

JAN 23 2008

A BILL FOR AN ACT

RELATING TO MACADAMIA NUTS.

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

1 SECTION 1. Chapter 148, Hawaii Revised Statutes, is
2 amended by adding a new part to be appropriately designated and
3 to read as follows:

4 "PART . MACADAMIA NUT COMMISSION

5 §148-A Definitions. For purposes of this part:

6 "Processor" and "first handler":

7 (1) Mean any person, within the State, engaged in the
8 operation of hulling and roasting macadamia nuts:

9 (A) That the person produced, purchased, or acquired
10 from a producer; or

11 (B) On behalf of a producer, as owner, agent,
12 employee, broker, or otherwise.

13 (2) Does not include a retailer, except for a retailer who
14 purchases or acquires from, or hulls and roasts on
15 behalf of any producer, macadamia nuts that were not
16 previously subject to regulation by the commission.



1 "Producer" or "grower" means any person who is engaged in
2 this State in the business of producing or causing to be
3 produced for market macadamia nuts.

4 "Producer-supplier" means any producer who engages in the
5 operations of selling, marketing, or distributing macadamia nuts
6 that the person has produced, or purchased or acquired from a
7 processor. The term does not include a retailer, except a
8 retailer who purchases or acquires from, or sells, markets, or
9 distributes on behalf of a producer, macadamia nuts that were
10 not previously subject to regulation by the commission.

11 **§148-B Macadamia nut commission; established; members.**

12 (a) There is established within the department of agriculture
13 for administrative purposes the macadamia nut commission
14 consisting of members appointed by the chairperson of the board
15 of agriculture.

16 (b) The members shall be appointed from a list of nominees
17 submitted by organizations and individuals in the macadamia nut
18 industry who, commencing on September 1, 2008, and by September
19 1, every two years thereafter, shall submit a list of nominees
20 to the chairperson. Members shall include eight representatives
21 of large and small growers and processors and one representative



1 of the public. The public member shall be appointed from
2 nominees recommended by the commission.

3 (c) Each member shall serve a term of three years, which
4 shall end on December 31 of each third year thereafter.

5 (d) The members of the macadamia nut commission shall
6 serve without compensation but shall be reimbursed for expenses,
7 including travel expenses, necessary for the performance of
8 their duties.

9 §148-C Commission; purpose; power and duty. (a) The
10 commission shall develop and manage a national and international
11 advertising and promotion program to ensure that the macadamia
12 industry in the State can compete successfully in the world
13 marketplace. The commission shall carry engage in advertising,
14 promotion, education, marketing research, and production
15 research relating to the macadamia nut industry.

16 (b) The commission may:

17 (1) Employ a manager to serve at the pleasure of the
18 commission as president and chief executive officer of
19 the commission, and other personnel necessary to carry
20 out the purpose of this part:

21 (2) Appoint committees composed of members and nonmembers
22 to advise the commission;



- 1 (3) Establish an office and incur expenses, invest funds
2 in permissible investments, enter into contracts and
3 agreements, create liabilities and borrow funds in
4 advance of receipt of assessments as necessary;
- 5 (4) Promote the sale of macadamia nuts by advertising and
6 other promotional means, including cost-sharing
7 advertising of macadamia nuts or other complimentary
8 products and brand credit advertising to maintain and
9 expand present markets and create new markets;
- 10 (5) Recommend to the chairperson of the board of
11 agriculture adoption of macadamia nut quality
12 standards, product labeling, or other activity
13 authorized under this chapter;
- 14 (6) Serve in an advisory capacity to the chairperson of
15 the board of agriculture on all matters relating to
16 this part;
- 17 (7) Educate the public on the uses, healthful properties,
18 and nutritional value of macadamia nuts;
- 19 (8) Require processors and producers-suppliers to provide
20 records and other information necessary for the
21 commission to carry out its duties, including
22 information regarding inventories, shipment



1 destinations, and related information. These records
2 and information shall be preserved by the processor or
3 producer-supplier for two years and shall be submitted
4 for inspection at any reasonable time upon written
5 demand of the commission;

6 (9) Educate and instruct wholesale and retail trade
7 regarding proper methods of handling and selling
8 macadamia nuts, including market surveys and analysis,
9 factual presentations, and negotiations with state,
10 federal, and foreign agencies relating to marketing of
11 macadamia nuts;

12 (10) Contract to render service in formulating and
13 conducting plans and programs, and other agreements
14 the commission may determine necessary to promote the
15 sale of macadamia nuts;

16 (11) Conduct or contract for others to conduct scientific
17 research, including the study, analysis,
18 dissemination, and accumulation of information obtain
19 from research regarding cultural and production
20 practices, and marketing and distribution of macadamia
21 nuts;



- 1 (12) Accept gifts, contributions, or appropriations of
- 2 private, state, or federal funds;
- 3 (13) Establish an assessment rate to defray operating costs
- 4 of the commission;
- 5 (14) Establish an annual budget pursuant to accepted
- 6 accounting practices;
- 7 (15) Administer any governmental program establishing
- 8 quality standards for the macadamia nut industry upon
- 9 request of an authorized agent of a governmental
- 10 agency; and
- 11 (16) Other things necessary to carry out the purpose of
- 12 this part.

