

**DAVID Y. IGE**  
Governor

**JOSH GREEN**  
Lt. Governor



**PHYLLIS SHIMABUKURO-GEISER**  
Chairperson, Board of Agriculture

**MORRIS 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 SENATE COMMITTEE ON**  
**AGRICULTURE AND ENVIRONMENT**

**FEBRUARY 11, 2022**

**1:30 P.M.**

**CONFERENCE ROOM 224 & VIA VIDEOCONFERENCE**

**SENATE BILL NO. 2556**  
**RELATING TO MILK PRODUCTION**

Chairperson Gabbard and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill 2556. This measure repeals Hawaii Revised Statutes (HRS) Chapter 157 commonly referred to as the Milk Control Act. The Hawaii Department of Agriculture (Department) offers comments on and recommendations for the measure.

The initial intent of Milk Control Act was to strengthen and create order in the Hawaii dairy industry by giving the Department the authority to establish milk prices paid to producers by the processor based on quota and to regulate the industry at a time when the State was self-sufficient in milk. The State is no longer self-sufficient in milk and the Department currently does not set the minimum price of milk pursuant to Hawaii Administrative Rules §§4-60-9(a) and 4-60-10(a), which allows the producer to sell its milk for less than the minimum price previously established by rule.



HRS §157-29 established the milk control special fund. Moneys collected for this fund are received by the Department as fees derived from a percentage of the total value of milk that is produced and processed. Over fifty dairies and five processing plants were in operation when the Milk Control Act was enacted in 1967. Currently, there is only one commercial scale dairy producing fluid milk, one inactive dairy, and one milk processor operating within the State. As such, fees collected have declined to the point where this special fund can no longer sustain the milk control program. The Department notes the milk control special fund is a regulatory fund which collects fees from the dairy industry for the specific purpose of funding the milk control program. As such, the fund balance of the special fund cannot be comingled with the general fund. The Department respectfully suggests that all remaining funds currently in the milk control special fund be used for a study conducted by the Department to determine how the Department can continue to support the milk industry upon repeal of HRS Chapter 157, or in the alternative, provide a refund of the balance to the dairy industry.

The Milk Control Act governs the quality of milk, milk composition, and marketing and promotion of locally produced milk. Though the act may be outdated and inconsistent with the current state of the Hawaii dairy industry, the Department is concerned about the lack of safeguards for milk quality and the absence of any promotion for local milk consumption if the measure is to move forward and HRS Chapter 157 repealed.

Thank you for the opportunity to testify on this measure.



Hawaii Coffee Association  
PO Box 168, Kealahou, HI 96750

SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT  
February 11, 2022

**RE: Testimony in Support for SB 2556; RELATING TO MILK PRODUCTION**

Aloha Chair Gabbard, Vice Chair Nishihara and Senators,

I am Chris Manfredi, Executive Director of Hawaii Coffee Association (HCA) testifying in support of SB 2556.

SB 2556 repeals Chapter 157, commonly referred to as the Milk Control Act. The obsolete Milk Control Act contains an outdated quota system that serves as a barrier to new milk and dairy producers.

Issues relating to supply chain disruptions, climate change and conversations and initiatives surrounding food security indicate the State should be doing all it can to encourage local dairy production.

Further, we understand that imported milk is pasteurized twice to enable the long journey necessary to reach Hawaii, arguably degrading its nutritional value for Hawaii's families.

We look forward to a future wherein Hawaii's locally grown coffee can be served with locally sourced dairy products.

Please pass this measure.

Thank you for the opportunity to testify and for your support for Hawaii's coffee and future dairy producers.

Michelle Galimba  
Kuahiwi Ranch  
PO Box 294  
Nā'ālehu, HI 96772

Testimony for SB 2556, AEN Committee, Feb 11, 2022, 1:30 pm

Aloha Chair Gabbard and Committee Members:

Thank you for the opportunity to testify in SUPPORT of SB2556 which will repeal the Milk Control Act. Simply put, the Act has outlived its purpose and no longer serves to support local milk production.

In the 1960's Hawai'i had dozens of commercial scale dairies and produced almost all of the milk consumed in the state. In fact, The Milk Control Act was created to address the problem of over-production of milk especially during the summer months when school was not in session.

