

**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  
Honolulu, Hawai'i 96814-2512  
Phone: (808) 973-9600 FAX: (808) 973-9613

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

**BEFORE THE HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT**

**WEDNESDAY, FEBRUARY 8, 2023**  
**9:45 A.M.**

**CONFERENCE ROOM 325 AND VIDEO CONFERENCING**

**HOUSE BILL NO. 947**  
**RELATING TO AGRICULTURE**

Chairperson Gates and Members of the Committee:

Thank you for the opportunity to present testimony on House Bill 947. This bill establishes a new income tax credit that incentivizes private food manufacturers to use locally grown ingredients in their products. The Department supports the intent and provides the following comments.

The Department acknowledges this effort may help to support the development of agricultural self-sufficiency and food security within the State. However, we have concerns on the tax credit amount that is equal to the qualified expenses of eligible taxpayers as qualified expenses include purchase, maintenance, or improvement of food manufacturing equipment and facilities (page 6, line 4-6). The amount of qualified expenses/tax credit could be substantial, and verifying the nature and value could present a challenge to the Department, given its limited resources and fiscal administration capacity.

The Department appreciates current legislative efforts to help develop the food manufacturing industry using locally grown agricultural products. Lastly, we defer to the Department of Taxation with respect to the proposed amendments in Chapter 235.

Thank you for the opportunity to testify on this measure.

JOSH GREEN M.D.  
GOVERNOR

SYLVIA LUKE  
LT. GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF TAXATION**

Ka 'Oihana 'Auhau  
P.O. BOX 259

HONOLULU, HAWAII 96809  
PHONE NO: (808) 587-1540  
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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. 947, Relating to Agriculture

**BEFORE THE:**

House Committee on Agriculture & Food Systems

**DATE:** Wednesday, February 8, 2023

**TIME:** 9:45 a.m.

**LOCATION:** State Capitol, Room 325

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

The Department of Taxation ("Department") offers the following comments regarding H.B. 947 for your consideration.

H.B. 947 adds a new section to chapter 235, Hawaii Revised Statutes (HRS), to create a new nonrefundable income tax credit for "qualified expenses," up to an unspecified amount, for producing value-added products using local crops. The bill sets an unspecified aggregate cap and requires the Board of Agriculture to certify all "qualified expenses." The terms "net income tax liability," "qualified expenses," and "qualified taxpayer" are defined in this measure.

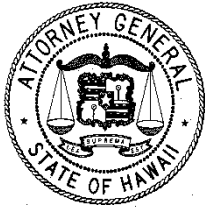
This bill is effective upon approval and applies to taxable years beginning after December 31, 2023.

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

Department of Taxation Testimony  
H.B. 947  
February 8, 2023  
Page 2 of 2

The Department further notes that it is able to administer this bill by the current effective date.

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



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
KA 'OIHANA O KA LOIO KUHINA  
THIRTY-SECOND LEGISLATURE, 2023**

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**ON THE FOLLOWING MEASURE:**  
H.B. NO. 947, RELATING TO AGRICULTURE.

**BEFORE THE:**  
HOUSE COMMITTEE ON AGRICULTURE AND FOOD SYSTEMS

**DATE:** Wednesday, February 8, 2023      **TIME:** 9:45 a.m.

**LOCATION:** State Capitol, Room 325

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

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Chair Gates and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purpose of this bill is to incentivize food production in the State by providing an income tax credit to food manufacturers who produce value-added products using local crops. The bill's preamble states that establishing this tax credit for "private food manufacturers in the State to use Hawaii-grown food ingredients in their products . . . will support the development of agricultural self-sufficiency and food security in Hawaii." See page 2, lines 6-9. The income tax credit would only be available to qualified taxpayers, with "qualified taxpayer" defined as "food manufacturers that produce value-added products using local crops." See page 6, lines 7-8.

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 in commerce," known as the Dormant Commerce Clause. *Or. Waste Sys., Inc. v. Dep't of Env'tl. Quality*, 511 U.S. 93, 98 (1994). 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. Mich. Dep't of Nat. Res.*, 504 U.S. 353

(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 for the manufacture of any value-added product using "local crops." See page 6, line 8. Although "local crops" is not defined, the preamble asserts that this credit will incentivize "private food manufacturers in the State to use Hawaii-grown food ingredients in their products." See page 2, lines 6-7. If these terms are interpreted to discriminate against crops grown or produced *out-of-state*, the proposed tax credit may be challenged as unconstitutional because it would bestow a commercial advantage on producers using locally-grown crops in the form of lower taxes, while burdening out-of-state competitors who would not be eligible for the same exemption if their crops were grown out-of-state.

