually assist one subset of consumers at

the expense of others. A subsidized rate for one subset of customers will generally be shifted to other consumers who may also be facing economic struggles.

This bill may also result in unintended consequences. For instance, this bill potentially creates a disparity between “bona-fide farm or ranch” consumers, who receive mandatory preferential rates, and all “other ratepayers that engage in agricultural activities,” who may receive preferential rates. Young Brothers, the sole certificated intrastate water carrier, already offers an agricultural discount, and this measure could create a more burdensome process to receive a discount. Further, some customers currently receive an agricultural discount but are not required to file federal tax returns or other documents as a farm or ranch; these customers may be excluded from any future agricultural discount if this bill passes.

Thank you for the opportunity to testify on this bill.



Email: [communications@ulupono.com](mailto:communications@ulupono.com)

HOUSE COMMITTEE ON WATER & LAND  
Tuesday, February 9, 2021 — 9:15 a.m.

**Ulupono Initiative supports the intent of HB 1144, Relating to Agriculture.**

Dear Chair Tarnas and Members of the Committee:

My name is Micah Munekata, and I am the Director of Government Affairs at Ulupono Initiative. We are a Hawai'i-focused impact investment firm that strives to improve quality of life throughout the islands by helping our communities become more resilient and self-sufficient through locally produced food; renewable energy and clean transportation; and better management of freshwater and waste.

**Ulupono supports the intent of HB 1144**, which exempts from general excise tax law amounts received from the interisland transportation and related loading and unloading of livestock, and requires the Public Utilities Commission to authorize preferential water carrier service rates by tariff for ratepayers that operate farms or ranches located in any county with a population equal to or less than 500,000.

Ulupono supports local food producers across the state, and believes that supporting each operation's bottom line is important for the State's food security and resilience. This measure seeks to solidify a preferential rate for bona fide farmers and ranchers in the counties of Kaua'i, Maui, and Hawai'i. Ulupono would like to see this measure include all counties across the state, as food production and the transportation of such goods and products affects all producers statewide.

As Hawai'i's local food issues become increasingly complex and challenging, the agricultural industry will need additional resources and support to address and overcome them. We appreciate this committee's efforts to look at policies that support local food production and increase our state's food security and resilience.

Thank you for this opportunity to testify.

Respectfully,

Micah Munekata  
Director of Government Affairs

*Investing in a Sustainable Hawai'i*

TESTIMONY OF  
JAMES P. GRIFFIN, Ph.D.  
CHAIR, PUBLIC UTILITIES COMMISSION  
STATE OF HAWAII

TO THE  
HOUSE COMMITTEE ON  
WATER & LAND

February 9, 2021  
9:15 a.m.

Chair Tarnas and Members of the Committee:

**MEASURE:** H.B. No. 1144

**TITLE:** RELATING TO AGRICULTURE.

**DESCRIPTION:** Exempts from general excise tax law amounts received from the interisland transportation and related loading and unloading of livestock. Requires the public utilities commission to authorize preferential water carrier service rates by tariff for ratepayers that operate farms or ranches located in any county with a population equal to or less than 500,000.

**POSITION:**

The Public Utilities Commission (“Commission”) offers the following comments for consideration.

**COMMENTS:**

The Commission appreciates the intent of this measure to support farm and ranch operators on the neighbor islands. The Legislature has previously allowed the Commission to set preferential potable water rates for agricultural customers, preferential transportation rates for agricultural customers, preferential electricity rates for renewable energy produced in conjunction with agricultural activities, and preferential electricity rates for protected agriculture (see Hawaii Revised Statutes §§ 269-26.5, -26.6, -27.3, and -27.7).

The Commission supports a holistic approach to ensuring the continued provision of essential services at affordable rates. While preferential rates are one option to provide

direct savings to a specific customer group, the Commission notes that the costs are likely to be borne by all other customers through base rates or other recovery mechanisms.

To facilitate timely implementation of this measure's provisions, the Commission recommends that the language on page 9, lines 1-2, be amended to allow the Commission to implement the preferential rates either through the adoption of rules or by Commission order.

