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

13 Lands identified by the State as important
14 agricultural lands needed to fulfill the purposes
15 above shall not be reclassified by the State or
16 rezoned by its political subdivisions without meeting
17 the standards and criteria established by the



1 legislature and approved by a two-thirds vote of the
2 body responsible for the reclassification or rezoning
3 action."

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

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

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

18 The purpose of this Act is to establish a variety of
19 incentives that meet the requirements of Act 183 by:

- 20 (1) Providing incentives and protections to establish and
21 sustain viable agricultural operations on important
22 agricultural lands; and



- 1 (2) Providing for the designation of important
2 agricultural lands on public lands by:
- 3 (A) Requiring the department of agriculture and
4 department of land and natural resources to
5 jointly identify the state-owned lands that
6 should be designated as "important agricultural
7 lands"; and
- 8 (B) Transferring management authority over those
9 lands to the department of agriculture.

PART II

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

14 **"§235- Rental income from agricultural leases on**
15 **important agricultural lands excluded from gross income.** (a)
16 In addition to the exclusions in section 235-7, there shall be
17 excluded from gross income, adjusted gross income, and taxable
18 income, rental income including lease rents, in an amount not to
19 exceed \$ that is received by a taxpayer subject to the
20 taxes imposed by this chapter and derived from agricultural
21 leases on lands identified and designated as important



1 agricultural lands pursuant to part III of chapter 205, for the
2 taxable year the rental income was realized; provided that:

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

4 (A) Twenty years; or

5 (B) Any other lease term mutually agreeable to the
6 lessor and lessee, if the amount of the lease
7 rent is set by an independent appraisal using the
8 lower of the comparable value or agricultural
9 capitalization appraisal methodologies;

10 and

11 (2) The lease is in effect and the lessee is continuously
12 and substantially undertaking agribusiness on the
13 leased land, pursuant to chapter 205, as verified by
14 the department of agriculture on a regular basis using
15 a process determined by the department of agriculture;

16 provided further that the exclusion shall not apply if the lease
17 is terminated or the department of agriculture determines that
18 the leased land is not continuously and substantially used for
19 agribusiness.

20 The taxpayer shall be eligible for the exclusion for up to
21 twenty years; provided that the time period may be extended for
22 every year the term of the lease is extended; provided further



1 that the assignment of the original lease to another lessee
2 shall be for the time period remaining on the original lease,
3 unless the terms of the lease are renegotiated.

4 (b) Each taxpayer who claims the exclusion under this
5 section shall annually provide any necessary information
6 determined by, and in a manner prescribed by, the department of
7 agriculture to enable an aggregated quantitative and qualitative
8 assessment of the impact of the exclusion.

9 (c) The department of agriculture shall:

- 10 (1) Maintain records of the total amount of rental income
11 excluded from gross income pursuant to this section
12 for each taxpayer claiming an exclusion;
13 (2) Verify the amount of the exclusion claimed;
14 (3) Total all qualified exclusions claimed; and
15 (4) Certify the total amount of the exclusion for each
16 taxable year and the cumulative amount of all
17 exclusions claimed during the taxable period.

18 Upon each determination, the department of agriculture
19 shall issue a certificate to the taxpayer verifying the
20 exclusions, the amount of the exclusion certified for each
21 taxable year, and the cumulative amount of the exclusions during
22 the credit period. The taxpayer shall file the certificate with



1 the taxpayer's tax return with the department of taxation.
2 Notwithstanding the department of agriculture's certification
3 authority under this section, the director of taxation may audit
4 and adjust exclusions to conform to the facts.

5 If in any year, the annual amount of rental income from
6 agricultural leases on important agricultural lands excluded
7 from gross income reaches \$2,500,000 in the aggregate, the
8 department of agriculture shall immediately discontinue
9 certifying exclusions and notify the department of taxation. In
10 no instance shall the total amount of certified exclusions
11 exceed \$2,500,000 per year. Notwithstanding any other law to
12 the contrary, this information shall be available for public
13 inspection and dissemination under chapter 92F.

14 (d) For the purposes of this section:

15 "Agribusiness" means a business licensed for the
16 production, processing, and sale of products from the
17 cultivation of crops, propagation of fish or game, or raising of
18 livestock."