Based on the foregoing, one solution would be to remove the phrase "using local crops" from the definition of "qualified taxpayer" (page 6, line 7). This amendment would address the possible Dormant Commerce Clause challenge by allowing the tax credit for food manufacturers using both locally and out-of-state grown crops.

Thank you for the opportunity to offer these comments.



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February 8, 2023

HEARING BEFORE THE  
HOUSE COMMITTEE ON AGRICULTURE & FOOD SYSTEMS

**TESTIMONY ON HB 947**  
RELATING TO AGRICULTURE

Conference Room 325 & Videoconference  
9:45 AM

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 947**, which establishes a food manufacturer tax credit and defines "qualified taxpayers" as manufacturers that produce value-added products using local crops.

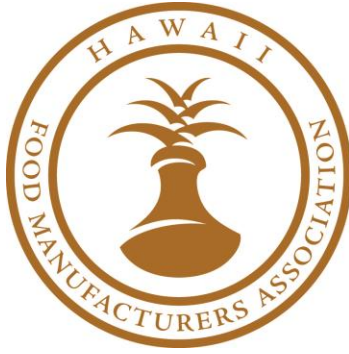
As expenses rise, increases in farm revenues and profits are critical to the continued viability of farms and ranches. One way farmers can do this is by "adding value" to raw agricultural crops. Currently, off-grade and excess production is sometimes wasted due to market conditions. Converting them into value-added products will not only increase farm revenue but also provide new business opportunities, increase employment opportunities, and address Hawai'i's goals of increased self-sufficiency and sustainability.

High production costs are a major driver of narrow profit margins for Hawai'i's farmers and value-added food producers. Labor, taxes, land, transportation, utilities, and supplies are all costs of doing business that often results in value-added food producers just being able to break even.

Hawai'i is potentially losing millions of dollars because of the cost to process agricultural crops into value-added products. HFB supports any program that supports the production of value-added products so that farmers can increase their income while allowing locally produced value-added goods can compete with imported products, strengthening our local economy.

The strength of Hawai'i's economy is dependent upon a diversity in commerce that is resilient to economic downturns and aggressive in creating new growth opportunities.

Thank you for your efforts to protect and support Hawai'i's farmers and ranchers.



**Testimony to the House Committee on Agriculture and Food Systems  
Wednesday, February 8<sup>th</sup>, 2023, at 9:45 A.M.  
Conference Room 325 & Via Videoconference**

**RE: HB 947 Relating to Agriculture**

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

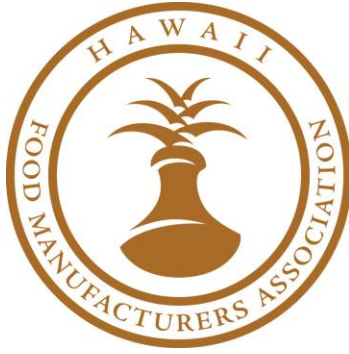
The Hawaii Food Manufacturers Association **strongly supports** HB 947, which establishes a food manufacturer tax credit. Defines "qualified taxpayers" as manufacturers that produce valued-added products using local crops. Applies to taxable years beginning after 12/31/2023.

The Hawaii Food Manufacturers Association (HFMA) is a non-profit organization of approximately 120 members that has been promoting Hawaiian grown or manufactured products since 1977. The HFMA works to increase the understanding and appreciation of the unique flavors, quality, and care that go into the production of Hawaii's fine foods and beverages represented by our valued members and enjoyed by our valued community.

The food manufacturing industry in Hawaii generates \$900 million in annual revenue and is the largest manufacturing sector in the state using local inputs according to the Hawaii State Department of Business, Economic Development and Tourism. The industry provides over 6,100 jobs in the state and an annual payroll of more than \$160 million.

