

DAVID Y. IGE  
Governor

SHAN S. TSUTSUI  
Lt. Governor



State of Hawaii  
DEPARTMENT OF AGRICULTURE  
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SCOTT E. ENRIGHT  
Chairperson, Board of Agriculture

PHYLLIS SHIMABUKURO-GEISER  
Deputy to the Chairperson



TESTIMONY OF SCOTT E. ENRIGHT  
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON AGRICULTURE

FEBRUARY 8, 2017  
8:30 A.M.  
CONFERENCE ROOM 312

HOUSE BILL NO. 230  
RELATING TO TAXATION

Chairperson Creagan and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 230, which creates a new income tax credit for agricultural businesses that are required to take land out of active production in order to comply with Federal food safety requirements. The Department of Agriculture offers comments on the responsibilities assigned.

It is our understanding that the Federal Food Safety Modernization Act (FSMA) will probably assess monetary fines rather than require farmers to take a portion of their cultivable lands out of production. If farmers have environmental issues for which FSMA has jurisdiction, it will be the responsibility of the affected farmers to determine what portion of their farms need to be fallowed.

The Department, at this time, is unable to determine the approximate number of farmer taxpayers that may be affected by the costs associated with the removal of production land resulting from application of FSMA rules.

The bill defines "agricultural business" (page 6, line 15 to page 7, line 7) as a "commercial" operation. The term "commercial" needs to be further defined. The bill



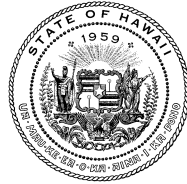
also defined “qualified compliance costs” (page 7, lines 10-14) as “loss of income incurred by an agricultural business as a result of being required to take land out of active production or use in order to comply with federal food safety requirements, such as the Food Safety Modernization Act.” Further definition is needed for “loss of income”, such as how to determine the time period that the taxpayer is unable to use; how to estimate the portion of income lost that is attributable to the land area actively cultivated up until the time it is removed from production due to food safety rules. Other terms may need to be defined in this measure, depending upon the FSMA regulations.

The Department is already responsible for duties in two existing tax credits, the Important Agricultural Land Qualified Agricultural Cost Tax Credit and the Organic Foods Production Tax Credit. Both come with responsibilities similar to that proposed in HB 230 and both did not provide personnel, appropriation of funds, or the ability to adopt rules to ensure fair and equal consideration of qualified costs for the effective duration of the tax credits.

Thank you for the opportunity to comment on this measure.

DAVID Y. IGE  
GOVERNOR

SHAN TSUTSUI  
LT. GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
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MARIA E. ZIELINSKI  
DIRECTOR OF TAXATION

DAMIEN A. ELEFANTE  
DEPUTY DIRECTOR

To: The Honorable Richard P. Creagan, Chair  
and Members of the Senate Committee on Agriculture

Date: Wednesday, February 8, 2017  
Time: 8:30 A.M.  
Place: Conference Room 312, State Capitol

From: Maria E. Zielinski, Director  
Department of Taxation

Re: H.B. 230, Relating to Taxation

The Department of Taxation (Department) appreciates the intent of H.B. 230 and provides the following comments for your consideration.

H.B.230 creates a refundable income tax credit for agricultural food safety compliance. The credit is calculated based on the loss of income incurred by the taxpayer required to take land out of active production in order to comply with federal food safety requirements. The credit is given to the taxpayer over three years, as twenty-five percent of the qualified costs in the first year, fifteen percent of the qualified costs in the second year, and ten percent of the qualified costs in the third year. The yearly amounts are capped at unspecified amounts. The credit additionally has an aggregate cap of an unspecified amount per year. The Department of Agriculture certifies all claims for the credit and must cease certifying credits after the fourth year following the year in which the credits are first claimed. The measure is effective for tax years beginning after December 31, 2016.

First, the Department notes that because the tax credit is based on lost income, it is unclear how the amount of tax credit available to each taxpayer can be calculated. No method is provided for arriving at an amount of lost income attributable to taking land out of service. Also, no criteria are established for determining that the land was taken out of service in order to comply with federal law. Audit of any claim for this tax credit will be difficult because taxpayers may use different methods to arrive at costs incurred. The subjectivity involved in calculating costs, particularly when combined with the fact that this tax credit is refundable, provides an opportunity for abuse of the tax credit.

Second, the tax credit may be claimed in any taxable year after the taxable year in which the costs were incurred, and claimed in consecutive or non-consecutive years until it is exhausted. This provision also makes an audit of any claim for the credit problematic as the audit may take place years after the costs were incurred. Any information submitted by the

taxpayer to support their claim for the credit would be extremely difficult for the Department to verify.

Third, as a general matter the Department prefers nonrefundable tax credits, which are easier to administer and less prone to abuse by taxpayers. The Department defers to the Department of Agriculture regarding its ability to certify claims for the tax credit, but requests that the certification process remain because the Department does not have the necessary expertise to certify claims for this credit.

Finally, the Department requests that the measure be made effective for taxable years beginning after December 31, 2017, to allow time for necessary changes to forms, instructions, and the Department's computer system.