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



1 "**§237-24.75 Additional exemptions.** In addition to the
2 amounts exempt under section 237-24, this chapter shall not
3 apply to:

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

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

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

1 professional employment organization is responsible.

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

6 (4) Amounts received as lease rents as provided in section
7 235- in an amount not to exceed \$2,500,000 in the
8 aggregate as provided by rule adopted pursuant to
9 chapter 91. Any rules adopted pursuant to this
10 paragraph shall include a provision that the income
11 exemption shall apply only until the tax department
12 has exempted an aggregate amount of \$2,500,000 for any
13 single tax year beginning after December 31, 2008."

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 taxation 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 taxation for the purposes of this part.



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

9 PART III

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

13 **"§205- Important agricultural land; residential housing.**

14 A landowner qualifying under section 205-44 may develop,
15 construct, and maintain residential dwelling units for farmers,
16 employees, and their families on important agricultural land;
17 provided that:

18 (1) The farmers' dwelling units shall be used exclusively
19 by farmers and their immediate family members who
20 actively and currently farm on important agricultural
21 land upon which the dwelling is situated; provided
22 further that the immediate family members of a farmer



- 1 may live in separate dwelling units situated on the
2 same designated land;
- 3 (2) Employee dwelling units shall be used exclusively by
4 employees and their immediate family members who
5 actively and currently work on important agricultural
6 land upon which the dwelling is situated; provided
7 further that the immediate family members of the
8 employee shall not live in separate dwelling units and
9 shall live with the employee;
- 10 (3) The total land area upon which the farmer and employee
11 dwelling units and all appurtenances are situated
12 shall not occupy more than per cent of the total
13 important agricultural land area controlled by the
14 farmer or the employee's employer;
- 15 (4) The farmers' and employee dwelling units meet all
16 applicable building code requirements;
- 17 (5) Notwithstanding section 205-4.5(a)(12), the landowner
18 shall not plan or develop a residential subdivision on
19 the important agricultural land; and
- 20 (6) The plans for farmers' and employee dwelling units
21 shall be supported by agricultural plans that are
22 approved by the department of agriculture."



1 PART IV

2 SECTION 7. Tax incentives are a critical component of the
3 long-term viability of agriculture on important agricultural
4 lands in the state. The legislature finds that it is in the
5 public's interest to assist agricultural businesses in
6 establishing and sustaining viable agricultural operations on
7 important agricultural lands by providing incentives such as
8 income tax credits.

9 The purpose of this part is to establish an important
10 agricultural land qualified agricultural cost tax credit to
11 establish and sustain viable agricultural operations on
12 important agricultural lands.

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

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

- 1 (1) In the year qualified agricultural costs are incurred,
2 fifty per cent of the qualified agricultural costs up
3 to a maximum of \$625,000;
- 4 (2) In the first year following the year in which
5 qualified agricultural costs are incurred, twenty per
6 cent of the qualified agricultural costs up to a
7 maximum of \$250,000;
- 8 (3) In the second year following the year in which
9 qualified agricultural costs are incurred, ten per
10 cent of the qualified agricultural costs up to a
11 maximum of \$125,000;
- 12 (4) In the third 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 \$125,000; and
- 16 (5) In the fourth 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 \$125,000.
- 20 (b) No other credit may be claimed under this chapter for
21 qualified agricultural costs for which a credit is claimed under
22 this section for the taxable year.



1 (c) The amount of the qualified agricultural costs
2 eligible to be claimed under this section shall be reduced by
3 the amount of funds received by the taxpayer during the taxable
4 year from the irrigation repair and maintenance special fund
5 under section 167-24.

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

11 If a deduction is taken under Section 179 (with respect to
12 election to expense depreciable business assets) of the Internal
13 Revenue Code, no tax credit shall be allowed for that portion of
14 the qualified agricultural cost for which a deduction was taken.

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

21 (e) If the credit under this section exceeds the
22 taxpayer's net income tax liability for the taxable year, the



1 excess of the credit over liability may be used as a credit
2 against the taxpayer's income tax liability in subsequent years
3 until exhausted.

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

10 (f) The director of taxation:

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

13 (2) May require the taxpayer to furnish information to
14 ascertain the validity of the claim for credit made
15 under this section; and

16 (3) May adopt rules pursuant to chapter 91 to effectuate
17 this section.

