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

7 **"§235- Land conservation incentives tax credit;**

8 **definitions.** (a) There shall be allowed to every eligible  
9 taxpayer a land conservation incentives tax credit that shall be  
10 deductible from the taxpayer's net income tax liability imposed  
11 by this chapter for taxable years after December 31, 2007;  
12 provided that a husband and wife filing separate returns for a  
13 taxable year for which a joint return could have been filed by  
14 them shall claim only the tax credit to which they would have  
15 been entitled had a joint return been filed.

16 (b) The tax credit shall apply to an eligible taxpayer  
17 who:



1       (1) Donates land in perpetuity or completes a bargain sale  
2       in perpetuity to the State or public or private  
3       conservation agency that fulfills a conservation or  
4       preservation purpose; provided that any donation or  
5       sale that represents a less-than-fee interest  
6       qualifies as a charitable contribution deduction under  
7       Section 170(h) of the Internal Revenue Code of 1986,  
8       as amended; or

9       (2) Voluntarily invests in the management of land to  
10       protect or enhance a conservation or preservation  
11       purpose under a land protection agreement,  
12       conservation management agreement, or other legal  
13       instrument that is consistent with a conservation or  
14       preservation purpose.

15       (c) Donations of land for open space for the purpose of  
16       fulfilling density requirements to obtain subdivision or  
17       building permits do not qualify for the land conservation  
18       incentives tax credit.

19       (d) The amount of the tax credit shall be:

20       (1) Fifty per cent of the fair market value of the land or  
21       interest in land that an eligible taxpayer donates in  
22       perpetuity after December 31, 2007, for a conservation



1           or preservation purpose to the State, or public or  
2           private conservation agency. The fair market value of  
3           donations made under this section shall be  
4           substantiated by a qualified appraisal prepared by a  
5           qualified appraiser, as those terms are defined under  
6           applicable federal law and regulations governing  
7           charitable contributions; or  
8           (2) Fifty per cent of the amount invested in the  
9           management of land pursuant to subsection (b)(2),  
10          up to a maximum of \$1,000,000 in the aggregate for all qualified  
11          taxpayers for all years.

12           (e) The amount of the tax credit shall not exceed  
13          \$1,000,000 per donation regardless of the value of the land or  
14          interest in land; provided that if the tax credit under this  
15          section exceeds the taxpayer's net income tax liability under  
16          this chapter, any excess of the tax credit over liability may be  
17          used as a credit against the taxpayer's income tax liability in  
18          subsequent taxable years until exhausted.

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

21           (f) The tax credit claimed by a pass-through tax entity  
22          may be used either by the pass-through tax entity or a member,



1 manager, partner, shareholder, or beneficiary of the pass-  
2 through entity, in proportion to the total interest of the  
3 member, manager, partner, shareholder, or beneficiary; provided  
4 that:

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

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

9 (g) Every claim, including amended claims, for the tax  
10 credit under this section shall be filed on or before the end of  
11 the twelfth month following the close of the taxable year for  
12 which the tax credit may be claimed. Failure to meet the filing  
13 requirements of this subsection shall constitute a waiver of the  
14 right to claim the tax credit.

15 (h) The director of taxation:

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

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

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

21 (i) The chairperson of the board of land and natural  
22 resources and the chairperson of the board of agriculture may



1 adopt rules pursuant to chapter 91 to effectuate this section  
2 and to certify that a donation or investment claimed for a tax  
3 credit under this section fulfills a conservation or  
4 preservation purpose pursuant to subsection (k).

5 (j) Any appraisals prepared pursuant to subsection (d)(1)  
6 shall be subject to all requirements, including penalties for  
7 valuation misstatements, for appraisals and appraisers under  
8 applicable federal law and regulations governing charitable  
9 contributions.

10 (k) As used in this section:

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

13 "Conservation or preservation purpose" means:

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

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

17 (3) Preservation of forest land; agricultural land;  
18 watersheds; streams; rainfall infiltration areas;  
19 outdoor recreation, including hiking, biking, and  
20 walking trails; and historic or cultural property;

21 provided that the resources or areas protected or preserved are  
22 designated as significant or important by a relevant state



1 agency, and that the state agency work with the taxpayer to  
2 identify opportunities for public access if appropriate and  
3 reasonable, and that nothing herein shall prevent the exercise  
4 of any rights of Native Hawaiians for traditional and customary  
5 practices as may be required by law.

6 "Cultural property" means a structure, place, site, or  
7 object having historic, archaeological, scientific,  
8 architectural, or cultural significance.

9 "Eligible taxpayer":

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

14 (2) Includes individuals, corporations, or pass-through  
15 tax entities such as trusts, estates, partnerships,  
16 limited liability companies or partnerships, S  
17 corporations, or other fiduciaries.

18 "Interest in land" means a right in real property,  
19 including access, improvement, water right, fee simple interest,  
20 easement, land use easement, partial interest in real property,  
21 mineral right, remainder or future interest, or other interest  
22 or right in real property that complies with the requirements of



1 Section 170(h)(2) of the Internal Revenue Code of 1986, as  
2 amended.

3 "Land" means real property, including rights of way,  
4 easements, privileges, water rights, and all other rights or  
5 interests related to real property.

6 "Public or private conservation agency" means a  
7 governmental body or a private nonprofit charitable corporation  
8 or trust authorized to do business in the state that is  
9 organized and operated for natural resources, land, or historic  
10 conservation purposes and that has tax-exempt status as a public  
11 charity under Section 501(c)(3) of the Internal Revenue Code of  
12 1986, as amended, and has the power to acquire, hold, or  
13 maintain land or interests in land."

14 SECTION 3. Section 205-45, Hawaii Revised Statutes, is  
15 amended by amending subsection (a) to read as follows:

16 "(a) A farmer or landowner with lands qualifying under  
17 section 205-44 may file a petition for declaratory ruling with  
18 the commission at any time in the designation process. The  
19 holder of an interest in agricultural lands that qualifies for  
20 the land conservation incentives tax credit under section 235-  
21 may petition the commission for designation of the agricultural



1 lands as important agricultural lands, and enjoy the incentives  
2 for important agricultural lands provided under section 205-46."

3 SECTION 4. New statutory material is underscored.

4 SECTION 5. This Act shall take effect on July 1, 2008,  
5 shall be repealed on December 31, 2013, and shall apply to  
6 taxable years beginning after December 31, 2007.





S.B. NO. 2198  
S.D. 2  
H.D. 2  
C.D. 2

**Report Title:**

Tax Credit; Land Conservation

**Description:**

Provides a tax credit to encourage the preservation and protection of conservation land in the State. (CD2)

