
A BILL FOR AN ACT

RELATING TO AGRICULTURAL LANDS.

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

1 PART I

2 SECTION 1. In 1978, voters approved article XI, section 3,
3 of the Constitution of the State of Hawaii, which set out the
4 framework for state policies to promote agriculture and the
5 conservation of productive agricultural lands in the State.

6 Article XI, section 3, reads as follows:

7 "The State shall conserve and protect agricultural lands,
8 promote diversified agriculture, increase agricultural self
9 sufficiency and assure the availability of agriculturally
10 suitable lands. The legislature shall provide standards and
11 criteria to accomplish the foregoing.

12 Lands identified by the State as important agricultural
13 lands needed to fulfill the purposes above shall not be
14 reclassified by the State or rezoned by its political
15 subdivisions without meeting the standards and criteria
16 established by the legislature and approved by a two-thirds vote
17 of the body responsible for the reclassification or rezoning
18 action."



1 To address the issue of important agricultural lands, Act
2 183, Session Laws of Hawaii 2005, established standards,
3 criteria, and mechanisms to identify important agricultural
4 lands and to implement the intent and purpose of article XI,
5 section 3, of the Hawaii state constitution.

6 Act 183 also recognized that while the supply of lands
7 suitable for agriculture is critical, the long-term viability of
8 agriculture also depends on other factors, including:

- 9 (1) Commodity prices;
- 10 (2) Availability of water for irrigation;
- 11 (3) Agricultural research and outreach;
- 12 (4) Application of production technologies;
- 13 (5) Marketing; and
- 14 (6) Availability and cost of transportation services.

15 The purpose of this Act is to provide incentives and
16 protections to establish and sustain viable agricultural
17 operations on important agricultural lands.

18 PART II

19 SECTION 2. Chapter 235, Hawaii Revised Statutes, is
20 amended by adding a new section to be appropriately designated
21 and to read as follows:

1 "§235- Rental income from agricultural leases on
2 important agricultural lands excluded from gross income. (a)

3 In addition to the exclusions in section 235-7, there shall be
4 excluded from gross income, adjusted gross income, and taxable
5 income, rental income, including lease rents, in an amount not
6 to exceed \$ that is received by a taxpayer subject to
7 the taxes imposed by this chapter, that is derived from
8 agricultural leases on lands identified and designated as
9 important agricultural lands pursuant to part III of chapter
10 205, for the taxable year the rental income was realized;
11 provided that:

- 12 (1) The minimum length of the initial lease term shall be:
13 (A) Twenty years; or
14 (B) Any other lease term mutually agreeable to the
15 lessor and lessee, if the amount of the lease
16 rent is set by an independent appraisal using the
17 lower of the comparable value or agricultural
18 capitalization appraisal methodologies; and
19 (2) The lease is in effect and the lessee is continuously
20 and substantially undertaking agribusiness on the
21 leased land, pursuant to chapter 205, as verified by



1 the department of agriculture on a regular basis using
2 a process determined by the department of agriculture;
3 provided that the exclusion shall not apply if the lease is
4 terminated or the department of agriculture determines that the
5 leased land is not continuously and substantially used for
6 agribusiness.

7 The taxpayer shall be eligible for the exclusion initially
8 for up to twenty years; provided that the time period may be
9 extended for every year the term of the lease is extended;
10 provided further that the assignment of the original lease to
11 another lessee shall be for the time period remaining on the
12 original lease, unless the terms of the lease are renegotiated.

13 (b) Each taxpayer who claims the exclusion under this
14 section shall annually provide any necessary information
15 determined by, and in a manner prescribed by the department of
16 agriculture to enable an aggregated quantitative and qualitative
17 assessment of the impact of the exclusion.

18 (c) For the purposes of this section:

19 "Agribusiness" means a business licensed for the
20 production, processing, and sale of products from the
21 cultivation of crops, propagation of fish or game, or raising of
22 livestock."



1 SECTION 3. Section 237-24.75, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§237-24.75 Additional exemptions. In addition to the
4 amounts exempt under section 237-24, this chapter shall not
5 apply to:

6 (1) Amounts received as a beverage container deposit
7 collected under chapter 342G, part VIII;

8 (2) Amounts received by the operator of the Hawaii
9 convention center for reimbursement of costs or
10 advances made pursuant to a contract with the Hawaii
11 tourism authority under section 201B-7[+]; and[+]

12 [+](3) Amounts received[+] by a professional employment
13 organization from a client company equal to amounts
14 that are disbursed by the professional employment
15 organization for employee wages, salaries, payroll
16 taxes, insurance premiums, and benefits, including
17 retirement, vacation, sick leave, health benefits, and
18 similar employment benefits with respect to assigned
19 employees at a client company; provided that this
20 exemption shall not apply to a professional employment
21 organization upon failure of the professional
22 employment organization to collect, account for, and



1 pay over any income tax withholding for assigned
2 employees or any federal or state taxes for which the
3 professional employment organization is responsible.