18 (g) The department of agriculture shall:

19 (1) Maintain records of the total amount of qualified
20 agricultural costs for each taxpayer claiming a
21 credit;



- 1 (2) Verify the amount of the qualified agricultural costs
2 claimed;
- 3 (3) Total all qualified agricultural costs claimed; and
- 4 (4) Certify the total amount of the tax credit for each
5 taxable year and the cumulative amount of the tax
6 credit during the credit period.

7 Upon each determination, the department of agriculture
8 shall issue a certificate to the taxpayer verifying the
9 qualifying agricultural costs, the credit amount certified for
10 each taxable year, and the cumulative amount of the tax credit
11 during the credit period. The taxpayer shall file the
12 certificate with the taxpayer's tax return with the department
13 of taxation. Notwithstanding the department of agriculture's
14 certification authority under this section, the director of
15 taxation may audit and adjust certification to conform to the
16 facts.

17 If in any year, the annual amount of certified credits
18 reaches \$2,500,000 in the aggregate, the department of
19 agriculture shall immediately discontinue certifying credits and
20 notify the department of taxation. In no instance shall the
21 total amount of certified credits exceed \$2,500,000 per year.

22 Notwithstanding any other law to the contrary, this information



1 shall be available for public inspection and dissemination under
2 chapter 92F.

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

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

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



1 (j) As used in this section:

2 "Agricultural business" means any person with a commercial
3 agricultural, silvicultural, or aquacultural facility or
4 operation, including:

5 (1) The care and production of livestock and livestock
6 products, poultry and poultry products, apiary
7 products, and plant and animal production for nonfood
8 uses;

9 (2) The planting, cultivating, harvesting, and processing
10 of crops; and

11 (3) The farming or ranching of any plant or animal species
12 in a controlled salt, brackish, or freshwater
13 environment;

14 provided that the principal place of the agricultural business
15 is maintained in the state and more than fifty per cent of the
16 land the agricultural business owns or leases, excluding land
17 classified as conservation land, is important agricultural land.

18 "Important agricultural lands" means lands identified and
19 designated as important agricultural lands pursuant to part III
20 of chapter 205.

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



1 "Qualified agricultural costs" means expenditures for:
2 (1) The plans, design, engineering, construction,
3 renovation, repair, maintenance, and equipment for:
4 (A) Roads or utilities, primarily for agricultural
5 purposes, where the majority of the lands
6 serviced by the roads or utilities, excluding
7 lands classified as conservation lands, are
8 important agricultural lands;
9 (B) Agricultural processing facilities in the state,
10 primarily for agricultural purposes, where the
11 majority of the crops or livestock processed,
12 harvested, treated, washed, handled, or packaged
13 are from agricultural businesses;
14 (C) Water wells, reservoirs, dams, water storage
15 facilities, water pipelines, ditches, or
16 irrigation systems in the state, primarily for
17 agricultural purposes, providing water for lands,
18 the majority of which, excluding lands classified
19 as conservation lands, are important agricultural
20 lands; and
21 (D) Agricultural housing in the state, primarily for
22 agricultural purposes; provided that:



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

1 retaining the right to farm on lands identified as
2 important agricultural lands."

3 SECTION 9. The department of taxation, in consultation
4 with the department of agriculture, shall submit to the
5 legislature an annual report, no later than twenty days prior to
6 the convening of each regular session, beginning with the
7 regular session of 2010, regarding the quantitative and
8 qualitative assessment of the impact of the important
9 agricultural land qualified agricultural cost tax credit.

10 SECTION 10. 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 taxation to administer the important agricultural
14 land qualified agricultural cost tax credit.

15 The sum appropriated shall be expended by the department of
16 taxation for the purposes of this part.

17 SECTION 11. There is appropriated out of the general
18 revenues of the State of Hawaii the sum of \$ or so much
19 thereof as may be necessary for fiscal year 2008-2009 for the
20 department of agriculture to administer the important
21 agricultural land qualified agricultural cost tax credit and for



1 one full time equivalent planner position for the department of
2 agriculture.

