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# A BILL FOR AN ACT

RELATING TO LAND USE.

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

1 SECTION 1. Chapter 205, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 "§205- Satisfaction of state or county affordable  
5 housing requirements in the rural district. (a) In lieu of  
6 satisfying a state or county affordable housing assessment in  
7 the urban district, a project landowner subject to subsection  
8 (b) may fulfill the assessment by providing affordable housing  
9 in the rural district in accordance with section 205-2(c)(7).

10 (b) This section shall apply only to a project landowner  
11 who has been granted a declaratory order from the land use  
12 commission to designate all or some of the landowner's land as  
13 important agricultural land pursuant to section 205-45."

14 SECTION 2. Section 205-2, Hawaii Revised Statutes, is  
15 amended by amending subsection (c) to read as follows:

16 "(c) Rural districts shall include [~~activities~~]:

17 (1) Activities or uses as characterized by low density  
18 residential lots of not more than one dwelling house



1 per one-half acre, except as provided by county  
 2 ordinance pursuant to section 46-4(c), in areas where  
 3 "city-like" concentration of people, structures,  
 4 streets, and urban level of services are absent~~[, and~~  
 5 ~~where small]~~;

6 (2) Small farms ~~[are]~~ intermixed with low density  
 7 residential lots, except that within a subdivision, as  
 8 defined in section 484-1, the commission, for good  
 9 cause and on petition for a special permit, may allow  
 10 one lot of less than one-half acre, but not less than  
 11 18,500 square feet, or an equivalent residential  
 12 density, within a rural subdivision and permit the  
 13 construction of one dwelling on such lot, provided  
 14 that all other dwellings in the subdivision shall have  
 15 a minimum lot size of one-half acre or 21,780 square  
 16 feet~~[. Such petition for variance may be processed~~  
 17 ~~under the special permit procedure. These districts~~  
 18 ~~may include contiguous]~~;

19 (3) Contiguous areas ~~[which]~~ that are not suited to low  
 20 density residential lots or small farms by reason of  
 21 topography, soils, and other related characteristics~~[~~  
 22 ~~Rural districts shall also include golf]~~;



- 1        (4) Golf courses, golf driving ranges, and golf-related
- 2                    facilities[-];
- 3        (5) Agribusiness activities, including but not limited to
- 4                    horticulture, apiculture, aquaculture, the raising and
- 5                    keeping of livestock, and establishment of plant
- 6                    nurseries;
- 7        (6) Farm worker housing; and
- 8        (7) Affordable housing, without a special permit; provided
- 9                    that the housing is:
- 10                    (A) Affordable to households with incomes at or below
- 11                    one hundred forty per cent of the median family
- 12                    income as determined by the United States
- 13                    Department of Housing and Urban Development; and
- 14                    (B) Situated on land reclassified to the rural
- 15                    district under a declaratory order issued
- 16                    pursuant to section 205-45 that also designates
- 17                    important agricultural land."

18            SECTION 3. Section 205-5, Hawaii Revised Statutes, is  
 19 amended by amending subsection (c) to read as follows:

20            "(c) Unless authorized by special permit issued pursuant  
 21 to this chapter, only the following uses shall be permitted  
 22 within rural districts:



- 1 (1) Low density residential uses[+], with a minimum lot
- 2 size of one-half acre and one dwelling unit per lot,
- 3 except as provided in section 205-2(c);
- 4 (2) Agricultural uses;
- 5 (3) Golf courses, golf driving ranges, and golf-related
- 6 facilities; [and]
- 7 (4) Public, quasi-public, and public utility
- 8 facilities[-];
- 9 (5) Agribusiness activities, as provided in section
- 10 205-2(c);
- 11 (6) Farm worker housing; and
- 12 (7) Affordable housing meeting the requirements of section
- 13 205-2(c)(7), with density established by county
- 14 zoning.

15 ~~[In addition, the minimum lot size for any low density~~

16 ~~residential use shall be one half acre and there shall be but~~

17 ~~one dwelling house per one half acre, except as provided for in~~

18 ~~section 205-2.] "~~

19 SECTION 4. Section 205-44, Hawaii Revised Statutes, is

20 amended to read as follows:

21 " [+] §205-44 [+] **Standards and criteria for the**

22 **identification of important agricultural lands.** (a) The

1 standards and criteria in this section shall be used to identify  
2 important agricultural lands. Lands identified as important  
3 agricultural lands need not meet every standard and criteria  
4 listed below. Rather, lands meeting any of the criteria below  
5 shall be given initial consideration; provided that the  
6 designation of important agricultural lands shall be made by  
7 weighing the standards and criteria with each other to meet the  
8 constitutionally mandated purposes in article XI, section 3, of  
9 the state constitution and the objectives and policies for  
10 important agricultural lands in sections 205-42 and 205-43.

