

JAN 22 2007

A BILL FOR AN ACT

RELATING TO INCENTIVES FOR IMPORTANT AGRICULTURAL LANDS.

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

1 SECTION 1. The historic important agricultural lands Act
2 (Act 183, Session Laws of Hawaii 2005) mandates the State and
3 counties to develop and implement incentives to promote the
4 long-term use and protection of designated important
5 agricultural lands for agricultural use in Hawaii.

6 These incentives are intended to promote investment in and
7 the long-term use and protection of designated important
8 agricultural lands for agricultural use in Hawaii by farmers,
9 landowners, and others through the reduction of risks and costs
10 that affect the viability of agricultural businesses and the
11 retention of agricultural land.

12 The incentives proposed include a tax credit for
13 infrastructure improvements, exclusion from income tax and
14 exemption from general excise tax collected on leases of
15 important agricultural lands, expanded agribusiness assistance
16 through a guaranty loan program, and priority processing for air

1 quality permits for certain facilities located on or related to
2 important agricultural lands.

3 The overall package requires a substantial and sustained
4 investment by the State, estimated at \$5 million in the first
5 year and \$10 million in the second year after the legislature
6 has adopted the most broadly supported incentives.

7 There is need for close scrutiny of all incentives to
8 ensure that enhanced agricultural activity and viability
9 occurring on designated important agricultural lands is
10 commensurate with the State's expectations. Under this Act, the
11 department of agriculture and the department of taxation will
12 develop a process to share data in order for the department of
13 agriculture to monitor, evaluate, and report on the status and
14 performance of incentives on a regular basis.

15 The department of agriculture shall have the authority to
16 obtain and analyze data presented by individuals and
17 organizations to the department of taxation who utilize the
18 incentives. The department of agriculture shall also have the
19 authority to request additional information in order to provide
20 certification of eligibility for the incentives and to report on
21 the outcomes of the incentives and their effectiveness. The

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1 department of agriculture shall maintain the confidentiality of
2 information provided unless specifically waived by the individual
3 or organization utilizing the incentives.

4 SECTION 2. Chapter 36, Hawaii Revised Statutes, is amended
5 by adding a new section to be appropriately designated and to
6 read as follows:

7 "§36- Guaranty loan program for important agricultural
8 lands. (a) The director of finance may guaranty loans to
9 farmers, landowners, associations, and cooperatives from
10 commercial lenders authorized to do business in the State for
11 the purpose of developing agricultural and aquacultural
12 operations and infrastructure on lands designated as important
13 agricultural lands, when the director determines that:

14 (1) The project is located on important agricultural
15 lands;

16 (2) The intent of the project is agricultural or
17 aquacultural; and

18 (3) The lender has properly determined that the applicant
19 and project qualifies, the lender's analysis is
20 complete and sound, and there is adequate collateral.

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1 (b) In addition to any other conditions that the director
2 of finance may impose, any loan made pursuant to this section
3 shall be subject to the following conditions:

4 (1) The maximum term for operating loans shall be ten
5 years. The maximum term for capital improvement loans
6 shall be twenty years;

7 (2) The interest rate charged shall be one per cent below
8 the lender's prime rate as long as the guaranty is in
9 effect;

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

14 (4) The State will not charge any fees for the guaranty;
15 and

16 (5) The director determines there are sufficient moneys of
17 the State to provide a proper reserve for the
18 guaranties which in the director's judgment are in
19 excess of the amounts necessary for meeting the
20 immediate requirements of the State and where in the

1 director's judgment will not impede or hamper the
2 necessary financial obligations of the State."

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

6 "§235- Important agricultural lands infrastructure tax
7 credit. (a) There shall be allowed to each person subject to
8 the tax imposed by this chapter, an income tax credit, which
9 shall be deductible from that person's net income tax liability,
10 if any, imposed by this chapter for the taxable year in which
11 the credit is properly claimed.

12 The amount of the credit shall be one hundred per cent of
13 any expenditure certified by the department of agriculture
14 pursuant to this section as a qualified expenditure. Qualified
15 expenditures are:

16 (1) Expenditures for planning, design, construction,
17 renovation, or equipment incurred during the taxable
18 year for any of the following:

19 (A) Roads or utilities, including distributed power
20 generation facilities serving an agribusiness
21 with a portion of lands utilized in the business

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1 identified and designated as important
2 agricultural lands pursuant to part III of
3 chapter 205;

4 (B) Agricultural processing facilities that processes
5 crops or livestock from an agribusiness with a
6 portion of lands utilized in the business
7 identified and designated as important
8 agricultural lands pursuant to part III of
9 chapter 205;

10 (C) Water wells, reservoirs, dams, water storage
11 facilities, water pipelines, ditches, or
12 irrigation systems for which the lands serviced
13 by these assets are identified and designated as
14 important agricultural lands pursuant to part III
15 of chapter 205;

16 (D) Agricultural housing specifically for laborers of
17 an agribusiness with a portion of lands utilized
18 in the business identified and designated as
19 important agricultural lands pursuant to part III
20 of chapter 205; and

1 (2) The costs incurred during a taxable year for equipment
2 necessary to cultivate, grow, or harvest agricultural
3 products by an agribusiness with a portion of lands
4 utilized in the business identified and designated as
5 important agricultural lands pursuant to part III of
6 chapter 205.

