

JOSH GREEN M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION

Ka 'Oihana 'Auhau
P.O. BOX 259

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GARY S. SUGANUMA
DIRECTOR

KRISTEN M.R. SAKAMOTO
DEPUTY DIRECTOR

**TESTIMONY OF
GARY S. SUGANUMA, DIRECTOR OF TAXATION**

TESTIMONY ON THE FOLLOWING MEASURE:

H.B. No. 619 H.D.1, Relating to Taxation

BEFORE THE:

House Committee on Finance

DATE: Wednesday, March 1, 2023

TIME: 2:30 p.m.

LOCATION: State Capitol, Room 308

Chair Yamashita, Vice-Chair Kitagawa, and Members of the Committee:

The Department of Taxation ("Department") offers the following comments regarding H.B. 619, H.D.1, for your consideration.

H.B. 619, H.D.1, adds a new section to chapter 235, Hawaii Revised Statutes (HRS), to create a nonrefundable income tax credit for qualified farms that donate eligible food products or prepared food to food banks or food pantries located in the State. The amount of the credit is equal to 100 percent of the wholesale value of the eligible food product or prepared food and shall not exceed \$8,000 per qualified farm, with an annual aggregate cap of \$150,000 for each county. The measure requires the Department of Agriculture to certify this credit. The terms "eligible food product," "prepared food," and "qualified farm" are defined in this measure.

This bill has a defective effective date of June 30, 3000 and applies to taxable years beginning after December 31, 2022 and shall be repealed on June 30, 2026.

First, the Department defers to the Department of Agriculture on its ability to certify this credit and administer its aggregate cap, but respectively request that a third-party certification requirement be maintained, as the Department lacks the subject-matter expertise to determine eligibility for and to administer the credit.

Second, the Department recommends prohibiting taxpayers from using the same donation as a basis for a charitable deduction and the tax credit. This may be accomplished by adding a new subsection providing:

No other tax credit or deduction shall be claimed under this chapter for amounts claimed under this section for the taxable year.

The Department estimates an expected revenue loss of \$600,000 for Fiscal Year 2024 and thereafter until the measure is repealed.

Finally, the Department further notes that it will require resources and time to implement the new credit. Accordingly, the Department requests that if the effective date of the measure is updated, it be amended to apply to taxable years beginning after December 31, 2023.

Thank you for the opportunity to provide comments on this measure.

JOSH GREEN, M.D.
Governor

SYLVIA LUKE
Lt. Governor



SHARON HURD
Chairperson, Board of Agriculture

MORRIS M. ATTA
Deputy to the Chairperson

State of Hawai'i
DEPARTMENT OF AGRICULTURE
KA 'OIHANA MAHI'AI
1428 South King Street
Honolulu, Hawai'i 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

TESTIMONY OF SHARON HURD
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON FINANCE

WEDNESDAY, MARCH 1, 2023
ROOM 308
2:30 P.M.

HOUSE BILL NO. 619, HOUSE DRAFT 1
RELATING TO TAXATION

Chairperson Yamashita and Members of the Committee:

Thank you for the opportunity to testify on House Bill 619, HD1 that establishes an income tax credit for qualified farms that donate eligible food products or prepared food to food banks or food pantries located in the State. The definitions of eligible food products and prepared foods emphasize or require farmed plant products that are indigenous to native Hawaiian culture. The Department of Agriculture (Department) notes that the tax credit shall be equal to 100 percent of the wholesale value of the eligible food product or prepared food. The statewide amount of credits issued is not to exceed \$600,000 per taxable year, not to exceed \$150,000 per county, and not to exceed \$8,000 per qualified farm. This tax credit is to be repealed on June 30, 2026. There are two consecutive appropriations to the Department to administer the certification process for this tax credit. The Department offers comments and concerns.

The Department supports the general intent of this tax credit offered to farmers that can meet the content requirements of the food products to be donated to qualified food banks and food pantries. Notwithstanding the two consecutive appropriations to the Department to administer the certification process for this tax credit, we remain very concerned about the staffing resources needed for the Department to responsibly establish and administer this very complex tax credit. Including this measure, there are at least four other House bills with tax credits that are still moving and requires the Department's involvement. Otherwise, we defer to the Department of Taxation.



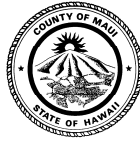
Thank you for the opportunity to testify on this measure.

