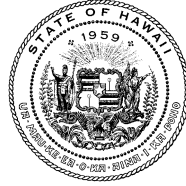


DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LT. GOVERNOR



ISAAC W. CHOY
DIRECTOR OF TAXATION

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

To: The Honorable Sylvia Luke, Chair;
The Honorable Ty J.K. Cullen, Vice Chair;
and Members of the House Committee on Finance

From: Isaac W. Choy, Director
Department of Taxation

Date: March 2, 2021
Time: 12:00 P.M.
Place: Via Videoconference, Hawaii State Capitol

Re: H.B. 1144, H.D. 2, Relating to Agriculture

The Department of Taxation (Department) offers the following comments regarding H.B. 1144, H.D. 2, for your consideration.

H.B. 1144, H.D. 2, amends section 237-24.3, Hawaii Revised Statutes (HRS), to exempt from General Excise Tax (GET) amounts received from the loading, transportation, and unloading of agricultural commodities that are shipped interisland for a qualifying entity. "Qualifying entity" means any entity engaged in agricultural activities as defined in section 269-1, HRS. The measure has a defective effective date of January 1, 2050, with the new GET exemption otherwise taking effect on July 1, 2021.

As stated in testimony on previous versions of this measure, the Department respectfully requests that the effective date of the new GET exemption be postponed until January 1, 2022. This will give the Department the necessary time to update forms, instructions, and any necessary computer system changes.

Thank you for the opportunity to provide comments.

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture

MORRIS M. ATTA
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

**TESTIMONY OF PHYLLIS SHIMABUKURO-GEISER
CHAIRPERSON, BOARD OF AGRICULTURE**

BEFORE THE HOUSE COMMITTEE ON FINANCE

**TUESDAY, MARCH 2, 2021
12:00 P.M.
VIA VIDEO CONFERENCE**

**HOUSE BILL NO. 1144, HD 2
RELATING TO AGRICULTURE**

Chairperson Luke and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 1144, HD2. This measure seeks to exempt from the General Excise Tax, the amounts received from interisland transportation of all agricultural commodities produced from the agricultural activities of qualifying entities, regardless where the product is grown. The agricultural products captured in the produced definition of "agricultural commodity" greatly expand the current definition by including livestock, poultry, apiary, non-food plants and animals, and all water-borne organisms.

The Department of Agriculture appreciates the intent of the proposed benefit to Hawaii's farming businesses and otherwise defers to the Department of Taxation.

Thank you for the opportunity to comment on this measure.





Maui County

March 2, 2021

HOUSE COMMITTEE ON FINANCE

TESTIMONY ON HB 1144 HD2 RELATING TO AGRICULTURE

Conference Room 308
12:00 PM

Aloha Chair Luke, Vice Chair Cullen, and Members of the Committee:

I am Warren Watanabe, Executive Director of the Maui County Farm Bureau. We are a county chapter of the Hawaii Farm Bureau, representing 170 farm families and organizations on the island. Our mission seeks to protect and increase the viability of farms and ranches while ensuring the social and environmental wellbeing of the island.

MCFB strongly supports HB1144 HD2 seeking to bring parity for agricultural producers in our island state.

Transportation is a major factor in agricultural marketing when production areas are separated from population centers by not only distance but bodies of water that limit access to markets. Farmers face increased costs for inputs and additional costs to sell their products on Oahu, the population center.

Some testimonies have addressed the concern of preferential rates over other consumer classes while others speak to the difficulty to identify qualified agricultural producers. The law has recognized the need for agricultural preferential rates in HRS 269-26.5. Relying on the YB Island Fresh discount does not address changes that have occurred in agriculture and updates are needed to help foster agricultural viability.

We support the efforts of the Hawaii Water Carriers Working Group.

However, action is needed NOW. Results of the working group are unknown and when they will be implemented is also in question. The future of farmers and ranchers is at risk and action is needed now. Regrets when farmers and ranchers fade, leaving Hawaii Oahu-centric will be too late.

The question of identifying agricultural producers can be left to the Department of Agriculture for the interim until the Department can develop an official definition. Just as County ag water rates require Schedule F, such a requirement could also be implemented. Solutions exist.

People want agriculture. Practical support is needed. We respectfully request your strong support in moving HB 1144 HD2 forward. Thank you.



Email: communications@ulupono.com

HOUSE COMMITTEE ON FINANCE
Tuesday, March 2, 2021 — 12:00 p.m.

Ulupono Initiative supports HB 1144 HD 2, Relating to Agriculture.

Dear Chair Luke 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 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; and better management of freshwater and waste.

Ulupono supports HB 1144 HD 2, which exempts from general excise tax law amounts received from the interisland transportation and related loading and unloading of agricultural commodities.