11 (b) In a petition for a declaratory order submitted under  
12 section 205-45 that seeks to both designate lands as important  
13 agricultural lands and reclassify lands in the agricultural  
14 district to the rural or urban district, the lands shall be  
15 deemed qualified for the important agricultural land designation  
16 if the commission reasonably finds that the lands meet at least  
17 the criteria of subsection (c)(4), (6), and (8).

18 If a petition seeks to only designate land as important  
19 agricultural lands, then the commission shall evaluate the lands  
20 in accordance with subsection (a).

21 (c) The standards and criteria shall be as follows:

22 (1) Land currently used for agricultural production;



1 (2) Land with soil qualities and growing conditions that  
2 support agricultural production of food, fiber, or  
3 fuel- and energy-producing crops;

4 (3) Land identified under agricultural productivity rating  
5 systems, such as the agricultural lands of importance  
6 to the State of Hawaii (ALISH) system adopted by the  
7 board of agriculture on January 28, 1977;

8 (4) Land with soil classified by the land study bureau's  
9 detailed land classification as overall (master)  
10 productivity rating:

11 (A) Class A or B; or

12 (B) Class C or D if the land is currently in  
13 agricultural production or could be put into  
14 productive agricultural use with the  
15 implementation of new technology or development  
16 of irrigation water;

17 [~~4~~] (5) Land types associated with traditional native  
18 Hawaiian agricultural uses, such as taro cultivation,  
19 or unique agricultural crops and uses, such as coffee,  
20 vineyards, aquaculture, and energy production;

21 [~~5~~] (6) Land with sufficient quantities of water to  
22 support viable agricultural production;



1       ~~[(6)]~~ (7) Land whose designation as important agricultural  
2                   lands is consistent with general, development, and  
3                   community plans of the county;

4       ~~[(7)]~~ (8) Land that contributes to maintaining a critical  
5                   land mass important to agricultural operating  
6                   productivity; ~~[and]~~

7       ~~[(8)]~~ (9) Land with or near support infrastructure  
8                   conducive to agricultural productivity, such as  
9                   transportation to markets, water, or power~~[-]~~; and

10       (10) Land that, although unsuited for agricultural use  
11                   because of topography, is part of a tax map key  
12                   parcel, most of which is comprised of land meeting at  
13                   least one of the standards and criteria listed above.  
14                   Land under this paragraph shall be designated as  
15                   important agricultural land only if the entire tax map  
16                   key parcel is so designated."

17       SECTION 5. Section 205-45, Hawaii Revised Statutes, is  
18       amended to read as follows:

19       "~~[(1)]~~**\$205-45**~~[(1)]~~ **Petition by farmer or landowner.** (a) A  
20       farmer or landowner with lands qualifying under section 205-44  
21       may file with the commission a petition for declaratory ~~[ruling~~  
22       ~~with the commission]~~ order to designate those lands as important



1 agricultural lands in perpetuity. The petition may be filed at  
2 any time in the designation process.

3 (b) Any law to the contrary notwithstanding, within the  
4 same petition for declaratory order as described in subsection  
5 (a), the petitioner may seek a reclassification of land in the  
6 agricultural district to the rural district, urban district, or  
7 a combination of both; provided that the:

8 (1) Land sought to be reclassified to the rural or urban  
9 district is within the same county as the land sought  
10 to be designated as important agricultural lands;

11 (2) Reclassification of the land to the rural or urban  
12 district is consistent with the relevant county  
13 general, development, and community plans; and

14 (3) Total acreage of the land sought to be designated or  
15 reclassified in the petition complies with the  
16 following proportions:

17 (A) At least eighty per cent of the total acreage is  
18 sought to be designated as important agricultural  
19 land; and

20 (B) The remainder of the acreage is sought to be  
21 reclassified to the rural or urban district.





1        [~~(b)~~] (c) The petition for declaratory [~~ruling~~] order  
2 shall be submitted in accordance with subchapter 14 of the  
3 commission's rules and shall include:

4        (1) Tax map keys of the land to be designated as important  
5                agricultural lands and, if applicable, the land to be  
6                reclassified from the agricultural district to the  
7                rural or urban district, along with verification and  
8                authorization from the applicable landowners;

9        (2) Proof of qualification for designation as important  
10                agricultural lands under section 205-44, respecting a  
11                regional perspective; [~~and~~]

12        (3) The current or planned agricultural use of the area  
13                sought to be designated [~~-~~] as important agricultural  
14                lands; and

15        (4) If applicable, the current or planned use of the area  
16                sought to be reclassified to the rural or urban  
17                district.