Council Chair
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Yuki Lei K. Sugimura

Presiding Officer Pro Tempore
Tasha Kama

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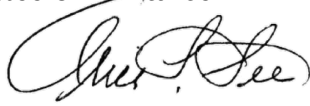
Director of Council Services
Traci N. T. Fujita, Esq.

Deputy Director of Council Services
David M. Raatz, Jr., Esq.

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

February 28, 2023

TO: The Honorable Kyle T. Yamashita, Chair
House Committee on Finance

FROM: Alice L. Lee
Council Chair 

SUBJECT: **HEARING OF MARCH 1, 2023; TESTIMONY IN SUPPORT OF HB 619, HD1, RELATING TO TAXATION**

Thank you for the opportunity to testify in **support** of this important measure. The purpose of this bill is to establish an income tax credit for qualified farms that donate eligible food products or prepared food to food banks or food pantries located in the State.

The Maui County Council adopted Resolution 23-43, "URGING THE STATE LEGISLATURE TO SUPPORT AND ADOPT THE PRIORITY FOOD POLICIES RECOMMENDED BY THE TRANSFORMING HAWAII'S FOOD SYSTEMS TOGETHER INITIATIVE," in support of this measure. Therefore, I offer this testimony on the Council's behalf

The County Council supports this measure for the following reasons:

1. This food producers income tax credit supports food systems by encouraging farmers to donate produce for food access and security for vulnerable groups.
2. This tax credit helps farmers alleviate the high costs of agricultural production to promote the development of agricultural self-sufficiency and food security.
3. Donation of excess produce to food banks and pantries by farms helps to reduce waste of fresh farmed plant products and prepared foods.

For the foregoing reasons, the Maui County Council **supports** this measure.



Email: communications@ulupono.com

HOUSE COMMITTEE ON FINANCE
Wednesday, March 1, 2023 — 2:30 p.m.

Ulupono Initiative supports HB 619 HD1, Relating to Taxation.

Dear Chair Yamashita 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 the 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 choices, and better management of freshwater resources.

Ulupono supports HB 619 HD1, which establishes an income tax credit for qualified small farms that donate eligible food products or prepared food to food banks or food pantries located in the State.

Ulupono supports the local food producers with their efforts to support food banks and food pantries. This type of tax incentive can help to further connect any excess or seconds from Hawai'i's producers to food banks and pantries that serve our communities. It also serves to reinforce important relationships between Hawai'i's food producers and service entities in addressing food insecurity throughout our state.

Thank you for the opportunity to testify.

Respectfully,

Micah Munekata
Director of Government Affairs

Investing in a Sustainable Hawai'i



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e-mail info@hfbf.org; www.hfbf.org

March 1, 2023

HEARING BEFORE THE
HOUSE COMMITTEE ON FINANCE

TESTIMONY ON HB 619, HD1
RELATING TO TAXATION

Conference Room 308 & Videoconference
2:30 PM

Aloha Chair Yamashita, Vice-Chair Kitagawa, and Members of the Committee:

I am Brian Miyamoto, Executive Director of the Hawai'i Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,800 farm family members statewide and serves as Hawai'i's voice of agriculture to protect, advocate and advance the social, economic, and educational interests of our diverse agricultural community.

The Hawai'i Farm Bureau supports HB 619, HD1, which establishes an income tax credit for qualified farms that donate eligible food products or prepared food to food banks or food pantries located in the State.

The Coronavirus Pandemic disrupted Hawai'i's local food systems and caused many local producers to lose their local markets. Many catered to tourism, large-scale events, hotels, restaurants, cruise ships, farmers' markets, and school lunch programs, which were non-existent during Hawai'i's shutdown.

Like small businesses around the state, without open and consistent markets, local farmers and ranchers will decrease food production levels and will likely downsize and/or go out of business. To help address the state's food security during the pandemic, Hawai'i's Foodbanks partnered with local food producers to ensure that farmers and ranchers could survive.

At the onset of the pandemic, Hawai'i's Foodbanks partnered with farmers and ranchers to provide local agricultural produce and proteins for their food assistance programs. As organizations that aggregate and distribute food, Foodbank staff brought valuable logistical insight to these programs. The combined efforts of Hawai'i's Foodbanks, the Hawai'i Farm Bureau, and other partner organizations allowed tens of thousands of families to have access to food during unprecedented times. This win-win partnership connected local producers that lost markets and revenue sources due to COVID-19 with the Hawai'i Foodbank to meet the increased demands of feeding Hawai'i's communities.

