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# A BILL FOR AN ACT

RELATING TO AGRICULTURAL LANDS.

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

1           SECTION 1. (a) The purpose of this Act is to establish  
2 new policies regarding the districting and protection of land in  
3 state agricultural districts. Under this Act, all lands in  
4 agricultural districts are designated "important agricultural  
5 land" for the purpose of article XI, section 3, of the state  
6 constitution. This Act rejects the previous approach of  
7 establishing a two-tier agricultural districting and protection  
8 system, one for "important agricultural land" and the second for  
9 "other agricultural land".

10           The most significant provision of this Act is set forth in  
11 a new section that designates the land to be placed in  
12 agricultural districts on July 1, 2010. Under the new section,  
13 that land, deemed "important agricultural land", is identified  
14 as:

- 15           (1) Certain land in the central Oahu/north shore area;  
16           (2) Land within state agricultural parks;



1           (3) Other state-owned land that the department of  
2           agriculture determines should remain or be included in  
3           the state agricultural district; and

4           (4) Other land in the State that is within a "relevant  
5           county agricultural zoning district" on July 1, 2010.

6 For land in the city and county of Honolulu and county of  
7 Hawaii, each of which has more than one agricultural zoning  
8 district, "relevant county agricultural zoning district" means  
9 the zoning district that is most protective of agricultural use.  
10 For land in the county of Maui and county of Kauai, each of  
11 which has only one agricultural zoning district, "relevant  
12 county agricultural zoning district" means that zoning district.  
13 If either county chooses to establish another more protective  
14 agriculture zoning district before June 30, 2010, then "relevant  
15 county agricultural zoning district" means the district that is  
16 more protective. Thus, this Act depends on the counties to  
17 assist in the initial identification of important agricultural  
18 land.

19           (b) Notwithstanding the counties' initial involvement,  
20 this Act provides that the redesignation of such land after July  
21 1, 2010 shall be subject to chapter 205, Hawaii Revised  
22 Statutes. Thus, the legislature intends that the land use



1 commission will be responsible for the redesignation of  
2 "important agricultural land" of greater than fifteen acres and  
3 the counties will be responsible for the redesignation of  
4 "important agricultural land" of lesser area. As required by  
5 article XI, section 3, of the Hawaii state constitution, a  
6 redesignation shall require the affirmative vote of two-thirds  
7 of the members of the land use commission.

8 The legislature has identified the land included in the  
9 agricultural district after application of the standards and  
10 criteria of section 205-44. In this respect, the legislature  
11 makes the following findings:

12 (1) The central Oahu/north shore areas identified under  
13 section 205-A(b)(1), Hawaii Revised Statutes, in  
14 section 2 of this Act is a vast expanse of contiguous  
15 land generally recognized as having high quality soil  
16 and growing conditions for crops. The inclusion of  
17 the entire area in the agricultural district comports  
18 with the standards and criteria of section 205-44(1),  
19 (2), (5), (6), (7), and (8). The inclusion of parts  
20 of the area also comports with standard and criteria  
21 of section 205-44(3) or (4).



1           (2) Land within state agricultural parks is expressly  
2           intended for agricultural production. Inclusion of  
3           each parcel of such land comports with the standard  
4           and criterion of section 205-44(1).

5           (3) With respect to other state-owned land placed in the  
6           agricultural district, the department of agriculture  
7           is required by law to determine that inclusion of such  
8           land comports with at least one of the standards and  
9           criteria of section 205-44. This duty is expressly  
10          delegated to the department, which the Legislature  
11          finds is very capable of making the determination.

12          (4) The other land in the relevant county agricultural  
13          zoning district is land recognized by the counties as  
14          necessary for the preservation or operation of  
15          agricultural activity. The inclusion of each parcel  
16          of such land in the agricultural district comports  
17          with at least one of the standards and criteria of  
18          section 205-44.