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

5 PART V

6 SECTION 12. Financing is also a critical component of the
7 long-term viability of agriculture on important agricultural
8 lands in the state. The legislature finds that it is in the
9 public interest to assist agricultural producers in meeting
10 their financing needs for projects that are located on important
11 agricultural lands.

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

16 SECTION 13. Chapter 155, Hawaii Revised Statutes, is
17 amended by adding a new section to be appropriately designated
18 and to read as follows:

19 "§155- Loan guaranty; important agricultural lands;
20 agricultural and aquacultural loans. (a) The chairperson of
21 the board of agriculture may guarantee loans made by commercial
22 lenders authorized to do business in this state, to agricultural



1 producers for the purpose of developing and implementing
2 agricultural projects; provided that the chairperson of the
3 board of agriculture shall determine that:

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

7 (2) The commercial lender has completed its due diligence
8 in approving the loan, including ensuring adequate
9 collateral; and

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

18 The chairperson of the board of agriculture may impose other
19 conditions that the chairperson deems reasonable to implement
20 the loan guaranty.

21 (b) In addition to the conditions that the chairperson of
22 the board of agriculture may impose under subsection (a), any



1 loan guaranty made pursuant to this section shall meet the
2 following conditions:

3 (1) For any loan that finances operating costs, the
4 maximum term of the loan shall be ten years;

5 (2) For any loan that finances capital improvement costs,
6 the maximum term of the loan shall be twenty years;

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

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

14 (5) The total amount of the guaranty on all loans in any
15 tax year shall not exceed \$2,500,000.

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

18 (d) As used in this section:

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



1 "Agricultural project" means a project relating to
 2 agricultural or aquacultural operations or capital
 3 improvements."

4 SECTION 14. The department of taxation, in consultation
 5 with the department of agriculture, shall submit to the
 6 legislature an annual report, no later than twenty days prior to
 7 the convening of each regular session, beginning with the
 8 regular session of 2010, that provides a quantitative and
 9 qualitative assessment of the impact of the loan guaranty
 10 program established in section 155- , Hawaii Revised Statutes.

11 PART VI

12 SECTION 15. Section 174C-31, Hawaii Revised Statutes, is
 13 amended by amending subsections (e) and (f) to read as follows:

14 "(e) The department of agriculture shall prepare a state
 15 agricultural water use and development plan for agricultural
 16 uses in the [~~State~~] state in accordance with chapter 167 and
 17 this chapter, and subsequently modify and update the plan as
 18 necessary. The state agricultural water use and development
 19 plan shall include but not be limited to a master irrigation
 20 inventory plan which shall:

- 21 (1) Inventory [~~the~~] public and private irrigation water
 22 systems;



- 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, particularly agriculture on lands
5 designated as important agricultural lands under part
6 III of chapter 205, aquaculture, hydropower
7 development, drainage, reuse, reclamation, recharge,
8 and resulting problems 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 16. 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; provided that the majority of the lands held,
3 owned, or used by the agribusiness shall be land designated as
4 important agricultural lands pursuant to this part, excluding
5 lands held, owned, or used by the agribusiness in a conservation
6 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 section, "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 SECTION 17. Chapter 321, Hawaii Revised Statutes, is
17 amended by adding a new section to be appropriately designated
18 and to read as follows:

19 **"§321- Agricultural processing facilities; permits;**
20 **priority.** (a) Any agency subject to this chapter or title 19
21 that issues permits shall establish and implement a procedure
22 for the priority processing of permit applications and renewals,



1 at no additional cost to the applicant, for agricultural
2 processing facilities that process crops or livestock from an
3 agribusiness; provided that the majority of the lands held,
4 owned, or used by the agribusiness shall be land designated as
5 important agricultural lands pursuant to part III of chapter
6 205, excluding lands held, owned, or used by the agribusiness in
7 a conservation district.

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

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

17 PART VIII

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



1 PART IX

2 SECTION 19. Chapter 205, Hawaii Revised Statutes, is
3 amended by adding a new section to part III to be appropriately
4 designated and to read as follows:

5 "§205- Important agricultural lands; public lands. (a)
6 Notwithstanding any law to the contrary, before December 31,
7 2009, the department of agriculture and the department of land
8 and natural resources shall collaborate to identify public lands
9 as defined under section 171-2 that should be designated
10 important agricultural lands as defined in section 205-42 and
11 shall cause to be prepared maps delineating those lands. In
12 making the designations, the departments shall use the standards
13 and criteria of section 205-44.

