

**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:

H.B. NO. 947, H.D. 1, S.D. 1, RELATING TO AGRICULTURE.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Wednesday, April 5, 2023

TIME: 10:00 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**

(For more information, contact Joshua J. Michaels,
Deputy Attorney General, at 808-586-1475)

Chair Dela Cruz and Members of the Committee:

The Department of the Attorney General opposes the bill as written and provides the following comments.

The purpose of this bill is to incentivize food production in the State by providing an income tax credit to food manufacturers who produce value-added products using local crops. The bill's preamble states that establishing this tax credit for "private food manufacturers in the State to use Hawaii-grown food ingredients in their products . . . will support the development of agricultural self-sufficiency and food security in Hawaii." See page 2, lines 6-9. The income tax credit would only be available to qualified taxpayers, with "qualified taxpayer" defined as "food manufacturers that produce local value-added processed, agricultural, or food products." See page 6, lines 14-15. "'Local value-added processed, agricultural, or food product' means at least fifty-one per cent of the product's primary agricultural product is grown, raised, and harvested in Hawaii." See page 6, lines 2-5.

This bill could be subject to challenge as a violation of the Commerce Clause of the United States Constitution, which provides that Congress shall have the power to "regulate Commerce . . . among the several States." U.S. Const. art I, § 8, cl. 3. "Though phrased as a grant of regulatory power to Congress, the Clause has long been understood to have a 'negative' aspect that denies the States the power unjustifiably to

discriminate against or burden the interstate flow of articles in commerce." *Or. Waste Sys., Inc. v. Dep't of Env'tl. Quaity*, 511 U.S. 93, 98 (1994). This negative aspect of the commerce clause is known as the Dormant Commerce Clause; this doctrine prohibits states from "advancing their own commercial interests by curtailing the movement of articles of commerce, either into or out of the state," *Fort Gratiot Sanitary Landfill, Inc. v. Mich. Dep't of Nat. Res.*, 504 U.S. 353 (1992) (internal brackets omitted), based on concern about "economic protectionism," i.e., "regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors." *Dep't of Revenue of Ky. v. Davis*, 553 U.S. 328, 337 (2008).

Here, an income tax credit would only be given for the manufacture of value-added products using "local" crops. See page 6, lines 2-5 and 14-15. In addition to requiring "at least fifty-one per cent of the product's primary agricultural product" to be "grown, raised, and harvested in Hawaii[.]" (page 6, lines 3-5), the bill also asserts in its preamble that this credit will incentivize "private food manufacturers in the State to use Hawaii-grown food ingredients in their products." See page 2, lines 6-7. As these terms require discrimination against crops grown or produced *out-of-state*, the proposed tax credit may be challenged as unconstitutional because it would bestow a commercial advantage on producers using locally grown crops in the form of lower taxes, while burdening out-of-state competitors who would not be eligible for the same exemption if their crops were grown out-of-state.

Based on the foregoing, we recommend removing the word "local" from the definition of "qualified taxpayer" (page 6, line 15), and deleting the definition of "local value-added processed, agricultural, or food product" (page 6, lines 2-5). This amendment would address a possible Dormant Commerce Clause challenge by allowing the tax credit for food manufacturers using both locally grown and out-of-state-grown crops.

The Department opposes the bill as written and thanks the Committee for the opportunity to provide these comments.

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 SENATE COMMITTEE ON WAYS AND MEANS

**WEDNESDAY, APRIL 5, 2023
10:00 A.M.**

CONFERENCE ROOM 211 AND VIDEO CONFERENCING

**HOUSE BILL NO. 947, HD1, SD1
RELATING TO AGRICULTURE**

Chair Dela Cruz and Members of the Committee:

Thank you for the opportunity to present testimony on House Bill 947, HD1, SD1. This bill establishes a new income tax credit that incentivizes private food manufacturers to use locally grown ingredients in their products. The Department supports the intent and provides the following comments.

The Department acknowledges this effort may help to support the development of agricultural self-sufficiency and food security within the State. This measure strengthens the definition of "qualified expenses," adds a definition for "local value-added processed, agricultural, or food products" and adds a definition for "primary agricultural product." The Department welcome these revisions, which in our opinion, protects the position of our local farmers and ranchers.

The Department's remaining concern is on the tax credit amount that is equal to the qualified expenses of eligible taxpayers as qualified expenses include purchase, maintenance, or improvement of food manufacturing equipment and facilities (page 6, lines 11-13). The amount of qualified expenses/tax credit could be generous (subject to



the total amount allowed), and verifying the nature and value the proposed tax credit could present a challenge to the Department, given its limited resources and fiscal administration capacity.