13 **§148-D Moneys received by commission; agent; bond.** All

14 moneys received from assessments or otherwise received by the

15 commission shall be deposited into any bank the commission may

16 designate. Moneys shall be disbursed by the commission through

17 any agent designated by the commission for that purpose. Any

18 agent shall be bonded by a fidelity bond, executed by a surety

19 company authorized to transact business in the State in favor of

20 the commission in the amount of not less than \$25,000.

21 **§148-E Assessments.** (a) Not later than October 1 of each

22 year, the commission shall establish an assessment for the



1 marketing season that begins September 1 and continues through
2 August 31 of the following year. The assessment shall not
3 exceed five per cent of the average price received by producers,
4 computed on a per pound basis or computed in any other manner
5 determined by the commission to be reasonably equivalent to the
6 per pound computation.

7 (b) The commission may revise the assessment established
8 prior to October 1 of each year if it determines, based on
9 information including crop volume, that the action is necessary
10 and the revision does not exceed assessment limitations
11 specified in this section. Any revision shall be made prior to
12 the date established by the commission for payment of the
13 assessment.

14 **§148-F Producer assessments; processor liability.** (a)
15 The first handler of macadamia nuts being assessed shall deduct
16 the assessment from amounts paid to the producer or collect the
17 assessment from the producer. The first handler shall be a
18 trustee of the funds until the assessment is paid to the
19 commission.

20 (b) Every processor shall be personally liable for payment
21 of the collected assessments. Failure of the processor to



1 collect the assessment from any producer shall not exempt the
2 processor from liability.

3 **§148-G Failure to pay assessment.** Any assessment levied
4 pursuant to this part is a personal debt of the producer
5 assessed. Failure of a processor to make payment of the
6 collected assessment to the commission shall not relieve the
7 producer of this obligation.

8 **§148-H Penalties.** (a) Any producer or processor who
9 fails to file a return or to pay any assessment within the time
10 requires by the commission shall pay to the commission a penalty
11 of ten per cent of the amount of the assessment determined to be
12 past due, in addition to interest on the unpaid balance at the
13 rate of 11.5 per cent per month.

14 (b) In addition to any other penalty, the commission may
15 require any person who fails to pay any assessment or related
16 charge to furnish and maintain a surety bond in a form and
17 amount and for a period of time specified by the commission as
18 assurance that payment to the commission will be made when due.

19 **§148-I Exemptions.** (a) This part does not apply to
20 macadamia nuts produced only for the producer's home use or to
21 macadamia nuts used only for ornamental purposes.



1 (b) To claim the exemption, a producer shall file an
2 affidavit with the commission to establish that the producer's
3 macadamia nuts are not produced for commercial purposes.

4 (c) Any production of macadamia nuts in excess of one
5 thousand pounds shall not be exempt from assessment established
6 in this part.

7 **§148-J Processor records.** (a) Processors shall keep a
8 complete and accurate record of all macadamia nuts processed,
9 including the name of the producer whose macadamia nuts were
10 processed. The records shall contain information as the
11 commission shall prescribe.

12 (b) Records shall be preserved by the processor for two
13 years and shall be submitted for inspection at a reasonable time
14 upon the written request of the commission.

15 **§148-K Liability.** (a) The State shall not be liable for
16 any act of the commission or its contracts.

17 (b) Payment of all claims arising by reason of the
18 administration of this part or acts of the commission shall be
19 limited to the funds collected by the commission.

20 (c) No member, alternate member, or employee of the
21 commission shall be personally liable on any contract of the
22 commission or responsible individually to any producer,



1 processor, producer-supplier, or any other person for any error
2 in judgment, mistake, or other act of commission or omission as
3 principal, agent, or employee, except for the individual's own
4 act or dishonesty or crime.

5 (d) No member or alternate member of the commissions shall
6 be responsible individually for any act or omission of any
7 member of the commission.

8 (e) Liability of the commissioners if several and not
9 joint, and no member is liable for the default of any other
10 member of the commission.

11 **§148-L Proprietary information.** (a) All proprietary
12 information obtained or received by the commission from
13 producers, processors, or producer-suppliers shall be
14 confidential and shall not be disclosed, except pursuant to a
15 court order after a hearing in a judicial proceeding involving
16 this part.

17 (b) Information on volume shipments, crop value, and other
18 related information required for reports to governmental
19 agencies, financial reports to the commission, or aggregate
20 sales and inventory information, and other information that
21 processors or producer-suppliers request from the commission to



1 receive in total, excluding individual process or producer-
2 supplier information, may be disclosed by the commission."

3 SECTION 2. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$ or so much
5 thereof as may be necessary for fiscal year 2008-2009 for the
6 promotion and expansion of the macadamia nut industry in the
7 State by the Hawaii Macadamia Nut Association and for the
8 establishment of the macadamia nut commission.

9 The sum appropriated shall be expended by the department of
10 agriculture for the purposes of this Act.

11 SECTION 3. In codifying the new sections added by section
12 1 of this Act, the revisor of statutes shall substitute
13 appropriate section numbers for the letters used in designating
14 the new sections in this Act.

15 SECTION 4. This Act shall take effect upon its approval;
16 provided that section 2 shall take effect on July 1, 2008.

17

INTRODUCED BY: *Lorraine F. Irons*
John Hume
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Report Title:

Macadamia Nut Commission; Appropriation

Description:

Establishes a macadamia nut commission to develop marketing and promotional programs for the macadamia nut industry in the State. Appropriation.