14 (b) The designation of important agricultural lands
15 pursuant to this section shall not be subject to the district
16 boundary amendment procedures of section 205-3.1 or 205-4 or
17 declaratory order procedures of section 205-45.

18 (c) Notwithstanding any law to the contrary, beginning
19 January 1, 2010, after receipt of the maps of public lands
20 identified as important agricultural lands pursuant to
21 subsection (a), the commission shall designate the public lands
22 as important agricultural lands and adopt the maps of those



1 public lands. Upon designation, the public lands shall be
2 subject to this chapter."

3 SECTION 20. Section 141-1, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§141-1 Duties in general.** The department of agriculture
6 shall:

7 (1) Gather, compile, and tabulate, from time to time,
8 information and statistics concerning:

9 (A) Entomology and plant pathology: Insects, scales,
10 blights, and diseases injurious[7] or liable to
11 become injurious[7] to trees, plants, or other
12 vegetation, and the ways and means of
13 exterminating pests and diseases already in the
14 [State] state and preventing the introduction of
15 [~~these~~] pests and diseases not yet here; and

16 (B) General agriculture: Fruits, fibres, and useful
17 or ornamental plants and their introduction,
18 development, care, and manufacture or
19 exportation, with a view to introducing,
20 establishing, and fostering new and valuable
21 plants and industries;



- 1 (2) Encourage and cooperate with the agricultural
2 extension service and agricultural experiment station
3 of the University of Hawaii and all private persons
4 and organizations doing work of an experimental or
5 educational character coming within the scope of the
6 subject matter of chapters 141, 142, and 144 to 150A,
7 and avoid, as far as practicable, duplicating the work
8 of those persons and organizations;
- 9 (3) Enter into contracts, cooperative agreements, or other
10 transactions with any person, agency, or organization,
11 public or private, as may be necessary in the conduct
12 of the department's business and on such terms as the
13 department may deem appropriate; provided that the
14 department shall not obligate any funds of the State,
15 except the funds that have been appropriated to the
16 department. Pursuant to cooperative agreement with
17 any authorized federal agency, employees of the
18 cooperative agency may be designated to carry out, on
19 behalf of the State the same as department personnel,
20 specific duties and responsibilities under chapters
21 141, 142, 150A, and rules adopted pursuant to those
22 chapters, for the effective prosecution of pest



1 control[7] and animal disease control[7] and the
2 regulation of import into the [~~State~~] state and
3 intrastate movement of regulated articles;

4 (4) Secure copies of the laws of other states,
5 territories, and countries, and other publications
6 germane to the subject matters of chapters 141, 142,
7 and 144 to 150A, and make laws and publications
8 available for public information and consultation;

9 (5) Provide buildings, grounds, apparatus, and
10 appurtenances necessary for the examination,
11 quarantine, inspection, and fumigation provided for by
12 chapters 141, 142, and 144 to 150A; for the obtaining,
13 propagation, study, and distribution of beneficial
14 insects, growths, and antidotes for the eradication of
15 insects, blights, scales, or diseases injurious to
16 vegetation of value and for the destruction of
17 injurious vegetation; and for carrying out any other
18 purposes of chapters 141, 142, and 144 to 150A;

19 (6) Formulate and recommend to the governor and
20 legislature additional legislation necessary or
21 desirable for carrying out the purposes of chapters
22 141, 142, and 144 to 150A;



- 1 (7) Publish at the end of each year a report of the
2 expenditures and proceedings of the department and of
3 the results achieved by the department, together with
4 other matters germane to chapters 141, 142, and 144 to
5 150A[7] and [~~which~~] that the department may deem
6 proper;
- 7 (8) Administer a program of agricultural planning and
8 development, including the formulation and
9 implementation of general and special plans, including
10 but not limited to the functional plan for
11 agriculture; administer the planning, development, and
12 management of the agricultural park program; plan,
13 construct, operate, and maintain the state irrigation
14 water systems; review, interpret, and make
15 recommendations with respect to public policies and
16 actions relating to agricultural land and water use;
17 assist in research, evaluation, development,
18 enhancement, and expansion of local agricultural
19 industries; and serve as liaison with other public
20 agencies and private organizations for the above
21 purposes. In the foregoing, the department [~~of~~
22 ~~agriculture~~] shall act to conserve and protect