Thank you for the opportunity to testify on this measure.

JOSH GREEN M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION

Ka 'Oihana 'Auhau
P.O. BOX 259

HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

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. 947, H.D. 1, S.D. 1, Relating to Agriculture

BEFORE THE:

Senate Committee on Ways and Means

DATE: Wednesday, April 5, 2023

TIME: 10:00 a.m.

LOCATION: State Capitol, Room 211

Chair Dela Cruz, Vice-Chair Keith-Agaran, and Members of the Committee:

The Department of Taxation ("Department") offers the following comments regarding H.B. 947, H.D. 1, S.D. 1, for your consideration.

H.B. 947, H.D. 1, S.D. 1, adds a new section to chapter 235, Hawaii Revised Statutes (HRS), to create a nonrefundable income tax credit for "qualified expenses," up to an unspecified amount, for producing local value-added processed, agricultural, or food products. The bill sets an unspecified aggregate cap and requires the Board of Agriculture to certify all "qualified expenses." The terms "net income tax liability," "qualified expenses," "local value-added processed, agricultural, or food product," "primary agricultural product," and "qualified taxpayer" 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, 2023.

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

Department of Taxation Testimony
H.B. 947, H.D. 1, S.D. 1
April 5, 2023
Page 2 of 2

The Department further notes that it is able to administer this bill for taxable years beginning after December 31, 2023.

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



Written Statement of
Len Higashi
Executive Director
Hawaii Technology Development Corporation
before the
Senate Committee On Ways and Means
Wednesday, April 5, 2023
10:00 a.m.
Conference Room 211 & Videoconference

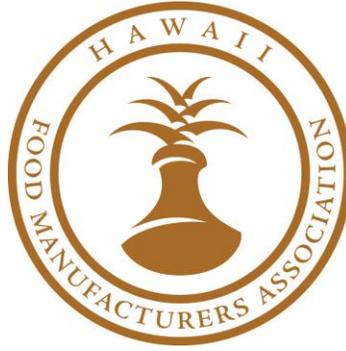
In consideration of
HB947, HD1, SD1
RELATING TO AGRICULTURE

Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committee.

The Hawai'i Technology Development Corporation (HTDC) offers **comments** on HB947, HD1, SD1 that establishes a food manufacturer tax credit for manufacturers that produce valued-added products using local crops for taxable years beginning after 12/31/2023.

HTDC supports initiatives aimed at growing tech and manufacturing jobs and supports the intent of this bill. HTDC comments that the bill does not specify the amount of time the manufacturer must keep the equipment or facility to claim the credit. HTDC administers the Manufacturing Development Program (a.k.a. Manufacturing Assistance Program or MAP grants) that provides up to 20% reimbursement up to \$100,000 on qualified expenses that help Hawai'i manufacturers become globally competitive. HTDC comments that manufacturers should be prohibited from claiming the tax credit and grant for the same expense. HTDC comments that this bill should be coordinated with HB1384. HTDC defers to the Board of Agriculture and Department of Taxation on implementation.

HTDC looks forward to working with stakeholders in moving this initiative forward. Thank you for the opportunity to offer these comments.



**Testimony to the Senate Committee on Ways and Means
Wednesday, April 5th, 2023, at 10:00 A.M.
Conference Room 211 & Via Videoconference**

RE: HB 947 HD1 Relating to Agriculture

Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committee:

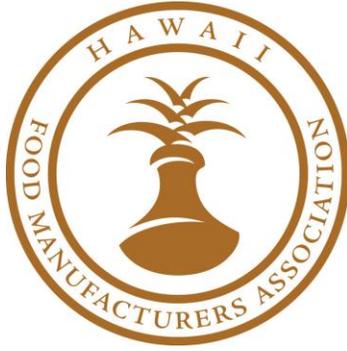
The Hawaii Food Manufacturers Association **strongly supports** HB 947, which establishes a food manufacturer tax credit. Defines "qualified taxpayers" as manufacturers that produce valued-added products using local crops. Applies to taxable years beginning after 12/31/2023.

The Hawaii Food Manufacturers Association (HFMA) is a non-profit organization of approximately 120 members that has been promoting Hawaiian grown or manufactured products since 1977. The HFMA works to increase the understanding and appreciation of the unique flavors, quality, and care that go into the production of Hawaii's fine foods and beverages represented by our valued members and enjoyed by our valued community.

The food manufacturing industry in Hawaii generates \$900 million in annual revenue and is the largest manufacturing sector in the state using local inputs according to the Hawaii State Department of Business, Economic Development and Tourism. The industry provides over 6,100 jobs in the state and an annual payroll of more than \$160 million.