Food manufacturers have struggled in recent years due to the COVID-19 pandemic, supply chain shortages, and rising inflation. This bill would be a tremendous help to the small businesses that are struggling to keep their doors open and bring back workers that were laid off during the last few years.

The state set goals to double local food production by 2030, but that is likely not going to happen unless small mom and pop food manufacturers have access to more capital or can receive investment from the private sector. Currently, there is no incentive for private investors to invest in agriculture or food manufacturing in Hawaii.



Establishing an incentive for private food manufacturers in the State to use Hawaii-grown food ingredients would not only promote made-in-Hawaii products but will kick-start our economy and get the state closer to the goal of doubling local food production by 2030.

Thank you for the opportunity to testify.





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#### **Executive Officers**

**Eddie Asato**, Pint Size Hawaii, *Chair*  
**Gary Okimoto**, Safeway, *Vice Chair*  
**Maile Miyashiro**, C&S Wholesale, *Secretary/Treas.*  
**Lauren Zirbel**, HFIA, *President and Executive Director*  
**John Schilf**, Rainbow Sales and Marketing, *Advisor*  
**Paul Kosasa**, ABC Stores, *Advisor*  
**Derek Kurisu**, KTA Superstores, *Advisor*  
**Toby Taniguchi**, KTA Superstores, *Advisor*  
**Joe Carter**, Coca-Cola Bottling of Hawaii, Odom, *Advisor*  
**Charlie Gustafson**, Tamura Super Market, *Immediate Past Chair*

TO: Committee on Agriculture and Food Systems

FROM: HAWAII FOOD INDUSTRY ASSOCIATION  
Lauren Zirbel, Executive Director

DATE: Wednesday, February 8, 2023  
TIME: 9:45am  
PLACE: Via Videoconference

RE: HB947 Relating to Agriculture

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.

Increasing local food production, is a goal we all share, and we are all aware of the many challenges that our local food producers face. High real estate prices, high labor costs, lack of economy of scale, and high energy costs can make it challenging or even impossible for locally made products to reach the market at competitive prices with imported products. For those interested in using local agricultural products in their manufacturing these challenges can be compounded because they apply to both the raw agricultural materials and the value added finished products. Unfortunately, these obstacles also mean that many who might be interested in manufacturing food here in Hawaii do not.

This measure would be an important step in making Hawaii food manufacturers, and agricultural producers more competitive. It will also incentivize more companies to choose to manufacture food products here in Hawaii, and facilitate deeper integration of local agricultural products within our food systems.

HFIA has proudly produced the Made in Hawaii Festival for over 25 years. We are keenly aware of the potential of our local food manufacturers and we know that with our support this sector and continue to grow and thrive. We urge you to pass this measure and we thank you for the opportunity to testify.

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Food Manufacturer Tax Credit

BILL NUMBER: HB 947, SB 1266

INTRODUCED BY: HB by GATES, HASHIMOTO, HUSSEY-BURDICK, KILA, LAMOSAO, LOWEN, MARTEN, MATAYOSHI, MIZUNO, NAKASHIMA, PERRUSO, TODD; SB by INOUE, AQUINO, KEOHOKALO

EXECUTIVE SUMMARY: Establishes a food manufacturer tax credit. Defines "qualified taxpayers" as manufacturers that produce valued-added products using local crops. Applies to taxable years beginning after 12/31/2023.

SYNOPSIS: Adds a new section to chapter 235, HRS, to establish the food manufacturer tax credit. The credit amount is 100% of the qualified expenses of the qualified taxpayer, up to \$\_\_\_\_\_.

Defines "qualified expenses" as the costs directly incurred by the taxpayer for the purchase, maintenance, or improvement of food manufacturing equipment and facilities.

Defines "qualified taxpayer" as food manufacturers that produce value-added products using local crops.

Requires the Department of Agriculture to verify and certify each claim for the credit including the total amount of credit for each taxable year and the cumulative amount of tax credit during the credit period. The department shall issue a certificate to qualifying taxpayers who shall file the certificate with the taxpayer's tax return.

Allows the Department of Agriculture to assess and collect a fee to offset the cost of certifying tax credit claims. If the amount of credits exceeds the taxpayer's income tax liability, the excess of credit over liability may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted. All claims for a credit under this section shall be properly 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 total amount of credits allowed shall not exceed \$\_\_\_\_\_ for all qualified taxpayers in any taxable year; however, any taxpayer who is not eligible to claim the credit in a taxable year due to the \$\_\_\_\_\_ cap having been exceeded for that taxable year shall be eligible to claim the credit in the subsequent taxable year.

