



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 provide annually to the department of agriculture  
21 any information determined by the department of agriculture to  
22 be necessary to enable an aggregated quantitative and



1 qualitative assessment of the impact of the exclusion. The  
2 taxpayer shall provide the information in a manner prescribed by  
3 the department of agriculture.

4 (c) For the purposes of this section:

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

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

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

- 14 (1) Amounts received as a beverage container deposit
- 15 collected under chapter 342G, part VIII;
- 16 (2) Amounts received by the operator of the Hawaii
- 17 convention center for reimbursement of costs or
- 18 advances made pursuant to a contract with the Hawaii
- 19 tourism authority under section 201B-7[+]; [~~and~~
- 20 +](3) Amounts received[+] by a professional employment
- 21 organization from a client company equal to amounts
- 22 that are disbursed by the professional employment



1 organization for employee wages, salaries, payroll  
2 taxes, insurance premiums, and benefits, including  
3 retirement, vacation, sick leave, health benefits, and  
4 similar employment benefits with respect to assigned  
5 employees at a client company; provided that this  
6 exemption shall not apply to a professional employment  
7 organization upon failure of the professional  
8 employment organization to collect, account for, and  
9 pay over any income tax withholding for assigned  
10 employees or any federal or state taxes for which the  
11 professional employment organization is responsible.  
12 As used in this paragraph, "professional employment  
13 organization", "client company", and "assigned  
14 employee" shall have the meanings provided in section  
15 373K-1[-]; and

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



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







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 renewals, at no additional cost to the applicant, for  
2 agricultural processing facilities that process crops or  
3 livestock from an agribusiness with a majority of the lands  
4 held, owned, or used by the agribusiness, identified and  
5 designated as important agricultural lands pursuant to this  
6 part, excluding lands held, owned, or used by the agribusiness  
7 in the conservation district. Any priority permit processing  
8 procedure established pursuant to this section shall not imply  
9 or provide that any permit application filed under the priority  
10 processing procedure shall be automatically approved.

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

16 SECTION 16. Chapter 321, Hawaii Revised Statutes, is  
17 amended by adding a new section to be appropriately designated  
18 and to read as follows:

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



1 renewals, at no additional cost to the applicant, for  
2 agricultural processing facilities that process crops or  
3 livestock from an agribusiness with a majority of the lands  
4 held, owned, or used by the agribusiness, identified and  
5 designated as important agricultural lands pursuant to this  
6 part, excluding lands held, owned, or used by the agribusiness  
7 in the conservation district. Any priority permit processing  
8 procedure established pursuant to this section shall not imply  
9 or provide that any permit application filed under the priority  
10 processing procedure shall be automatically approved.

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

16 **PART VIII**

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

19 SECTION 18. This Act shall take effect on July 1, 2008.



**Report Title:**

Important Agricultural Lands; Incentives

**Description:**

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

