

JAN 18 2008

A BILL FOR AN ACT

RELATING TO IMPORTANT AGRICULTURAL LANDS.

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

PART I

GENERAL PURPOSE

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

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

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



1 the standards and criteria established by the
2 legislature and approved by a two-thirds vote of the
3 body responsible for the reclassification or rezoning
4 action."
5 To address the issue of important agricultural lands, Act
6 183, Session Laws of Hawaii 2005 (Act 183), was enacted. Act
7 183 establishes standards, criteria, and mechanisms to identify
8 important agricultural lands and implement the intent and
9 purpose of article XI, section 3, of the Hawaii State
10 Constitution.
11 Act 183 also recognized that while the supply of lands
12 suitable for agriculture is critical, the long-term viability of
13 agriculture also depends on other factors. These factors
14 include:
15 (1) Commodity prices;
16 (2) Availability of water for irrigation;
17 (3) Agricultural research and outreach;
18 (4) Application of production technologies;
19 (5) Marketing; and
20 (6) Availability and cost of transportation services.

1 The purpose of this Act is to provide incentives and
2 protections to establish and sustain viable agricultural
3 operations on important agricultural lands.

4 PART II

5 SECTION 2. 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- Rental income from agricultural leases on
9 important agricultural lands excluded from gross income. (a)

10 In addition to the exclusions in section 235-7, there shall be
11 excluded from gross income, adjusted gross income, and taxable
12 income, rental income, including lease rents, in an amount not
13 to exceed \$ _____ in any taxable year and received by a
14 taxpayer subject to the taxes imposed by this chapter that are
15 derived from agricultural leases on lands identified and
16 designated as important agricultural lands pursuant to part III,
17 chapter 205, for the taxable year the rental income was
18 realized; provided that:

- 19 (1) The minimum length of the initial lease term shall be:
20 (A) Twenty years; or
21 (B) Any other lease term length mutually agreeable to
22 lessor and lessee, if the amount of the lease



1 rent is set by an independent appraisal using the
2 lower of the comparable value or agricultural
3 capitalization appraisal methodologies; and

4 (2) The lease is in effect and the lessee is continuously
5 and substantially undertaking agribusiness on the
6 leased land, pursuant to chapter 205, as verified by
7 the department of agriculture on a regular basis using
8 a process determined by the department of agriculture;
9 provided that the exclusion shall not apply if the
10 lease is terminated or the department of agriculture
11 determines that the leased land is not continuously
12 and substantially being used for agribusiness.

13 The taxpayer shall be eligible for the exclusion initially for
14 up to twenty years; provided that the time period may be
15 extended for every year the term of the lease is extended;
16 provided further that the assignment of the original lease to
17 another lessee shall be for the time period remaining on the
18 original lease, unless the terms of the lease are renegotiated.

19 (b) Each taxpayer who claims the exclusion under this
20 section shall annually provide any necessary information
21 determined by and to the department of agriculture in the manner
22 prescribed by the department of agriculture to enable an



1 aggregated quantitative and qualitative assessment of the impact
2 of the exclusion.

3 (c) For the purposes of this section:

4 "Agribusiness" means a business licensed for the
5 production, processing, and sale of products from the
6 cultivation of crops, propagation of fish or game, or raising of
7 livestock."

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

10 **"§237-24.75 Additional exemptions.** In addition to the
11 amounts exempt under section 237-24, this chapter shall not
12 apply to:

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

15 (2) Amounts received by the operator of the Hawaii
16 convention center for reimbursement of costs or
17 advances made pursuant to a contract with the Hawaii
18 tourism authority under section 201B-7; [~~and~~]

19 [+](3) Amounts received[+] by a professional employment
20 organization from a client company equal to amounts
21 that are disbursed by the professional employment
22 organization for employee wages, salaries, payroll



1 taxes, insurance premiums, and benefits, including
 2 retirement, vacation, sick leave, health benefits, and
 3 similar employment benefits with respect to assigned
 4 employees at a client company; provided that this
 5 exemption shall not apply to a professional employment
 6 organization upon failure of the professional
 7 employment organization to collect, account for, and
 8 pay over any income tax withholding for assigned
 9 employees or any federal or state taxes for which the
 10 professional employment organization is responsible.

