

HB 2357 HD1

LINDA LINGLE
Governor



State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512

SANDRA LEE KUNIMOTO
Chairperson, Board of Agriculture

DUANE K. OKAMOTO
Deputy to the Chairperson

LATE

TESTIMONY OF SANDRA LEE KUNIMOTO
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEES ON AGRICULTURE AND HAWAIIAN AFFAIRS
AND
WATER AND LAND

THURSDAY, MARCH 13, 2008
2:45 p.m.
Room 224

HOUSE BILL 2357, H.D. 1
RELATING TO AGRICULTURAL LANDS

Chairpersons Tokuda and Hee and Members of the Committees:

Thank you for the opportunity to testify on House Bill No. 2357, H.D. 1. The Hawaii Department of Agriculture (HDOA) is in support of the intent of this measure; however, we have concerns about the possible adverse budgetary impact that this bill may have on the Executive Supplemental Budget request. We offer the following comments on Parts IV, V, and VI.

Part IV
IAL Tax Credit

We note that this incentive as currently described has significant cost implications. We offer the following recommendations:

- This should be a refundable tax credit for the first three years only to encourage voluntary declaration of lands as important agricultural lands. Thereafter, any unused portion of the credit should be allowed to be carried forward in subsequent years until exhausted;

- There should be a recapture feature in the event that at the end of five years the individual or entity receiving the credit is no longer a qualified agricultural business. The recapture period should be for the three years preceding the year in which the entity no longer qualified as an agricultural business;
- A sunset date for the credit should be established, we suggest a 10 year period from date of approval;
- In order to receive the tax credit for agricultural housing, we prefer that all of the housing units are occupied by farmers or employees for agricultural businesses and their immediate family members rather than a simple majority.

Part V Loan Guaranty

We defer to the department of budget and finance as to the language of Part VI, Section 13 and will work with budget and finance to determine an appropriate loan guaranty cap and reasonable reserve requirement for each loan. We offer the following recommendation:

On page 23, delete lines 21-22; on page 24, delete lines 1-6.

~~(3) — After consultation with the director of finance, the State possesses sufficient funds to provide an appropriate reserve for the loan guaranty and which, in the director of finance's judgment, are in excess of the amounts necessary for meeting the immediate requirements of the State and will not impede or hamper the fulfillment of the financial obligations of the State.~~

Part VI State Agricultural Water Use & Development Plan

Section 13 of this bill amends the scope of the Agricultural Water Use & Development Plan (Plan) which will increase the overall cost of the Plan. Currently, the Plan is in its third phase with at least two more phases already identified, depending on funding appropriations (no appropriations are identified in this bill). We offer the following

comments on this portion of the bill: **1)** changes to §174C-31 (e)(1), HRS are unnecessary as the original language is broad enough to cover both types of systems and the current plan's intent is to comprehensively identify both types of systems; and **2)** the department and the Commission recognized early on that water planning could be seen from two different perspectives - land availability as the limiting factor assuming there would be unlimited water to serve these lands, or water availability as the limiting factor assuming that agricultural land growth would be limited by the available water resources. As the name of this plan is the "agricultural water use and development plan" and the legislative intent of this plan is to focus on existing irrigation systems, the decision was made to focus on water as the controlling factor. Therefore, the department respectfully **recommends** that the proposed language for §174C-31 (e)(3), HRS, be amended to read "Identify current and potential sources of water used by the irrigation systems" and the proposed language for §174C-31 (e)(4), HRS, be amended to read "Project current and future water needs for lands currently and potentially served by the irrigation systems, using water as the limiting factor."

The language contained in the bill changes the focus of the Plan from being an independent irrigation system water study to a subservient plan to justify designation as important agricultural lands (IAL). In addition, it would overly broaden the scope to identify water sources or future needs for all agricultural lands in the state regardless of any affiliation with an existing irrigation system, changing the focus of the Plan from water as the controlling factor to land as the controlling factor. We believe this plan and the designation of IAL should complement each other by consciously preventing this plan's purpose to become a justification for designation as IAL. If lands are being considered for inclusion into IAL, this document can be reviewed to see if an existing irrigation system is available to serve the concerned lands.

Lastly, county water supplies provide a significant percentage of agricultural water and their water plans are required to include agricultural use as part of their planning process. Agricultural water planning for lands not served by an irrigation system should be included in county water plans.

