JOSH GREEN Lt. Governor



PHYLLIS SHIMABUKURO-GEISER
Acting Chairperson
Board of Agriculture

State of Hawaii **DEPARTMENT OF AGRICULTURE**

1428 South King Street Honolulu, Hawaii 96814-2512 Phone: (808) 973-9600 FAX: (808) 973-9613

TESTIMONY OF THE DEPARTMENT OF AGRICULTURE

BEFORE THE HOUSE COMMITTEES ON AGRICULTURE AND ECONOMIC DEVELOPMENT & BUSINESS

FEBRUARY 6, 2019 8:30 A.M. CONFERENCE ROOM 312

HOUSE BILL NO. 616 RELATING TO TAXATION

Chairpersons Creagan and McKelvey and Members of the Committees:

Thank you for the opportunity to testify on House Bill 616. This measure exempts from the general excise tax, amounts received by a producer of locally grown produce and locally raised livestock food products from a consumer. The Department of Agriculture supports this measure.

This measure offers a tax exemption limited solely to producers of produce and livestock to be consumed for nutrition within the State. This directly supports the State's goals in food security and self sufficiency with benefits to local farmers and ranchers who grow agricultural products.

Thank you for the opportunity to testify on this measure.



DAMIEN A. ELEFANTE DEPUTY DIRECTOR

JOSH GREEN M.D.
LIEUTENANT GOVERNOR



STATE OF HAWAII DEPARTMENT OF TAXATION

830 PUNCHBOWL STREET, ROOM 221 HONOLULU, HAWAII 96813

http://tax.hawaii.gov/ Phone: (808) 587-1540 / Fax: (808) 587-1560 Email: Tax.Directors.Office@hawaii.gov

To: The Honorable Richard P. Creagan, Chair

and Members of the House Committee on Agriculture;

The Honorable Angus L.K. McKelvey, Chair

and Members of the House Committee on Economic Development & Business

Date: Wednesday, February 6, 2019

Time: 8:30 A.M.

Place: Conference Room 312, State Capitol

From: Linda Chu Takayama, Director

Department of Taxation

Re: H.B. 616, Relating to Taxation

The Department of Taxation (Department) appreciates the intent of H.B. 616, but has concerns that the measure may violate the Commerce Clause of the United States Constitution.

H.B. 616 amends section 237-24.3, Hawaii Revised Statutes (HRS), by adding an exemption to the general excise tax (GET) for amounts received from a consumer by a producer of locally-grown produce and locally-raised livestock food products. The measure defines "locally grown produce" to mean any agricultural, horticultural, or vegetable product of the soil consumed for nutrition by humans that is grown in the State and sold within the State, and defines "locally raised livestock food products" to mean any product consumed for nutrition by humans that consists of or is derived from livestock raised in the State and sold within the State. The measure takes effect on January 1, 2020.

The Department believes that this exemption creates a constitutional issue. Limiting a tax exemption for food products solely to those food products that are grown or produced within the State is likely to violate the Commerce Clause of the United States Constitution. The Department ultimately defers to the Department of the Attorney General on the constitutionality of this provision.

Thank you for the opportunity to provide comments.



ON THE FOLLOWING MEASURE:

H.B. NO. 616, RELATING TO TAXATION.

BEFORE THE:

HOUSE COMMITTEE ON AGRICULTURE and HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS

DATE: Wednesday, February 6, 2019 **TIME:** 8:30 a.m.

LOCATION: State Capitol, Room 312

TESTIFIER(S): Clare E. Connors, Attorney General, or

Cynthia M. Johiro, Deputy Attorney General

Chairs Creagan and McKelvey and Members of the Committees

The Department of the Attorney General appreciates the intent of H.B. No. 616 and provides the following comments.