19          (c) Other significant provisions of this Act are as  
20 follows:



- 1 (1) The counties are authorized to enact rezoning
- 2 ordinances before July 1, 2010 to include land in or
- 3 exclude land from the state agricultural district;
- 4 (2) Standards and criteria for the redesignation of
- 5 agricultural land by the land use commission after
- 6 July 1, 2010 are reaffirmed;
- 7 (3) Unnecessary provisions of Act 183, Session Laws of
- 8 Hawaii 2005, are repealed; and
- 9 (4) The legislative reference bureau is directed to submit
- 10 to the legislature before the 2009 regular session
- 11 draft legislation proposing amendments that will
- 12 conform chapter 205, Hawaii Revised Statutes, to this
- 13 Act.

14 SECTION 2. Chapter 205, Hawaii Revised Statutes, is  
15 amended by adding two new sections to be appropriately  
16 designated and to read as follows:

17 "§205-A Agricultural district on July 1, 2010. (a)  
18 Notwithstanding any other law to the contrary, for the purposes  
19 of this chapter, "relevant county agriculture zoning district"  
20 means:



- 1        (1) With respect to the city and county of Honolulu, the  
2        "restricted agricultural" zoning district but not the  
3        "general agricultural" zoning district;
- 4        (2) With respect to the county of Maui, the "agricultural"  
5        zoning district; provided that, if the county of Maui  
6        establishes more than one agricultural zoning district  
7        before July 1, 2010, the "relevant county agriculture  
8        zoning district" shall mean the agriculture zoning  
9        district that is identified by the county as most  
10       protective of agricultural use;
- 11       (3) With respect to the county of Kauai, the "agriculture"  
12       zoning district; provided that, if the county of Kauai  
13       establishes more than one agricultural zoning district  
14       before July 1, 2010, the "relevant county agriculture  
15       zoning district" shall mean the agriculture zoning  
16       district that is identified by the county as most  
17       protective of agricultural use; and
- 18       (4) With respect to the county of Hawaii, the "intensive  
19       agricultural" zoning district but not the "family  
20       agricultural" or "agricultural" zoning district.
- 21       (b) On July 1, 2010, the following lands shall be included  
22       in the state agricultural district:



- 1        (1) Land in the central Oahu/north shore area within the
- 2        following tax map key parcels:
- 3        (A) 6-1-005-001;
- 4        (B) 6-1-006-001, but not that portion outside the
- 5        restricted agricultural zoning district of the
- 6        city and county of Honolulu on July 1, 2008;
- 7        (C) 6-1-007-001;
- 8        (D) 6-2-009-001;
- 9        (E) 6-2-010-001, but not that portion outside the
- 10       restricted agricultural zoning district of the
- 11       city and county of Honolulu on July 1, 2008;
- 12       (F) 6-2-011-001, but not that portion outside the
- 13       restricted agricultural zoning district of the
- 14       city and county of Honolulu on July 1, 2008;
- 15       (G) 6-4-001-001;
- 16       (H) 6-4-001-006;
- 17       (I) 6-4-002-001;
- 18       (J) 6-4-003-001;
- 19       (K) 6-4-003-003;
- 20       (L) 6-4-004-001;
- 21       (M) 6-5-001-002;
- 22       (N) 6-5-002-011;



- 1           (O) 6-5-002-018; and
- 2           (P) 6-5-002-019;
- 3           (2) Land within the boundaries of each of the following
- 4           state agricultural parks:
- 5           (A) On the island of Oahu: Waimanalo, Waianae,
- 6           Kahuku, and Kalaeloa agricultural parks;
- 7           (B) On the island of Hawaii: Pahoia, Panaewa,
- 8           Keahole, and Hamakua agricultural parks;
- 9           (C) On the island of Kauai: Kekaha agricultural
- 10           park; and
- 11           (D) The Molokai agricultural park;
- 12           (3) Other land owned by the State that the department of
- 13           agriculture determines should remain or be included in
- 14           the state agricultural district on July 1, 2010,
- 15           because the land comports with at least one of the
- 16           standards and criteria of section 205-44; and
- 17           (4) Other land in the State that is within a relevant
- 18           county agriculture zoning district on July 1, 2010.
- 19           (c) By October 1, 2010, the land use commission shall
- 20           issue maps of the state agricultural districts on each island.
- 21           (d) The inclusion of land into, or exclusion of land from
- 22           the state agricultural districts on July 1, 2010, pursuant to





1 this section shall not be subject to the district boundary  
2 amendment provisions of section 205-3.1 or section 205-4.