11 As used in this paragraph, "professional employment
 12 organization", "client company", and "assigned
 13 employee" shall have the meanings provided in section
 14 373K-1[-]; and

15 (4) Rental income, including lease rents, in an amount not
 16 to exceed \$ _____ in any taxable year and derived
 17 from agricultural leases on lands identified and
 18 designated as important agricultural lands pursuant to
 19 part III, chapter 205, for the taxable year the rental
 20 income was realized; provided that:

21 (A) The minimum length of the initial lease term
 22 shall be:



- 1 (i) Twenty years; or
- 2 (ii) Any other lease term length mutually
- 3 agreeable to lessor and lessee, if the
- 4 amount of the lease rent is set by an
- 5 independent appraisal using the lower of the
- 6 comparable value or agricultural
- 7 capitalization appraisal methodologies;
- 8 (B) The lease is in effect and the lessee is
- 9 continuously and substantially undertaking
- 10 agricultural activity on the leased land,
- 11 pursuant to chapter 205, as verified by the
- 12 department of agriculture on a regular basis
- 13 using a process determined by the department of
- 14 agriculture; provided that the exemption shall
- 15 not apply if the lease is terminated or the
- 16 department of agriculture determines that the
- 17 leased land is not continuously and substantially
- 18 being used for agricultural activity; and
- 19 (C) The taxpayer shall be eligible for the exemption
- 20 initially for up to twenty years and for every
- 21 year the term of the lease is extended; provided
- 22 further that the assignment of the original lease



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

4 "§235- Important agricultural lands real property tax
5 credit. (a) There shall be allowed to each taxpayer, subject
6 to the taxes imposed by this chapter, an important agricultural
7 lands real property tax credit that shall be deductible from the
8 taxpayer's net income tax liability, if any, imposed by this
9 chapter for the taxable year in which the credit is properly
10 claimed.

11 (b) The amount of the credit shall be equal to one hundred
12 per cent of the actual amount of county real property taxes paid
13 by the taxpayer during the taxable year in which real property
14 tax was assessed on lands identified and designated as important
15 agricultural lands pursuant to part III, chapter 205.

16 In the case of a partnership, S corporation, estate, or
17 trust, the amount upon which the credit is computed shall be
18 determined at the entity level. Distribution and share of
19 credit shall be determined by rule.

20 (c) The tax credit shall be allowed only for the entity
21 incurring the actual cost of the real property tax. If the real
22 property tax is part of the lease rent and not otherwise



1 specified in the lease agreement, the lessor shall provide the
2 lessee with the amount of the real property tax included as part
3 of the lease rent upon request.

4 (d) If the classification of the important agricultural
5 lands subject to the credit is redesignated, the credit shall no
6 longer be available.

7 (e) If the credit under this section exceeds the
8 taxpayer's tax payments due for the taxable year, the excess of
9 the credits over tax payments due shall be refunded to the
10 taxpayer; provided that the credit properly claimed by the
11 taxpayer who has no income tax liability shall be paid to the
12 taxpayer; and provided further that no refunds or payments on
13 account of the credits allowed by this section shall be made for
14 amounts less than \$1.

15 All claims for a credit under this section shall be filed
16 on or before the end of the twelfth month following the close of
17 the taxable year for which the credit may be claimed. Failure
18 to comply with the foregoing provision shall constitute a waiver
19 of the right to claim the credit.

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



1 ascertain the validity of the claim for credit made under this
2 section by rule pursuant to chapter 91.

3 (g) The tax credit allowed under this section shall be
4 available for taxable years beginning after December 31, 2008,
5 and shall not be available for taxable years beginning after
6 December 31, 2028.

7 (h) Taxpayers claiming the credit under this section shall
8 provide prescribed information to the department of agriculture
9 on an annual basis, upon request, that will enable a
10 quantitative and qualitative assessment of the impact of the tax
11 credit to be determined. The assessment shall be available to
12 the public.

13 The department of agriculture shall determine on an annual
14 basis if the important agricultural land subject to the credit
15 is in productive agricultural use based on a ten year farm plan
16 submitted to and approved by the department."

17 SECTION 7. There is appropriated out of the general
18 revenues of the State of Hawaii the sum of \$ or so
19 much thereof as may be necessary for fiscal year 2008-2009 for
20 the department of agriculture to collect and analyze data to
21 make an aggregated quantitative and qualitative assessment of
22 the full impact of the important agricultural lands tax credit.



1 situated; provided that the immediate family members
2 of the employee shall not live in separate dwelling
3 units and shall live with the employee;

4 (3) The total land area upon which the combined total of
5 farmer and employee dwelling units and all
6 appurtenances are situated shall not occupy more than
7 twenty per cent of the total important agricultural
8 land area controlled by the farmer or the employee's
9 employer;

10 (4) The farmers' and employee dwelling units meet all
11 applicable building code requirements;

12 (5) Notwithstanding section 205-4.5(a)(12), the landowner
13 shall not plan or develop a residential subdivision on
14 the designated important agricultural land; and

15 (6) The plans for farmers' and employee dwelling units
16 shall be supported by agricultural plans that are
17 approved by the department of agriculture."