The purpose of this bill is to provide local farmers a general excise tax exemption for amounts received from the sale of locally grown produce and locally raised livestock food products upon a finding that "providing tax relief to producers of locally grown produce and locally raised livestock food products will make these local food products more affordable, increase sales, and return more profits to the local farmers and agriculture industry." See H.B. No. 616, pages 1-2. The bill defines "locally grown produce" as "any agricultural, horticultural, or vegetable product of the soil consumed for nutrition by humans that is grown in the State and sold within the State." The term "locally raised livestock food products" is defined in the bill as meaning "any product consumed for nutrition by humans that consists of or is derived from livestock raised in the State and sold within the State." Id. page 9, lines 4-11.

H.B. No. 616 could be subject to challenge as violative of the Commerce Clause of the United States Constitution. Article I, section 8, clause 3, of the United States Constitution provides that the Commerce Clause grants Congress power to "regulate Commerce . . . among the several States." "It has long been accepted that the Commerce Clause not only grants Congress the authority to regulate commerce among

Testimony of the Department of the Attorney General Thirtieth Legislature, 2019
Page 2 of 2

the States, but also directly limits the power of the States to discriminate against interstate commerce." New Energy Co. of In. v. Limbach, 486 U.S. 269, 273-74, 108 S. Ct. 1803, 1807-08, 100 L. Ed. 2d 302 (1988). "Discrimination against interstate commerce in favor of local business or investment is per se invalid, save in a narrow class of cases in which the municipality can demonstrate, under rigorous scrutiny, that it has no other means to advance a legitimate local interest." C & A Carbone, Inc. v. Town of Clarkstown, N.Y., 511 U.S. 383, 392, 114 S. Ct. 1677, 1683, 128 L. Ed. 2d 399 (1994), citing Maine v. Taylor, 477 U.S. 131, 106 S. Ct. 2440, 91 L. Ed. 2d 110 (1986). The United States Supreme Court stated in a case arising from a Hawai'i tax law that the cardinal rule of Commerce Clause jurisprudence is that "[n]o State, consistent with the Commerce Clause, may 'impose a tax which discriminates against interstate commerce . . . by providing a direct commercial advantage to local business." Bacchus Imports Ltd. v. Dias, 468 U.S. 263, 268 (1984) (citing Boston Stock Exch. v. State Tax Comm'n, 429 U.S. 318, 329 (1977)). In Bacchus, the United States Supreme Court struck down a an exemption from the liquor tax for locally produced alcoholic beverages upon finding that the exemption bestowed a commercial advantage on locally produced products. Similar to the bill at hand, the purpose of the exemption in Bacchus was to promote local industry and encourage increased consumption of local products.

In this bill, the tax exemptions for locally grown produce and livestock food products provide a commercial advantage to local producers in the form of lower taxes that would not be available to out-of-state competitors. This sort of discrimination in favor of local business is precisely what the Commerce Clause prohibits.

Due to the constitutional concerns noted above, the Department of the Attorney General believes this bill should be held.



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

February 6, 2019

HEARING BEFORE THE HOUSE COMMITTEE ON AGRICULTURE

TESTIMONY ON HB 616RELATING TO TAXATION

Room 312 8:30 AM

Aloha Chair Creagan, Vice Chair DeCoite, 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 1,900 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 strongly support HB 616, which exempts locally grown produce and locally raised livestock food products from the general excise tax.

Hawaii's agriculture industry faces numerous challenges. Sustainability, self-sufficiency and growing agriculture are popular concepts seen in many of the measures before the legislature this year. This Legislative Session, there have been many bills introduced that support of Hawaii's agricultural Industry.

Many of Hawaii's farmers and ranchers are struggling with the high cost of their operations. This measure, which seeks to provide a GET exemption to assist Hawaii's farmers and livestock industry, is critical to ensure the sustainability of Hawaii's diverse agriculture industry. This will help to reduce the operating costs and eventually help reduce the cost of purchasing local produce, flowers, livestock and aquaculture products to local consumers.

Thank you for this opportunity to testify in support of this measure.