3 (e) Land within the state agricultural district on  
4 June 30, 2010, that is excluded from that district on July 1,  
5 2010, pursuant to subsection (b) shall be included in the state  
6 rural district on July 1, 2010. The inclusion of the land into  
7 the state rural district on that date shall not be subject to  
8 the district boundary amendment provisions of section 205-3.1 or  
9 section 205-4.

10 (f) After July 1, 2010, any land included in the state  
11 agricultural or rural district pursuant to this section shall be  
12 subject to the district boundary amendment provisions of this  
13 chapter.

14 **§205-B County zoning map amendments before June 30, 2010.**

15 (a) For the purposes of this section, "rezoning ordinance"  
16 means an ordinance amending a zoning map or the narrative of a  
17 zoning code or land use ordinance.

18 (b) Each county, on its own initiative or upon application  
19 of a person, may review, process, and act upon any proposed  
20 rezoning ordinance that, on July 1, 2010, will include land in  
21 or exclude land from the "relevant county agricultural zoning  
22 district" pursuant to section 205-A(b)(2); provided that:



- 1        (1) A county through a rezoning ordinance shall not
- 2        include land that is in the state urban, rural, or
- 3        conservation district on June 30, 2010 in the relevant
- 4        county agricultural zoning district;
- 5        (2) The rezoning ordinance shall take effect on July 1,
- 6        2010 so that the subject land is included in or
- 7        excluded from the state agricultural district on that
- 8        date in accordance with section 205-A(b) (2);
- 9        (3) When including land in the relevant county
- 10       agricultural zoning district by a rezoning ordinance,
- 11       the county shall find that the inclusion comports with
- 12       at least one of the standards and criteria of section
- 13       205-44; and
- 14       (4) No rezoning ordinance enacted by any county shall
- 15       affect the inclusion into the state agricultural
- 16       district of the central Oahu/north shore area
- 17       identified under section 205-A(b) (1), the state
- 18       agricultural park land identified under section 205-
- 19       A(b) (2), or the state-owned land identified by the
- 20       department of agriculture under section 205-A(b) (3).
- 21       (c) The county of Maui and the county of Kauai may also
- 22       create through a rezoning ordinance more than one agricultural



1 zoning district to separate land to be included in the state  
2 agricultural district from other agricultural land.

3 (d) No rezoning ordinance enacted pursuant to this section  
4 shall be deemed a "proposed action" requiring the preparation of  
5 an environmental assessment or environmental impact statement,  
6 notwithstanding section 343-5(a) or any other provision of  
7 chapter 343.

8 (e) This section shall be repealed on July 1, 2010."

9 SECTION 3. Section 205-2, Hawaii Revised Statutes, is  
10 amended by amending subsection (a) to read as follows:

11 "(a) There shall be four major land use districts in which  
12 all lands in the State shall be placed: urban, rural,  
13 agricultural, and conservation. The land use commission shall  
14 group contiguous land areas suitable for inclusion in one of  
15 these four major districts. The commission shall set standards  
16 for determining the boundaries of each district, provided that:

17 (1) In the establishment of boundaries of urban districts  
18 those lands that are now in urban use and a sufficient  
19 reserve area for foreseeable urban growth shall be  
20 included;

21 (2) In the establishment of boundaries for rural  
22 districts, areas of land composed primarily of small