18 **PART V**

19 SECTION 9. Tax incentives are a critical component of the
20 long-term viability of agriculture on important agricultural
21 lands in the State. The legislature finds that it is in the
22 public's interest to assist agricultural businesses in



1 establishing and sustaining viable agricultural operations on
2 important agricultural lands by providing incentives such as
3 income tax credits.

4 The purpose of this part is to establish an important
5 agricultural land tax credit to establish and sustain viable
6 agricultural operations on important agricultural lands.

7 SECTION 10. Chapter 235, Hawaii Revised Statutes, is
8 amended by adding a new section to be appropriately designated
9 and to read as follows:

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

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



1 of the qualified agricultural costs up to a maximum
2 of _____ ;

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

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

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

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

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



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

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

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

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

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

7 (f) The director of taxation shall prepare any forms that
8 may be necessary to claim a credit under this section. The
9 director may also require the taxpayer to furnish information to
10 ascertain the validity of the claim for credit made under this
11 section and may adopt rules necessary to effectuate the purposes
12 of this section pursuant to chapter 91.

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

20 (h) The department of agriculture, in consultation with
21 the department of taxation, shall determine the types of
22 information that is necessary on an annual basis to enable a



1 quantitative and qualitative assessment of the outcomes of the
2 tax credit to be determined. Every taxpayer, no later than the
3 last day of the taxable year following the close of the
4 taxpayer's taxable year in which qualified costs were incurred,
5 shall submit a written statement to and certified by the
6 department of agriculture.

7 Any taxpayer failing to submit information to the
8 department of agriculture in the manner prescribed by the
9 department of agriculture prior to the last day of the taxable
10 year following the close of the taxpayer's taxable year in which
11 qualified costs were incurred shall not be eligible to receive
12 the tax credit, and any credit already claimed for that taxable
13 year shall be recaptured in total. The amount of the recaptured
14 tax credit shall be added to the taxpayer's tax liability for
15 the taxable year in which the recapture occurs.

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

18 (i) On an annual basis, the department of agriculture, in
19 consultation with the department of taxation, shall submit a
20 report evaluating the effectiveness of the tax credit. The
21 report shall include but not be limited to findings and



1 recommendations to improve the effectiveness of the tax credit
2 to further encourage the development of agricultural businesses

3 (j) As used in this section:

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

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

11 (2) The planting, cultivating, harvesting, and processing
12 of crops; and

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

16 provided that it maintains its principal place of business in
17 the State and more than fifty per cent of the land the
18 agricultural business owns or leases, excluding land classified
19 as conservation land, is important agricultural land.

20 "Important agricultural lands" means lands identified and
21 designated as important agricultural lands pursuant to chapter
22 205, part III.



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

3 "Qualified agricultural costs" means expenditures for:

4 (1) The plans, design, engineering, construction,
5 renovation, repair, maintenance, and equipment for:

6 (A) Roads or utilities, primarily for agricultural
7 purposes, for which the majority of the lands
8 serviced by the roads or utilities, excluding
9 lands classified as conservation lands, are
10 important agricultural lands;

11 (B) Agricultural processing facilities in the State,
12 primarily for agricultural purposes, that
13 process, harvest, treat, wash, handle, or package
14 a majority of crops or livestock from
15 agricultural businesses;

16 (C) Water wells, reservoirs, dams, water storage
17 facilities, water pipelines, ditches, or
18 irrigation systems in the State, primarily for
19 agricultural purposes, for which the majority of
20 the lands serviced by its water, excluding lands
21 classified as conservation lands, are important
22 agricultural lands; and



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



1 SECTION 11. There is appropriated out of the general
2 revenues of the State of Hawaii the sum of \$ or so
3 much thereof as may be necessary for fiscal year 2008-2009 to
4 the department of taxation for the costs to administer the
5 important agricultural land agricultural business tax credit.

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

8 SECTION 12. There is appropriated out of the general
9 revenues of the State of Hawaii the sum of \$ or so
10 much thereof as may be necessary for fiscal year 2008-2009 to
11 the department of agriculture for the costs to administer the
12 important agricultural land agricultural business tax credit and
13 for one FTE planner position for the department of agriculture.