Ulupono is a champion for local food producers across the state, and believes that supporting each operation's bottom line is important for the State's food security and resilience. As Hawai'i's local food issues become increasingly complex and challenging, the agricultural industry will need additional resources and support to address and overcome them. We appreciate this committee's efforts to look at policies that support local food production and increase our state's food security and resilience.

Thank you for this opportunity to testify.

Respectfully,

Micah Munekata
Director of Government Affairs

Investing in a Sustainable Hawai'i

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, Exempts interisland transportation of livestock

BILL NUMBER: HB 1144, HD2

INTRODUCED BY: House Committee on Consumer Protection & Commerce

EXECUTIVE SUMMARY: Exempts from general excise tax law amounts received from the interisland transportation and related loading and unloading of livestock.

SYNOPSIS: Amends section 237-24.3(1) HRS, to broaden the existing exemption for loading, transportation, loading, and unloading of agricultural commodities shipped for a producer or produce dealer so that it applies to any product resulting from agricultural activities as defined in section 269-1, HRS, and that the shipper may be any entity engaged in agricultural activities as defined in section 269-1, HRS.

EFFECTIVE DATE: 1/1/2050.

STAFF COMMENTS: Our tax system, especially the General Excise Tax, applies to transportation of goods and people, We should seriously consider exempting transportation, and this bill appears to be a step in that direction. Here's why.

First, we can't tax air transportation. There are federal laws prohibiting us from applying a gross receipts tax (like our General Excise Tax) to transportation charges. Back in the late 70's and early 80's, we tried to tax air carriers by imposing our Public Service Company Tax, which applies to public utilities in lieu of GET. We were very creative. The Hawaii Supreme Court held, and our state told the U.S. Supreme Court, that our tax was actually a tax on real and personal property (which was allowed), but because it was so difficult to value the kinds of property that utilities had, like airspace rights, rights-of-way for power and cable lines, or easements for water pipes, the tax used the gross income of an airline as a proxy for valuing its property.

The U.S. Supreme Court didn't buy the argument. "It's still a tax measured by gross receipts, which is a gross receipts tax under federal law, and we get to interpret that federal law," they said, in effect, in a unanimous 8-0 decision in 1983. *Aloha Airlines, Inc. v. Director of Taxation*, 464 U.S. 7 (1983).

Despite this ruling, zealous tax auditors still tried to go after helicopter tour companies and those companies pushed back, leading the Department of Taxation to rule, in Tax Information Release 89-10, that those gross receipts were immune both from the Public Service Company Tax and the GET.

There are also federal restrictions on taxing transportation by water. Federal law prohibits anyone other than the federal government to tax a vessel, its passengers, or its crew while the vessel is operating on navigable waters. In 2010, our Intermediate Court of Appeals ruled that

the GET as applied to charges for chartering a sport fishing boat was valid because it was a tax on the business and not on the vessel, passengers, or crew. *In re Reel Hooker Sportfishing, Inc.*, 123 Haw. 494, 236 P.3d 1230 (Ct. App. 2010), *cert. denied*, 562 U.S. 1272 (2011). The court reasoned that the federal law was meant to prohibit fees and taxes on a vessel simply because the vessel sails through a given jurisdiction and didn't mean to affect whether sales or income taxes can apply in general. The Hawaii Supreme Court declined to review the case, as did the U.S. Supreme Court. So, GET can be applied to transportation by water, at least for now.

In the meantime, fine distinctions are already being made. In cases involving UPS and Lynden Air Freight, the Hawaii Supreme Court held that when a shipper pays for a shipment to go from your office to your counterpart on the Mainland, GET can apply only to the transportation by ground between your office and the airport. *Kamikawa v. United Parcel Service, Inc.*, 99 Haw. 336, 966 P.2d 648 (1998); *Kamikawa v. Lynden Air Freight, Inc.*, 89 Haw. 51, 968 P.2d 653 (1998), *cert. denied*, 526 U.S. 1087 (1999).

In short, the landscape here is filled with complexity and disparities between transportation industries. Are there good reasons why, as a matter of tax policy, we should tax water and ground transportation when air transportation can't be taxed? (Other than, "Because we can.") We're an island state. One of the reasons often given to explain our astronomical cost of living is that goods and people need to be shipped in and out, and that isn't done for free. So, what would happen if the tax goes away? The industries would compete on a more level playing field, residents would feel some relief in the cost of living department (or at least sellers wouldn't be able to use the tax as an excuse), and the government revenues might not go down because fewer costs may lead to more buying, and thus more total revenue subject to GET taxation.

Digested 2/27/2021



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

March 2, 2021

HEARING BEFORE THE
HOUSE COMMITTEE ON FINANCE

TESTIMONY ON HB 1144, HD2
RELATING TO AGRICULTURE

Conference Room 308
12:00 PM

Aloha Chair Luke, Vice-Chair Cullen, 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 strongly supports HB 1144, HD2, which exempts from general excise tax law amounts received from the interisland transportation and related loading and unloading of livestock.