The Commission has convened a Hawaii Water Carriers Working Group, pursuant to SR 125 SD1 (2020), in order to develop mid-term and long-term solutions that enable the provision of continued and sustainable interisland water carrier service. The working group is meeting regularly and includes membership from the Commission, the Legislature, the Department of Agriculture, the Consumer Advocate, various State and County departments and agencies, water carriers, and other stakeholders.

The Commission intends for this working group to offer collaborative solutions that are mutually beneficial for all parties. The needs and interests of agricultural producers, residents, and businesses on the neighbor islands are represented in these conversations and are being considered in the context of improvements to interisland water transport. The working group will submit a final report of its finding and recommendations, including any proposed legislation, to the Legislature prior to the convening of the 2022 legislative session, pursuant to SR 125 SD1 (2020).

Thank you for the opportunity to testify on this measure.





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February 9, 2021

HEARING BEFORE THE  
HOUSE COMMITTEE ON WATER AND LAND

**TESTIMONY ON HB 1144**  
RELATING TO AGRICULTURE

Conference Room 423  
8:30 AM

Aloha Chair Tarnas, Vice Chair Branco, and Members of the Committee:

I am Brian Miyamoto, Executive Director of the Hawaii Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,800 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.

**The Hawaii Farm Bureau strongly supports HB 469**, which exempts from general excise tax law amounts received from the interisland transportation and related loading and unloading of livestock and requires the public utilities commission to authorize preferential water carrier service rates by tariff for ratepayers that operate farms or ranches located in any county with a population equal to or less than 500,000.

Interisland transportation has been a major issue with neighbor island farmers and ranchers. The majority of agricultural lands are in the neighbor islands yet the population center is on Oahu. Neighbor island farmers and ranchers are disadvantaged when competing with fellow farmers and ranchers on Oahu due to additional transportation costs of bringing in supplies and sending product out. Each increase in interisland shipping rates means increased costs to these farmers and ranchers, costs that usually cannot be passed on to the vendor. This bill seeks to level the playing field by assisting these farmers and ranchers.

Thank you for this opportunity to testify on this measure.



February 9, 2021

Representative David Tarnas, Chair  
Representative Patrick Branco, Vice Chair  
House Committee on Water and Land

Representative Nadine Nakamura, Chair  
Representative Troy Hashimoto, Vice Chair  
House Committee on Housing

**RE: House Bill 1144 – RELATING TO AGRICULTURE**  
**Hearing date: February 9, 2021, 9:15 a.m.**

Aloha Chair Tarnas and Vice Chair Branco, and Members of the House Committee on Water & Land and Chair Nakamura and Vice Chair Hashimoto, and Members of the House Committee on Housing:

Thank you for allowing me to submit testimony on behalf of Young Brothers, LLC ("YB") providing **COMMENTS** on House Bill 1144 – Relating to Agriculture.

This measure, would, in part, require the Hawaii Public Utilities Commission ("PUC") to authorize preferential water carrier service rates "for ratepayers that **operate farms or ranches** located in any county with a population equal to or less than five hundred thousand[.]" (Emphasis added).

YB, as a certificated intrastate water carrier of property subject to Hawaii Revised Statutes ("HRS") Chapters 269 and 271G, offers the following COMMENTS on this measure:

- **YB already provides preferential water carrier service rates to certain agricultural ratepayers/customers:** Currently, the PUC has already authorized and approved a provision in YB's tariff that provides preferential water carrier service rates for ratepayers/customers that engage in agricultural activities via YB's "Island Agricultural Product Discount" (aka, IAP Discount). The IAP Discount (which ranges between 30-35 percent) is available for certain customers who ship fresh agricultural products grown wholly in Hawaii including, but not limited to: pineapple, sugar, island fruits and vegetables, coffee, hay, whole eggs, island juices (not in retail can), macadamia nuts, onions and potatoes, milk, island meats and poultry, and flowering and ornamental plants in an unprocessed or raw state. See the Fifth Revised Page No. 61 of Young Brothers Local Freight Tariff No. 5-A. The IAP Discount is currently being subsidized by other ratepayers/customers and is currently being discussed by Senate Resolution 125 working group to address the need for water carriers to continue service and maintain long-term financial sustainability.

