



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2020**

ON THE FOLLOWING MEASURE:

H.B. No.2156, RELATING TO TAXATION OF LOCALLY PRODUCED, ORGANIC FOOD.

BEFORE THE:

HOUSE COMMITTEE ON AGRICULTURE

DATE: Friday, February 7, 2020

TIME: 8:30 a.m.

LOCATION: State Capitol, Room 312

TESTIFIER(S): Clare E. Connors, Attorney General, or
Mary B. Yokota, Deputy Attorney General

Chair Creagan and Members of the Committee:

The Department of the Attorney General has concerns regarding this bill and provides the following comments.

The stated purpose of H.B. No. 2156 “is to help Hawaii achieve its local food production goals by: (1) Providing a tax credit for locally produced, organic food; and (2) Exempting locally produced, organic food from the general excise tax.” See H.B. No. 2156, page 1, line 13, to page 2, line 2. A qualified taxpayer under the Act is defined as “a certified organic farm . . . that produces agricultural products or livestock in the State.” See id. at page 2, lines 18-20.

This bill could be subject to challenge as a violation of the Commerce Clause of the United States Constitution.

The Commerce Clause provides that Congress shall have the power to “regulate Commerce . . . among the several States.” U.S. Const. art I, § 8, ct. 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.” *Oregon Waste Systems, Inc. v. Dep’t of Env’tl. Quality*, 511 U.S. 93, 98, 114 S. Ct. 1345, 1349 (1994). This implicit constitutional restriction upon the States has become known as the “negative” or “dormant” Commerce Clause doctrine. See *Rocky Mountain Farmers*

Union v. Corey, 730 F.3d 1070, 1087 (9th Cir. 2013). The 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. Michigan Dep’t of Natural Resources*, 504 U.S. 353, 112 S. Ct. 2019 (1992) (internal brackets omitted), upon concern about “economic protectionism,” *i.e.*, “regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors.” *Department of Revenue of Ky. v. Davis*, 553 U.S. 328, 337, 128 S. Ct. 1801, 1808 (2008). For example, in *Bacchus Imports Ltd. v. Dias*, 468 U.S. 263 (1984), the United States Supreme Court struck down an exemption from the liquor tax for locally produced alcoholic beverages upon finding that the exemption bestowed a commercial advantage on locally produced products.

Here, an income tax credit and exemption from the general excise tax would be given to local certified organic farms that produce agricultural products or livestock in the State, but it would not be available to out-of-state producers of agricultural products or livestock. Similar to the situation in *Bacchus*, the proposed tax credit and exemption may be challenged as unconstitutional because it bestows a commercial advantage on locally produced products in the form of lower taxes, while burdening out-of-state competitors who would not be eligible for the same tax credit and exemption. The bill may further be challenged under the Commerce Clause because it has “both the purpose and effect of discriminating in favor of local products.” *Bacchus*, 468 U.S. 263, 273.

Based on the foregoing, we respectfully ask that these concerns be addressed. One way to do so is to remove the requirement that agricultural products or livestock be produced “in the State” to qualify for the tax credit and exemption. This amendment would address the possible Commerce Clause challenge by allowing the tax credit and exemption for both locally and out-of-state produced farm products.

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture

MORRIS M. ATTA
Deputy to the Chairperson

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TESTIMONY OF PHYLLIS SHIMABUKURO-GEISER
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON AGRICULTURE

FRIDAY, FEBRUARY 7, 2020
8:30 A.M.
CONFERENCE ROOM 312

HOUSE BILL NO. 2156
RELATING TO TAXATION OF LOCALLY PRODUCED, ORGANIC FOOD

Chairperson Creagan and Members of the Committee:

Thank you for the opportunity to testify on House Bill 2156 that establishes an income tax credit for locally produced, organic food and exempts locally produced, organic food from the general excise tax.

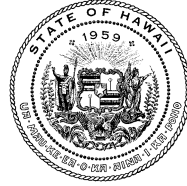
HB2156 offers certified organic farms a 25% exemption from the General Excise Tax (GET) for their sales of agricultural products or livestock in the State for five years. This is on top of the tax credit for organic farmers and others, established in 2016 by Act 258/SLH2016), who may claim a tax credit of up to \$50K to produce organically certified agricultural products and/or costs to associated with organic certification per tax year. The Department notes that the GET exemption contemplated in this measure and the tax credit established by Act 258 SLH 2016 will overlap in tax year FY2021.