1 agricultural lands and irrigation water systems,
2 promote diversified agriculture, increase agricultural
3 self-sufficiency, and ensure the availability of
4 agriculturally suitable lands[-]; and

5 (9) Manage, administer, and exercise control over any
6 public lands, as defined under section 171-2, that are
7 designated important agricultural lands pursuant to
8 section 205- , including but not limited to
9 establishing priorities for the leasing of these
10 public lands within the department's jurisdiction."

11 SECTION 21. Section 171-3, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§171-3 Department of land and natural resources.** (a)
14 The department of land and natural resources shall be headed by
15 an executive board to be known as the board of land and natural
16 resources. The department shall manage, administer, and
17 exercise control over public lands, the water resources, ocean
18 waters, navigable streams, coastal areas (excluding commercial
19 harbor areas), and minerals and all other interests therein and
20 exercise such powers of disposition thereof as may be authorized
21 by law. The department shall also manage and administer the
22 state parks, historical sites, forests, forest reserves, aquatic



1 life, aquatic life sanctuaries, public fishing areas, boating,
2 ocean recreation, coastal programs, wildlife, wildlife
3 sanctuaries, game management areas, public hunting areas,
4 natural area reserves, and other functions assigned by law.

5 (b) Notwithstanding subsection (a), beginning January 1,
6 2010, the authority to manage, administer, and exercise control
7 over any public lands that are designated important agricultural
8 lands pursuant to section 205- , shall be transferred to the
9 department of agriculture."

10 SECTION 22. All appropriations, records, equipment,
11 machines, files, supplies, contracts, books, papers, documents,
12 maps, and other personal property heretofore made, used,
13 acquired, or held by the department of land and natural
14 resources relating to the functions transferred to the
15 department of agriculture shall be transferred by this Act with
16 the functions to which they relate.

17 PART X

18 SECTION 23. Section 235-2.45, Hawaii Revised Statutes,
19 is amended by amending subsection (d) to read as follows:

20 "(d) Section 704 of the Internal Revenue Code (with
21 respect to a partner's distributive share) shall be operative



1 for purposes of this chapter; except that section 704(b)(2)
2 shall not apply to:

3 (1) Allocations of the high technology business investment
4 tax credit allowed by section 235-110.9;

5 (2) Allocations of net operating loss pursuant to section
6 235-111.5; or

7 [~~(3) Allocations of the attractions and educational
8 facilities tax credit allowed by section 235-110.46;~~

9 ~~or~~

10 ~~(4)]~~ (3) Allocations of low-income housing tax credits among
11 partners under section 235-110.8."

12 SECTION 24. Section 235-110.46, Hawaii Revised Statutes,
13 is repealed.

14 ["~~§235-110.46~~ ~~Attractions and educational facilities tax~~

15 ~~credit; Ko Olina Resort and Marina; Makaha Resort.~~ (a) There

16 ~~shall be allowed to each qualified taxpayer subject to the taxes~~

17 ~~imposed by this chapter or chapter 237, 237D, 238, 239, 241, or~~

18 ~~431, a tax credit [that] may be claimed for taxable years~~

19 ~~beginning after December 31, 2004, for qualified costs in the~~

20 ~~development of facilities for attractions and educational~~

21 ~~purposes at Ko Olina Resort and Marina and at Makaha Resort.~~

22 ~~The tax credit shall be deductible from the taxpayer's net~~



1 ~~income tax liability, if any, imposed by this chapter and, at~~
2 ~~the election of the taxpayer, from the tax liability imposed by~~
3 ~~chapters 237, 237D, 238, 239, 241, and 431.~~

