

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
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**TESTIMONY OF SHARON HURD
CHAIRPERSON, BOARD OF AGRICULTURE**

BEFORE THE HOUSE COMMITTEE ON AGRICULTURE AND FOOD SYSTEMS

**MONDAY, FEBRUARY 13, 2023
ROOM 312
2:20 P.M.**

**HOUSE BILL NO. 619
RELATING TO TAXATION**

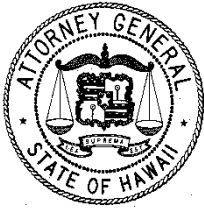
Chairperson Gates and Members of the Committee:

Thank you for the opportunity to testify on House Bill 619 that establishes an income tax credit for qualified small farms with gross sales of \$250,000 or less that donate eligible food products or prepared food to food banks or food pantries. The Department of Agriculture (Department) notes that the statewide amount of credits is not to exceed \$600,000 per taxable year, not to exceed \$150,000 per county, and not to exceed \$8,000 per qualified farm.

The Department appreciates the intent of this measure; however, we are very concerned about the resources needed for the Department to responsibly establish and administer this very complex tax credit. However, should this measure be enacted, the Department respectfully suggests expanding the eligibility of food products or prepared foods to all locally produced farmed plant products rather than limiting it to those derived from farmed plant products that are recognized as indigenous to native Hawaiian culture. The challenges and tax burdens sought to be addressed by this measure is equally shared by all small farmers. Otherwise, we defer to the Department of Taxation.

Thank you for the opportunity to testify on this measure.





**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. 607, RELATING TO TAXATION.

BEFORE THE:
HOUSE COMMITTEE ON AGRICULTURE AND FOOD SYSTEMS

DATE: Monday, February 13, 2023 **TIME:** 2:20 p.m.

LOCATION: State Capitol, Room 312

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Joshua J. Michaels, Deputy Attorney General

Chair Gates and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purpose of this bill is to combat food insecurity by incentivizing small farms to donate certain food products or prepared foods to food banks and food pantries. See page 2, lines 18-19. The bill would provide an income tax credit to qualified small farms, defined as "an operation with a gross cash farm income of \$250,000 or less" that is a "farm business that has a valid employer identification number and general excise tax license and is located in the State." See page 7, lines 3-8.

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 of commerce." *Oregon Waste Sys., Inc. v. Dep't of Env'tl. Quality*, 511 U.S. 93, 98 (1994). The "negative" or "dormant" aspect of the Commerce Clause 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, 359 (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." *Dep't of Revenue of Ky. v. Davis*, 553 U.S. 328, 337 (2008).

Here, an income tax credit would be given to qualified small farms "located in the State." See page 7, line 8. Small farms in the State who donate to food banks or food pantries would receive the tax credit, but small farms located outside the State who donate to those same food banks or food pantries would not receive any tax credit. Thus, the proposed tax credit may be challenged as unconstitutional because it would bestow a commercial advantage on small farms located in the State, while burdening out-of-state competitors who would not be eligible for the same tax credit despite their donations.

One solution to this issue would be to remove the phrase "and is located in the State" from the definition of "qualified small farm" (page 7, line 8). This amendment would address the possible Commerce Clause challenge by allowing the tax credit for small farms both in and out-of-state who donate to food banks and food pantries.

If the Legislature wishes to focus specifically on "the issues of hunger and nutritional disparities for many families in Hawaii[.]" (page 2, lines 5-6), it may be more effective to amend page 3, line 7, to specify that the "food banks or food pantries" to which small farms are donating must be located in Hawaii. Allowing small farm taxpayers both inside and outside the State to receive the income tax credit for donating to Hawaii food banks would likely pass Constitutional muster while better fulfilling the purpose outlined in the preamble.

Thank you for the opportunity to offer these comments.

JOSH GREEN M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION

Ka 'Oihana 'Auhau
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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. 619, Relating to Taxation

BEFORE THE:

House Committee on Agriculture & Food Systems

DATE: Monday, February 13, 2023

TIME: 2:20 p.m.

LOCATION: State Capitol, Room 312

Chair Gates, Vice-Chair Kahaloa, and Members of the Committee:

The Department of Taxation ("Department") offers the following comments regarding H.B. 619 for your consideration.

H.B. 619 adds a new section to chapter 235, Hawaii Revised Statutes (HRS), to create a nonrefundable income tax credit for qualified small farms with gross sales of \$250,000 or less that donate eligible food products or prepared food to food banks or food pantries. The amount of the credit is equal to 100 percent of the wholesale value of the eligible food product or prepared food and shall not exceed \$8,000 per qualified small farm, with an annual aggregate cap of \$150,000 for each county. The measure requires the Department of Agriculture to certify this credit. The terms "eligible food product," "prepared food," and "qualified small farm" are defined in this measure.

This bill is effective on July 1, 2023 and applies to taxable years beginning after December 31, 2022 and shall be repealed on June 30, 2026.