4 As used in this paragraph, "professional employment
5 organization", "client company", and "assigned
6 employee" shall have the meanings provided in section
7 373K-1[-]; and

8 (4) Rental income, including lease rents as provided in
9 section 235- in an amount not to exceed \$ _____."

10 SECTION 4. There is appropriated out of the general
11 revenues of the State of Hawaii the sum of \$ _____ or so much
12 thereof as may be necessary for fiscal year 2008-2009 for the
13 department of agriculture to collect and analyze data to make an
14 aggregated quantitative and qualitative assessment of the impact
15 of the exclusion of rental income from important agricultural
16 lands from income and general excise taxation.

17 The sum appropriated shall be expended by the department of
18 agriculture for the purposes of this part.

19 SECTION 5. The department of agriculture shall submit to
20 the legislature an annual report, no later than twenty days
21 prior to the convening of each regular session, beginning with
22 the regular session of 2010, regarding the quantitative and



1 qualitative assessment of the impact of the exclusion of rental
2 income from important agricultural lands from income and general
3 excise taxation.

4 PART III

5 SECTION 6. Chapter 205, Hawaii Revised Statutes, is
6 amended by adding a new section to part III to be appropriately
7 designated and to read as follows:

8 **"§205- Important agricultural land; residential housing.**

9 A landowner qualifying under section 205-44 may develop,
10 construct, and maintain residential dwelling units for farmers,
11 employees, and their families on important agricultural land;
12 provided that:

13 (1) The farmers' dwelling units shall be used exclusively
14 by farmers and their immediate family members who
15 actively and currently farm on important agricultural
16 land upon which the dwelling is situated; provided
17 further that the immediate family members of a farmer
18 may live in separate dwelling units situated on the
19 same designated land;

20 (2) Employee dwelling units shall be used exclusively by
21 employees and their immediate family members who
22 actively and currently work on important agricultural



1 land upon which the dwelling is situated; provided
 2 that the immediate family members of the employee
 3 shall not live in separate dwelling units and shall
 4 live with the employee;

5 (3) The total land area upon which the farmer and employee
 6 dwelling units and all appurtenances are situated
 7 shall not occupy more than _____ per cent of the
 8 total important agricultural land area controlled by
 9 the farmer or the employee's employer;

10 (4) The farmers' and employee dwelling units meet all
 11 applicable building code requirements;

12 (5) Notwithstanding section 205-4.5(a)(12), the landowner
 13 shall not plan or develop a residential subdivision on
 14 the important agricultural land; and

15 (6) The plans for farmers' and employee dwelling units
 16 shall be supported by agricultural plans that are
 17 approved by the department of agriculture."

PART IV

19 SECTION 7. Tax incentives are a critical component of the
 20 long-term viability of agriculture on important agricultural
 21 lands in the State. The legislature finds that it is in the
 22 public's interest to assist agricultural businesses in



1 establishing and sustaining viable agricultural operations on
2 important agricultural lands by providing incentives such as
3 income tax credits.

4 The purpose of this part is to establish an important
5 agricultural land qualified agricultural cost tax credit to
6 establish and sustain viable agricultural operations on
7 important agricultural lands.

8 SECTION 8. Chapter 235, Hawaii Revised Statutes, is
9 amended by adding a new section to be appropriately designated
10 and to read as follows:

11 "§235- Important agricultural land qualified
12 agricultural cost tax credit. (a) There shall be allowed to
13 each taxpayer, an important agricultural land qualified
14 agricultural cost tax credit that shall be deductible from the
15 taxpayer's net income tax liability, if any, imposed by this
16 chapter for the taxable year in which the credit is properly
17 claimed. The tax credit shall apply as follows:

- 18 (1) In the year qualified agricultural costs are incurred,
19 fifty per cent of the qualified agricultural costs up
20 to a maximum of _____ ;
21 (2) In the first year following the year in which
22 qualified agricultural costs are incurred, twenty per



1 cent of the qualified agricultural costs up to a
2 maximum of _____ ;

3 (3) In the second year following the year in which
4 qualified agricultural costs are incurred, ten per
5 cent of the qualified agricultural costs up to a
6 maximum of _____ ;

7 (4) In the third year following the year in which
8 qualified agricultural costs are incurred, ten per
9 cent of the qualified agricultural costs up to a
10 maximum of _____ ; and

11 (5) In the fourth year following the year in which
12 qualified agricultural costs are incurred, ten per
13 cent of the qualified agricultural costs up to a
14 maximum of _____ .