LEGISLATIVE TAX BILL SERVICE

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, Exemption for Locally Grown Food

BILL NUMBER: HB 616

INTRODUCED BY: GATES, BROWER, CREAGAN, DECOITE, HASHEM, HASHIMOTO, HOLT, B. KOBAYASHI, C. LEE, MCKELVEY, MIZUNO, NAKASHIMA, NISHIMOTO, OHNO, ONISHI, TAKUMI, TARNAS, TODD, Eli, Kitagawa, San Buenaventura, Takayama

EXECUTIVE SUMMARY: Exempts sales of locally grown food from GET. Such an exemption violates the federal Commerce Clause and cannot be given effect, as held in *In re Hawaiian Flour Mills, Inc.*, 76 Hawai'i 1, 868 P.2d 419 (1994).

SYNOPSIS: Adds a new paragraph to section 237-24.3, HRS, to exempt from the GET amounts received by a producer of locally grown produce and locally raised livestock food products from a consumer.

Defines "locally grown produce" as any agricultural, horticultural, or vegetable product of the soil consumed for nutrition by humans that is grown in the State and sold within the State.

Defines "locally raised livestock food products" as any product consumed for nutrition by humans that consists of or is derived from livestock raised in the State and sold within the State.

EFFECTIVE DATE: January 1, 2020.

STAFF COMMENTS: The measure would grant a tax preference to locally grown produce or livestock food products. *In re Hawaiian Flour Mills, Inc.*, 76 Hawai'i 1, 868 P.2d 419 (1994), involved a general excise tax exemption for "agricultural, meat, or fish products grown, raised or caught in Hawaii" which the department of taxation interpreted to "include only those commodities which are sold in their original or natural state." Our supreme court struck down the exemption because it discriminated against other states' agricultural, meat, or fish products in violation of the Commerce Clause of the U.S. Constitution. The exemption, as proposed, is like the one invalidated in *Hawaiian Flour Mills*.

Digested 1/30/2019



Email: communications@ulupono.com

HOUSE COMMITTEES ON AGRICULTURE AND ECONOMIC DEVELOPMENT & BUSINESS Wednesday, February 6, 2019 — 8:30 a.m. — Room 312

Ulupono Initiative Supports HB 616, Relating to Taxation

Dear Chair Creagan, Vice Chair DeCoite, Chair McKelvey, Vice Chair Kitagawa, and Members of the Committees:

My name is Murray Clay and I am Managing Partner of Ulupono Initiative, a Hawaiʻi-based impact investment firm that strives to improve the quality of life for the people of Hawaiʻi by working toward solutions that create more locally produced food; increase affordable, clean, renewable energy; and better manage waste and fresh water resources. Ulupono believes that self-sufficiency is essential to our future prosperity and will help shape a future where economic progress and mission-focused impact can work hand in hand.

Ulupono <u>supports</u> HB 616, which exempts locally grown produce and locally raised livestock food products from the general excise tax, because it aligns with our goal to increase local food production.

This bill would support our local food producers by making their products more competitive. It would also help consumers by reducing the cost of locally produced food products consumed in the state. The general excise tax multiplies along the food supply chain, hitting multiple points between the producer and consumer. Therefore, general excise taxes make local food less competitive with imported food products.

As Hawai'i's local food issues become increasingly complex and challenging, organizations need additional resources and support to address and overcome them. We appreciate these committees' efforts to look at policies that support local food production.

We believe that through collaboration, we can help produce more local food and support an economically robust homegrown agriculture industry, which strengthens our community with fresh, healthy food. Thank you for this opportunity to testify.

