
A BILL FOR AN ACT

RELATING TO AGRICULTURAL LANDS.

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

1 **PART I**

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

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

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



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

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

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

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

18 **PART II**

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



1 "§235- Rental income from agricultural leases on
2 important agricultural lands excluded from gross income. (a)
3 In addition to the exclusions in section 235-7, there shall be
4 excluded from gross income, adjusted gross income, and taxable
5 income, rental income, including lease rents, in an amount not
6 to exceed \$ that is received by a taxpayer subject to
7 the taxes imposed by this chapter, that is derived from
8 agricultural leases on lands identified and designated as
9 important agricultural lands pursuant to part III of chapter
10 205, for the taxable year the rental income was realized;
11 provided that:

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



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

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

12 (c) For the purposes of this section:

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

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

19 "**§237-24.75 Additional exemptions.** In addition to the
20 amounts exempt under section 237-24, this chapter shall not
21 apply to:



- 1 (1) Amounts received as a beverage container deposit
2 collected under chapter 342G, part VIII;
- 3 (2) Amounts received by the operator of the Hawaii
4 convention center for reimbursement of costs or
5 advances made pursuant to a contract with the Hawaii
6 tourism authority under section 201B-7[+]; and[+]
7 +] (3) Amounts received[+] by a professional employment
8 organization from a client company equal to amounts
9 that are disbursed by the professional employment
10 organization for employee wages, salaries, payroll
11 taxes, insurance premiums, and benefits, including
12 retirement, vacation, sick leave, health benefits, and
13 similar employment benefits with respect to assigned
14 employees at a client company; provided that this
15 exemption shall not apply to a professional employment
16 organization upon failure of the professional
17 employment organization to collect, account for, and
18 pay over any income tax withholding for assigned
19 employees or any federal or state taxes for which the
20 professional employment organization is responsible.
21 As used in this paragraph, "professional employment
22 organization", "client company", and "assigned



1 employee" shall have the meanings provided in section
 2 373K-1[-]; and
 3 (4) Rental income, including lease rents as provided in
 4 section 235- in an amount not to exceed
 5 \$."

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

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

15 SECTION 5. The department of agriculture shall submit to
 16 the legislature an annual report, no later than twenty days
 17 prior to the convening of each regular session, beginning with
 18 the regular session of 2010, regarding the quantitative and
 19 qualitative assessment of the impact of the exclusion of rental
 20 income from important agricultural lands from income and general
 21 excise taxation.

PART III



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

4 **"§205- Important agricultural land; residential housing.**

5 A landowner qualifying under section 205-44 may develop,
6 construct, and maintain residential dwelling units for farmers,
7 employees, and their families on important agricultural land;
8 provided that:

- 9 (1) The farmers' dwelling units shall be used exclusively
10 by farmers and their immediate family members who
11 actively and currently farm on important agricultural
12 land upon which the dwelling is situated; provided
13 further that the immediate family members of a farmer
14 may live in separate dwelling units situated on the
15 same designated land;
- 16 (2) Employee dwelling units shall be used exclusively by
17 employees and their immediate family members who
18 actively and currently work on important agricultural
19 land upon which the dwelling is situated; provided
20 that the immediate family members of the employee
21 shall not live in separate dwelling units and shall
22 live with the employee;



- 1 (3) The total land area upon which the farmer and employee
2 dwelling units and all appurtenances are situated
3 shall not occupy more than per cent of the total
4 important agricultural land area controlled by the
5 farmer or the employee's employer;
- 6 (4) The farmers' and employee dwelling units meet all
7 applicable building code requirements;
- 8 (5) Notwithstanding section 205-4.5(a)(12), the landowner
9 shall not plan or develop a residential subdivision on
10 the important agricultural land; and
- 11 (6) The plans for farmers' and employee dwelling units
12 shall be supported by agricultural plans that are
13 approved by the department of agriculture."

