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## A BILL FOR AN ACT

RELATING TO IMPORTANT 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, was enacted. Act 183  
3 establishes standards, criteria, and mechanisms to identify  
4 important agricultural lands and to implement the intent and  
5 purpose of article XI, section 3, of the Hawaii state  
6 constitution.

7 Act 183 also recognized that while the supply of lands  
8 suitable for agriculture is critical, the long-term viability of  
9 agriculture also depends on other factors. These factors  
10 include:

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

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



PART II

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

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

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

(1) The minimum length of the initial lease term shall be:

(A) Twenty years; or

(B) Any other lease term mutually agreeable to the

lessor and lessee, if the amount of the lease

rent is set by an independent appraisal using the

lower of the comparable value or agricultural

capitalization appraisal methodologies; and



1       (2) The lease is in effect and the lessee is continuously  
2       and substantially undertaking agribusiness on the  
3       leased land, pursuant to chapter 205, as verified by  
4       the department of agriculture on a regular basis using  
5       a process determined by the department of agriculture;  
6       provided that the exclusion shall not apply if the lease is  
7       terminated or the department of agriculture determines that the  
8       leased land is not continuously and substantially used for  
9       agribusiness.

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

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

22       (c) For the purposes of this section:



1       "Agribusiness" means a business licensed for the  
2 production, processing, and sale of products from the  
3 cultivation of crops, propagation of fish or game, or raising of  
4 livestock."

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

7       "**§237-24.75 Additional exemptions.** In addition to the  
8 amounts exempt under section 237-24, this chapter shall not  
9 apply to:

- 10       (1) Amounts received as a beverage container deposit  
11             collected under chapter 342G, part VIII;
- 12       (2) Amounts received by the operator of the Hawaii  
13             convention center for reimbursement of costs or  
14             advances made pursuant to a contract with the Hawaii  
15             tourism authority under section 201B-7[+]; and[+]
- 16       [+] (3) Amounts received[+] by a professional employment  
17             organization from a client company equal to amounts  
18             that are disbursed by the professional employment  
19             organization for employee wages, salaries, payroll  
20             taxes, insurance premiums, and benefits, including  
21             retirement, vacation, sick leave, health benefits, and  
22             similar employment benefits with respect to assigned



1 employees at a client company; provided that this  
 2 exemption shall not apply to a professional employment  
 3 organization upon failure of the professional  
 4 employment organization to collect, account for, and  
 5 pay over any income tax withholding for assigned  
 6 employees or any federal or state taxes for which the  
 7 professional employment organization is responsible.  
 8 As used in this paragraph, "professional employment  
 9 organization", "client company", and "assigned  
 10 employee" shall have the meanings provided in section  
 11 373K-1[-]; and

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

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

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



1 SECTION 5. The department of agriculture shall submit to  
2 the legislature an annual report, no later than twenty days  
3 prior to the convening of each regular session, beginning with  
4 the regular session of 2010, regarding the quantitative and  
5 qualitative assessment of the impact of the exclusion of rental  
6 income from important agricultural lands from income and general  
7 excise taxation.

8 PART III

9 SECTION 6. Chapter 235, Hawaii Revised Statutes, is  
10 amended by adding a new section to be appropriately designated  
11 and to read as follows:

12 "§235- Important agricultural lands tax credit. (a)  
13 There shall be allowed to each taxpayer, subject to the taxes  
14 imposed by this chapter, an important agricultural lands real  
15 property tax credit that shall be deductible from the taxpayer's  
16 net income tax liability, if any, imposed by this chapter for  
17 the taxable year in which the credit is properly claimed.

18 (b) The amount of the tax credit shall be equal to the  
19 amount of county real property taxes paid by the taxpayer during  
20 the taxable year in which the real property tax was assessed on  
21 lands designated as important agricultural lands pursuant to  
22 part III, chapter 205.



1 In the case of a partnership, S corporation, estate, or  
2 trust, the amount upon which the credit is computed shall be  
3 determined at the entity level. Distribution and share of  
4 credit shall be determined by rule.

5 (c) The tax credit shall be allowed only for the entity  
6 incurring the actual cost of the real property tax. If the real  
7 property tax is part of the lease rent and not otherwise  
8 specified in the lease agreement, upon request, the lessor shall  
9 provide the lessee with the amount of the real property tax  
10 included as part of the lease rent.