Respectfully,

Murray Clay Managing Partner



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

Executive Officers

Toby Taniguchi, KTA Superstores, Chair
Joe Carter, Coca-Cola Bottling of Hawaii, Vice Chair
Charlie Gustafson, Tamura Super Market, Secretary/Treas.
Lauren Zirbel, HFIA, Executive Director
Beau Oshiro, C&S Wholesale Grocers, Past Chair
Stan Brown, Acosta Sales & Marketing, Advisor
Paul Kosasa, ABC Stores, Advisor
Barry Taniguchi, KTA Superstores, Advisor
Derek Kurisu, KTA Superstores, Advisor

TO:

Committee on Agriculture and Committee on Economic Development and Business Representative Richard P. Creagan and Representative Lynn DeCoite, Chairs Angus L.K. McKelvey and Lisa Kitagawa, Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION Lauren Zirbel, Executive Director

DATE: February 6, 2019

TIME: 8:30am

PLACE: Conference Room

RE: Relating to Taxation

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.

HFIA is in support of this measure. Food taxes are regressive and have the biggest impact on lower income families since these households spend the greatest percentage of their income on food. Ideally the state would not tax any groceries or other essential items, and exempting local produce and meat is a step in the right direction.

Hawaii has the highest cost of living in the nation. Many contributing factors of this are beyond control, such as our remote location and limited land area. But food taxes are within the Legislature's control. A GET exemption on local food helps bring down the cost of living and encourages Hawaii residents and visitors to choose our great locally grown fruits and vegetables and locally raised meat. For these reasons we ask that this measure be passed, and we thank you for the opportunity to testify.

Submitted on: 2/5/2019 12:27:18 PM

Testimony for AGR on 2/6/2019 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Sara Perry	Handcrafters and Artisans Alliance	Support	No

Comments:

I would like to offer an amendment to this bill to include not just locally grown produce and locally farmed products, but also to include any items manufactured in our state by verified residents of our state. This should include locally produced artwork, locally manufactured baked goods and food items, and anything that could meet already created standards of a "made in Hawaii" product.

The Handcrafters and Artisans Alliance aims to promote locally produced artwork, handcrafts, and handmade products by local residents. Our organization hosts the monthly Artfest events at Kapiolani Park, as well as weekly events in Ko Olina, and facilitates made in Hawaii vendors for events like the Pan Pacific block party, Honolulu Festival, and Aloha Week festivities in Waikiki. We do over 100 events annually. We have approximately 200 active members who would benefit significantly from this type of financial incentive, as we are all small businesses struggling to carve out a living in this tight economy.

Submitted on: 2/4/2019 9:18:46 AM

Testimony for AGR on 2/6/2019 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Randy Gonce	Young Progressives Demanding Action	Support	No

Comments:

Strong Support! This is a great step in the right doreito make healthy, local, and sustainable foods more available to all!

-Randy Gonce



O'ahu County Committee on Legislative Priorities

COMMITTEE ON AGRICULTURE

Rep. Richard P. Creagan, Chair Rep. Lynn DeCoite, Vice Chair

COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS

Rep. Angus L.K. McKelvey, Chair Rep. Lisa Kitagawa, Vice Chair

DATE: Wednesday, February 6, 2019
TIME: 8:30 a.m.
PLACE: Conference Room 312, State Capitol

RE: HB 616 Relating to Taxation

To the Honorable Richard P. Creagan, Chair; the Honorable Lynn DeCoite, Vice Chair; and Members of the Committee on Agriculture; and To the Honorable Angus L.K. McKelvey, Chair the Honorable Lisa Kitagawa, Vice Chair, and Members of the Committee on Economic Development and Business:

The O'ahu County Committee on Legislative Priorities (OCCLP) of the Democratic Party of Hawai'i (DPH) hereby submits its testimony in **SUPPORT of HB 616 relating to the Taxation.**

HB 616 provides that there shall be excluded from gross income, adjusted gross income, and taxable income: (13) The lesser of fifty-one per cent of gross annual income or \$50,000 of gross annual income earned by a farmer from farming activities. For purposes of this paragraph, "farmer" means an individual earning more than seventy-five per cent of the individual's annual gross income from farm products sold within the State.