Thank you for the opportunity to provide comments.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 6, 2017 1:36 PM  
**To:** AGRtestimony  
**Cc:** mendezj@hawaii.edu  
**Subject:** \*Submitted testimony for HB230 on Feb 8, 2017 08:30AM\*

**HB230**

Submitted on: 2/6/2017

Testimony for AGR on Feb 8, 2017 08:30AM in Conference Room 312

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Javier Mendez-Alvarez	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Establish Food Safety Income Tax Credit

BILL NUMBER: HB 230

INTRODUCED BY: EVANS, CREAGAN, MCKELVEY, MORIKAWA, NAKASHIMA, LoPresti, San Buenaventura, Takayama

EXECUTIVE SUMMARY: Establishes an income tax credit to assist farmers with expenses associated with compliance with the federal Food Safety Modernization Act. Are we telling farmers that we don't expect them to grow food that would be safe for consumers without paying them public money?

Amends HRS chapter 235 by adding a new section allowing the agricultural food safety compliance act tax credit.

The amount of the tax credit would be, in the first year the credit is claimed, the lesser of 25% of the qualified compliance costs or \$\_\_\_\_; in the second year the credit is claimed, the lesser of 15% of the qualified compliance costs or \$\_\_\_\_; in the third year the credit is claimed, the lesser of 10% of the qualified compliance costs and \$\_\_\_\_\_.

The credit is refundable. The taxpayer may claim the credit in any taxable year after the taxable year during which the taxpayer incurred the qualified compliance costs upon which the credit is claimed. The taxpayer also may claim the credit in consecutive or inconsecutive taxable years until exhausted.

The department of agriculture would verify and certify the qualified expenses, like how motion picture and television production credit expenses are certified by the Hawaii film office.

Defines "agricultural business" as any person with a commercial agricultural, silvicultural, or aquacultural facility or operation, including: (1) the care and production of livestock and livestock products, poultry and poultry products, apiary products, and plant and animal production for nonfood uses; (2) the planting, cultivating, harvesting, and processing of crops; and (3) the farming or ranching of any plant or animal species in a controlled salt, brackish, or freshwater environment; provided that the principal place of the agricultural business is maintained in the State.

Defines "qualified compliance costs" as losses of income incurred by an agricultural business as a result of being required to take land out of active production or use in order to comply with federal food safety requirements, such as the Food Safety Modernization Act.

Caps the credit at \$\_\_\_\_\_ for all qualified taxpayers in any taxable year.

EFFECTIVE DATE: Upon approval, applies to taxable years beginning after December 31, 2016.

STAFF COMMENTS: This proposed tax credit would appear undesirable as a matter of tax policy because the creditable behavior is a federal law that the taxpayer must comply with anyway.

Are we telling farmers that we don't expect them to grow food that would be safe for consumers without paying them public money? If we don't give them the money and they go out of business, shouldn't we be saying, "Good riddance, why do we need to have a farmer in the marketplace who is willing to put unsafe food on the market?"

Some technical comments:

- The bill as now drafted is inconsistent as to how credits are handled. The bill provides that the credits are refundable. If that is so, they do not need to be carried to prior or subsequent tax years, whether consecutive or not.
- The creditable amount in the bill is lost income. Substantiating that amount would be tricky at best, even for seasoned insurance adjusters. It is much easier to award a credit based on hard costs, which can be substantiated with invoices.

Digested 2/6/2017

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 7, 2017 11:53 AM  
**To:** AGRtestimony  
**Cc:** spawaikiki@gmail.com  
**Subject:** Submitted testimony for HB230 on Feb 8, 2017 08:30AM

**HB230**

Submitted on: 2/7/2017

Testimony for AGR on Feb 8, 2017 08:30AM in Conference Room 312

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
dennis boyd miller	Individual	Support	No

Comments: Dear Representatives, I'm Dennis Miller, a Waikiki resident. I'm writing to urge you to support this tax credit. Farmers need to follow guide lines for healthy soil, and that means declining to harvest every single season. It is reasonable to provide a tax break for the time in which their land is waiting for natural restorative processes to restore the soil for healthy farming. Thank you, Dennis Miller

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February 8, 2017

HEARING BEFORE THE  
HOUSE COMMITTEE ON AGRICULTURE

**TESTIMONY ON HB 230**  
RELATING TO TAXATION

Room 312  
8:30 AM

Aloha Chair Creagan, Vice Chair DeCoite, and Members of the Committee:

I am Randy Cabral, President of the Hawaii Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,900 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.

**HFB supports HB 230**, which establishes an income tax credit for agricultural businesses that are required to take land out of active production in order to comply with federal food safety requirements.

Foodborne illnesses can be serious and we should seek ways to reduce the risk. This bill will provide that assistance to our farmers for the costs they will incur to become food safety compliant.

The many criteria associated with FSMA to be compliant should not be an impediment for safe food. Hawaii cannot afford to further lose farmers as we strive to increase local food production. We want to incentivize our farmers' ability to continue their operations and provide Hawaii with abundant safe food.

Hawaii Farm Bureau respectfully requests your **strong support of HB 230** which will assist farmers with expenses to become compliant with the Food Safety Modernization Act.

Thank you for the opportunity to testify on this measure.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 8, 2017 7:14 AM  
**To:** AGRtestimony  
**Cc:** darakawa@lurf.org  
**Subject:** Submitted testimony for HB230 on Feb 8, 2017 08:30AM



**HB230**

Submitted on: 2/8/2017

Testimony for AGR on Feb 8, 2017 08:30AM in Conference Room 312

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
David Z. Arakawa	Land Use Research Foundation of Hawaii	Support	No

Comments: The Land Use Research Foundation of Hawaii (LURF) SUPPORTS HB 230, which establishes an income tax credit for agricultural businesses that are required to take land out of active production in order to comply with federal food safety requirements. LURF respectfully urges the favorable consideration of this measure by this Committee.

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