7 Except as otherwise set forth in this section, tax credits
8 shall not be calculated on the construction or renovation costs
9 for which another credit was claimed under this chapter for the
10 taxable year.

11 The cost upon which the tax credit is computed shall be
12 determined at the entity level. Distribution and share of
13 credit shall be determined by rule.

14 If a deduction is taken under section 179 of the Internal
15 Revenue Code of 1986, no tax credit shall be allowed for that
16 portion of the construction or renovation cost for which the
17 deduction is taken.

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

21 In the alternative, the taxpayer shall treat the amount of the

1 credit allowable and claimed as a taxable income item for the
2 taxable year in which it is properly recognized under the method
3 of accounting used to compute taxable income.

4 (b) The credit allowed under this section shall be claimed
5 against the net income tax liability for the taxable year.

6 (c) If the tax credit under this section exceeds the
7 taxpayer's income tax liability, the excess of credit over
8 liability may be used as a credit against the taxpayer's income
9 tax liability in subsequent years until exhausted. All claims
10 for a tax credit under this section, including amended claims,
11 shall be filed on or before the end of the twelfth month
12 following the close of the taxable year for which the credit may
13 be claimed. Failure to comply with the foregoing provision
14 shall constitute a waiver of the right to claim the credit.

15 (d) The director of taxation shall prepare any forms that
16 may be necessary to claim a credit under this section. The
17 director may also require the taxpayer to furnish information to
18 ascertain the validity of the claim for credit made under this
19 section and may adopt rules necessary to effectuate the purposes
20 of this section pursuant to chapter 91.

1 (e) Taxpayers claiming the credit shall provide prescribed
2 information to the department of agriculture on an annual basis,
3 upon request, that will enable a quantitative and qualitative
4 assessment of the impact of the tax credit to be determined. The
5 board of agriculture shall adopt rules pursuant to chapter 91 to
6 effectuate the purposes of this section.

7 (f) The tax credit allowed under this section shall be
8 available for taxable years beginning after December 31, 2007,
9 and shall not be available for taxable years beginning after
10 December 31, 2017."

11 SECTION 4. 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- Important agricultural lands exclusion from
15 income and exemption from general excise tax credit. (a) There
16 shall be allowed to each taxpayer subject to the taxes imposed
17 by this chapter an exclusion from gross income for rental income
18 derived from agricultural leases on important agricultural lands
19 pursuant to part III of chapter 205. The exclusion shall be
20 from the taxpayer's gross income, if any, for the taxable year
21 in which rental income was recognized. The exclusion shall only

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1 be applied to lease rents collected from lessees of important
2 agricultural lands.

3 The exclusion shall be allowed provided that the minimum
4 length of the lease term shall be established at twenty years,
5 or less if mutually agreeable to both the lessor and lessee.

6 The amount of the lease rent may be set by negotiation or, if
7 mutually agreeable, an independent appraisal, using the lower of
8 the comparable value or agricultural capitalization appraisal
9 methodologies. Lease rents from the important agricultural
10 lands will be eligible for the exclusion for up to twenty years
11 from the date of enactment.

12 (b) Taxpayers claiming the exclusion must provide
13 prescribed information to the department of agriculture on an
14 annual basis that will enable an aggregated quantitative and
15 qualitative assessment of the impact of the exemptions to be
16 conducted as prescribed in rules. The board of agriculture shall
17 adopt rules pursuant to chapter 91 to effectuate the purposes of
18 this section."

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

1 " ~~[§]~~ 237-24.75 ~~[§]~~ Additional exemptions. In addition to
2 the amounts exempt under section 237-24, this chapter shall not
3 apply to amounts received as a beverage container deposit
4 collected under chapter 342G, part VIII.

5 As a further addition to the amounts exempt under section
6 237-24, this chapter shall not apply to amounts received as
7 lease rents from lessees of important agricultural lands
8 provided that that the minimum length of the lease term shall be
9 established at twenty years, or less if mutually agreeable to
10 both the lessor and lessee. The amount of the lease rent may be
11 set by negotiation or, if mutually agreeable, independent
12 appraisal, using the lower of the comparable value or
13 agricultural capitalization appraisal methodologies. The lessor
14 will be eligible for the general excise tax exemption for up to
15 twenty years from the date of enactment.

16 Taxpayers claiming the exclusion must provide prescribed
17 information to the department of agriculture on an annual basis
18 that will enable an aggregated quantitative and qualitative
19 assessment of the impact of the exemptions to be conducted as
20 prescribed in rules."

1 SECTION 6. Section 342B-24, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§342B-24 Action on a permit application. (a) Within
4 sixty days of receipt of an application the department shall
5 give the applicant written notice that the application is
6 complete, or give the applicant written notice of incompleteness
7 outlining additional information requirements.