1 farms mixed with very low density residential lots,  
 2 which may be shown by a minimum density of not more  
 3 than one house per one-half acre and a minimum lot  
 4 size of not less than one-half acre shall be included,  
 5 except as [~~herein~~] provided[+] in this chapter;

6 (3) In the establishment and amendment of the boundaries  
 7 of agricultural districts [~~the greatest possible~~  
 8 ~~protection shall be given to those lands with a high~~  
 9 ~~capacity for intensive cultivation;], section 205-A  
 10 shall apply on July 1, 2010, and section 205-50 shall  
 11 apply thereafter. All lands in agricultural districts  
 12 shall be designated "important agricultural lands" for  
 13 the purpose of article XI, section 3, of the state  
 14 constitution. For the purposes of this chapter,  
 15 "agricultural lands", "lands in the agricultural  
 16 district", and similar terms shall have the same  
 17 meaning as "important agricultural lands" as defined  
 18 in section 205-42; and~~

19 (4) In the establishment of the boundaries of conservation  
 20 districts, the "forest and water reserve zones"  
 21 provided in Act 234, section 2, Session Laws of Hawaii  
 22 1957, are renamed "conservation districts" and,



1 effective as of July 11, 1961, the boundaries of the  
 2 forest and water reserve zones theretofore established  
 3 pursuant to Act 234, section 2, Session Laws of Hawaii  
 4 1957, shall constitute the boundaries of the  
 5 conservation districts; provided that thereafter the  
 6 power to determine the boundaries of the conservation  
 7 districts shall be in the commission.

8 In establishing the boundaries of the districts in each county,  
 9 the commission shall give consideration to the master plan or  
 10 general plan of the county."

11 SECTION 4. Section 205-42, Hawaii Revised Statutes, is  
 12 amended to read as follows:

13 "[+]§205-42[+] **Important agricultural lands; definition**  
 14 **and objectives.** (a) [~~As used in this part, unless the context~~  
 15 ~~otherwise requires,~~] As provided under section 205-2(a)(3), all  
 16 lands in an agricultural district shall be designated "important  
 17 agricultural lands" [~~means these lands, identified pursuant to~~  
 18 ~~this part, that:~~

- 19 ~~(1) Are capable of producing sustained high agricultural~~
- 20 ~~yields when treated and managed according to accepted~~
- 21 ~~farming methods and technology;~~



1       ~~(2) Contribute to the State's economic base and produce~~  
2       ~~agricultural commodities for export or local~~  
3       ~~consumption; or~~

4       ~~(3) Are needed to promote the expansion of agricultural~~  
5       ~~activities and income for the future, even if~~  
6       ~~currently not in production.]~~ for the purpose of  
7       article XI, section 3, of the state constitution.

8       (b) ~~[The objective for the identification of important~~  
9       ~~agricultural lands is to identify and plan for the maintenance~~  
10       ~~of a strategic agricultural land resource base that can support~~  
11       ~~a diversity of agricultural activities and opportunities that~~  
12       ~~expand agricultural income and job opportunities and increase~~  
13       ~~agricultural self-sufficiency for current and future~~  
14       ~~generations. To achieve this objective,]~~ To protect important  
15       agricultural lands, the State shall:

16       (1) Promote agricultural development and land use planning  
17       that delineates blocks of productive agricultural land  
18       and areas of agricultural activity for protection from  
19       the encroachment of nonagricultural uses; and

20       (2) Establish incentives that promote:

21       (A) Agricultural viability~~[+]~~ and diversity;



1 (B) Sustained growth of the agriculture industry;  
2 [and]

3 (C) Agricultural self-sufficiency for current and  
4 future generations;

5 [~~(C)~~] (D) The long-term agricultural use and  
6 protection of [~~these~~] productive agricultural  
7 lands[~~-~~]; and

8 (E) Expansion of agricultural related income and job  
9 opportunities."