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

Second, the Department recommends prohibiting taxpayers from using the same donation as a basis for a charitable deduction and the tax credit. This may be accomplished by adding a new subsection providing:

No other tax credit or deduction shall be claimed under this chapter for amounts claimed under this section for the taxable year.

Finally, the Department notes that due to the number of bills with law changes that have been introduced this year, the Department may not have the resources to timely implement all measures passed this session in time for tax year 2023. The Department will continue to monitor the status of proposed legislation and will advise whether some changes will require a later effective date.

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



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e-mail info@hfbf.org; www.hfbf.org

February 13, 2023

HEARING BEFORE THE
HOUSE COMMITTEE ON AGRICULTURE & FOOD SYSTEMS

TESTIMONY ON HB 619
RELATING TO TAXATION

Conference Room 312 & Videoconference
2:20 PM

Aloha Chair Gates, Vice-Chair Kahaloa, 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 HB 619, which establishes an income tax credit for qualified small farms with gross sales of \$250,000 or less that donate eligible food products or prepared food to food banks or food pantries.

The Coronavirus Pandemic disrupted Hawai'i's local food systems and caused many local producers to lose their local markets. Many catered to tourism, large-scale events, hotels, restaurants, cruise ships, farmers' markets, and school lunch programs, which were non-existent during Hawai'i's shutdown.

Like small businesses around the state, without open and consistent markets, local farmers and ranchers will decrease food production levels and will likely downsize and/or go out of business. To help address the state's food security during the pandemic, Hawai'i's Foodbanks partnered with local food producers to ensure that farmers and ranchers could survive.

At the onset of the pandemic, Hawai'i's Foodbanks partnered with farmers and ranchers to provide local agricultural produce and proteins for their food assistance programs. As organizations that aggregate and distribute food, Foodbank staff brought valuable logistical insight to these programs. The combined efforts of Hawai'i's Foodbanks, the Hawai'i Farm Bureau, and other partner organizations allowed tens of thousands of families to have access to food during unprecedented times. This win-win partnership connected local producers that lost markets and revenue sources due to COVID-19 with the Hawai'i Foodbank to meet the increased demands of feeding Hawai'i's communities.

An income tax credit will encourage and support small farmers that donate eligible food to food banks and other community feeding programs to communities in need. This will support Hawai'i's farmers and ranchers while also providing local nutritional food to those who need it most.

Thank you for the opportunity to testify on this measure.



Email: communications@ulupono.com

HOUSE COMMITTEE ON AGRICULTURE & FOOD SYSTEMS
Monday, February 13, 2023 — 2:20 p.m.

Ulupono Initiative supports HB 619, Relating to Taxation.

Dear Chair Gates 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 619, which establishes an income tax credit for qualified small farms with gross sales of \$250,000 or less that donate eligible food products or prepared food to food banks or food pantries.

Ulupono supports the local food producers with their efforts to support food banks and food pantries. This type of tax incentive can help to further connect any excess or seconds from Hawai'i's producers to food banks and pantries that serve our communities. It also serves to reinforce important relationships between Hawai'i's food producers and service entities in addressing food insecurity throughout our state.

Thank you for the opportunity to testify.

Respectfully,

Micah Munekata
Director of Government Affairs

Investing in a Sustainable Hawai'i

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Tax Credit for Donation by Qualified Small Farms

BILL NUMBER: HB 619

INTRODUCED BY: POEPOE, AMATO, CHUN, COCHRAN, GANADEN, GARCIA, HASHIMOTO, HOLT, HUSSEY-BURDICK, ICHIYAMA, KAHALOA, KAPELA, KITAGAWA, LOWEN, MARTEN, MATAYOSHI, MORIKAWA, NISHIMOTO, PERRUSO, TAM, TODD, WOODSON

EXECUTIVE SUMMARY: Establishes an income tax credit for qualified small farms with gross sales of \$250,000 or less that donate eligible food products or prepared food to food banks or food pantries. Appropriates funds.

SYNOPSIS: Adds a new section to chapter 235, HRS, to establish the qualified small farm food donation tax credit. The credit is equal to 100% of the wholesale value of the eligible food product or prepared food donated to food banks or food pantries, up to \$8,000 per qualified small farm.

The total amount of tax credits is limited to \$150,000 per county.

The credit is nonrefundable but may be carried forward until exhausted.

All claims for the tax credit under this section, including amended claims, shall be 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 department of agriculture is tasked with certifying credits, and the certificate is then submitted with the taxpayer's tax return.

The following definitions apply:

"Eligible food product" means fresh farmed plant products for human consumption, including farmed plant products that are recognized as indigenous to native Hawaiian culture.

"Prepared food" means a value-added eligible food product that consists of no more than two ingredients, with the primary ingredient being a farmed plant product that is recognized as indigenous to native Hawaiian culture. "Prepared food" includes but is not limited to poi and cooked kalo corms, kalo leaves, or breadfruit.

"Qualified small farm" means: (1) An operation with a gross cash farm income of \$250,000 or less; and (2) A farm business that has a valid employer identification number and general excise tax license and is located in the State.