11 (d) If the classification of the important agricultural  
12 lands subject to the credit is redesignated, the credit shall no  
13 longer be available.

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





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

6       (f) The director of taxation:

7       (1) Shall prepare forms that may be necessary to claim a  
8 credit under this section;

9       (2) May require the taxpayer to furnish information to  
10 ascertain the validity of the claim for credit made  
11 under this section; and

12       (3) May adopt rules pursuant to chapter 91 to effectuate  
13 this section.

14       (g) The tax credit allowed under this section shall be  
15 available for taxable years beginning after December 31, 2008,  
16 and shall not be available for taxable years beginning after  
17 December 31, 2028.

18       (h) Upon request, taxpayers claiming the credit under this  
19 section shall provide prescribed information to the department  
20 of agriculture on an annual basis that will enable a  
21 quantitative and qualitative assessment of the impact of the tax  
22 credit. The assessment shall be made available to the public.





- 1       (1) The farmers' dwelling units shall be used exclusively  
2       by farmers and their immediate family members who  
3       actively and currently farm on important agricultural  
4       land upon which the dwelling is situated; provided  
5       that the immediate family members of a farmer may live  
6       in separate dwelling units situated on the same  
7       designated land;
- 8       (2) Employee dwelling units shall be used exclusively by  
9       employees and their immediate family members who  
10      actively and currently work on important agricultural  
11      land upon which the dwelling is situated; provided  
12      that the immediate family members of the employee  
13      shall not live in separate dwelling units and shall  
14      live with the employee;
- 15      (3) The total land area upon which the farmer and employee  
16      dwelling units and all appurtenances are situated  
17      shall not occupy more than twenty per cent of the  
18      total important agricultural land area controlled by  
19      the farmer or the employee's employer;
- 20      (4) The farmers' and employee dwelling units meet all  
21      applicable building code requirements;



1       (5) Notwithstanding section 205-4.5(a)(12), the landowner  
 2       shall not plan or develop a residential subdivision on  
 3       the important agricultural land; and  
 4       (6) The plans for farmers and employee dwelling units  
 5       shall be supported by agricultural plans that are  
 6       approved by the department of agriculture."

PART V

8       SECTION 9. Tax incentives are a critical component of the  
 9 long-term viability of agriculture on important agricultural  
 10 lands in the State. The legislature finds that it is in the  
 11 public's interest to assist agricultural businesses in  
 12 establishing and sustaining viable agricultural operations on  
 13 important agricultural lands by providing incentives such as  
 14 income tax credits.

15       The purpose of this part is to establish an important  
 16 agricultural land tax credit to establish and sustain viable  
 17 agricultural operations on important agricultural lands.

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

21       "§235-    **Important agricultural land tax credit.** (a)  
 22 There shall be allowed to each taxpayer an income tax credit,



1 which shall be deductible from the taxpayer's net income tax  
2 liability, if any, imposed by this chapter for the taxable year  
3 in which the credit is properly claimed. The tax credit shall  
4 apply as follows:

5 (1) In the year qualified agricultural costs are incurred,  
6 fifty per cent of the qualified agricultural costs up  
7 to a maximum of \_\_\_\_\_ ;

8 (2) In the first year following the year in which  
9 qualified agricultural costs are incurred, twenty per  
10 cent of the qualified agricultural costs up to a  
11 maximum of \_\_\_\_\_ ;

12 (3) In the second year following the year in which  
13 qualified agricultural costs are incurred, ten per  
14 cent of the qualified agricultural costs up to a  
15 maximum of \_\_\_\_\_ ;

16 (4) In the third year following the year in which  
17 qualified agricultural costs are incurred, ten per  
18 cent of the qualified agricultural costs up to a  
19 maximum of \_\_\_\_\_ ; and

20 (5) In the fourth year following the year in which  
21 qualified agricultural costs are incurred, ten per



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

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

6           (c) The amount of the qualified agricultural costs  
7 eligible to be claimed under this section shall be reduced by  
8 the amount of funds received by the taxpayer during the taxable  
9 year from the irrigation repair and maintenance special fund  
10 under section 167-24.

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

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

20           The basis of eligible property for depreciation or  
21 accelerated cost recovery system purposes for state income taxes  
22 shall be reduced by the amount of credit allowable and claimed.



1 No deduction shall be allowed for that portion of otherwise  
2 deductible qualified agricultural costs on which a credit is  
3 claimed under this section.