4 ~~(b) The tax credit earned shall be equal to the qualified~~
5 ~~costs incurred from June 1, 2003, through May 31, 2009, up to a~~
6 ~~maximum of \$75,000,000 of credits in the aggregate for all~~
7 ~~qualified taxpayers for all years; provided that notwithstanding~~
8 ~~the amount of tax credits earned in any year, a maximum of~~
9 ~~\$7,500,000 of tax credits in the aggregate for all qualified~~
10 ~~taxpayers may be used in any one taxable year. The credits over~~
11 ~~\$7,500,000 shall be used as provided in subsection (d). In the~~
12 ~~case of a partnership, limited liability company, S corporation,~~
13 ~~estate, trust, or association of apartment owners, the tax~~
14 ~~credit allowable is for qualified costs incurred by the entity.~~
15 ~~The costs upon which the tax credit is computed shall be~~
16 ~~determined at the entity level.~~

17 ~~(c) To qualify for the tax credit, a taxpayer shall:~~
18 ~~(1) Have expended qualified costs on and be developing a~~
19 ~~world class aquarium and marine science and mammal~~
20 ~~research facility at Ko Olina Resort and Marina; and~~
21 ~~(2) Dedicate one half of the net operating income of the~~
22 ~~world class aquarium to the State, beginning on the~~



1 ~~first day of the seventeenth year following the year~~
2 ~~in which the attractions and educational facilities~~
3 ~~credit was first taken; or~~

4 ~~(3) Acquire or own the Makaha Resort, and lease or sell a~~
5 ~~portion of the Makaha Resort for use as training and~~
6 ~~educational facilities for a period of not less than~~
7 ~~six years to a taxpayer meeting the requirements of~~
8 ~~subsection (c)(1).~~

9 ~~(d) If the tax credit under this section exceeds~~
10 ~~\$7,500,000 in the aggregate for all qualified taxpayers for any~~
11 ~~taxable year or exceeds the taxpayer's tax liability under this~~
12 ~~chapter or chapters 237, 237D, 238, 239, 241, and 431 for any~~
13 ~~year for which the credit is taken, the excess of the tax credit~~
14 ~~may be used as a credit against the taxpayer's tax liability for~~
15 ~~the taxes set forth in this section in subsequent years until~~
16 ~~exhausted; provided that the taxpayer may continue to claim the~~
17 ~~credit provided in this section if the qualified costs are~~
18 ~~incurred before June 1, 2009, subject to the monetary ceilings~~
19 ~~in subsection (b).~~

20 ~~(e) Every claim, including amended claims, for a tax~~
21 ~~credit under this section shall be filed on or before the end of~~
22 ~~the twelfth month following the close of the taxable year for~~



1 ~~which the credit may be claimed. Failure to comply with the~~
2 ~~foregoing provision shall constitute a waiver of the right to~~
3 ~~claim the credit.~~

4 ~~(f) If, at any time during the six year period in which~~
5 ~~tax credits are earned under this section, the costs incurred no~~
6 ~~longer meet the definition of qualified costs, the credits~~
7 ~~claimed under this section shall be recaptured. The recapture~~
8 ~~shall be equal to one hundred per cent of the total tax credits~~
9 ~~claimed under this section for the preceding taxable year,~~
10 ~~provided that the amount of the credits recaptured shall apply~~
11 ~~only to those costs that no longer meet the definition of~~
12 ~~qualified costs. The amount of the recaptured tax credits~~
13 ~~determined under this subsection shall be added to the~~
14 ~~taxpayer's tax liability for the taxable year in which the~~
15 ~~recapture occurs under this subsection.~~

16 ~~(g) If any credit is claimed under this section, then no~~
17 ~~taxpayer shall claim a credit under any chapter identified in~~
18 ~~this section for the same qualified costs for which a credit is~~
19 ~~claimed under this section.~~

20 ~~(h) The director of taxation shall prepare any forms that~~
21 ~~may be necessary to claim a credit under this section. The~~
22 ~~director may also require the taxpayer to furnish information to~~



1 ~~ascertain the validity of the claims for credits made under this~~
2 ~~section and may adopt rules necessary to effectuate the purposes~~
3 ~~of this section pursuant to chapter 91.~~

4 ~~Every qualified taxpayer, no later than March 31 of each~~
5 ~~year in which qualified costs were expended in the previous~~
6 ~~taxable year, shall submit a written, certified statement to the~~
7 ~~director of business, economic development, and tourism, in the~~
8 ~~form specified by the director of business, economic~~
9 ~~development, and tourism, identifying:~~

10 ~~(1) Qualified costs, if any, expended in the previous~~
11 ~~taxable year;~~