Representative David Tarnas, Chair  
House Committee on Water & Land  
Representative Nadine Nakamura, Chair  
House Committee on Housing

February 9, 2021  
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- **Other water carrier ratepayers/customers will need to subsidize a mandated expansion of preferential rates:** YB notes that mandating the PUC to establish preferential water carrier service rates for certain ratepayers necessitates that the costs of these preferential rates be borne or subsidized by other ratepayers/customers. In other words, requiring preferential water carrier service rates to include "ratepayers that operate farms or ranches located in any county with a population equal to or less than five hundred thousand" would result in increased costs that would need to be borne by other ratepayers/customers – particularly those recurring ratepayers/customers that assist the intrastate water carrier to remain financially viable. Moreover, if this is the intent of this measure, then an expensive and time-consuming rate case will be necessary to adjust the rates accordingly. YB also suggests that such water carriers should be allowed to recover any reasonable unamortized costs incurred in its previous rate cases (similar to HRS Section 269-26.5 relating to preferential water rates for water utilities) to ensure that such carriers are not adversely impacted (financially and otherwise).
- **The interpretation of ratepayers/customers that “operate farms or ranches” is overly broad and ambiguous and could result in unintended consequences:** If the intent of this measure is to support local agricultural production and sustainability within Hawaii, YB supports such efforts. However, as currently drafted, the language relating to operating farms or ranches is overly broad and not clearly defined. For example, the contemplated preferential rates could be interpreted to be beneficial to ratepayers/customers who simply operate farms or ranches on the neighbor island, but are not actually shipping local agricultural products related to the operation of these farms or ranches. As such, if the intent is to assist neighbor island farms/ranches in shipping their respective local agricultural products between the islands, YB recommends clarifying such language to ensure that such intent is achieved.

Thank you for your service to the State of Hawaii, and for the opportunity to testify and comment on this measure.

Sincerely,

Kris Nakagawa  
Vice President of External and Legal Affairs

DAVID Y. IGE  
Governor

JOSH GREEN  
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER  
Chairperson, Board of Agriculture

MORRIS M. ATTA  
Deputy to the Chairperson

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

**TESTIMONY OF PHYLLIS SHIMABUKURO-GEISER  
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE HOUSE COMMITTEE ON WATER AND LAND**

**TUESDAY, FEBRUARY 9, 2021  
9:15 A.M.  
VIA VIDEO CONFERENCE**

**HOUSE BILL NO. 1144  
RELATING TO AGRICULTURE**

Chairperson Tarnas and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 1144. This measure seeks to exempt from the General Excise Tax, the amounts received from interisland transportation of all agricultural commodities produced from the agricultural activities of qualifying entities, regardless where the product is grown. The agricultural products captured in the produced definition of "agricultural commodity" greatly expand the current definition by including livestock, poultry, apiary, non-food plants and animals, and all water-borne organisms.

This bill also amends Section 269-26.6 to require the Public Utilities Commission to establish preferential water carrier service rates for farms or ranches located on the counties of Kauai, Maui, and Hawaii. Qualification for the preferential rates is based upon documentation verifying that the applicant operates a bona fide farm on the affected counties. The Department of Agriculture appreciates the intent of the proposed benefits to Hawaii's farming businesses and otherwise defers to the Department of Taxation and the Public Utilities Commission.

Thank you for the opportunity to comment on this measure.





## Maui County

February 9, 2021

HOUSE COMMITTEE ON WATER AND LAND

TESTIMONY ON HB 1144  
RELATING TO AGRICULTURE

Conference Room 430  
9:15 AM

Aloha Chair Tarnas, Vice Chair Branco, and Members of the Committee:

I am Warren Watanabe, Executive Director of the Maui County Farm Bureau. We are a county chapter of the Hawaii Farm Bureau, representing 170 farm families and organizations on the island. Our mission seeks to protect and increase the viability of farms and ranches while ensuring the social and environmental wellbeing of the island.