10 SECTION 5. Section 205-44, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "[~~+~~]**\$205-44**[~~+~~] **Standards and criteria for the initial**  
13 **identification of important agricultural lands.** The standards  
14 and criteria in this section shall be used to identify important  
15 agricultural lands. Lands identified as important agricultural  
16 lands need not meet every standard and criteria listed below.  
17 Rather, lands meeting any of the standards and criteria below  
18 shall be given [~~initial~~] consideration[~~;~~ ~~provided that the~~  
19 ~~designation of important agricultural lands shall be made by~~  
20 ~~weighing the standards and criteria with each other to meet the~~  
21 ~~constitutionally mandated purposes in article XI, section 3, of~~  
22 ~~the state constitution and the objectives and policies]~~ for



1 initial identification as important agricultural lands [~~in~~  
2 ~~sections 205-42 and 205-43~~]. The standards and criteria shall  
3 be as follows:

- 4 (1) Land currently used for agricultural production;
- 5 (2) Land with soil qualities and growing conditions that  
6 support agricultural production of food, fiber, or  
7 fuel- and energy-producing crops;
- 8 (3) Land identified under agricultural productivity rating  
9 systems, such as the agricultural lands of importance  
10 to the State of Hawaii (ALISH) system adopted by the  
11 board of agriculture on January 28, 1977;
- 12 (4) Land types associated with traditional native Hawaiian  
13 agricultural uses, such as taro cultivation, or unique  
14 agricultural crops and uses, such as coffee,  
15 vineyards, aquaculture, and energy production;
- 16 (5) Land with sufficient quantities of water to support  
17 viable agricultural production;
- 18 (6) Land whose designation as important agricultural lands  
19 is consistent with general, development, and community  
20 plans of the county;





1 (7) Land that contributes to maintaining a critical land  
 2 mass important to agricultural operating productivity;  
 3 and

4 (8) Land with or near support infrastructure conducive to  
 5 agricultural productivity, such as transportation to  
 6 markets, water, or power."

7 SECTION 6. Section 205-50, Hawaii Revised Statutes, is  
 8 amended to read as follows:

9 "[~~†~~]**\$205-50**[~~†~~] **Standards and criteria for [the**  
 10 **reclassification] district boundary amendments or rezoning of**  
 11 **[important] agricultural lands.** (a) [~~Any~~] After July 1, 2010,  
 12 any land use district boundary amendment or change in zoning  
 13 involving [~~important~~] agricultural lands [~~identified pursuant to~~  
 14 ~~this chapter~~] shall be subject to this section.

15 (b) Upon acceptance by the county for processing, any  
 16 application for a special permit involving important  
 17 agricultural lands shall be referred to the department of  
 18 agriculture and the office of planning for review and comment.

19 (c) Any decision by the land use commission or county  
 20 [~~pursuant to this section~~] to amend an agricultural district  
 21 boundary or change the zoning of agricultural land shall  
 22 specifically consider the following standards and criteria:



- 1           (1) The relative importance of the land for agriculture  
2                   based on the stock of similarly suited lands in the  
3                   area and the State as a whole;
- 4           (2) The proposed district boundary amendment or zone  
5                   change will not harm the productivity or viability of  
6                   existing agricultural activity in the area[~~r~~] or  
7                   adversely affect the viability of other agricultural  
8                   activities or operations that share infrastructure,  
9                   processing, marketing, or other production-related  
10                  costs or facilities with the agricultural activities  
11                  on the land in question;
- 12          (3) The district boundary amendment or zone change will  
13                  not cause the fragmentation of or intrusion of  
14                  nonagricultural uses into largely intact areas of  
15                  [~~lands identified by the State as important~~]  
16                  agricultural lands that create residual parcels of a  
17                  size that would preclude viable agricultural use;
- 18          (4) The public benefit to be derived from the proposed  
19                  action is justified by a need for additional lands for  
20                  nonagricultural purposes; [~~and~~]
- 21          (5) The impact of the proposed district boundary amendment  
22                  or zone change on the necessity and capacity of state