We no longer have a problem of over-production of milk. In fact we only have one small commercial dairy left on Hawai'i island. What we need now is to encourage and support milk production rather than impose an outdated regulatory framework on potential new participants.

I grew up on dairy farms on Hawai'i Island and Oahu in the 1970's and 80's, and watched the slow decline of the industry. My father once managed some of the largest dairies in the state - the Meadow Gold Dairy in Hale'iwa and the Toledo Dairy in Wai'anae. In the 1990's when my family explored starting our own dairy on the Hawai'i Island, one of the roadblocks that we faced was "getting quota" as required under the Milk Control Act. To explain — as an unintended consequence of the Milk Control Act the milk quotas issued under this Act were monetized by industry participants. In other words dairies bought and sold "quota" to get access to the market. And as a result, quota holders - the dairies - were incentivized to block the issuance of new quota in order to preserve the value of the quota that they had previously bought. In fact our last remaining dairy holds "milk quota" on its balance sheet, although there are no other dairies left and the price it receives is based on a local premium paid by a local supermarket rather than on the quota price structure.

As a former member of the Board of Agriculture I had many conversations over the eight years of my term with dairy farmers and potential dairy farmers, who were frustrated with the Milk Control Act. It imposes a regulatory burden, inhibits new participants, and does not effectively support the local milk industry.

In fact the Legislature has already implicitly recognized that the Milk Control Act no longer serves a purpose, by repealing the Special Fund attached to the Act last year.

For these reasons I believe that repealing the Milk Control Act is a good first step towards revitalizing our local milk industry. I hope that the Legislature will see fit to create new legislation that will encourage and support milk production in our state.

Mahalo for your consideration,

Michelle Galimba





Hawaii Foodservice Alliance LLC, 2720 Waiwai Loop, Honolulu, HI 96819  
Tel: 808.839.2004 ~ Fax: 808.839.2033 ~ HFA@HFAHawaii.com

February 9, 2022

TO: Committee on Agriculture  
Chair Gabbard  
Vice Chair Nishihara

FROM: Chad Buck  
CEO  
Hawaii Foodservice Alliance LLC  
Hawaii Secure Foods LLC (Ookala)

RE: **Support** for SB 2556 relating to milk production quota

I am writing this letter in **support for SB 2556** pertaining to the repeal of chapter 157, commonly referred to as the Milk Control Act.

As the new operator of the former Ookala Dairy operation, I believe the the Milk Control Act is an unnecessary burden that provides no value to advancing dairy production in Hawaii.

Furthermore, the Legislature already implicitly recognized that the Milk Control Act no longer serves a purpose, and repealed the Special Fund attached to the Act last year. It seems that repealing the Milk Control Act is the next necessary step to help advance milk production in our state.

Thank you for allowing me to testify in **support of SB 2556**.

A handwritten signature in black ink, appearing to read "Chad Buck", is positioned below the text of the letter.

Chad Buck  
Hawaii Foodservice Alliance LLC  
Hawaii Secure Foods LLC

**SB-2556**

Submitted on: 2/10/2022 12:59:29 PM

Testimony for AEN on 2/11/2022 1:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Megahn Chun	Testifying for Meadow Gold Dairies Hawaii	Oppose	No

Comments:

February 10, 2022

Hawaii State Legislature

415 S Beretania St.

Honolulu, HI 96813

Re: S.B. NO. 2556

Dear Representatives of the Hawaii State Legislature:

Meadow Gold Dairies Hawaii LLC joins Cloverleaf Dairy, our partner and the sole operating dairy in the State of Hawaii in opposing SB No 2556. While Meadow Gold Dairies Hawaii LLC acknowledges that the current act requires reform, we do not find that a repeal would benefit the local dairy industry.

Please do not hesitate to contact us with any questions or if we may be of further assistance.

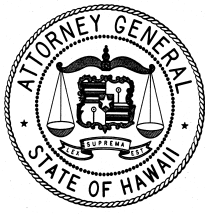
Sincerely,

Bahman Sadeghi

Managing Partner

Meadow Gold Dairies Hawaii LLC





**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTY-FIRST LEGISLATURE, 2022**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2556, RELATING TO MILK PRODUCTION.