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

16 **PART VI**

17 SECTION 13. Financing is also a critical component of the
18 long-term viability of agriculture on important agricultural
19 lands in the State. The legislature finds that it is in the
20 public interest to assist agricultural producers in meeting
21 their financing needs for projects that are located in important
22 agricultural lands.



1 The purpose of this part is to further the implementation
2 of Act 183 by authorizing the chairperson of the board of
3 agriculture to guarantee loans relating to agricultural projects
4 located on important agricultural lands.

5 SECTION 14. Chapter 155, Hawaii Revised Statutes, is
6 amended by adding a new section to be appropriately designated
7 and to read as follows:

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

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

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

21 (3) After consultation with the director of finance, the
22 State possesses sufficient funds to provide an



1 appropriate reserve for the loan guaranty and which,
2 in the director of finance's judgment, are in excess
3 of the amounts necessary to meet the immediate
4 requirements of the State and will not impede or
5 hamper the fulfillment of the financial obligations of
6 the State.

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

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

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

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

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

21 (4) The loan guaranty may be up to eighty-five per cent of
22 the outstanding principal amount of the loan, but



- 1 (3) Agricultural research and outreach;
- 2 (4) The application of production technologies;
- 3 (5) Marketing; and
- 4 (6) The availability and cost of transportation services.

5 The most important of these is the availability of water
6 for irrigation. The legislature finds that to promote the long-
7 term viability of agriculture, the State must establish
8 mechanisms that promote the availability of irrigation water for
9 agricultural activities.

10 The legislature finds that amendments to the state water
11 code (chapter 174C, Hawaii Revised Statutes) are needed to
12 accomplish the foregoing. The water code was adopted prior to
13 the legislature adopting Act 183, establishing the important
14 agricultural lands program. The adoption of the water code also
15 preceded a number of decisions made by the Hawaii supreme court
16 in a series of water law cases interpreting the state water
17 code, several of which are known collectively as the Waiahole
18 ditch cases.

19 In these cases, the Hawaii supreme court decided that the
20 "public trust doctrine" applies to water resources and water
21 resource decisions made by the implementing agency. Further, in
22 these cases, the Hawaii supreme court identified resource



1 protection, domestic uses, preservation of the rights of native
2 tenants and reservations of water for the department of Hawaiian
3 home lands as valid public trust purposes. In these same cases,
4 the court did not specifically recognize agriculture as a public
5 trust use of water and in fact, viewed the requests for
6 agricultural water as serving private interests, and stopped
7 short of embracing private commercial uses as a protected trust
8 purpose. The court appeared to relegate agriculture to a lower
9 priority.

10 Uses under the public trust, however, do not remain fixed
11 for all time but must conform to changing public values and
12 needs. The legislature, as elected representatives of the
13 people of Hawaii, is in the best position to identify such
14 public trust values and needs.

15 While agricultural activities may be conducted by private
16 entities, the preservation of agriculture as an industry and the
17 preservation of important agricultural lands are interests that
18 the people of Hawaii value highly, and have recognized as a
19 constitutional mandate as discussed above. Essential to
20 conserving and protecting agricultural lands, promoting
21 diversified agriculture, increasing agricultural self-
22 sufficiency, and ensuring the availability of agriculturally



1 suitable lands is the availability of water for agricultural
2 use.

3 The purpose of this part is to further implement Act 183 by
4 amending the state water code to require that:

5 (1) The state water plan, including the water resource
6 protection, water use and development, and water
7 projects plans; and

8 (2) The provisions of the water code regulating the use of
9 waters,

10 recognize and support the importance of making sufficient water
11 available for agricultural activity on lands identified and
12 designated as important agricultural lands under part III of
13 chapter 205, Hawaii Revised Statutes, so as to preserve
14 agriculture and agricultural lands as mandated by the state
15 constitution.

16 SECTION 16. Section 174C-2, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§174C-2 Declaration of policy.** (a) It is recognized
19 that the waters of the State are held for the benefit of the
20 citizens of the State. It is declared that the people of the
21 State are beneficiaries and have a right to have the waters
22 protected for their use.



1 (b) There is a need for a program of comprehensive water
2 resources planning to address the problems of supply and
3 conservation of water. The Hawaii water plan, with such future
4 amendments, supplements, and additions as may be necessary, is
5 accepted as the guide for developing and implementing this
6 policy.