According to the 2017 USDA Census of Agriculture, USDA National Certified Organic farms are 2.07% of Hawaii's total number of farms. Doubling local food production and improving local food self-sufficiency through increased local food production are overarching priorities of the Legislature and the Administration. The Department would encourage that actions taken to reduce costs and increase incomes to agricultural operators be applied broadly. The Department supports the intent of this measure, and would additionally encourage that this exemption be applied to all agricultural producers in the State.

Thank you for the opportunity to testify on this measure.



DAVID Y. IGE
GOVERNOR
JOSH GREEN M.D.
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
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RONA M. SUZUKI
DIRECTOR OF TAXATION
DAMIEN A. ELEFANTE
DEPUTY DIRECTOR

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

From: Rona M. Suzuki, Director
Department of Taxation

Re: H.B. 2156, Relating to Taxation of Locally Produced, Organic Food

Date: Friday, February 7, 2020

Time: 8:30 A.M.

Place: Conference Room 312, State Capitol

The Department of Taxation (Department) appreciates the intent of H.B. 2156, but has concerns about the measure.

H.B. 2156 creates a new refundable income tax credit for agricultural products or livestock produced by a certified organic farm in the State, and amends section 237-24.3, Hawaii Revised Statutes, to exempt from the general excise tax (GET) amounts received by a certified organic farm that produces agricultural products or livestock in the State. The income tax credit would be equal to 25 percent of the certified organic farm's taxable income, up to an unspecified cap, and the credit would be available for five consecutive years, beginning from the first taxable year in which a qualified taxpayer begins producing agricultural products or livestock in the State. It is effective July 1, 2020, with changes to income tax applying to taxable years beginning after December 31, 2020.

The Department believes the measure is likely to violate the Commerce Clause of the United States Constitution because it provides a tax benefit only to locally produced products. An opinion from the Attorney General should be requested.

Notwithstanding the potential commerce clause violation, the Department suggests specifying the income that would qualify for the credit. As currently written, the taxpayer would qualify for being a certified organic farm and all income would qualify for the credit even if it did not relate to farming.

The Department is able to administer the bill as written, but respectfully requests that any changes to the GET be made effective for gross receipts received on or after January 1, 2021. This will level the playing field so the exemption will apply to all affected taxpayers regardless of the tax year followed. The date change will also give the Department time to update forms and our computer system.

Thank you for the opportunity to provide comments.



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Toby Taniguchi, KTA Superstores, *Advisor*

TO:
Committee on Agriculture
Rep. Richard P. Creagan, Chair
Rep. Lynn DeCoite, Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION
Lauren Zirbel, Executive Director

LATE

DATE: February 7, 2020
TIME: 8:30am
PLACE: Conference Room 312

RE: HB2156 Relating to Locally Produced Organic Food

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.

Exempting locally produced organic food from the GET is a step in the right direction. Food is a major expense for Hawaii families. In 2014, the average spent on food annually for a two-person household was \$9,978 in Maui county; \$9,901 in Kauai county; \$9,467 in Honolulu county; and \$7,676 in Hawaii county. Thirty-two states plus the District of Columbia exempt groceries from their sales taxes, and another six states tax groceries at lower rates than other goods. It is time for Hawaii to join this majority. This bill is a good start and we encourage the legislature to look at ending our state's regressive tax on all groceries.

We also support of efforts to increase local food production. The high cost of labor in our state combined with the high cost of real estate make agricultural activities and food manufacturing commercially very challenging in Hawaii. Tax credits like this can help encourage local agriculture and potentially bring down the cost of local food in our state. We support tax credits for local growers of organic food and would support similar tax credits for all local food producers. Thank you for the opportunity to testify.



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LATE

February 7, 2020

HEARING BEFORE THE
HOUSE COMMITTEE ON AGRICULTURE

TESTIMONY ON HB 2156
RELATING TO TAXATION OF LOCALLY PRODUCED, ORGANIC FOOD

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 1,800 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 supports the intent HB 2156, which establishes an income tax credit for locally produced, organic food and exempts locally produced, organic food from the general excise tax.

We agree that the organic sector of our agricultural industry has great potential and an opportunity to expand in Hawaii. Having a stronger organic industry will not only help the overall agricultural industry, but it will also lead to reducing imported organic products and invasive species that are commonly found on the importation of organic fruits and produce.

HFB supports any initiative that reduces the cost of production so that locally produced goods can compete with imported products, strengthening our local economy.