Food manufacturers have struggled in recent years due to the COVID-19 pandemic, supply chain shortages, and rising inflation. This bill would be a tremendous help to the small businesses that are struggling to keep their doors open and bring back workers that were laid off during the last few years.

The state set goals to double local food production by 2030, but that is likely not going to happen unless small mom and pop food manufacturers have access to more capital or can receive investment from the private sector. Currently, there is no incentive for private investors to invest in agriculture or food manufacturing in Hawaii.



Establishing an incentive for private food manufacturers in the State to use Hawaii-grown food ingredients would not only promote made-in-Hawaii products but will kick-start our economy and get the state closer to the goal of doubling local food production by 2030.

Thank you for the opportunity to testify.



1050 Bishop St. PMB 235 | Honolulu, HI 96813
P: 808-533-1292 | e: info@hawaiiifood.com

Executive Officers

Eddie Asato, Pint Size Hawaii, *Chair*
Gary Okimoto, Safeway, *Vice Chair*
Maile Miyashiro, C&S Wholesale, *Secretary/Treas.*
Lauren Zirbel, HFIA, *President and Executive Director*
John Schilf, Rainbow Sales and Marketing, *Advisor*
Paul Kosasa, ABC Stores, *Advisor*
Derek Kurisu, KTA Superstores, *Advisor*
Toby Taniguchi, KTA Superstores, *Advisor*
Joe Carter, Coca-Cola Bottling of Hawaii, Odom, *Advisor*
Charlie Gustafson, Tamura Super Market, *Immediate Past Chair*

TO: Committee on Ways and Means
Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION
Lauren Zirbel, Executive Director

DATE: April 5, 2023
TIME: 10am

RE: HB947 HD1 SD1 Relating to Agriculture

Position: Support

The Hawaii Food Industry Association is comprised of two hundred member companies representing retailers, suppliers, producers, and distributors of food and beverage related products in the State of Hawaii.

Increasing local food production, is a goal we all share, and we are all aware of the many challenges that our local food producers face. High real estate prices, high labor costs, lack of economy of scale, and high energy costs can make it challenging or even impossible for locally made products to reach the market at competitive prices with imported products. For those interested in using local agricultural products in their manufacturing these challenges can be compounded because they apply to both the raw agricultural materials and the value added finished products. Unfortunately, these obstacles also mean that many who might be interested in manufacturing food here in Hawaii do not.

This measure would be an important step in making Hawaii food manufacturers, and agricultural producers more competitive. It will also incentivize more companies to choose to manufacture food products here in Hawaii, and facilitate deeper integration of local agricultural products within our food systems.

HFIA has proudly produced the Made in Hawaii Festival for over 25 years. We are keenly aware of the potential of our local food manufacturers and we know that with our support this sector and continue to grow and thrive. We urge you to pass this measure and we thank you for the opportunity to testify.



Email: communications@ulupono.com

SENATE COMMITTEE ON WAYS & MEANS
Wednesday, April 5, 2023 — 10:00 a.m.

Ulupono Initiative supports HB 947 HD1 SD1, Relating to Agriculture.

Dear Chair Dela Cruz 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 947 HD1 SD1, which establishes a food manufacturer tax credit and defines “qualified taxpayers” as manufacturers that produce local value-added processed, agricultural, or food products.

Ulupono supports local food manufacturing as it provides market options for local farmers and ranchers to bring products to consumers. By processing various fruits, vegetables, meats, or dairy products into value-added goods, farmers and ranchers can utilize all of their products, some of which may have previously been considered food waste, and diversify their revenue streams. This tax incentive will help grow local production and influence future investments in food manufacturing.

Thank you for this opportunity to testify.

Respectfully,

Micah Munekata
Director of Government Affairs

Investing in a Sustainable Hawai'i



P.O. Box 253, Kunia, Hawai'i 96759
Phone: (808) 848-2074; Fax: (808) 848-1921
e-mail info@hfbf.org; www.hfbf.org

April 5, 2023

HEARING BEFORE THE
SENATE COMMITTEE ON WAYS AND MEANS

TESTIMONY ON HB 947, HD1, SD1
RELATING TO AGRICULTURE

Conference Room 211 & Videoconference
10:00 AM

Aloha Chair Dela Cruz, Vice-Chair Keith-Agaran, 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 the intent of HB 947, HD1, SD1, which establishes a food manufacturer tax credit and defines "qualified taxpayers" as manufacturers that produce local value-added processed, agricultural, or food products.

As expenses rise, increases in farm revenues and profits are critical to the continued viability of farms and ranches. One way farmers can do this is by "adding value" to raw agricultural crops. Currently, off-grade and excess production is sometimes wasted due to market conditions. Converting them into value-added products will not only increase farm revenue but also provide new business opportunities, increase employment opportunities, and address Hawai'i's goals of increased self-sufficiency and sustainability.