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

10 All claims for a tax credit under this section, including  
11 amended claims, shall be filed on or before the end of the  
12 twelfth month following the close of the taxable year for which  
13 the credit is claimed. Failure to comply with the foregoing  
14 provision shall constitute a waiver of the right to claim the  
15 credit.

16 (f) The director of taxation:

17 (1) Shall prepare any forms that may be necessary to claim  
18 a credit under this section;

19 (2) May require the taxpayer to furnish information to  
20 ascertain the validity of the claim for credit made  
21 under this section; and



1       (3) May adopt rules pursuant to chapter 91 to effectuate  
2       this section.

3       (g) Prior to claiming the tax credit under this section,  
4       the taxpayer may request a letter from the department of  
5       agriculture specifying the qualified agricultural costs in the  
6       taxable year the tax credit will be claimed. The taxpayer shall  
7       provide information required by the department of agriculture  
8       prior to the issuance of the letter.

9       (h) The department of agriculture, in consultation with  
10      the department of taxation, shall annually determine the  
11      information necessary to provide a quantitative and qualitative  
12      assessment of the outcomes of the tax credit. Every taxpayer,  
13      no later than the last day of the taxable year following the  
14      close of the taxpayer's taxable year in which qualified costs  
15      were incurred, shall submit a written statement to and certified  
16      by the department of agriculture. Failure to provide the  
17      information shall result in ineligibility and a recapture of any  
18      credit already claimed for that taxable year. The amount of the  
19      recaptured tax credit shall be added to the taxpayer's tax  
20      liability for the taxable year in which the recapture occurs.

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





1       (i) The department of agriculture, in consultation with  
2 the department of taxation, shall annually submit a report  
3 evaluating the effectiveness of the tax credit. The report  
4 shall include but not be limited to findings and recommendations  
5 to improve the effectiveness of the tax credit to further  
6 encourage the development of agricultural businesses.

7       (j) As used in this section:

8       "Agricultural business" means any person with a commercial  
9 agricultural, silvicultural, or aquacultural facility or  
10 operation, including:

11       (1) The care and production of livestock and livestock  
12 products, poultry and poultry products, apiary  
13 products, and plant and animal production for nonfood  
14 uses;

15       (2) The planting, cultivating, harvesting, and processing  
16 of crops; and

17       (3) The farming or ranching of any plant or animal species  
18 in a controlled salt, brackish, or freshwater  
19 environment;

20 provided that the principal place of the agricultural business  
21 is maintained in the State and more than fifty per cent of the



1 land the agricultural business owns or leases, excluding land  
2 classified as conservation land, is important agricultural land.

3 "Important agricultural lands" means lands identified and  
4 designated as important agricultural lands pursuant to chapter  
5 205, part III.

6 "Net income tax liability" means income tax liability  
7 reduced by all other credits allowed under this chapter.

8 "Qualified agricultural costs" means expenditures for:

9 (1) The plans, design, engineering, construction,  
10 renovation, repair, maintenance, and equipment for:

11 (A) Roads or utilities, primarily for agricultural  
12 purposes, for which the majority of the lands  
13 serviced by the roads or utilities, excluding  
14 lands classified as conservation lands, are  
15 important agricultural lands;

16 (B) Agricultural processing facilities in the State,  
17 primarily for agricultural purposes, that  
18 process, harvest, treat, wash, handle, or package  
19 a majority of crops or livestock from  
20 agricultural businesses;

21 (C) Water wells, reservoirs, dams, water storage  
22 facilities, water pipelines, ditches, or



1           irrigation systems in the State, primarily for  
2           agricultural purposes, for which the majority of  
3           the lands serviced by its water, excluding lands  
4           classified as conservation lands, are important  
5           agricultural lands; and

6           (D) Agricultural housing in the State, primarily for  
7           agricultural purposes; provided that:

8           (i) The majority of the housing units are  
9           occupied by farmers or employees for  
10           agricultural businesses and their immediate  
11           family members;

12           (ii) The housing units are owned by the  
13           agricultural business;

14           (iii) The housing units are in the general  
15           vicinity, as determined by the department of  
16           agriculture, of agricultural lands owned or  
17           leased by the agricultural business; and

18           (iv) The housing units conform to any other  
19           conditions that may be required by the  
20           department of agriculture;



- 1        (2) Feasibility studies, regulatory processing, and legal
- 2                    and accounting services related to the items under
- 3                    paragraph (1); and
- 4        (3) Equipment, primarily for agricultural purposes, used
- 5                    to cultivate, grow, harvest, or process agricultural
- 6                    products by an agricultural business."