15 (b) No other credit may be claimed under this chapter for
16 qualified agricultural costs for which a credit is claimed under
17 this section for the taxable year.

18 (c) The amount of the qualified agricultural costs
19 eligible to be claimed under this section shall be reduced by
20 the amount of funds received by the taxpayer during the taxable
21 year from the irrigation repair and maintenance special fund
22 under section 167-24.



1 (d) The cost upon which the tax credit is computed shall
2 be determined at the entity level. In the case of a
3 partnership, S corporation, estate, trust, or other pass through
4 entity, distribution and share of the credit shall be determined
5 pursuant to section 235-110.7(a).

6 If a deduction is taken under section 179 (with respect to
7 election to expense depreciable business assets) of the Internal
8 Revenue Code, no tax credit shall be allowed for that portion of
9 the qualified agricultural cost for which a deduction was taken.

10 The basis of eligible property for depreciation or
11 accelerated cost recovery system purposes for state income taxes
12 shall be reduced by the amount of credit allowable and claimed.
13 No deduction shall be allowed for that portion of otherwise
14 deductible qualified agricultural costs on which a credit is
15 claimed under this section.

16 (e) If the credit under this section exceeds the
17 taxpayer's net income tax liability for the taxable year, the
18 excess of the credit over liability shall be refunded to the
19 taxpayer; provided that no refunds or payments on account of the
20 credits allowed by this section shall be made for amounts less
21 than \$1.



1 All claims for a tax credit under this section, including
2 amended claims, shall be filed on or before the end of the
3 twelfth month following the close of the taxable year for which
4 the credit is claimed. Failure to comply with the foregoing
5 provision shall constitute a waiver of the right to claim the
6 credit.

7 (f) The director of taxation:
8 (1) Shall prepare any forms that may be necessary to claim
9 a credit under this section;
10 (2) May require the taxpayer to furnish information to
11 ascertain the validity of the claim for credit made
12 under this section; and
13 (3) May adopt rules pursuant to chapter 91 to effectuate
14 this section.

15 (g) Prior to claiming the tax credit under this section,
16 the taxpayer shall obtain a letter from the department of
17 agriculture specifying the qualified agricultural costs in the
18 taxable year the tax credit will be claimed. The taxpayer shall
19 provide information required by the department of agriculture
20 prior to the issuance of the letter.

21 (h) The department of agriculture, in consultation with
22 the department of taxation, shall annually determine the



1 information necessary to provide a quantitative and qualitative
 2 assessment of the outcomes of the tax credit. Every taxpayer,
 3 no later than the last day of the taxable year following the
 4 close of the taxpayer's taxable year in which qualified costs
 5 were incurred, shall submit a written statement to and certified
 6 by the department of agriculture. Failure to provide the
 7 information shall result in ineligibility and a recapture of any
 8 credit already claimed for that taxable year. The amount of the
 9 recaptured tax credit shall be added to the taxpayer's tax
 10 liability for the taxable year in which the recapture occurs.

11 Notwithstanding any law to the contrary, a statement
 12 submitted under this subsection shall be a public document.

13 (i) The department of agriculture, in consultation with
 14 the department of taxation, shall annually submit a report
 15 evaluating the effectiveness of the tax credit. The report
 16 shall include but not be limited to findings and recommendations
 17 to improve the effectiveness of the tax credit to further
 18 encourage the development of agricultural businesses.

19 (j) As used in this section:

20 "Agricultural business" means any person with a commercial
 21 agricultural, silvicultural, or aquacultural facility or
 22 operation, including:



- 1 (1) The care and production of livestock and livestock
- 2 products, poultry and poultry products, apiary
- 3 products, and plant and animal production for nonfood
- 4 uses;
- 5 (2) The planting, cultivating, harvesting, and processing
- 6 of crops; and
- 7 (3) The farming or ranching of any plant or animal species
- 8 in a controlled salt, brackish, or freshwater
- 9 environment;
- 10 provided that the principal place of the agricultural business
- 11 is maintained in the State and more than fifty per cent of the
- 12 land the agricultural business owns or leases, excluding land
- 13 classified as conservation land, is important agricultural land.
- 14 "Important agricultural lands" means lands identified and
- 15 designated as important agricultural lands pursuant to part III
- 16 of chapter 205.
- 17 "Net income tax liability" means income tax liability
- 18 reduced by all other credits allowed under this chapter.
- 19 "Qualified agricultural costs" means expenditures for:
- 20 (1) The plans, design, engineering, construction,
- 21 renovation, repair, maintenance, and equipment for:



- 1 (A) Roads or utilities, primarily for agricultural
2 purposes, for which the majority of the lands
3 serviced by the roads or utilities, excluding
4 lands classified as conservation lands, are
5 important agricultural lands;
- 6 (B) Agricultural processing facilities in the State,
7 primarily for agricultural purposes, that
8 process, harvest, treat, wash, handle, or package
9 a majority of crops or livestock from
10 agricultural businesses;
- 11 (C) Water wells, reservoirs, dams, water storage
12 facilities, water pipelines, ditches, or
13 irrigation systems in the State, primarily for
14 agricultural purposes, for which the majority of
15 the lands serviced by its water, excluding lands
16 classified as conservation lands, are important
17 agricultural lands; and
- 18 (D) Agricultural housing in the State, primarily for
19 agricultural purposes; provided that:
 - 20 (i) The majority of the housing units are
21 occupied by farmers or employees for



- 1 agricultural businesses and their immediate
- 2 family members;
- 3 (ii) The housing units are owned by the
- 4 agricultural business;
- 5 (iii) The housing units are in the general
- 6 vicinity, as determined by the department of
- 7 agriculture, of agricultural lands owned or
- 8 leased by the agricultural business; and
- 9 (iv) The housing units conform to any other
- 10 conditions that may be required by the
- 11 department of agriculture;
- 12 (2) Feasibility studies, regulatory processing, and legal
- 13 and accounting services related to the items under
- 14 paragraph (1); and
- 15 (3) Equipment, primarily for agricultural purposes, used
- 16 to cultivate, grow, harvest, or process agricultural
- 17 products by an agricultural business."

18 SECTION 9. There is appropriated out of the general

19 revenues of the State of Hawaii the sum of \$ or so much

20 thereof as may be necessary for fiscal year 2008-2009 for the

21 department of taxation to administer the important agricultural

22 land qualified agricultural cost tax credit.

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

3 SECTION 10. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$ or so much
5 thereof as may be necessary for fiscal year 2008-2009 for the
6 department of agriculture to administer the important
7 agricultural land qualified agricultural cost tax credit and for
8 one full time equivalent planner position for the department of
9 agriculture.

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

12 PART V

13 SECTION 11. Financing is also a critical component of the
14 long-term viability of agriculture on important agricultural
15 lands in the State. The legislature finds that it is in the
16 public interest to assist agricultural producers in meeting
17 their financing needs for projects that are located on important
18 agricultural lands.

19 The purpose of this part is to further implement Act 183,
20 Session Laws of Hawaii 2005, by authorizing the chairperson of
21 the board of agriculture to guarantee loans relating to
22 agricultural projects located on important agricultural lands.



1 SECTION 12. Chapter 155, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§155- Loan guaranty; important agricultural lands;
5 agricultural and aquacultural loans. (a) The chairperson of
6 the board of agriculture may guarantee loans made by commercial
7 lenders, authorized to do business in this State, to
8 agricultural producers for the purpose of developing and
9 implementing agricultural projects; provided that the
10 chairperson of the board of agriculture determines that:

11 (1) The agricultural projects are located on lands
12 designated as important agricultural lands pursuant to
13 part III of chapter 205;

14 (2) The commercial lender has completed its due diligence
15 in approving the loan, including ensuring adequate
16 collateral; and

17 (3) After consultation with the director of finance, the
18 State possesses sufficient funds to provide an
19 appropriate reserve for the loan guaranty and which,
20 in the director of finance's judgment, are in excess
21 of the amounts necessary for meeting the immediate
22 requirements of the State and will not impede or



1 hamper the fulfillment of the financial obligations of
2 the State.

3 The chairperson of the board of agriculture may impose other
4 conditions that the chairperson deems reasonable to implement
5 the loan guaranty.

6 (b) In addition to the conditions that the chairperson of
7 the board of agriculture may impose under subsection (a), any
8 loan guaranty made pursuant to this section shall meet the
9 following conditions:

10 (1) For a loan that finances operating costs, the maximum
11 term of the loan shall be ten years;

12 (2) For a loan that finances capital improvement costs,
13 the maximum term of the loan shall be twenty years;

14 (3) The interest rate charged on a loan shall be one per
15 cent below the commercial lender's prime rate for as
16 long as the loan guaranty is in effect;

17 (4) The loan guaranty may be up to eighty-five per cent of
18 the outstanding principal amount of the loan, but
19 shall not include any fees or accrued interest
20 associated with the loan or its collection; and

21 (5) The principal amount of the loan shall not exceed
22 \$2,500,000.