1 and county agencies to provide and support additional  
2 agricultural infrastructure or services in the  
3 area[-];

4 (6) Whether a sufficient supply of water is no longer  
5 available to allow profitable agricultural use of the  
6 land due to governmental action, an act of God, or  
7 other cause beyond the farmer's or landowner's  
8 reasonable control; and

9 (7) The negative effect that the proposed district  
10 boundary amendment or zone change may have on the  
11 following:

12 (A) The potential for increasing the cultivation of  
13 crops or trees for the generation of energy;

14 (B) The recharging of the aquifer;

15 (C) The beneficial reuse of treated wastewater for  
16 crop or tree farm irrigation;

17 (D) The absorption of carbon dioxide from the  
18 atmosphere, and the potential future use of crop  
19 or tree farm lands for carbon credit;

20 (E) The need for green or open space for the  
21 viability of the visitor industry and contentment  
22 of residents; and



1            (F) The prevention of soil erosion and non-point  
2            source pollutant discharge into the ocean.

3            (d) Any decision pursuant to this section shall be based  
4 upon a determination that:

5            (1) On balance, the public benefit from the proposed  
6            district boundary amendment or zone change outweighs  
7            the benefits of retaining the land for agricultural  
8            purposes; and

9            (2) The proposed action will have no significant impact  
10           upon the viability of agricultural operations on  
11           adjacent agricultural lands.

12           (e) The standards and criteria of this section shall be in  
13 addition to:

14           (1) The decision-making criteria of section 205-17  
15           governing decisions of the land use commission under  
16           this chapter; and

17           (2) The decision-making criteria adopted by each county to  
18           govern decisions of county decision-making authorities  
19           under this chapter.

20           (f) Any decision of the land use commission and any  
21 decision of any county on a land use district boundary amendment  
22 or change in zoning involving [~~important~~] agricultural lands



1 shall be approved by the body responsible for the decision by a  
2 two-thirds vote of the membership to which the body is entitled.

3 ~~[(g) A farmer or landowner with qualifying lands may also  
4 petition the land use commission to remove the "important  
5 agricultural lands" designation from lands if a sufficient  
6 supply of water is no longer available to allow profitable  
7 farming of the land due to governmental actions, acts of God, or  
8 other causes beyond the farmer's or landowner's reasonable  
9 control.]"~~

10 SECTION 7. Part III of Act 183, Session Laws of Hawaii  
11 2005, is repealed.

12 SECTION 8. The legislative reference bureau shall submit  
13 to the legislature at least twenty days before the convening of  
14 the regular session of 2009, legislation proposing amendments  
15 intended to conform chapter 205, Hawaii Revised Statutes, to  
16 this Act. In performing this duty, the legislative reference  
17 bureau shall consult with the chairpersons of the appropriate  
18 legislative committees, the land use commission, the department  
19 of agriculture, the office of planning, and appropriate county  
20 administrations and councils.

21 SECTION 9. In codifying the new sections added by section  
22 2 and of this Act, the revisor of statutes shall substitute



1 appropriate section numbers for the letters used in designating  
2 the new sections.

3 SECTION 10. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 11. This Act shall take effect on July 1, 2009;  
6 except that sections 2, 5, 7, 8, 9, and 10 shall take effect  
7 upon its approval.

8

INTRODUCED BY:

K. L.  
J. Phil. Karaman  
Joe Chung  
[Signature]  
Tom Brown

JAN 15 2008



**Report Title:**

Land Use; Important Agricultural Lands

**Description:**

Requires certain lands to be placed in the agricultural districts on 7/1/10, including certain lands specifically identified, and other lands in a "relevant county agricultural zoning district". Deems those lands to be important agricultural lands. Allows those lands to be redesignated after 7/1/10 by the land use commission or the counties, as the case may be, under land use law. Allows counties to enact rezoning ordinances that, on 7/1/10 includes land in or excludes land from the "relevant county agricultural zoning district".