7            SECTION 11. There is appropriated out of the general  
8 revenues of the State of Hawaii the sum of \$                    or so much  
9 thereof as may be necessary for fiscal year 2008-2009 for the  
10 department of taxation to administer the important agricultural  
11 land agricultural tax credit.

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

14            SECTION 12. There is appropriated out of the general  
15 revenues of the State of Hawaii the sum of \$                    or so much  
16 thereof as may be necessary for fiscal year 2008-2009 for the  
17 department of agriculture to administer the important  
18 agricultural land tax credit and for one full time equivalent  
19 planner position for the department of agriculture.

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



PART VI

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

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

SECTION 14. Chapter 155, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

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

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

4       (2) The commercial lender has completed its due diligence  
5       in approving the loan, including ensuring adequate  
6       collateral; and

7       (3) After consultation with the director of finance, the  
8       State possesses sufficient funds to provide an  
9       appropriate reserve for the loan guaranty and which,  
10       in the director of finance's judgment, are in excess  
11       of the amounts necessary for meeting the immediate  
12       requirements of the State and will not impede or  
13       hamper the fulfillment of the financial obligations of  
14       the State.

15       The chairperson of the board of agriculture may impose other  
16       conditions that the chairperson deems reasonable to implement  
17       the loan guaranty.

18       (b) In addition to the conditions that the chairperson of  
19       the board of agriculture may impose under subsection (a), any  
20       loan guaranty made pursuant to this section shall meet the  
21       following conditions:



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

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

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

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

12       (5) The principal amount of the loan shall not exceed  
13       \$2,500,000.

14       (c) The department of agriculture may adopt rules pursuant  
15       to chapter 91 to effectuate this section.

16       (d) As used in this section:

17       "Agricultural producer" means a farmer, cooperative  
18       association, or landowner who derives at least fifty per cent of  
19       its gross income from agricultural or aquacultural activities.

20       "Agricultural project" means a project relating to  
21       agricultural or aquacultural operations or capital  
22       improvements."



1 PART VII

2 SECTION 15. Act 183 recognized that while land is the  
3 basic resource for agriculture and the supply of land suitable  
4 for agriculture is an irreplaceable resource, the long-term  
5 viability of agriculture also depends on factors that affect the  
6 profitability of agriculture, such as:

- 7 (1) The availability of water for irrigation;
- 8 (2) Commodity prices;
- 9 (3) Agricultural research and outreach;
- 10 (4) The application of production technologies;
- 11 (5) Marketing; and
- 12 (6) The availability and cost of transportation services.

13 The most important of these is the availability of water  
14 for irrigation. The legislature finds that to promote the long-  
15 term viability of agriculture, the State must establish  
16 mechanisms that promote the availability of irrigation water for  
17 agricultural activities.

18 The legislature finds that amendments to the state water  
19 code are needed to accomplish this objective. The water code  
20 was adopted prior to the enactment of Act 183, establishing the  
21 important agricultural lands program. The adoption of the water  
22 code also preceded a number of decisions made by the Hawaii





1 supreme court in a series of water law cases interpreting the  
2 state water code, several of which are known collectively as the  
3 Waiahole Ditch cases.

4 In these cases, the Hawaii supreme court decided that the  
5 "Public Trust Doctrine" applies to water resources and water  
6 resource decisions made by the implementing agency. Further,  
7 the Hawaii supreme court identified resource protection,  
8 domestic uses, preservation of the rights of native tenants and  
9 reservations of water for the department of Hawaiian home lands  
10 as valid public trust purposes. In these same cases, the court  
11 did not specifically recognize agriculture as a public trust,  
12 and in fact, viewed the requests for agricultural water as  
13 serving private interests. The court stopped short of embracing  
14 private commercial use as a protected trust purpose and appeared  
15 to relegate agriculture to a lower priority.

16 Uses under the public trust, however, do not remain fixed  
17 for all time but must conform to changing public values and  
18 needs. The legislature, as elected representatives of the  
19 people of Hawaii, is in the best position to identify such  
20 public trust values and needs.