8 (b) The department shall take final action on each permit
9 application within eighteen months after the application is
10 determined or deemed to be complete, except that in each of the
11 first three years of the permit program the department need only
12 act on one third of the permit applications submitted during the
13 first year of the permit program. The department may prioritize
14 final action on applications for construction or modification.

15 (c) Each application for a covered source shall be subject
16 to federal oversight.

17 (d) For each application for a covered source permit the
18 director shall provide public notice, including the method by
19 which a public hearing can be requested, and an opportunity for
20 public comments in accordance with section 342B-13.

1 (e) The department shall establish and implement a
2 procedure for the priority processing of permit applications and
3 renewals for agricultural processing facilities that process
4 crops or livestock from an agribusiness with a majority of the
5 lands held, owned, or utilized by the agribusiness which lands
6 are identified and designated as important agricultural lands
7 pursuant to part III of chapter 205, but excluding lands held,
8 owned, or utilized by the agribusiness in the conservation
9 district. Such priority processing shall be done at no
10 additional cost to the applicant.

11 Any priority permit processing procedure established
12 pursuant to this subsection shall not imply or provide that any
13 permit application filed under the priority processing procedure
14 shall be automatically approved."

15 SECTION 7. Total tax credits or financial incentives
16 allowed pursuant to this Act shall not exceed \$5,000,000 for
17 fiscal year 2007-2008 and \$10,000,000 for fiscal year 2008-2009.

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

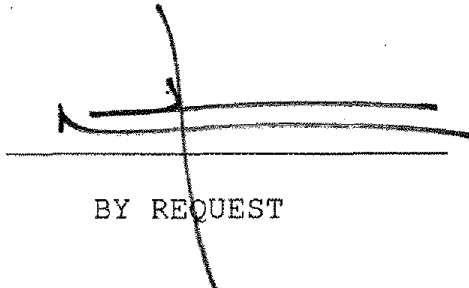
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1 SECTION 9. This Act shall take effect on January 1, 2008.

2

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INTRODUCED BY:



4

BY REQUEST

JUSTIFICATION SHEET

DEPARTMENT: Agriculture

TITLE: A BILL FOR AN ACT RELATING TO INCENTIVES FOR IMPORTANT AGRICULTURAL LANDS.

PURPOSE: This Act is intended to address Hawaii's commitment to fulfill the mandate of article XI, section 3 of the state constitution and to achieve the protection and full potential of lands designated as important agricultural lands (IAL) pursuant to Act 183, Session Laws of Hawaii 2005. This Act does so by establishing a comprehensive and integrated framework of incentives. These incentives are intended to promote investment in, and the long-term use and protection of, designated IAL for agricultural use in Hawaii by farmers, landowners, and others through the reduction of risks and costs that affect the viability of agricultural businesses and the retention of lands in agricultural production.

MEANS: Add new sections to chapter 36 and 235 and amend sections 237-24.75 and 342B-24, Hawaii Revised Statutes (HRS).

JUSTIFICATION: The availability of arable land and sufficient quantities of potable and non-potable water are fundamental to all agricultural activities.

Incentives are necessary to improve the economic viability of existing agri-business operations, enhance the likelihood of new agri-business start-ups, and encourage landowners to put their lands into agricultural production on important agricultural lands.

Incentives are also needed that will reduce landowners' cost of holding, improving, and offering land for farming while under IAL designation, and provide for improvement and

repair of plantation irrigation infrastructure.

Impact on the public: Incentives for IAL will enable Hawaii agriculture to grow and expand beyond its current capacity in order to provide more fresh, diverse, and nutritious products to Hawaii's population and its mainland and foreign markets. The incentives will bring about increased profitability for Hawaii's agribusinesses, create new job opportunities, and increase Hawaii's food and fuel security while contributing to maintaining Hawaii's green spaces which tourists expect to see. The incentives will also contribute to more rational land use policies that will ensure the long-term future for agriculture while moving the discussion forward on the use of other portions of the agricultural district and new uses for the rural district.

Impact on the department and other agencies: The Hawaii Department of Agriculture will take the lead role in monitoring and evaluating the outcomes of the incentives and working to ensure that the incentives are not abused. The Hawaii Department of Agriculture will provide recommendations for improvements or termination of existing incentives or addition of new ones if the monitoring and evaluation results indicate the need to make changes. The Hawaii Department of Agriculture will work with Department of Taxation to provide information to decision-makers so that the costs and benefits are clearly understood. Budget and Finance will be affected by the proposal to establish a guaranty loan program. The Budget and Finance department will be responsible for establishing a reserve for the guaranties and issuing the loan guaranties to the lenders. Department of Health will be affected by the proposal to allow for priority to be given for an air permit for agricultural processing

facilities on IAL and for changes to statutes governing environmental restrictions for facilities serving or using products from IAL. Department of Taxation has been a co-leader of the incentive development effort and has provided input and research into each of the incentives impacting their statutes.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: AGR-192.

OTHER AFFECTED
AGENCIES: Departments of Health, Budget and Finance,
and Taxation.

EFFECTIVE DATE: January 1, 2008.