
A BILL FOR AN ACT

RELATING TO MACADAMIA NUTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 148, Hawaii Revised Statutes, is
2 amended by adding a new part to be appropriately designated and
3 to read as follows:

4 **"PART . MACADAMIA NUT COMMISSION**

5 **§148-A Definitions.** For purposes of this part, unless the
6 context otherwise requires:

7 "Chairperson" means the chairperson of the board of
8 agriculture.

9 "Commission" means the macadamia nut commission.

10 "Processor" or "first handler":

11 (1) Means any person, within the state, engaged in the
12 operations of husking, processing, and marketing
13 macadamia nuts:

14 (A) That the person produced, purchased, or acquired
15 from a producer; or

16 (B) On behalf of a producer, as owner, agent,
17 employee, broker, or otherwise; and



1 (2) Does not include a retailer, except for a retailer who
2 purchases or acquires from, or husks, processes, and
3 markets on behalf of any producer, macadamia nuts that
4 were not previously subject to regulation by the
5 commission.

6 "Producer" or "grower" means any person who is engaged in
7 this state in the business of producing or causing to be
8 produced for market, macadamia nuts.

9 "Producer-supplier" means any producer who engages in the
10 operations of selling, marketing, or distributing macadamia nuts
11 that the person has produced, purchased, or acquired from a
12 processor. The term does not include a retailer, except a
13 retailer who purchases or acquires from, or sells, markets, or
14 distributes on behalf of a producer, macadamia nuts that were
15 not previously subject to regulation by the commission.

16 **§148-B Macadamia nut commission; established; members.**

17 (a) There is established within the department of agriculture
18 for administrative purposes the macadamia nut commission
19 consisting of nine members appointed by the chairperson.

20 (b) The members of the commission shall be appointed from
21 a list of nominees submitted by the board of directors of the
22 Hawaii Macadamia Nut Association; provided that members



1 nominated and appointed shall be members of the board of
2 directors of the Hawaii Macadamia Nut Association in good
3 standing; and provided further the members nominated and
4 appointed shall represent the existing membership divisions that
5 have been in place and draw from large and small growers,
6 growing districts, and processors. The members of the
7 commission shall elect a commission chairperson by a majority
8 vote of the members. Each member of the commission shall serve
9 a term of years.

10 **§148-C Commission; purpose; power and duty.** (a) The
11 commission shall administer and manage the collection of the
12 mandatory assessment provided for in section 148-E and shall use
13 the revenue collected to accomplish the following strategic
14 objectives:

15 (1) Establishment of an initial research committee to
16 develop a list of research projects to propose to the
17 legislature, University of Hawaii, Pacific Basin
18 Agricultural Research Center, and other related
19 entities to restart macadamia nut research in Hawaii,
20 including at the University of Hawaii, and elsewhere;
21 provided that the research committee shall also



1 develop a plan to make existing research available to
2 all members of the commission;

3 (2) Negotiation and lobbying efforts to achieve country of
4 origin labeling at a federal level through the Hawaii
5 Congressional delegation and through the governor and
6 state agencies; provided that these efforts shall
7 promote the "truth in labeling" approach; provided
8 further that as part of these efforts, the commission
9 shall seek to have a certificate of analysis
10 requirement, along with date of manufacture, on all
11 macadamia nuts sold in the United States;

12 (3) Reconnection with the International Nut and Dried
13 Fruit Council Foundation's nutrition program,
14 collection of existing macadamia nut nutrition
15 research to be made available to processors and
16 marketers of Hawaii macadamia nuts, and increased
17 involvement with other selected industry groups that
18 will assist the commission and the Hawaii Macadamia
19 Nut Association in accomplishing their objectives; and

20 (4) Development of a Hawaii industry approach, including
21 the most effective means of developing and
22 disseminating information, both industry and corporate



1 related, and the best means to use state resources to
2 accomplish this goal; provided that the commission may
3 also establish a relationship with the international
4 macadamia association if deemed beneficial.

5 (b) The commission may:

6 (1) Appoint committees composed of members and nonmembers
7 to advise the commission;

8 (2) Accept gifts, contributions, or appropriations of
9 private, state, or federal funds;

10 (3) At the commission's sole discretion, defray operating
11 costs of the commission through a portion of the
12 revenues collected from the mandatory assessment;

13 (4) Establish an annual budget pursuant to accepted
14 accounting practices; and

15 (5) Take other action necessary to carry out the purposes
16 of this part.

17 **§148-D Moneys received by commission; agent; bond.** All
18 moneys received from assessments or otherwise received by the
19 commission shall be deposited into any bank the commission may
20 designate. Moneys shall be disbursed by the commission through
21 any agent designated by the commission for that purpose. Any
22 agent shall be bonded by a fidelity bond, executed by a surety



1 company authorized to transact business in the state in favor of
2 the commission in the amount of not less than \$25,000.