Hawaii Farm Bureau Policy states:

"State tax and monetary policies should be designed to encourage private initiative to help stabilize farm economics in the State of Hawaii, to promote employment and economic growth and to distribute the tax burden equitably. Further such policy should be used by the state, when appropriate, to encourage agricultural growth and expansion."

This measure falls in the "encourage agricultural growth and expansion." category. However, we believe that the tax credit and GET exemption should include all locally-produced foods, not just organic.

Thank you for this opportunity to testify on this important subject.

HB-2156

Submitted on: 2/4/2020 9:52:29 PM

Testimony for AGR on 2/7/2020 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Alexandra Kahn	Individual	Support	No

Comments:

Aloha Chair Creagan,

As stayed in the Section 1 of this Bill, we are a state separated by hundreds of miles from any other land mass and currently relying almost entirely on imported foods. Of the food we do grow on island, most of the land is owned by companies like Dole and Monsanto and covered in pesticides, which is turn contaminate our water supply, oceans, soil, and other farms which attempt to grow organically. This is not sustainable or smart because:

- with climate change, storms will continue to worsen and make it even harder for ships to get here with imports. This has already been happening
- Our carbon footprint is massive because so much is shipped in
- We are one of the only places in the world that has varying climates and temperates, as well as some of the most fertile soil ever, making us one of the best environments possible for food production
- We currently have operating ag land all over the state but much of the land is producing for export
- We have such a predictable climate compared to most places and therefore as climate change worsens and causes unpredictable weather patterns elsewhere, we have a more constant growing season here
- If we focus more on producing only what our people need, we can farm more efficiently
- We all know the damaging effects of pesticides and our islands have been working on getting rid of them, however, pesticides do help to make farming easier and increase yield, so incentives to not use pesticides and grow organically would be very beneficial

We already have less and less farmers with each new generation. It's hard work and many folks feel that doing things small scale and environmentally sustainable is not financially sustainable. It is important to provide aid to these folks so that we can boost local, organic farming and become a more resilient and healthier state.

Mahalo for your time,

Alexandra Kahn

HB-2156

Submitted on: 2/5/2020 8:21:04 AM

Testimony for AGR on 2/7/2020 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Wailana Marvin	Individual	Support	No

Comments:

HB-2156

Submitted on: 2/5/2020 8:21:17 AM

Testimony for AGR on 2/7/2020 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
James Pratt	Individual	Support	No

Comments:

HB-2156

Submitted on: 2/5/2020 8:22:36 AM

Testimony for AGR on 2/7/2020 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
pat gegen	Individual	Support	No

Comments:

Promote local organic farms. Creates jobs, good utilization of our ag lands, healthy population!

HB-2156

Submitted on: 2/5/2020 8:24:50 AM

Testimony for AGR on 2/7/2020 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Emma Thain	Individual	Support	No

Comments:

Because of the isolated nature of our islands, it is vital that we become more self-sustainable while increasing our dedication to the environment and general public health.

HB-2156

Submitted on: 2/5/2020 10:42:22 AM

Testimony for AGR on 2/7/2020 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Bradley Pratt	Individual	Support	No

Comments:

HB-2156

Submitted on: 2/5/2020 10:42:38 AM

Testimony for AGR on 2/7/2020 8:30:00 AM

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

Comments:

HB-2156

Submitted on: 2/5/2020 10:43:52 AM

Testimony for AGR on 2/7/2020 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Lucas McSweeney	Individual	Support	No

Comments:

HB-2156

Submitted on: 2/5/2020 10:43:59 AM

Testimony for AGR on 2/7/2020 8:30:00 AM

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

Comments:

HB-2156

Submitted on: 2/5/2020 7:49:35 PM

Testimony for AGR on 2/7/2020 8:30:00 AM

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

Comments:

Dear Representatives,

Increasing local food production is an important step towards making Hawai'i more self-sustaining. There are many benefits to supporting locally grown food. Eating and producing locally grown food creates a food system where money is kept within the local economy. Also, producing and consuming locally grown food lowers Hawai'i's carbon footprint and environmental impact by eliminating the need for food to be transported long distances. Helping Hawai'i increase local food production is helpful to our economy and the environment.

HB-2156

Submitted on: 2/6/2020 5:54:55 PM

Testimony for AGR on 2/7/2020 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
George Burnette	Individual	Support	No

Comments:

I support Hawaii becoming self-sufficient in the production of food. To not strive for that makes no sense. Please support this bill.