An income tax credit will encourage and support small farmers that donate eligible food to food banks and other community feeding programs to communities in need. This will support Hawai'i's farmers and ranchers while also providing local nutritional food to those who need it most.

Thank you for the opportunity to testify on this measure.



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Vincent Kimura
Honolulu, O'ahu

Ray Maki
Kauai

Aloha Chair Yamashita, Vice Chair Kitagawa, and Members of the House Finance Committee,

The Hawaii Farmers Union United (HFUU) is a 501(c)(5) agricultural advocacy nonprofit representing a network of over 2,500 family farmers and their supporters across the Hawaiian Islands. **HFUU supports HB619.**

We believe this bill is the perfect combination of incentivizing good deeds, recognizing the important work that farmers do for the community, and providing fresh and healthy foods to those in need.

This modest credit will help to defray the cost of production, so that farmers and their families are not adversely affected when they donate items to food banks and food pantries.

This credit is an important step towards addressing food insecurity across the islands while also supporting Hawaii's producers.

Towards that end we offer the following proposed amendments:

- Increase total credit ceiling to \$1M.
- Provide an inter-annual rollover of excess credit value.
- Have donors report market value. Requiring HDOA to set market rates would be tough as market data collection has fallen off significantly since 2009. In Iowa the "value of the donation is specified by the donor and must reflect the market value of the food at the time of the donation using the guidelines set forth in IRS regulation 1.170A-13(b). Virginia uses a similar approach. Iowa provides a link to a worksheet that DOTAX or HDOA could be directed to provide.
- Clarify recipient eligibility. NY focused on food pantries, IA limits to a "registered Iowa food bank or food pantry or an Iowa emergency feeding organization". The latter approach could be a good way to reduce the impact to those entities that work on food access. If any non-profit were eligible then even those focused on issues unrelated to food access could receive goods and provide credits.

Mahalo for the opportunity to testify.

Kaipo Kekona, President HFUU/HFUF



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Department of Pediatrics

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State of Hawai'i, Deputy Public Defender

HIPHI Initiatives

Coalition for a
Tobacco-Free Hawai'i

Community Health
Worker Initiative

COVID-19 Response

Hawai'i Drug & Alcohol-Free Coalitions

Hawai'i Farm to School Hui

Hawai'i Oral Health Coalition

Hawai'i Public Health Training Hui

Healthy Eating + Active Living

Kūpuna Collective

Date: February 28, 2023

To: Representative Kyle Yamashita, Chair
Representative Lisa Kitagawa, Vice Chair
Members of the House Committee on Finance

Re: Support for HB619 HD1, Relating to Taxation

Hrg: Wednesday, March 1, 2023, at 2:30 PM, Conf Rm 308

The Obesity Prevention Task Force (OPTF), a program of Hawai'i Public Health Instituteⁱ (HIPHI), is in **support of HB 619 HD1**, which would provide tax credits to local farmers who donate food to food banks.

This bill can significantly benefit farmers and their communities, improving access to fresh produce and increasing healthy eating habits.

Increasing Supply for Food Banks

This bill would incentivize farmers to donate excess food to food banks, reducing waste and helping feed needy families. Farmers often have surplus produce that goes to waste because it cannot be sold or stored for long periods. By donating this food to food banks, farmers can help increase the amount of food available to food bank recipients.

Helping Farmers Succeed

Tax credits for food bank donations help alleviate the financial burden of farming. Farmers face various economic challenges, and providing them with these credits will help make their businesses more viable. These credits can help local farms to invest in their business to help them grow and thrive.

Access to Healthy Food for More Residents

By increasing access to fresh produce, these tax credits can positively impact the health of food bank participants. Fresh fruits and vegetables are essential to a healthy diet, but they can be expensive and difficult to access for low-income families. By providing nutritious food options, food banks can help improve the overall health of their clients and reduce the risk of chronic diseases associated with poor nutrition.

Mahalo,



Nate Hix
Food Access Policy and Advocacy Coordinator
Hawai'i Public Health Institute

ⁱ Created by the legislature in 2012, the Obesity Prevention Task Force comprises over 60 statewide organizations and makes recommendations to reshape Hawai'i's school, work, community, and healthcare environments, making healthier lifestyles obtainable for all Hawai'i residents. The Hawai'i Public Health Institute (HIPHI) convenes the Task Force and supports and promotes policy efforts to create a healthy Hawai'i.