12 ~~(2) The amount of tax credits claimed pursuant to this~~
13 ~~section, if any, in the previous taxable year; and~~

14 ~~(3) The tax liability under this chapter and chapters 237,~~
15 ~~237D, 238, 239, 241, and 431 against which the tax~~
16 ~~credits are claimed.~~

17 ~~Any other law to the contrary notwithstanding, a statement~~
18 ~~submitted under this subsection shall be a public document.~~

19 ~~(i) The department of business, economic development, and~~
20 ~~tourism shall maintain records of the names of taxpayers~~
21 ~~eligible for the credits and the total amount of qualified costs~~
22 ~~incurred from June 1, 2003, through May 31, 2009. The~~



1 ~~department of business, economic development, and tourism shall~~
2 ~~verify all qualified costs and, upon each determination, shall~~
3 ~~issue a certificate to the taxpayer certifying:~~

- 4 ~~(1) The amount of the qualified costs; and~~
5 ~~(2) The amount of tax credit that the taxpayer is allowed~~
6 ~~to use for the taxable year.~~

7 ~~The department of business, economic development, and~~
8 ~~tourism shall certify no more than \$7,500,000 in credits in the~~
9 ~~aggregate for all taxpayers for each taxable year; provided that~~
10 ~~the department may verify qualified costs of no more than~~
11 ~~\$75,000,000 from June 1, 2003, through May 31, 2009. The~~
12 ~~taxpayer shall file the certificate with the taxpayer's return~~
13 ~~with the department of taxation.~~

14 ~~(j) As used in this section:~~

15 ~~"Ko Olina Resort and Marina" means the six hundred forty~~
16 ~~two acres reclassified to urban district by Decision and Order~~
17 ~~entered on September 12, 1985, in Docket A83-562, by the land~~
18 ~~use commission.~~

19 ~~"Makaha Resort" means the three hundred thirty two acre~~
20 ~~property identified as tax map keys (1) 8-04-002 parcels 51, 52,~~
21 ~~53, 54, 55, and 67 and (1) 8-04-029-142.~~



1 ~~"Qualified costs" means any costs for plans, design, and~~
2 ~~construction, costs for equipment that is permanently affixed to~~
3 ~~a building or structure, and acquisition of facilities for~~
4 ~~educational purposes, up to a total of \$75,000,000 in the~~
5 ~~aggregate, incurred after May 31, 2003, and before June 1, 2009,~~
6 ~~at either or both of:~~

7 ~~(1) Ko Olina Resort and Marina for the development of~~
8 ~~facilities for attractions and educational purposes,~~
9 ~~and for infrastructure within the Ko Olina Resort and~~
10 ~~Marina that is directly related to those facilities,~~
11 ~~including a world class aquarium, marine science and~~
12 ~~mammal research facilities, international sports~~
13 ~~training complex, a travel industry management intern~~
14 ~~campus, infrastructure for the transfer of ocean~~
15 ~~waters to the aquarium or marine mammal facilities, or~~
16 ~~both, seawater air conditioning, and other educational~~
17 ~~facilities developed or operated in cooperation with~~
18 ~~the University of Hawaii or other educational~~
19 ~~institutions; or~~

20 ~~(2) Makaha Resort for the development of a training and~~
21 ~~educational facility within a working resort and~~
22 ~~hotel;~~



1 ~~provided that "qualified costs" shall not include land~~
2 ~~acquisition costs.~~

3 ~~"Qualified taxpayer" means a person who fulfills the~~
4 ~~requirements of subsection (c)."]~~

5 PART XI

6 SECTION 25. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 26. This Act shall take effect on July 1, 2008;
9 provided that sections 2, 3, and 8 of this Act shall apply to
10 taxable years beginning after December 31, 2008; and provided
11 further that no taxpayer may claim the tax credit established in
12 section 8 of this Act in taxable years beginning after December
13 31, 2014, but may continue to claim amounts already claimed
14 against the taxpayer's tax liability in subsequent years.



Report Title:

Agriculture; Important Agricultural Lands

Description:

Provides incentives and protections to establish and sustain viable agricultural operations on important agricultural lands, and provides for the designation of important agricultural lands on public lands. (SB2646 HD2)