Interisland transportation has been a major issue with neighbor island farmers and ranchers. The majority of agricultural lands are in the neighbor islands yet the population center is on Oahu. Neighbor island farmers and ranchers are disadvantaged when competing with fellow farmers and ranchers on Oahu due to additional transportation costs of bringing in supplies and sending product out. Each increase in interisland shipping rates means increased costs to these farmers and ranchers, costs that usually cannot be passed on to the vendor. This bill seeks to level the playing field by assisting these farmers and ranchers.

Thank you for this opportunity to testify on this measure.



Hawaii Cattlemen's Council, Inc.

COMMITTEE ON FINANCE

Rep. Sylvia Luke, Chair

Rep. Ty J.K. Cullen, Vice Chair

HB1144 HD2

Relating to Agriculture

DATE: Tuesday, March 2, 2021

TIME: 12:00 p.m.

PLACE: VIA VIDEOCONFERENCE

Chair Luke, Vice Chair Cullen, and Members of the Committee on Finance,

The Hawaii Cattlemen's Council **strongly supports HB1144 HD2** to exempt from general excise tax law amounts received from the interisland transportation and related loading and unloading of livestock and requires the public utilities commission to authorize preferential water carrier service rates by tariff for ratepayers that operate farms or ranches located in any county with a population equal or less than 500,000.

The bill is clear that it pertains to agricultural activities as defined in section 269-1. Livestock shippers are in need of a reprieve, as they are currently working under the 46% emergency rate increase to ship via Young Brothers. This bill would alleviate costs by exempting agricultural entities from general excise tax. General Excise taxes collected on items which would be affected by this amendment would be a small amount for the State but a big amount for local livestock producers. With support for the success of agricultural entities, ranchers have the ability to increase local food production and help the State improve our food security.

We also support the public utilities commission authorizing preferential water carrier service rates for ratepayers that offer farms or ranches in counties with a populations equal or to or less than 500,000. These counties are underserved and agricultural entities face high costs of business to try to serve their communities. We strongly support HB1144 HD2 which would provide financial help for agricultural entities in these counties.

Nicole Galase

Hawaii Cattlemen's Council

Managing Director

LATE *Testimony submitted late may not be considered by the Committee for decision making purposes.



MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

**HEARING BEFORE THE HOUSE COMMITTEE ON FINANCE
HAWAII STATE CAPITOL, HOUSE CONFERENCE ROOM 308
TUESDAY, MARCH 2, 2021 AT 12:00 P.M.**

To The Honorable Sylvia Luke, Chair;
The Honorable Ty J.K. Cullen, Vice Chair; and
Members of the Committee on Finance,

SUPPORT HB1144 HD2 RELATING TO AGRICULTURE

Aloha, my name is Pamela Tumpap. I am the President of the Maui Chamber of Commerce, in the county most impacted by the COVID-19 pandemic in terms of our dependence on the visitor industry and corresponding rate of unemployment. I am writing to share our support of HB1144 HD2.

The Maui Chamber of Commerce stands for a level playing field and feels that if the state wants to help and sustain the Ag Industry, they need to have outside of the box ideas. This bill would be a tremendous help to neighbor island farmers and ranchers and would provide more equity between them and farmers and ranchers on Oahu. We deeply appreciate the support from the Hawaii Farm Bureau, who represents farmers across the state, as well as neighbor island farm bureaus.

Mahalo for your consideration of our testimony and ask that you please pass this bill.

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-1144-HD-2

Submitted on: 3/1/2021 10:54:20 AM

Testimony for FIN on 3/2/2021 12:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kyle Caires	Individual	Support	No

Comments:

Aloha Chair Luke, Vice Chair Cullen, and Members of the Committee:

My name is Kyle Caires. I am an independent rancher from Maui County and a member of the Maui Cattlemen's Association and Maui County Farm Bureau.

As an advocate of farming and ranching in Hawai'i, I am writing in support of HB1144 seeking to exempt all agricultural commodities produced from local agricultural activities, from further taxation during interisland transportation. The high cost of transportation between the islands limits markets and make it difficult for many edible crop and livestock producers across the state to compete with imported product. I greatly appreciate the YB Island Fresh discount, but more needs to be done to keep farmers and ranchers competitive in the state. The revised language proposed is broader, as 'agricultural commodity', better expands opportunities for a variety of items produced by the diverse kind of agricultural entities across the state.

Mahalo for your time, and for the opportunity to submit comments,

Kyle

HB-1144-HD-2

Submitted on: 3/1/2021 9:54:38 PM

Testimony for FIN on 3/2/2021 12:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
William G. Jacintho	Individual	Support	No

Comments:

This bill will help Ag producers.

Thank you