14 **PART IV**

15 SECTION 7. Tax incentives are a critical component of the
16 long-term viability of agriculture on important agricultural
17 lands in the State. The legislature finds that it is in the
18 public's interest to assist agricultural businesses in
19 establishing and sustaining viable agricultural operations on
20 important agricultural lands by providing incentives such as
21 income tax credits.



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

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

8 **"§235- Important agricultural land qualified**
9 **agricultural cost tax credit.** (a) There shall be allowed to
10 each taxpayer, an important agricultural land qualified
11 agricultural cost tax credit that shall be deductible from the
12 taxpayer's net income tax liability, if any, imposed by this
13 chapter for the taxable year in which the credit is properly
14 claimed. The tax credit shall apply as follows:

15 (1) In the year qualified agricultural costs are incurred,
16 fifty per cent of the qualified agricultural costs up
17 to a maximum of _____ ;

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



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

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

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

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

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

21 (d) The cost upon which the tax credit is computed shall
22 be determined at the entity level. In the case of a



1 partnership, S corporation, estate, trust, or other pass through
2 entity, distribution and share of the credit shall be determined
3 pursuant to section 235-110.7(a).

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

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

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

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

20 All claims for a tax credit under this section, including
21 amended claims, shall be filed on or before the end of the
22 twelfth month following the close of the taxable year for which



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

4 (f) The director of taxation:

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

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

10 (3) May adopt rules pursuant to chapter 91 to effectuate
11 this section.

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

18 (h) The department of agriculture, in consultation with
19 the department of taxation, shall annually determine the
20 information necessary to provide a quantitative and qualitative
21 assessment of the outcomes of the tax credit. Every taxpayer,
22 no later than the last day of the taxable year following the



1 close of the taxpayer's taxable year in which qualified costs
2 were incurred, shall submit a written statement to and certified
3 by the department of agriculture. Failure to provide the
4 information shall result in ineligibility and a recapture of any
5 credit already claimed for that taxable year. The amount of the
6 recaptured tax credit shall be added to the taxpayer's tax
7 liability for the taxable year in which the recapture occurs.

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

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

16 (j) As used in this section:

17 "Agricultural business" means any person with a commercial
18 agricultural, silvicultural, or aquacultural facility or
19 operation, including:

20 (1) The care and production of livestock and livestock
21 products, poultry and poultry products, apiary



1 products, and plant and animal production for nonfood
2 uses;

3 (2) The planting, cultivating, harvesting, and processing
4 of crops; and

5 (3) The farming or ranching of any plant or animal species
6 in a controlled salt, brackish, or freshwater
7 environment;

8 provided that the principal place of the agricultural business
9 is maintained in the State and more than fifty per cent of the
10 land the agricultural business owns or leases, excluding land
11 classified as conservation land, is important agricultural land.

12 "Important agricultural lands" means lands identified and
13 designated as important agricultural lands pursuant to part III
14 of chapter 205.

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

17 "Qualified agricultural costs" means expenditures for:

- 18 (1) The plans, design, engineering, construction,
- 19 renovation, repair, maintenance, and equipment for:
- 20 (A) Roads or utilities, primarily for agricultural
- 21 purposes, for which the majority of the lands
- 22 serviced by the roads or utilities, excluding



1 lands classified as conservation lands, are
2 important agricultural lands;

3 (B) Agricultural processing facilities in the State,
4 primarily for agricultural purposes, that
5 process, harvest, treat, wash, handle, or package
6 a majority of crops or livestock from
7 agricultural businesses;

8 (C) Water wells, reservoirs, dams, water storage
9 facilities, water pipelines, ditches, or
10 irrigation systems in the State, primarily for
11 agricultural purposes, for which the majority of
12 the lands serviced by its water, excluding lands
13 classified as conservation lands, are important
14 agricultural lands; and

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

17 (i) The majority of the housing units are
18 occupied by farmers or employees for
19 agricultural businesses and their immediate
20 family members;

21 (ii) The housing units are owned by the
22 agricultural business;



1 (iii) The housing units are in the general
2 vicinity, as determined by the department of
3 agriculture, of agricultural lands owned or
4 leased by the agricultural business; and

5 (iv) The housing units conform to any other
6 conditions that may be required by the
7 department of agriculture;

8 (2) Feasibility studies, regulatory processing, and legal
9 and accounting services related to the items under
10 paragraph (1);

11 (3) Equipment, primarily for agricultural purposes, used
12 to cultivate, grow, harvest, or process agricultural
13 products by an agricultural business; and

14 (4) Regulatory processing, studies, legal, and other
15 consultant services related to obtaining or retaining
16 sufficient water for agricultural activities and
17 retaining the right to farm on lands identified as
18 important agricultural lands."

