

---

---

# A BILL FOR AN ACT

RELATING TO LAND CONSERVATION.

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

1           SECTION 1. The purpose of this Act is to provide a land  
2 conservation incentives tax credit to encourage the preservation  
3 and protection of land in the State.

4           SECTION 2. Section 205-45, Hawaii Revised Statutes, is  
5 amended by amending subsection (a) to read as follows:

6           "(a) A farmer or landowner with lands qualifying under  
7 section 205-44 may file a petition for declaratory ruling with  
8 the commission at any time in the designation process. The  
9 holder of an interest in agricultural lands that qualifies for  
10 the land conservation incentives tax credit under section  
11 235-     may petition the commission for designation of the  
12 agricultural lands as important agricultural lands and, upon  
13 designation, enjoy the incentives for important agricultural  
14 lands provided under section 205-46."

15          SECTION 3. Chapter 235, Hawaii Revised Statutes, is  
16 amended by adding a new section to be appropriately designated  
17 and to read as follows:



1        "§235- Land conservation incentives tax credit;

2 definitions. (a) As used in this section:

3        "Bargain sale" means a sale where a taxpayer is paid less  
4 than the fair market value for land or an interest in land.

5        "Conservation or preservation purpose" means:

6        (1) Protection of open space for scenic values;

7        (2) Protection of natural areas for wildlife habitat,  
8 biological diversity, or native forest cover; or

9        (3) Preservation of forest land, agricultural land,  
10 watersheds, streams, rainfall infiltration areas,  
11 outdoor recreation areas, including hiking, biking,  
12 and walking trails, and historic or cultural property;

13 provided that the resources or areas protected or preserved are  
14 designated as significant or important by a relevant state  
15 agency and that the state agency work with the taxpayer to  
16 identify opportunities for public access if appropriate and  
17 reasonable.

18        "Cultural property" means a structure, place, site, or  
19 object having historic, archaeological, scientific,  
20 architectural, or cultural significance.

21        "Eligible taxpayer":



1       (1) Means a Hawaii taxpayer who is not claimed or is not  
2       otherwise eligible to be claimed as a dependent by  
3       another taxpayer for federal or Hawaii state  
4       individual income tax purposes; and

5       (2) Includes individuals, corporations, or pass-through  
6       tax entities such as trusts, estates, partnerships,  
7       limited liability companies or partnerships,  
8       S corporations, or other fiduciaries.

9       "Interest in land or real property" means a right in real  
10      property, including access, improvement, water right, fee simple  
11      interest, easement, land use easement, partial interest in real  
12      property, mineral right, remainder or future interest, or other  
13      interest or right in real property that complies with the  
14      requirements of section 170(h)(2) of the Internal Revenue Code.

15      "Land" means real property, including rights of way,  
16      easements, privileges, water rights, and all other rights or  
17      interests related to real property.

18      "Public or private conservation agency" means a  
19      governmental body or a private nonprofit charitable corporation  
20      or trust authorized to do business in the State that is  
21      organized and operated for natural resources, land, or historic  
22      conservation purposes and that has tax-exempt status as a public



1 charity under section 501(c)(3) of the Internal Revenue Code,  
2 and has the power to acquire, hold, or maintain land or  
3 interests in land.

4 (b) There shall be allowed to every eligible taxpayer a  
5 land conservation incentives tax credit that shall be deductible  
6 from the taxpayer's net income tax liability imposed by this  
7 chapter for taxable years beginning on or after January 1, 2008;  
8 provided that a husband and wife filing separate returns for a  
9 taxable year for which a joint return could have been filed  
10 shall claim only the tax credit to which they would have been  
11 entitled had a joint return been filed.

12 (c) The tax credit shall apply to an eligible taxpayer  
13 who:

- 14 (1) Donates land in perpetuity or completes a bargain sale  
15 in perpetuity to the State or public or private  
16 conservation agency that fulfills a conservation or  
17 preservation purpose; provided that any donation or  
18 sale that represents a less-than-fee interest  
19 qualifies as a charitable contribution deduction under  
20 section 170(h) of the Internal Revenue Code; or  
21 (2) Voluntarily invests in the management of land to  
22 protect or enhance a conservation or preservation



1 purpose under a land protection agreement,  
2 conservation management agreement, or other legal  
3 instrument that is consistent with a conservation or  
4 preservation purpose.

5 (d) Donations of land for open space for the purpose of  
6 fulfilling density requirements to obtain subdivision or  
7 building permits do not qualify for the land conservation  
8 incentives tax credit.

9 (e) The amount of the tax credit shall be:

10 (1) Fifty per cent of the fair market value of the land or  
11 interest in land that an eligible taxpayer donates in  
12 perpetuity on or after January 1, 2008, for a  
13 conservation or preservation purpose to the State, or  
14 public or private conservation agency. The fair  
15 market value of donations made under this section  
16 shall be substantiated by a qualified appraisal  
17 prepared by a qualified appraiser, as those terms are  
18 defined under applicable federal law and regulations  
19 governing charitable contributions; or

20 (2) Fifty per cent of the amount invested in the  
21 management of land pursuant to subsection (c)(2).



1       (f) The amount of the tax credit shall not exceed  
2       \$2,500,000 per donation regardless of the value of the land or  
3       interest in land; provided that if the tax credit under this  
4       section exceeds the taxpayer's net income tax liability under  
5       this chapter, any excess of the tax credit over liability may be  
6       used as a credit against the taxpayer's income tax liability in  
7       subsequent taxable years until exhausted.

8       An eligible taxpayer may claim the land conservation  
9       incentives tax credit only once per taxable year.

10       (g) The tax credit claimed by a pass-through tax entity  
11       may be used either by the pass-through tax entity or a member,  
12       manager, partner, shareholder, or beneficiary of the pass-  
13       through entity, in proportion to the total interest of the  
14       member, manager, partner, shareholder, or beneficiary; provided  
15       that:

16       (1) There is in fact a pass-through; and

17       (2) The tax credit may be claimed only once by either the  
18       pass-through entity or the member, manager, partner,  
19       shareholder, or beneficiary, but not both.

20       (h) Every claim, including amended claims, for the 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 tax credit may be claimed. Failure to meet the filing  
2 requirements of this subsection shall constitute a waiver of the  
3 right to claim the tax credit.

4 (i) The director of taxation:

5 (1) Shall prepare forms necessary to claim a tax credit  
6 under this section;

7 (2) May require proof of the claim for the tax credit; and

8 (3) May adopt rules pursuant to chapter 91 to effectuate  
9 the purposes of this section.

10 (j) The chairperson of the board of land and natural  
11 resources may adopt rules pursuant to chapter 91 to effectuate  
12 this section."

13 SECTION 4. New statutory material is underscored.

14 SECTION 5. This Act shall take effect on July 1, 2050, and  
15 shall apply to taxable years beginning after December 31, 2007;  
16 provided that this Act shall be repealed on December 31, 2012.



**Report Title:**

Tax Credit; Land Conservation

**Description:**

Provides a tax credit to encourage the preservation and protection of conservation land in the State. (SD2)

