



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

SENATE COMMITTEES ON COMMERCE AND CONSUMER PROTECTION AND ON JUDICIARY

DATE: Tuesday, March 1, 2022 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 229, Via Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Jodi K. Yi,
Deputy Attorney General, at (808) 586-1195)

Chairs Baker and Rhoads and Members of the Committees:

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 a provision to refund the monies as determined by the Department of Agriculture and the Department of Budget and Finance. The wording would be as follows:

SECTION 2. Chapter 157, Hawaii Revised Statutes, is repealed. The monies remaining in the fund shall be distributed as refunds in a manner to be determined by the departments of agriculture and budget and finance.

Thank you for the opportunity to present this testimony.

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 COMMITTEES ON
COMMERCE AND CONSUMER PROTECTION

AND
JUDICIARY

MARCH 1, 2022

10:00 A.M.

VIA VIDEOCONFERENCE

SENATE BILL NO. 2556
RELATING TO MILK PRODUCTION

Chairpersons Baker, Rhoads, and Members of the Committees:

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 and the producer



is currently allowed to sell its milk for less than the minimum price pursuant to Hawaii Administrative Rules §§4-60-9(a) and 4-60-10(a).

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 adopted and HRS Chapter 157 repealed.

Thank you for the opportunity to testify on this measure.



LATE

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

February 28, 2022

TO: Committee on Consumer Protection
Chair Baker
Committee on Judiciary
Chair Rhoads

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**.

Chad Buck
Hawaii Foodservice Alliance LLC
Hawaii Secure Foods LLC

LATE

SB-2556

Submitted on: 3/1/2022 11:29:13 AM

Testimony for CPN on 3/1/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Hattie Gerrish	Individual	Support	No

Comments:

Aloha,

I strongly support this bill.

Mahalo for your consideration.