**BEFORE THE:**

SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

**DATE:** Friday, February 11, 2022                      **TIME:** 1:30 p.m.

**LOCATION:** State Capitol, Room 224, Via Videoconference

**TESTIFIER(S):** Holly T. Shikada, Attorney General, or  
Jodi K. Yi or Bryan C. Yee, Deputy Attorneys General

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Chair Gabbard and Members of the Committee:

The Department of the Attorney General provides the following comments.

Section 2 of this bill repeals chapter 157, Hawaii Revised Statutes (HRS), the Milk Control Act. It does not indicate any disposition for funds currently in the milk control special fund, section 157-29, HRS.

We believe that under the *Hawaii Insurers Council v. Lingle*, 120 Hawai'i 51, 201 P.3d 564 (2008) decision, the moneys in the milk control special fund must be used to regulate the milk industry or risk being challenged as an unconstitutional violation of the separation of powers doctrine.

In *Hawaii Insurers Council*, the Hawai'i Supreme Court analyzed the differences between regulatory fees and taxes, recognizing that the power to assess regulatory fees rests with the executive branch of government, while the power to tax rests with the legislative branch. *Id.* at 59-70, 201 P.3d at 572-583. The Court concluded that by transferring regulatory fees into the general fund, the Legislature was treating the regulatory fees as tax revenues, in violation of the separation of powers doctrine. *Id.* at 72, 201 P.3d at 585.

*Hawaii Insurers Council* sets forth a three-prong test to determine whether moneys are regulatory fees or tax revenues: (1) whether a regulatory agency assesses the fee; (2) whether the agency places the money in a special fund; and (3) whether the assessment is expended for a general public purpose or used for the regulation or

benefit of the parties upon whom the assessment is imposed. *Id.* at 66, 201 P.3d at 579.

Applying the *Hawaii Insurers Council* test to the milk control special fund, first, the fees are assessed by the Department of Agriculture through administrative rules and not by the Legislature through statute. The amount of the fees is established by sections 4-60-4 and 4-60-5, Hawaii Administrative Rules, as a percentage of the value of the milk delivered (by a producer) and received (by a distributor/processor). The fees are paid by the producer and distributor/processor. The moneys are deposited into a special fund.

The moneys in the special fund are not used for a general public purpose. Rather, pursuant to section 157-29, HRS, the moneys in the special fund "shall be expended to cover all costs of administering this chapter [the Milk Control Act] including but not limited to the costs of salaries, fringe benefits, operating expenses, equipment, motor vehicles, contracts for services, and promotional expenses." The fees paid by the milk producer and distributor/processor are currently used to cover the Department of Agriculture's costs to regulate them.

Based on the foregoing, we believe the moneys in the milk control special fund constitute regulatory fees that cannot be swept into the general fund upon termination of the program. The special fund may be used for any of its existing uses, including salaries, studies to assist the milk industry or other similar expenditures consistent with *Hawaii Insurers Council*. The distribution of the moneys in the milk control special fund can be also addressed in conjunction with the timing of the repeal of chapter 157, HRS. We would be happy to assist in crafting specific wording at the legislature's direction. One alternative is to add the following wording to a new section of the bill and change the effective date to repeal chapter 157, HRS, as follows:

SECTION 3. All of the funds currently in the milk control special fund, notwithstanding the requirement to maintain an amount of not less than \$300,000 in the special fund under section 157-29, HRS, shall be used to cover all costs of regulating, supervising, investigating, and

assisting the milk industry, including but not limited to the costs of salaries, fringe benefits, operating expenses, equipment, motor vehicles, contracts for services, and promotional expenses.

SECTION ~~[3.]~~ 4. This Act shall take effect upon its approval[.]; provided that section 2 shall take effect on June 30, 2023.

Thank you for the opportunity to present this testimony.

**SB-2556**

Submitted on: 2/10/2022 1:06:50 PM

Testimony for AEN on 2/11/2022 1:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Ed Boteilho	Testifying for Cloverleaf Dairy	Oppose	No

Comments:

February 10, 2022

Hawaii State Legislature

415 S Beretania St.

Honolulu, HI 96813

Re: S.B. NO. 2556

Dear Representatives of the Hawaii State Legislature:

As the sole remaining dairy in operation in the State of Hawaii, I oppose SB No 2556. While there are provisions in the current act that may require reform, I do not find that a repeal would benefit my dairy and our small local dairy industry.

Sincerely,

Ed Boteilho

Cloverleaf Dairy