EFFECTIVE DATE: Taxable years beginning after December 31, 2023.

STAFF COMMENTS: 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. The bill applies the credit only to "qualified taxpayers," which produce value-added products using "local crops," which we understand to mean plants grown in Hawaii. 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: 2/6/23



Email: [communications@ulupono.com](mailto:communications@ulupono.com)

HOUSE COMMITTEE ON AGRICULTURE & FOOD SYSTEMS  
Wednesday, February 8, 2023 — 9:45 a.m.

**Ulupono Initiative supports HB 947, Relating to Agriculture.**

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 947**, which establishes a food manufacturer tax credit for qualified taxpayers who produce value-added products using local crops.

Ulupono supports local food manufacturing as it provides market options for local farmers and ranchers to bring products to consumers. By processing various fruits, vegetables, meats, or dairy products into value-added goods, farmers and ranchers can utilize all of their products, some of which may have previously been considered food waste, and diversify their revenue streams. This tax incentive will help grow local production and influence future investments in food manufacturing.

Ulupono would like to note that this measure does not define a “qualified expense.” As this bill moves forward, we ask the committee to consider the various expenses that would be covered with such a broad tax credit. For example, food manufacturing costs that may qualify include access to land and water, equipment purchases, labor force, food safety compliance, and processing and packaging.

We recommend that this committee consider amending the definition of a “qualified taxpayer” to read as:

- “Qualified taxpayer” means food manufacturers that produce [~~value-added products using local crops~~] local value-added processed, agricultural, or food products.

We also recommend adding the following definitions:

*Investing in a Sustainable Hawai'i*

- “Local value-added processed, agricultural, or food product” shall be defined to mean at least fifty-one per cent of the product’s primary agricultural product shall be grown, raised, and harvested in Hawaii.”
- “Primary agricultural product” means the major agricultural product in a processed or value-added agricultural or food product

These definitions were mirrored after the Department of Agriculture’s Seal of Quality Program—the top-of-the-line program established to protect the Hawai’i brand for both fresh and value-added products.

Thank you for this opportunity to testify.

Respectfully,

Micah Munekata  
Director of Government Affairs



Written Statement of  
**Len Higashi**  
Executive Director  
Hawaii Technology Development Corporation  
before the  
**House Committee On Agriculture & Food Systems**  
Wednesday, February 8, 2023  
9:45 a.m.  
Conference Room 325 & Videoconference

In consideration of  
**HB947**  
**RELATING TO AGRICULTURE**

Chair Gates, Vice Chair Kahaloa, and Members of the Committee.

The Hawai'i Technology Development Corporation (HTDC) offers **comments** on HB947 that establishes a food manufacturer tax credit for manufacturers that produce valued-added products using local crops for taxable years beginning after 12/31/2023.

HTDC supports initiatives aimed at growing tech and manufacturing jobs and supports the intent of this bill. HTDC comments that the bill does not specify the amount of local crops that must be used and does not specify the amount of time the manufacturer must keep the equipment or facility to claim the credit. HTDC administers the Manufacturing Development Program (a.k.a. Manufacturing Assistance Program or MAP grants) that provides up to 20% reimbursement up to \$100,000 on qualified expenses that help Hawai'i manufacturers become globally competitive. HTDC comments that manufacturers should be prohibited from claiming the tax credit and grant for the same expense. HTDC comments that this bill should be coordinated with HB1384. HTDC defers to the Board of Agriculture and Department of Taxation on implementation.

HTDC looks forward to working with stakeholders in moving this initiative forward. Thank you for the opportunity to offer these comments.

**HB-947**

Submitted on: 2/6/2023 8:50:20 AM

Testimony for AGR on 2/8/2023 9:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Will Caron	Individual	Support	Written Testimony Only

Comments:

I support HB947.

**HB-947**

Submitted on: 2/6/2023 10:06:26 AM

Testimony for AGR on 2/8/2023 9:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Caroline Azelski	Individual	Support	Written Testimony Only

Comments:

Support. Thank you.