Agriculture in our state must be preserved and its future strengthened. Sufficient prime agricultural lands must be maintained for the health, economic well-being and sustenance of the people. DPH believes in an integrated approach to agricultural innovation and sustainability. DPH encourages the responsible development of ocean resources and aquaculture to achieve sustainability in our State, of our marine resources and ensure and improve the health of our reef and marine life.

This approach includes, but is not limited to, the adoption of the Native Hawaiian concept of ahupua'a, an integrated approach to land management. This could also include development of economic, land and ocean use policies that foster sustainable crops both for local consumption and for export, policies to foster agriculture-related infrastructure at shipping points, and increased inspection to protect against invasive species and to encourage reduced holding times. We need to ensure food safety, strive towards food security and strive to set the highest standards for food quality and nutrition. *Democratic Party of Hawai'i Platform (2018), p. 9, In. 5-16.*

As an island state, securing affordable food for all is a priority. DPH supports healthy, sustainable, and diversified local food production, and "Buy Local" strategies to assure greater food security and food safety. *Democratic Party of Hawai`i Platform (2018), p. 9, ln. 28-29.*

For the foregoing reasons, i.e., to ensure food safety, strive towards food security and strive to set the highest standards for food quality and nutrition and to preserve and strengthen agriculture in our State, OCCLP supports HB 616 and urges its passage out of the Committee on Agriculture and Committee on Economic Development and Business.

Mahalo nui loa Me ka `oia`i`o

Melodie Aduja

Chair, O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i

Ph. (808) 258-8889

|s| **Melodie Aduja**

Email: legislativepriorities@gmail.com

<u>HB-616</u> Submitted on: 1/30/2019 6:47:50 PM

Testimony for AGR on 2/6/2019 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Autumn Ness	Individual	Support	No

<u>HB-616</u> Submitted on: 1/30/2019 8:11:50 PM

Testimony for AGR on 2/6/2019 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Brodie Lockard	350Hawaii.org	Support	No

Submitted on: 1/31/2019 11:47:29 AM

Testimony for AGR on 2/6/2019 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Emerald Gates	Individual	Support	No

Comments:

It is only fair that local growers get a break! We live in Hawaii you all know the struggle.

<u>HB-616</u> Submitted on: 1/31/2019 2:29:19 PM

Testimony for AGR on 2/6/2019 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Tadia Rice	Individual	Support	No

Submitted on: 2/1/2019 9:28:46 PM

Testimony for AGR on 2/6/2019 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Anonymous	Individual	Support	No

Comments:

It would benefit this bill if locals marketed the DOA's Hawaii Seal of quality that ensures it was made in Hawaii or change the logo design and how it stands apart from the label "Made in Hawaii".

Also to include axis deer meat to be on the market and for cows and any other livestock that are slaughtered here with zero waste facilities as seen in the example of White Oak Pastures farms. Link Below to be exempted.

Perhaps a local food festival /listing so we know where and who they are mass mailed to everyone.

https://www.whiteoakpastures.com/content/abattoirs.asp

Submitted on: 2/3/2019 6:10:43 PM

Testimony for AGR on 2/6/2019 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
SUSAN P HUGHES	Individual	Oppose	No

Comments:

I OPPOSE changes in the assessment of the state fuel tax from a specified cents per gallon to the greater of a specified cents per gallon or a specified percentage of the wholesale price per gallon to the retailer, subject to a minimum monetary amount of tax based upon the tax paid by certain retailers. Subjects biodiesel oil to the same tax rates and reporting requirements as diesel oil.

Submitted on: 2/4/2019 3:00:52 PM

Testimony for AGR on 2/6/2019 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Natasha Boteilho	Individual	Support	No

Comments:

I support the intent of this bill but would like it to be amended to include the following language:

Exempt taxing locally made food, clothes and any other merchandise. Support LOCAL all the way.