21 While agricultural activities may be conducted by private  
22 entities, the preservation of agriculture as an industry and the



1 preservation of important agricultural lands are interests that  
2 the people of Hawaii value highly, and have recognized as a  
3 constitutional mandate as discussed above. Essential to  
4 conserving and protecting agricultural lands, promoting  
5 diversified agriculture, increasing agricultural self-  
6 sufficiency, and ensuring the availability of agriculturally  
7 suitable lands is the availability of water for agricultural  
8 use.

9 The purpose of this part is to further implement Act 183 by  
10 amending the state water code to require that:

11 (1) The state water plan, including the water resource  
12 protection, water use and development, and water  
13 projects plans; and

14 (2) The provisions of the water code regulating the use of  
15 waters,

16 recognize and support the importance of making sufficient water  
17 available for agricultural activity on lands identified and  
18 designated as important agricultural lands under part III of  
19 chapter 205 to preserve agriculture and agricultural lands as  
20 mandated by the state constitution.

21 SECTION 16. Section 174C-2, Hawaii Revised Statutes, is  
22 amended to read as follows:



1           **"§174C-2 Declaration of policy.** (a) It is recognized  
2 that the waters of the State are held for the benefit of the  
3 citizens of the State. It is declared that the people of the  
4 State are beneficiaries and have a right to have the waters  
5 protected for their use.

6           (b) There is a need for a program of comprehensive water  
7 resources planning to address the problems of supply and  
8 conservation of water. The Hawaii water plan, with such future  
9 amendments, supplements, and additions as may be necessary, is  
10 accepted as the guide for developing and implementing this  
11 policy.

12           (c) The state water code shall be liberally interpreted to  
13 obtain maximum beneficial use of the waters of the State for  
14 purposes such as domestic uses, aquaculture uses, irrigation and  
15 other agricultural uses, power development, and commercial and  
16 industrial uses. However, adequate provision shall be made for  
17 the protection of traditional and customary Hawaiian rights, the  
18 protection and procreation of fish and wildlife, the maintenance  
19 of proper ecological balance and scenic beauty, and the  
20 preservation and enhancement of waters of the State for  
21 municipal uses, public recreation, public water supply,



1 agriculture, and navigation. Such objectives are declared to be  
2 in the public interest.

3 (d) The public trust doctrine shall guide the actions of  
4 the commission. In the planning and allocation of water  
5 resources, to the extent feasible, the commission shall  
6 recognize the public trust purposes of resource protection,  
7 domestic uses, upholding the exercise of native Hawaiian  
8 traditional and customary rights, and the conservation and  
9 protection of agricultural activity on important agricultural  
10 lands under part III of chapter 205.

11 [~~(d)~~] (e) The state water code shall be liberally  
12 interpreted to protect and improve the quality of waters of the  
13 State and to provide that no substance be discharged into such  
14 waters without first receiving the necessary treatment or other  
15 corrective action. The people of Hawaii have a substantial  
16 interest in the prevention, abatement, and control of both new  
17 and existing water pollution and in the maintenance of high  
18 standards of water quality.

19 [~~(e)~~] (f) The state water code shall be liberally  
20 interpreted and applied in a manner which conforms with  
21 intentions and plans of the counties in terms of land use  
22 planning."



1 SECTION 17. Section 174C-31, Hawaii Revised Statutes, is  
2 amended by amending subsections (e) and (f) to read as follows:

3 "(e) The department of agriculture shall prepare a state  
4 agricultural water use and development plan for agricultural  
5 uses in the State in accordance with chapter 167 and this  
6 chapter, and subsequently modify and update the plan as  
7 necessary. The state agricultural water use and development  
8 plan shall include but not be limited to a master irrigation  
9 inventory plan which shall:

- 10 (1) Inventory [~~the~~] public and private irrigation water  
11 systems;
- 12 (2) Identify the extent of rehabilitation needed for each  
13 system;
- 14 (3) Identify sources of water used by agricultural  
15 operations and particularly those on lands identified  
16 and designated as important agricultural lands under  
17 part III of chapter 205;
- 18 (4) Identify current and future water needs for  
19 agricultural operations on lands identified and  
20 designated as important agricultural lands under part  
21 III of chapter 205;



1        [~~3~~] (5)    Subsidize the cost of repair and maintenance of  
2                                    the systems;

3        [~~4~~] (6)    Establish criteria to prioritize the  
4                                    rehabilitation of the systems;

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

7        [~~6~~] (8)    Set up a long-range plan to manage the systems.