7 (c) The state water code shall be liberally interpreted to
8 obtain maximum beneficial use of the waters of the State for
9 purposes such as domestic uses, aquaculture uses, irrigation and
10 other agricultural uses, power development, and commercial and
11 industrial uses. However, adequate provision shall be made for
12 the protection of traditional and customary Hawaiian rights, the
13 protection and procreation of fish and wildlife, the maintenance
14 of proper ecological balance and scenic beauty, and the
15 preservation and enhancement of waters of the State for
16 municipal uses, public recreation, public water supply,
17 agriculture, and navigation. Such objectives are declared to be
18 in the public interest.

19 (d) The state water code shall be liberally interpreted to
20 protect and improve the quality of waters of the State and to
21 provide that no substance be discharged into such waters without
22 first receiving the necessary treatment or other corrective



1 action. The people of Hawaii have a substantial interest in the
2 prevention, abatement, and control of both new and existing
3 water pollution and in the maintenance of high standards of
4 water quality.

5 (e) The state water code shall be liberally interpreted
6 and applied in a manner which conforms with intentions and plans
7 of the counties in terms of land use planning.

8 (f) the public trust doctrine shall guide the actions of
9 the commission. In the planning and allocation of water
10 resources, to the extent feasible, the commission shall protect
11 the public trust purposes of resource protection, domestic uses,
12 upholding the exercise of native Hawaiian traditional and
13 customary rights, and the conservation and protection of
14 agricultural activity on agricultural lands identified and
15 designated as important agricultural lands pursuant to part III
16 of chapter 205."

17 SECTION 17. Section 174C-31, Hawaii Revised Statutes, is
18 amended as follows:

19 1. By amending subsection (e) and (f) to read:

20 "(e) The department of agriculture shall prepare a state
21 agricultural water use and development plan for agricultural
22 uses in the State in accordance with chapter 167 and this



1 chapter, and subsequently modify and update the plan as
2 necessary. The state agricultural water use and development
3 plan shall include but not be limited to a master irrigation
4 inventory plan ~~[which]~~ that shall:

5 (1) Inventory ~~[the]~~ public and private irrigation water
6 systems;

7 (2) Identify the extent of rehabilitation needed for each
8 system;

9 ~~[(3) Subsidize the cost of repair and maintenance of the
10 systems;~~

11 ~~-(4) Establish criteria to prioritize the rehabilitation of
12 the systems;]~~

13 (3) Identify sources of water used by agricultural
14 operations and particularly those on lands identified
15 and designated as important agricultural lands
16 pursuant to part III of chapter 205;

17 (4) Identify current and future water needs for
18 agricultural operations on lands identified and
19 designated as important agricultural lands pursuant to
20 part III of chapter 205;

21 (5) Develop a five-year program to repair the systems; and

22 (6) Set up a long-range plan to manage the systems.



1 The commission shall coordinate the incorporation of the state
2 agricultural water use and development plan into the state water
3 projects plan.

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

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

19 **PART VIII**

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



1 "§205- Agricultural processing facilities; permits;
2 priority. (a) Any applicable agency subject to this chapter or
3 title 13 that issues permits shall establish and implement a
4 procedure for the priority processing of permit applications and
5 renewals, at no additional cost to the applicant, for
6 agricultural processing facilities that process crops or
7 livestock from an agribusiness with a majority of the lands
8 held, owned, or used by the agribusiness, identified and
9 designated as important agricultural lands pursuant to this
10 part, excluding lands held, owned, or used by the agribusiness
11 in the conservation district. Any priority permit processing
12 procedure established pursuant to this section shall not imply
13 or provide that any permit application filed under the priority
14 processing procedure shall be automatically approved.

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

20 SECTION 19. Chapter 321, Hawaii Revised Statutes, is
21 amended by adding a new section to be appropriately designated
22 and to read as follows:



1 "§321- Agricultural processing facilities; permits;
2 priority. (a) Any applicable agency subject to this chapter or
3 title 19 that issues permits shall establish and implement a
4 procedure for the priority processing of permit applications and
5 renewals, at no additional cost to the applicant, for
6 agricultural processing facilities that process crops or
7 livestock from an agribusiness with a majority of the lands
8 held, owned, or used by the agribusiness, identified and
9 designated as important agricultural lands pursuant to this
10 part, excluding lands held, owned, or used by the agribusiness
11 in the conservation district. Any priority permit processing
12 procedure established pursuant to this section shall not imply
13 or provide that any permit application filed under the priority
14 processing procedure shall be automatically approved.

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

PART IX

21 SECTION 20. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.



1 SECTION 21. This Act shall take effect on July 1, 2008.

2

INTRODUCED BY:

Jim
Russell Kohb
Mike Hubbard
4. Alan C. Egan



Report Title:

Important Agricultural Lands; Incentives

Description:

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