<u>HB-616</u> Submitted on: 2/4/2019 5:51:39 PM

Testimony for AGR on 2/6/2019 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kevin J. Cole	Individual	Support	No

AGRtestimony

From: Amy Martens <amarten1@att.net>
Sent: Tuesday, February 5, 2019 12:00 PM

To: AGRtestimony

Subject: Regarding HB 872 - Relating to Environmental Protection (Oppose)

HOUSE COMMITTEES ON AGRICULTURE AND ENERGY & ENVIRONMENTAL PROTECTION February 6, 2019, 9:45 a.m. Conference Room 312

Regarding HB 872 – Relating to Environmental Protection

I am writing to respectfully ask that you oppose HB 872. Invasive species are one of the largest issues impacting Hawaii's native forests and watershed areas. Glyphosate is an important tool in helping to eradicate invasive weeds. There are also health benefits in using glyphosate to control weeds that can produce pollen that triggers allergies or that harbor insects, snails or slugs that carry diseases.

When it comes to safety assessments, no other pesticide has been more extensively tested than glyphosate. In evaluations spanning four decades, the overwhelming conclusion of experts worldwide, including the Environmental Protection Agency, has been that glyphosate can be used safely according to label instructions.

Please don't start creating unnecessary rules that will make it more difficult for homeowners, farmers and government agencies to protect their families, employees and communities. Leave the usage requirements to the experts.

Please oppose HB 872.



HEARING BEFORE THE HOUSE COMMITTEE ON AGRICULTURE AND THE HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS HAWAII STATE CAPITOL, HOUSE CONFERENCE ROOM 312 WEDNESDAY, FEBRUARY 6, 2019 AT 8:30 A.M.

To The Honorable Richard P. Creagan, Chair; The Honorable Lynn DeCoite, Vice Chair; and Members of the Committee on Agriculture,

To The Honorable Angus L.K McKelvey, Chair; The Honorable Lisa Kitagawa, Vice Chair; and Members of the Committee on Economic Development & Business,

TESTIMONY IN SUPPORT OF HB 616 RELATING TO TAXATION

Aloha, my name is Pamela Tumpap and I am the President of the Maui Chamber of Commerce with approximately 650 members. I am writing share our support of HB 616.

This bill fits with one of our legislative priorities on supporting agriculture. Farming and ranching are very hard work and requires many high, upfront investment costs. There are also a number of unpredictable costs and factors that farmers and ranchers face once established. We need to have broader definitions for tax exemption qualifications to encourage further growth and development of the agriculture industry in Hawaii. Therefore, we support any legislation that provides tax exemptions to support ag, which will spur additional farming and agriculture in our state. Broader farming and agriculture supports a more sustainable Hawaii.

Further, we have long promoted buy local and locally-made products first and appreciate that this bill helps to incentivize buying local produce and locally-raised livestock products and also helps to reduce costs. As Hawaii's cost of living is so high, by exempting the tax on these items, it will be more equal to other states (who exempt food from their sales tax) when it comes to food costs. As the legislature this year has several bills to address the minimum wage as many are concerned about the living wage, one of the ways to address that is to eliminate the GET on necessities, including food and medication. We applaud this bill for seeking to address this, while also doing it in away to support the purchase of locally-grown produce and livestock products, which is a more sustainable solution.

Mahalo for your consideration of our testimony and we hope you will move this bill forward.

Sincerely,

Pamela Tumpap President

Pamela Jumpap

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.

<u>HB-616</u> Submitted on: 2/5/2019 9:31:10 PM

Testimony for AGR on 2/6/2019 8:30:00 AM



Submitted By	Organization	Testifier Position	Present at Hearing
Dale Sandlin	Hawaii Cattlemens Council	Support	No

<u>HB-616</u> Submitted on: 2/5/2019 10:31:50 PM

Testimony for AGR on 2/6/2019 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Brett Kulbis	Honolulu County Republican Party	Support	No