8    The commission shall coordinate the incorporation of the state  
9    agricultural water use and development plan into the state water  
10 projects plan.

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

13        (1)    Status of water and related land development,  
14                                    including an inventory of existing water uses for  
15                                    domestic, municipal, and industrial users,  
16                                    agriculture~~[7]~~ and particularly those designated as  
17                                    important agricultural lands under part III of chapter  
18                                    205, aquaculture, hydropower development, drainage,  
19                                    reuse, reclamation, recharge, and resulting problems  
20                                    and constraints;

21        (2)    Future land uses and related water needs; and



1 (3) Regional plans for water developments, including  
 2 recommended and alternative plans, costs, adequacy of  
 3 plans, and relationship to the water resource  
 4 protection and water quality plans."

PART VIII

6 SECTION 18. Chapter 205, Hawaii Revised Statutes, is  
 7 amended by adding a new section to part III to be appropriately  
 8 designated and to read as follows:

9 **"§205- Agricultural processing facilities; permits;**  
 10 **priority.** (a) Any agency subject to this chapter or title 13  
 11 that issues permits shall establish and implement a procedure  
 12 for the priority processing of permit applications and renewals,  
 13 at no additional cost to the applicant, for agricultural  
 14 processing facilities that process crops or livestock from an  
 15 agribusiness with a majority of the lands held, owned, or used  
 16 by the agribusiness, identified and designated as important  
 17 agricultural lands pursuant to this part, excluding lands held,  
 18 owned, or used by the agribusiness in a conservation district.

19 Any priority permit processing procedure established  
 20 pursuant to this section shall not provide or imply that any  
 21 permit application filed under the priority processing procedure  
 22 shall be automatically approved.



1        (b) As used in this subsection, "agribusiness" means a  
2 business primarily engaged in the care and production of  
3 livestock, livestock products, poultry, poultry products,  
4 apiary, horticultural, floricultural products, or the planting,  
5 cultivating, and harvesting of crops or trees."

6        SECTION 19. Chapter 321, Hawaii Revised Statutes, is  
7 amended by adding a new section to be appropriately designated  
8 and to read as follows:

9        "§321-    **Agricultural processing facilities; permits;**  
10 **priority.** (a) Any agency subject to this chapter or title 19  
11 that issues permits shall establish and implement a procedure  
12 for the priority processing of permit applications and renewals,  
13 at no additional cost to the applicant, for agricultural  
14 processing facilities that process crops or livestock from an  
15 agribusiness. The majority of the lands held, owned, or used by  
16 the agribusiness shall be land designated as important  
17 agricultural lands pursuant to this part, excluding lands held,  
18 owned, or used by the agribusiness in a conservation district.

19        Any priority permit processing procedure established  
20 pursuant to this section shall not provide or imply that any  
21 permit application filed under the priority processing procedure  
22 shall be automatically approved.





1        (b) As used in this subsection, "agribusiness" means a  
 2 business primarily engaged in the care and production of  
 3 livestock, livestock products, poultry, poultry products,  
 4 apiary, horticultural, floricultural products, or the planting,  
 5 cultivating, and harvesting of crops or trees."

PART IX

7        SECTION 20. Chapter 205, Hawaii Revised Statutes, is  
 8 amended by adding a new section to be appropriately designated  
 9 and to read as follows:

10        **"§205- Satisfaction of state or county affordable**  
 11 **housing requirements for land in a rural district.** (a) In lieu  
 12 of partially satisfying a state or county affordable housing  
 13 assessment in a rural district, a project landowner may satisfy  
 14 the requirements in section 205-2(c)(7); provided that the  
 15 project landowner provides        per cent more affordable housing  
 16 units on the land in the rural district than required by the  
 17 assessment.

18        (b) No more than        per cent of the affordable housing  
 19 assessment under subsection (a) may be satisfied on the land in  
 20 the rural district."