19 SECTION 9. There is appropriated out of the general
20 revenues of the State of Hawaii the sum of \$ or so
21 much thereof as may be necessary for fiscal year 2008-2009 for



1 the department of taxation to administer the important
2 agricultural land qualified agricultural cost tax credit.

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

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

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

14 **PART V**

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

21 The purpose of this part is to further implement Act 183,
22 Session Laws of Hawaii 2005, by authorizing the chairperson of



1 the board of agriculture to guarantee loans relating to
2 agricultural projects located on important agricultural lands.

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

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

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

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

19 (3) After consultation with the director of finance, the
20 State possesses sufficient funds to provide an
21 appropriate reserve for the loan guaranty and which,
22 in the director of finance's judgment, are in excess



1 of the amounts necessary for meeting the immediate
2 requirements of the State and will not impede or
3 hamper the fulfillment of the financial obligations of
4 the State.

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

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

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

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

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

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



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

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

5 (d) As used in this section:

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

9 "Agricultural project" means a project relating to
10 agricultural or aquacultural operations or capital
11 improvements."

12 **PART VI**

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

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



- 1 (1) Inventory [~~the~~] public and private irrigation water
2 systems;
- 3 (2) Identify the extent of rehabilitation needed for each
4 system;
- 5 (3) Identify sources of water used by agricultural
6 operations and particularly those on lands identified
7 and designated as important agricultural lands under
8 part III of chapter 205;
- 9 (4) Identify current and future water needs for
10 agricultural operations on lands identified and
11 designated as important agricultural lands under part
12 III of chapter 205;
- 13 [~~+3~~] (5) Subsidize the cost of repair and maintenance of
14 the systems;
- 15 [~~+4~~] (6) Establish criteria to prioritize the
16 rehabilitation of the systems;
- 17 [~~+5~~] (7) Develop a five-year program to repair the
18 systems; and
- 19 [~~+6~~] (8) Set up a long-range plan to manage the systems.
- 20 The commission shall coordinate the incorporation of the state
21 agricultural water use and development plan into the state water
22 projects plan.



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

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

16 **PART VII**

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

20 **"§205- Agricultural processing facilities; permits;**
21 **priority.** (a) Any agency subject to this chapter or title 13
22 that issues permits shall establish and implement a procedure



1 for the priority processing of permit applications and renewals,
2 at no additional cost to the applicant, for agricultural
3 processing facilities that process crops or livestock from an
4 agribusiness. The majority of the lands held, owned, or used by
5 the agribusiness shall be land designated as important
6 agricultural lands pursuant to this part, excluding lands held,
7 owned, or used by the agribusiness in 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 subsection, "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 SECTION 15. Chapter 321, Hawaii Revised Statutes, is
18 amended by adding a new section to be appropriately designated
19 and to read as follows:

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



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

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

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

18 **PART VIII**

19 SECTION 16. The legislature declares that this Act
20 establishes incentives for the designation of important
21 agricultural lands in satisfaction of section 205-46, Hawaii



1 Revised Statutes, and section 9 of Act 183, Session Laws of
2 Hawaii 2005.

3 **PART IX**

4 SECTION 17. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 18. This Act shall take effect on July 1, 2020;
7 provided that sections 2, 3, and 8 of this Act shall apply to
8 taxable years beginning after December 31, 2019.



Report Title:

Agriculture; Important Agricultural Lands

Description:

Provides incentives and protections to establish and sustain viable agricultural operations on important agricultural lands.
(SD1)