3 **§148-E Assessments.** The commission shall, no later than
4 July 1 of each year, establish an assessment for the following
5 macadamia nut season; provided that beginning on July 1, 2008,
6 the assessment shall be one-fifth of one cent per pound of nut
7 in shell at twenty per cent moisture produced by each producer,
8 and an additional one-fifth of one cent per pound of nut in
9 shell at twenty per cent moisture for each processor. The
10 assessment may be changed by the commission from time to time
11 only by agreement of ninety per cent of the members of the
12 Hawaii Macadamia Nut Association. The maximum assessment for
13 any single entity shall be \$30,000 annually.

14 **§148-F Producer assessments; processor liability.** (a)
15 The first handler of macadamia nuts being assessed shall deduct
16 the assessment from amounts paid to the producer or collect the
17 assessment from the producer. The first handler shall be a
18 trustee of the funds until the assessment is paid to the
19 commission.

20 (b) Every processor shall be personally liable for payment
21 of the collected assessments. Failure of the processor to



1 collect the assessment from any producer shall not exempt the
2 processor from liability.

3 **§148-G Failure to pay assessment.** Any assessment levied
4 pursuant to this part is a personal debt of the producer
5 assessed. Failure of a processor to make payment of the
6 collected assessment to the commission shall not relieve the
7 producer of this obligation.

8 **§148-H Penalties.** (a) Any producer or processor who
9 fails to file a return or to pay any assessment within the time
10 required by the commission shall pay to the commission a penalty
11 of ten per cent of the amount of the assessment determined to be
12 past due, in addition to interest on the unpaid balance at the
13 rate of 11.5 per cent per month.

14 (b) In addition to any other penalty, the commission may
15 require any person who fails to pay any assessment or related
16 charge to furnish and maintain a surety bond in a form and
17 amount and for a period of time specified by the commission as
18 assurance that payment to the commission will be made when due.

19 **§148-I Exemptions.** (a) This part does not apply to
20 macadamia nuts produced only for the producer's home use or to
21 macadamia nuts used only for ornamental purposes.



1 (b) To claim the exemption, a producer shall file an
2 affidavit with the commission to establish that the producer's
3 macadamia nuts are not produced for commercial purposes.

4 (c) Any production of macadamia nuts in excess of one
5 thousand pounds shall not be exempt from assessment established
6 in this part.

7 **§148-J Processor records.** (a) Processors shall keep a
8 complete and accurate record of all macadamia nuts processed,
9 including the name of the producer whose macadamia nuts were
10 processed. The records shall contain information as the
11 commission shall prescribe.

12 (b) Records shall be preserved by the processor for two
13 years and shall be submitted for inspection at a reasonable time
14 upon the written request of the commission.

15 **§148-K Liability.** (a) The State shall not be liable for
16 any act of the commission or its contracts.

17 (b) Payment of all claims arising by reason of the
18 administration of this part or acts of the commission shall be
19 limited to the funds collected by the commission.

20 (c) No member, alternate member, or employee of the
21 commission shall be personally liable on any contract of the
22 commission or responsible individually to any producer,



1 processor, producer-supplier, or any other person for any error
2 in judgment, mistake, or other act of commission or omission as
3 principal, agent, or employee, except for the individual's own
4 act or dishonesty or crime.

5 (d) No member or alternate member of the commissions shall
6 be responsible individually for any act or omission of any
7 member of the commission.

8 (e) Liability of the commissioners is several and not
9 joint, and no member is liable for the default of any other
10 member of the commission.

11 **§148-L Proprietary information.** All proprietary
12 information obtained or received by the commission from
13 producers, processors, or producer-suppliers shall be
14 confidential and shall not be disclosed, except pursuant to a
15 court order after a hearing in a judicial proceeding involving
16 this part."

17 SECTION 2. There is appropriated out of the general
18 revenues of the State of Hawaii the sum of \$ or so much
19 thereof as may be necessary for fiscal year 2008-2009 for the
20 promotion and expansion of the macadamia nut industry in the
21 state by the Hawaii Macadamia Nut Association and for the
22 establishment of the macadamia nut commission.



1 The sum appropriated shall be expended by the department of
2 agriculture for the purposes of this Act.

3 SECTION 3. In codifying the new sections added by section
4 1 of this Act, the revisor of statutes shall substitute
5 appropriate section numbers for the letters used in designating
6 the new sections in this Act.

7 SECTION 4. This Act shall take effect upon its approval;
8 provided that section 2 shall take effect on July 1, 2008.



Report Title:

Macadamia Nut Commission; Appropriation

Description:

Establishes a macadamia nut commission to collect a mandatory assessment on macadamia nut processors and producers to achieve certain objectives for the macadamia nut industry in Hawaii. Appropriation. (HB1988 HD1)