21        SECTION 21. Section 205-2, Hawaii Revised Statutes, is  
 22 amended by amending subsection (c) to read as follows:



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

2       (1) Activities or uses as characterized by low density

3       residential lots of not more than one dwelling house

4       per one-half acre, except as provided by county

5       ordinance pursuant to section 46-4(c), in areas where

6       "city-like" concentration of people, structures,

7       streets, and urban level of services are absent [~~and~~

8       ~~where small~~];

9       (2) Small farms [~~are~~] intermixed with low density

10       residential lots except that within a subdivision, as

11       defined in section 484-1, the commission, for good

12       cause and on petition for a special permit, may allow

13       one lot of less than one-half acre, but not less than

14       18,500 square feet, or an equivalent residential

15       density, within a rural subdivision and permit the

16       construction of one dwelling on such lot [~~and~~]; provided

17       that all other dwellings in the subdivision shall have

18       a minimum lot size of one-half acre or 21,780 square

19       feet [~~. Such petition for variance may be processed~~

20       ~~under the special permit procedure. These districts~~

21       ~~may include contiguous~~];



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

5       (4) Golf courses, golf driving ranges, and golf-related  
6           facilities[~~-~~];

7       (5) Agribusiness activities including but not limited to  
8           horticulture, apiculture, aquaculture, raising and  
9           keeping of livestock, and establishment of plant  
10          nurseries;

11       (6) Farm worker housing; and

12       (7) Affordable housing, without regard to any density  
13          requirements and without a special permit; provided  
14          that the housing is affordable to households with  
15          incomes at or below one hundred forty per cent of the  
16          median family income as determined by the United  
17          States Department of Housing and Urban Development."

18       SECTION 22. 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 house per lot,  
3 except as provided for 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, as provided in section 205-2(c).

13 ~~[In addition, the minimum lot size for any low density~~  
14 ~~residential use shall be one-half acre and there shall be but~~  
15 ~~one dwelling house per one-half acre, except as provided for in~~  
16 ~~section 205-2.]"~~

17 SECTION 23. Section 205-45, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 "[~~f~~]**\$205-45**[~~+~~] **Petition by farmer or landowner.** (a) A  
20 farmer or landowner with lands qualifying under section 205-44  
21 may file a petition for declaratory ruling to designate



1 important agricultural lands with the commission at any time in  
2 the designation process.

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

8 (1) Land is within the same county as the land the  
9 petitioner seeks to designate as important  
10 agricultural lands; and

11 (2) Reclassification is consistent with the relevant  
12 county general plan.

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

16 (1) Tax map keys of the land to be designated as important  
17 agricultural lands and, if applicable, the land to be  
18 reclassified from agricultural district to rural  
19 district, along with verification and authorization  
20 from the applicable landowners;



1 (2) Proof of qualification for designation as important  
2 agricultural lands under section 205-44, respecting a  
3 regional perspective; and

4 (3) The current or planned agricultural use of the area to  
5 be designated~~[r]~~ as important agricultural lands.

6 [~~e~~] (d) The commission shall review the petition and the  
7 accompanying submissions to evaluate the qualifications of the  
8 land for designation as important agricultural lands in  
9 accordance with section 205-44. If the commission, after its  
10 review and evaluation, finds that the lands qualify for  
11 designation as important agricultural lands under this part, 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 lands as important agricultural lands~~[r]~~ and, if applicable,  
15 reclassifying petitioner's identified land from agricultural  
16 district to rural district.

17 [~~d~~—Designating important agricultural lands by the  
18 ~~commission~~] (e) The designation or reclassification of land  
19 pursuant to subsection (a) or (b) shall not be considered as an  
20 amendment to district boundaries under sections 205-3.1 and  
21 205-4 or become effective prior to legislative enactment of  
22 protection and incentive measures for important agricultural



1 land and agricultural viability, as provided in section 9 of Act  
2 183, Session Laws of Hawaii 2005.

3 ~~(e)~~ (f) Farmers or landowners with lands qualifying  
4 under section 205-44 may file petitions for a declaratory ruling  
5 to designate lands as important agricultural lands following the  
6 legislative enactment of protection and incentive measures for  
7 important agricultural lands and agricultural viability, as  
8 provided in section 9 of Act 183, Session Laws of Hawaii 2005.

9 (g) The commission may adopt rules pursuant to chapter 91  
10 to effectuate this section."

11 PART X

12 SECTION 24. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 25. This Act shall take effect on July 1, 2008;  
15 provided that sections 2, 3, 6, and 10 of this Act shall apply  
16 to taxable years beginning after December 31, 2007.

17 INTRODUCED BY:

*Tommy Chang*  
*Josh M. [unclear]*  
*Karen [unclear]*

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**Report Title:**

Agriculture; Important Agricultural Lands

**Description:**

Provides incentives and protections to establish and sustain viable agricultural operations on important agricultural lands.