Hawai'i Public Health Institute is a hub for building healthy communities, providing issue-based advocacy, education, and technical assistance through partnerships with government, academia, foundations, business, and community-based organizations.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Tax Credit for Donation by Qualified Small Farms

BILL NUMBER: HB 619 HD 1

INTRODUCED BY: House Committee on Agriculture & Food Systems

EXECUTIVE SUMMARY: Establishes an income tax credit for qualified small farms with gross sales of \$250,000 or less that donate eligible food products or prepared food to food banks or food pantries. Appropriates funds.

SYNOPSIS: Adds a new section to chapter 235, HRS, to establish the qualified small farm food donation tax credit. The credit is equal to 100% of the wholesale value of the eligible food product or prepared food donated to food banks or food pantries, up to \$8,000 per qualified small farm.

The total amount of tax credits is limited to \$150,000 per county.

The credit is nonrefundable but may be carried forward until exhausted.

All claims for the tax credit under this section, including amended claims, shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

The department of agriculture is tasked with certifying credits, and the certificate is then submitted with the taxpayer's tax return.

The following definitions apply:

“Eligible food product” means fresh, farmed plant products for human consumption, including farmed plant products that are recognized as indigenous to native Hawaiian culture.

“Prepared food” means a value-added eligible food product that consists of no more than two ingredients, with the primary ingredient being a farmed plant product that is recognized as indigenous to native Hawaiian culture. “Prepared food” includes but is not limited to poi and cooked kalo corms, kalo leaves, or breadfruit.

“Qualified farm” means a farm business that has a valid employer identification number and general excise tax license.

EFFECTIVE DATE: June 30, 3000; applicable to taxable years beginning after December 31, 2022; repeals June 30, 2026.

STAFF COMMENTS: The food donated as described is presumably deductible under existing federal and state income tax law. One of the open questions will be whether both benefits can be taken if the bill becomes law.

The tax system is there to raise revenue to keep the government moving. Using the tax system to give taxpayers money to do things that lawmakers want them to do for social policy reasons merely throws the revenue raising system out of whack, making the system less than reliable as there is no way to determine how many taxpayers will avail themselves of the credit and in what amount.

Furthermore, tax credits are nothing more than the expenditure of public dollars, but out the back door. If, in fact, these dollars were subject to the appropriation process, would taxpayers be as generous about the expenditure of these funds when our kids are roasting in the public school classrooms, there isn't enough money for social service programs, or our state hospitals are on the verge of collapse?

The additional credit would require changes to tax forms and instructions, reprogramming, staff training, and other costs that could be massive compared to the amount that may be paid out in credits.

There is also a constitutional issue. In the bill's definitions of "eligible food product" and "prepared food," it appears that the bill is intended to benefit "fresh" "farmed plant product that is recognized as indigenous to native Hawaiian culture." This restriction could be unconstitutional under the Commerce Clause of the Constitution because the same preferential tax treatment is not allowed for competing products from other States. *See In re Hawaiian Flour Mills, Inc.*, 76 Haw. 1, 868 P.2d 419 (1994); *Bacchus Imports, Inc. v. Dias*, 468 U.S. 263 (1984); Hawaii Tax Information Release No. 93-4. In *Hawaiian Flour Mills*, the Hawaii Supreme Court determined that a general excise tax exclusion for locally grown, raised, or caught agricultural, meat, or fish products for consumption out-of-state violated the Commerce Clause of the United States Constitution. The Court found that appellant Hawaiian Flour Mills, Inc. was entitled to the exemption from the general excise tax on its sales of fresh food products to be consumed out-of-State by persons engaged in interstate or foreign commerce, whether or not the fresh food products were locally grown, raised, or caught.

Digested: 2/28/2023

HB-619-HD-1

Submitted on: 2/27/2023 9:17:16 PM

Testimony for FIN on 3/1/2023 2:30:00 PM

Submitted By	Organization	Testifier Position	Testify
Will Caron	Individual	Support	Written Testimony Only

Comments:

Please support HB619 HD1.

HB-619-HD-1

Submitted on: 2/28/2023 6:22:11 AM

Testimony for FIN on 3/1/2023 2:30:00 PM

Submitted By	Organization	Testifier Position	Testify
Caroline Azelski	Individual	Support	Written Testimony Only

Comments:

In support of HD1. Thank you.