MCFB strongly supports HB 1144 seeking to bring parity for agricultural producers in our island state.

Transportation is a major factor in agricultural marketing when production areas are separated from population centers by not only distance but bodies of water that limits access to markets. Farmers face increased costs for inputs and additional costs to sell their products on Oahu, the population center.

Efforts to assist producers have been passed by the Legislature in the past. §237-24.3 reduces costs by exempting Amounts received from the loading, transportation, and unloading of agricultural commodities. Unfortunately, the section referenced to define "agricultural commodities" used a section for grading of commodities and therefore limits the application of this section to produce. Agricultural commodities include livestock products. Therefore, it is reasonable to reference 269-1, definition for "Agricultural activities" in PUC law, the section of law governing barge interisland transportation, the operation utilizing the loading and unloading services. This would correct this disparity by including livestock as a qualifying commodity in this exemption.

Young Brothers, the major interisland carrier, created a program called Island Fresh Discount by their own volition. For many years, this provision did not follow PUC requirements of compensatory rates where each line of service was expected to pay for its' cost of service. YB, supported agriculture by creating this program, recognizing Hawaii's State Constitution's requirement to "promote diversified agriculture, increase

agricultural self-sufficiency....”, The law was changed in 2008 to recognize this provision, allowing PUC to grant preferential water rates for agricultural activities – HRS 269-26.5. Differential tariffs exist for agricultural products that are negotiated with the water carrier during rate hearings. Despite these efforts, rate increases have been a major burden for neighbor island farmers and ranchers. Very often, operations have ceased following rate increases as farmers and ranchers are forced to bear the burden of transportation costs when shipping their products to Oahu. This additional cost causes a disparity with Oahu growers who do not need to bear these costs. As Oahu lands opened for production, this variable has placed neighbor island growers at a severe disadvantage in costs of production.

Ranchers, especially, needing to transport live animals face an additional challenge as direct routes between neighbor islands may not exist, requiring transshipments of animals on Oahu. This further stresses animals in addition to increasing the cost of doing business.

The Hawaii State Plan supports increased economic growth on the neighbor islands (HRS 226-5(2) and HRS 226-104(4)). Addressing transportation disparities is an important aspect to encourage increased agricultural activity on the neighbor islands and consistent with the goals of the Hawaii State Plan. While 269-26.5 has existed, the rate of discount provided by the Island Fresh Discount has not changed, while transportation costs have risen at rates far exceeding the benefit of the discount. This provision recognizing the disparity in transportation costs for neighbor island growers, seeking to address one of the cost factors limiting their success. We respectfully request your strong support of this Bill as a step towards revitalizing the industry. We appreciate this opportunity to provide our opinion and look forward to further discussion to support increased viability of neighbor island agriculture. Thank you.

Reference:

**§226-5 Objective and policies for population.** (a) It shall be the objective in planning for the State's population to guide population growth to be consistent with the achievement of physical, economic, and social objectives contained in this chapter.

(b) To achieve the population objective, it shall be the policy of this State to:

(1) Manage population growth statewide in a manner that provides increased opportunities for Hawaii's people to pursue their physical, social, and economic aspirations while recognizing the unique needs of each county.

(2) Encourage an increase in economic activities and employment opportunities on the neighbor islands consistent with community needs and desires.

(3) Promote increased opportunities for Hawaii's people to pursue their socio-economic aspirations throughout the islands.

Maui County Farm Bureau • Box 148 • Kula, Hawaii 96790 • (808)2819718  
info@mauicountyfarmbureau.org

(4) Encourage research activities and public awareness programs to foster an understanding of Hawaii's limited capacity to accommodate population needs and to address concerns resulting from an increase in Hawaii's population.

(5) Encourage federal actions and coordination among major governmental agencies to promote a more balanced distribution of immigrants among the states, provided that such actions do not prevent the reunion of immediate family members.

(6) Pursue an increase in federal assistance for states with a greater proportion of foreign immigrants relative to their state's population.