EFFECTIVE DATE: July 1, 2023; applicable to taxable years beginning after December 31, 2022; repeals June 30, 2026.

STAFF COMMENTS: The food donated as described is presumably deductible under existing federal and state income tax law. One of the open questions will be whether both benefits can be taken if the bill becomes law.

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. In the bill's definitions of "eligible food product" and "prepared food," it appears that the bill is intended to benefit "fresh" "farmed plant product that is recognized as indigenous to native Hawaiian culture." 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: 2/12/2023

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Honolulu, O'ahu

Ray Maki
Kauai



Aloha Chair Gates, Vice Chair Kahaloa, and Members of the House Agriculture & Food Systems Committee,

The Hawaii Farmers Union United (HFUU) is a 501(c)(5) agricultural advocacy nonprofit representing a network of over 2,500 family farmers and their supporters across the Hawaiian Islands. **HFUU supports HB619.**

We believe this bill is the perfect combination of incentivizing good deeds and recognizing the important work that small farmers do for the community.

With this bill, the small farmers of Hawaii will be more likely to donate food products or prepared food to food banks or pantries, having the incentive of an income tax credit for their efforts and good nature. That said we believe in expanding this opportunity to farms of any size, as the ultimate beneficiaries of such donations are not the farmers but the communities receiving the foods.

Towards that end we offer the following proposed amendments:

- Expand credit to all farm sizes, not just those under \$250k.
- Remove prepared foods. Many food banks and similar operations have limitations on prepared foods, particularly that they must be prepared in certified kitchens.
- Increase total credit ceiling to \$1M.
- Provide an inter-annual rollover of excess credit value.
- Have donors report market value. Requiring HDOA to set market rates would be tough as market data collection has fallen off significantly since 2009. In Iowa the "value of the donation is specified by the donor and must reflect the market value of the food at the time of the donation using the guidelines set forth in IRS regulation 1.170A-13(b). Virginia uses a similar approach. Iowa provides a link to a worksheet that DOTAX or HDOA could be directed to provide.
- Clarify recipient eligibility. NY focused on food pantries, IA limits to a "registered Iowa food bank or food pantry or an Iowa emergency feeding organization". The latter approach could be a good way to reduce the impact to those entities that work on food access. If any non-profit were eligible then even those focused on issues unrelated to food access could receive goods and provide credits.

Mahalo for the opportunity to testify.

Kaipo Kekona, President HFUU/HFUF

A handwritten signature in black ink that reads "Kaipo S.K. Kekona".

HB-619

Submitted on: 2/10/2023 6:47:52 PM

Testimony for AGR on 2/13/2023 2:20:00 PM

Submitted By	Organization	Testifier Position	Testify
Dana Keawe	Individual	Support	Written Testimony Only

Comments:

support

HB-619

Submitted on: 2/12/2023 8:52:35 AM

Testimony for AGR on 2/13/2023 2:20:00 PM

Submitted By	Organization	Testifier Position	Testify
Laa Poepoe	Individual	Support	Written Testimony Only

Comments:

I support a tax credit for small-scale farmers who provide healthy produce for food distribution sites. Thank you.

HB-619

Submitted on: 2/12/2023 11:29:44 AM

Testimony for AGR on 2/13/2023 2:20:00 PM

Submitted By	Organization	Testifier Position	Testify
Caroline Azelski	Individual	Support	Written Testimony Only

Comments:

Support. Thank you.

HB-619

Submitted on: 2/12/2023 2:39:52 PM

Testimony for AGR on 2/13/2023 2:20:00 PM

Submitted By	Organization	Testifier Position	Testify
penny levin	Individual	Support	Written Testimony Only

Comments:

in support

HB-619

Submitted on: 2/12/2023 7:12:47 PM

Testimony for AGR on 2/13/2023 2:20:00 PM

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

Comments:

Please support HB619.

HB-619

Submitted on: 2/13/2023 11:58:21 AM

Testimony for AGR on 2/13/2023 2:20:00 PM

Submitted By	Organization	Testifier Position	Testify
Robin Hill	Individual	Support	Written Testimony Only

Comments:

Testimony of Robin Hill

February 13, 2023

RE:HB619 RELATING TO TAXATION. Establishes an income tax credit for qualified small farms with gross sales of \$250,000 or less that donate eligible food products or prepared food to food banks or food pantries.

Aloha Chair and members of the House Committee,

I am writing on behalf of our agricultural community, and support House Bill 619 relating to tax credits for small farms to donate produce to food banks and food pantries.

The State can help to tackle issues of hunger and nutritional disparities for many families in Hawai'i by allowing tax credits for small farms to donate produce to food banks and food pantries. This will not only help families in need but will also reduce food waste at the agricultural production, processing, or distribution level; create partnerships between small farms and local organizations serving families in need; and increase access to and consumption of healthy, locally produced food products while reducing dependence on imported produce.

Please support HB619.

Thank you for taking time to consider my testimony.

Robin Hill

(808)756-0761

robininkona@yahoo.com