1 (2) Identify the extent of rehabilitation needed for each
2 system;

3 (3) Identify sources of water used by agricultural
4 operations and particularly those on lands identified
5 and designated as important agricultural lands under
6 part III of chapter 205;

7 (4) Identify current and future water needs for
8 agricultural operations on lands identified and
9 designated as important agricultural lands under part
10 III of chapter 205;

11 [~~+3~~] (5) Subsidize the cost of repair and maintenance of
12 the systems;

13 [~~+4~~] (6) Establish criteria to prioritize the
14 rehabilitation of the systems;

15 [~~+5~~] (7) Develop a five-year program to repair the
16 systems; and

17 [~~+6~~] (8) Set up a long-range plan to manage the systems.

18 The commission shall coordinate the incorporation of the state
19 agricultural water use and development plan into the state water
20 projects plan.

21 (f) Each county water use and development plan shall
22 include but not be limited to:



- 1 (1) Status of water and related land development,
 2 including an inventory of existing water uses for
 3 domestic, municipal, and industrial users,
 4 agriculture[7] and particularly those designated as
 5 important agricultural lands under part III of chapter
 6 205, aquaculture, hydropower development, drainage,
 7 reuse, reclamation, recharge, and resulting problems
 8 and constraints;
- 9 (2) Future land uses and related water needs; and
- 10 (3) Regional plans for water developments, including
 11 recommended and alternative plans, costs, adequacy of
 12 plans, and relationship to the water resource
 13 protection and water quality plans."

PART VII

15 SECTION 14. Chapter 205, Hawaii Revised Statutes, is
16 amended by adding a new section to part III to be appropriately
17 designated and to read as follows:

18 **"§205- Agricultural processing facilities; permits;**
 19 **priority.** (a) Any agency subject to this chapter or title 13
 20 that issues permits shall establish and implement a procedure
 21 for the priority processing of permit applications and renewals,
 22 at no additional cost to the applicant, for agricultural



1 processing facilities that process crops or livestock from an
2 agribusiness. The majority of the lands held, owned, or used by
3 the agribusiness shall be land designated as important
4 agricultural lands pursuant to this part, excluding lands held,
5 owned, or used by the agribusiness in a conservation district.

6 Any priority permit processing procedure established
7 pursuant to this section shall not provide or imply that any
8 permit application filed under the priority processing procedure
9 shall be automatically approved.

10 (b) As used in this subsection, "agribusiness" means a
11 business primarily engaged in the care and production of
12 livestock, livestock products, poultry, poultry products,
13 apiary, horticultural or floricultural products, or the
14 planting, cultivating, and harvesting of crops or trees."

15 SECTION 15. Chapter 321, Hawaii Revised Statutes, is
16 amended by adding a new section to be appropriately designated
17 and to read as follows:

18 **"§321- Agricultural processing facilities; permits;**
19 **priority.** (a) Any agency subject to this chapter or title 19
20 that issues permits shall establish and implement a procedure
21 for the priority processing of permit applications and renewals,
22 at no additional cost to the applicant, for agricultural



1 processing facilities that process crops or livestock from an
2 agribusiness. The majority of the lands held, owned, or used by
3 the agribusiness shall be land designated as important
4 agricultural lands pursuant to part III of chapter 205,
5 excluding lands held, owned, or used by the agribusiness in a
6 conservation district.

7 Any priority permit processing procedure established
8 pursuant to this section shall not provide or imply that any
9 permit application filed under the priority processing procedure
10 shall be automatically approved.

11 (b) As used in this subsection, "agribusiness" means a
12 business primarily engaged in the care and production of
13 livestock, livestock products, poultry, poultry products,
14 apiary, horticultural or floricultural products, or the
15 planting, cultivating, and harvesting of crops or trees."

16 PART VIII

17 SECTION 16. The legislature declares that this Act
18 establishes incentives for the designation of important
19 agricultural lands in satisfaction of section 205-46, Hawaii
20 Revised Statutes, and section 9 of Act 183, Session Laws of
21 Hawaii 2005.



Report Title:

Agriculture; Important Agricultural Lands

Description:

Provides incentives and protections to establish and sustain viable agricultural operations on important agricultural lands.
(HB2357 HD1)