18        [~~(e)~~] (d) The commission shall review the petition and the  
19        accompanying submissions to evaluate the qualifications of the  
20        land for designation as important agricultural lands in  
21        accordance with section 205-44.



1        If the petition also seeks the reclassification of land to  
2 the rural or urban district, the commission shall review the  
3 petition and accompanying submissions to evaluate the  
4 suitability of the land for the reclassification in accordance  
5 with section 205-2, consistency of the reclassification with the  
6 relevant county general, development, and community plans, and  
7 compliance with the other provisions of subsection (b).

8        If the commission, after its review [~~and evaluation~~], finds  
9 that the [~~lands qualify for~~] designation [~~as important~~  
10 ~~agricultural lands under this part,~~] and, if applicable,  
11 reclassification sought in the petition should be approved, the  
12 commission shall vote, by a two-thirds majority of the members  
13 of the commission, to issue a declaratory order designating the  
14 petitioner's identified lands as important agricultural lands[~~]~~  
15 and, if applicable, reclassifying the petitioner's identified  
16 land from the agricultural district to the rural or urban  
17 district.

18        With respect to a petition that seeks to both designate  
19 important agricultural lands and reclassify agricultural lands  
20 to the rural or urban district, if the commission finds that  
21 either the designation or reclassification as proposed by the



1 petitioner should not be approved, the commission shall deny the  
2 petition in its entirety.

3 ~~[(d) Designating important agricultural lands by the~~  
4 ~~commission]~~ (e) The designation or reclassification of land  
5 pursuant to subsection (a) or (b) shall not be [considered as an  
6 amendment to district boundaries under] subject to the district  
7 boundary amendment procedures of sections 205-3.1 and 205-4 or  
8 become effective prior to legislative enactment of protection  
9 and incentive measures for important agricultural land and  
10 agricultural viability, as provided in section 9 of Act 183,  
11 Session Laws of Hawaii 2005.

12 ~~[(e)]~~ (f) Farmers or landowners with lands qualifying  
13 under section 205-44 may file petitions for a declaratory  
14 ~~[ruling]~~ order to designate lands as important agricultural  
15 lands following the legislative enactment of protection and  
16 incentive measures for important agricultural lands and  
17 agricultural viability, as provided in section 9 of Act 183,  
18 Session Laws of Hawaii 2005.

19 (g) After a declaratory order designates any land as  
20 important agricultural land pursuant to this section, the  
21 commission shall not remove that designation from any land so  
22 designated in the order.



1        (h) The commission may adopt rules pursuant to chapter 91  
2 to effectuate this section."

3        SECTION 6. Section 205-52, Hawaii Revised Statutes, is  
4 amended to read as follows:

5        "[~~+~~]**§205-52**[~~+~~] **Periodic review and amendment of important**  
6 **agricultural lands maps.** The maps delineating important  
7 agricultural lands shall be reviewed in conjunction with the  
8 county general plan and community and development plan revision  
9 process, or at least once every ten years following the adoption  
10 of the maps by the land use commission; provided that the maps  
11 shall not be reviewed more than once every five years. Any  
12 review and amendment of the maps of important agricultural lands  
13 shall be conducted in accordance with this part. In these  
14 periodic reviews [~~or petitions by the farmers or landowners for~~  
15 ~~declaratory rulings~~], the "important agricultural lands"  
16 designation [~~shall~~] may be removed from those [~~important~~  
17 ~~agricultural lands where the commission has issued a declaratory~~  
18 ~~order that a sufficient supply of water is no longer available~~  
19 ~~to allow profitable farming of these lands due to governmental~~  
20 ~~actions, acts of God, or other causes beyond the farmer's or~~  
21 ~~landowner's reasonable control.~~] lands which were so designated



1 by district boundary amendment and not a declaratory order under  
2 section 205-45."

3 SECTION 7. The legislature declares that this Act  
4 establishes incentives for the designation of important  
5 agricultural land in satisfaction of section 205-46, Hawaii  
6 Revised Statutes, and section 9 of Act 183, Session Laws of  
7 Hawaii 2005.

8 SECTION 8. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10 SECTION 9. This Act shall take effect upon its approval.



**Report Title:**

Land Use; Rural or Urban Districts; Important Agricultural Lands

**Description:**

Provides two incentives to landowners who designate their land as important agricultural lands by allowing a landowner: (1) who has designated important agricultural lands to satisfy state- or county-imposed affordable housing assessments in the rural district; (2) to submit a petition for a declaratory order from the land use commission to combine the designation of important agricultural lands with the reclassification of agricultural land to the rural or urban district. (HB2807 HD1)