(7) Plan the development and availability of land and water resources in a coordinated manner so as to provide for the desired levels of growth in each geographic area. [L 1978, c 100, pt of §2; am L 1986, c 276, §4; am L 1988, c 70, §3; am L 1993, c 213, §3]

**§226-104 Population growth and land resources priority guidelines.** (a) Priority guidelines to effect desired statewide growth and distribution:

(1) Encourage planning and resource management to insure that population growth rates throughout the State are consistent with available and planned resource capacities and reflect the needs and desires of Hawaii's people.

(2) Manage a growth rate for Hawaii's economy that will parallel future employment needs for Hawaii's people.

(3) Ensure that adequate support services and facilities are provided to accommodate the desired distribution of future growth throughout the State.

(4) Encourage major state and federal investments and services to promote economic development and private investment to the neighbor islands, as appropriate.

February 9, 2021

Representative David Tarnas, Chair  
Representative Patrick Branco, Vice Chair  
House Committee on Water and Land

Representative Nadine Nakamura, Chair  
Representative Troy Hashimoto, Vice Chair  
House Committee on Housing

**RE: House Bill 1144 – RELATING TO AGRICULTURE**  
**Hearing date: February 9, 2021, 9:15 a.m.**

Aloha Chair Tarnas and Vice Chair Branco, and Members of the House Committee on Water & Land and Chair Nakamura and Vice Chair Hashimoto, and Members of the House Committee on Housing:

Thank you for allowing me to submit testimony on behalf of Young Brothers, LLC ("YB") providing **COMMENTS** on House Bill 1144 – Relating to Agriculture.

This measure, would, in part, require the Hawaii Public Utilities Commission ("PUC") to authorize preferential water carrier service rates "for ratepayers that **operate farms or ranches** located in any county with a population equal to or less than five hundred thousand[.]" (Emphasis added).

YB, as a certificated intrastate water carrier of property subject to Hawaii Revised Statutes ("HRS") Chapters 269 and 271G, offers the following COMMENTS on this measure:

- **YB already provides preferential water carrier service rates to certain agricultural ratepayers/customers:** Currently, the PUC has already authorized and approved a provision in YB's tariff that provides preferential water carrier service rates for ratepayers/customers that engage in agricultural activities via YB's "Island Agricultural Product Discount" (aka, IAP Discount). The IAP Discount (which ranges between 30-35 percent) is available for certain customers who ship fresh agricultural products grown wholly in Hawaii including, but not limited to: pineapple, sugar, island fruits and vegetables, coffee, hay, whole eggs, island juices (not in retail can), macadamia nuts, onions and potatoes, milk, island meats and poultry, and flowering and ornamental plants in an unprocessed or raw state. See the Fifth Revised Page No. 61 of Young Brothers Local Freight Tariff No. 5-A. The IAP Discount is currently being subsidized by other ratepayers/customers and is currently being discussed by Senate Resolution 125 working group to address the need for water carriers to continue service and maintain long-term financial sustainability.



Representative David Tarnas, Chair  
House Committee on Water & Land  
Representative Nadine Nakamura, Chair  
House Committee on Housing

February 9, 2021  
Page Two

- **Other water carrier ratepayers/customers will need to subsidize a mandated expansion of preferential rates:** YB notes that mandating the PUC to establish preferential water carrier service rates for certain ratepayers necessitates that the costs of these preferential rates be borne or subsidized by other ratepayers/customers. In other words, requiring preferential water carrier service rates to include "ratepayers that operate farms or ranches located in any county with a population equal to or less than five hundred thousand" would result in increased costs that would need to be borne by other ratepayers/customers – particularly those recurring ratepayers/customers that assist the intrastate water carrier to remain financially viable. Moreover, if this is the intent of this measure, then an expensive and time-consuming rate case will be necessary to adjust the rates accordingly. YB also suggests that such water carriers should be allowed to recover any reasonable unamortized costs incurred in its previous rate cases (similar to HRS Section 269-26.5 relating to preferential water rates for water utilities) to ensure that such carriers are not adversely impacted (financially and otherwise).
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Thank you for your service to the State of Hawaii, and for the opportunity to testify and comment on this measure.

Sincerely,

Kris Nakagawa  
Vice President of External and Legal Affairs