High production costs are a major driver of narrow profit margins for Hawai'i's farmers and value-added food producers. Labor, taxes, land, transportation, utilities, and supplies are all costs of doing business that often results in value-added food producers just being able to break even.

Hawai'i is potentially losing millions of dollars because of the cost to process agricultural crops into value-added products. HFB supports any program that supports the production of value-added products so that farmers can increase their income while allowing locally produced value-added goods can compete with imported products, strengthening our local economy.

The strength of Hawai'i's economy is dependent upon a diversity in commerce that is resilient to economic downturns and aggressive in creating new growth opportunities.

Thank you for your efforts to protect and support Hawai'i's farmers and ranchers.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

LATE

SUBJECT: INCOME, Food Manufacturer Tax Credit

BILL NUMBER: HB 947 SD 1

INTRODUCED BY: Senate Committee on Agriculture and Environment

EXECUTIVE SUMMARY: Establishes a food manufacturer tax credit. Defines "qualified taxpayers" as manufacturers that produce valued-added products using local crops. Applies to taxable years beginning after 12/31/2023.

SYNOPSIS: Adds a new section to chapter 235, HRS, to establish the food manufacturer tax credit. The credit amount is 100% of the qualified expenses of the qualified taxpayer, up to \$_____.

Defines "local value-added processed, agricultural, or food product" means at least fifty-one per cent of the product's primary agricultural product is grown, raised, and harvested in Hawaii.

Defines "primary agricultural product" as the major agricultural product in a processed or value-added agricultural or food product.

Defines "qualified expenses" as the costs directly incurred by the taxpayer for the purchase, maintenance, or improvement of food manufacturing equipment and facilities.

Defines "qualified taxpayer" as food manufacturers that produce local value-added processed, agricultural, or food products.

Requires the Department of Agriculture to verify and certify each claim for the credit including the total amount of credit for each taxable year and the cumulative amount of tax credit during the credit period. The department shall issue a certificate to qualifying taxpayers who shall file the certificate with the taxpayer's tax return.

Allows the Department of Agriculture to assess and collect a fee to offset the cost of certifying tax credit claims. If the amount of credits exceeds the taxpayer's income tax liability, the excess of credit over liability may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted. All claims for a credit under this section shall be properly 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 total amount of credits allowed shall not exceed \$_____ for all qualified taxpayers in any taxable year; however, any taxpayer who is not eligible to claim the credit in a taxable year due to the \$_____ cap having been exceeded for that taxable year shall be eligible to claim the credit in the subsequent taxable year.

EFFECTIVE DATE: June 30, 3000.

STAFF COMMENTS: 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. The bill applies the credit only to "qualified taxpayers," which produce "local value-added processed, agricultural, or food products" which are defined to require 51% of the primary agricultural product to be grown, raised, and harvested in Hawaii. 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: 4/3/2023

LATE



MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

**HEARING BEFORE THE SENATE COMMITTEE ON
WAYS AND MEANS
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 211
WEDNESDAY, APRIL 5, 2023 AT 10:00 A.M.**

To The Honorable Senator Donovan M. Dela Cruz, Chair
The Honorable Senator Gilbert S.C. Keith-Agaran, Vice Chair
Members of the committee on Ways and Means

SUPPORT OF HB947 HD1 SD1 RELATING TO AGRICULTURE

The Maui Chamber of Commerce would like offer our **SUPPORT for HB947 HD1 SD1** relating to agriculture that establishes a food manufacturer tax credit and defines “qualified taxpayers” as manufacturers that produce value-added products.

Agriculture and manufacturing are difficult industries in Hawaii, but are very important to our economic diversification and sustainability efforts. We are pleased to work with the Maui County Farm Bureau and local manufacturers who create value-added food products through our Made in Maui County Festival. We wholeheartedly support this bill to establish a food manufacturer tax credit to help offset costs and support our manufacturing and agricultural industries.

Mahalo for the opportunity to offer **SUPPORT for HB947 HD1 SD1**.

Sincerely,

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui’s unique community characteristics.

HB-947-SD-1

Submitted on: 4/3/2023 1:30:56 PM

Testimony for WAM on 4/5/2023 10:00:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Cards Pintor | Individual | Support | Written Testimony Only |

Comments:

Aloha,
I support this bill.
Mahalo nui,
Cards Pintor

HB-947-SD-1

Submitted on: 4/3/2023 3:35:35 PM

Testimony for WAM on 4/5/2023 10:00:00 AM

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

Comments:

Please support HB947 HD1 SD1.