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR



KURT KAWAFUCHI
DIRECTOR OF TAXATION

SANDRA L. YAHIRO
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809

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LATE

**SENATE COMMITTEES ON AGRICULTURE & HAWAIIAN AFFAIRS AND
WATER & LAND**

**TESTIMONY REGARDING HB 2357 HD 1
RELATING TO AGRICULTURAL LANDS**

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)

DATE: MARCH 13, 2008

TIME: 2:45PM

ROOM: 224

This bill provides an income tax and general excise tax exemption for rental proceeds of certain leases of important agricultural lands. This bill also provides a tax credit for important agricultural land costs.

The House Committees on Water, Land, Ocean Resources & Hawaiian Affairs and Agriculture eliminated the contents of the measure in its original form and inserted the contents of HB 2808. The Department's comments have been modified accordingly.

The House Committee on Finance passed the measure unamended.

The House of Representatives passed this measure on third reading.

The Department of Taxation (Department) has concerns with this legislation.

I. INCOME TAX & GENERAL EXCISE TAX EXCLUSION.

This bill seeks to amend Chapter 235 and 237, relating to the income and general excise taxes respectively, to exclude from taxation income earned and proceeds received from certain important agricultural land leases with the following terms:

- 20 years; or
- Any other lease length term, mutually agreed upon by the parties if the lease rent is set by an independent appraisal using the lower of comparable value or agricultural capitalization methodologies.

The Department's comments and concerns apply equally to both the income tax exclusion under Chapter 235 and the general excise tax exemption under Chapter 237 because these proposed amendments are nearly identical—

EXCLUSION/EXEMPTION OF LEASE RENT; REVIEW BY THE DEPARTMENT OF AGRICULTURE—In Part II, Section 2, the language of subsection (a) of the income tax exclusion should read as follows:

"§235- Rental income from agricultural leases on important agricultural lands excluded from gross income. (a) In addition to the exclusions in section 235-7, there shall be excluded from gross income, adjusted gross income, and taxable income, rental income, including lease rents, in an amount not to exceed \$ that is received by a taxpayer subject to the taxes imposed by this chapter, that is derived from agricultural leases on lands identified and designated as important agricultural lands pursuant to part III of chapter 205, for the taxable year the rental income was realized; provided that:

- (1) The minimum length of the initial lease term shall be:
 - (A) Twenty years or more; or
 - (B) A lease term of less than twenty years that is mutually agreeable to the lessor and lessee, if the amount of the lease rent is set by an independent appraisal using the lower of the comparable value or agricultural capitalization appraisal methodologies and the lease arrangement, including the amount of the lease rent determined by an appraisal, is reviewed and approved by the department of agriculture; and
- (2) The lease is in effect and the lessee is continuously and substantially undertaking agribusiness on leased land, pursuant to chapter 205, as verified by the department of agriculture on a regular basis using a process determined by the department of agriculture; provided that the exclusion shall not apply if the lease is terminated or the department of agriculture determines that the leased land is not continuously and substantially used for agribusiness.

The rest of subsection (a) is unnecessary and confusing. The language in subsections (b) and (c) should remain the same.

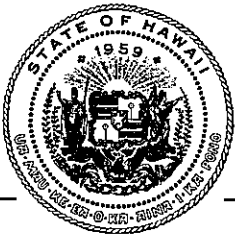
II. ADDITIONAL APPROPRIATIONS.

Many of the bills coming before the legislature regarding taxation incentives relating to important agricultural lands require the Department to consult or provide other support to agencies primarily responsible for assessing the effectiveness of the tax incentive. The Department requests that a reasonable appropriation, as provided under the current draft, be made to the Department so that it can devote the proper resources to this support without adversely affecting its other responsibilities and obligations.

III. REVENUE ESTIMATE.

This legislation will result in the following revenue impact to the general fund, assuming the bill were effective for FY 2009:

Total Revenue Loss Projection	
Year	Total
FY2009	\$ 12.71 million
FY2010	\$ 17.72 million
FY2011	\$ 20.23 million
FY2012	\$ 22.77 million
FY2013	\$ 25.28 million
Annually thereafter	\$ 25.28 million



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

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GOVERNOR
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DEPUTY DIRECTOR
ABBEY SETH MAYER
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OFFICE OF PLANNING

OFFICE OF PLANNING

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LATE

Statement of
ABBEY SETH MAYER
Interim Director, Office of Planning
Department of Business, Economic Development, and Tourism
before the
**SENATE COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS
AND
SENATE COMMITTEE ON WATER AND LAND**
Thursday, March 13, 2008
2:45 PM
State Capitol, Conference Room 224

in consideration of
HB 2357, HD 1
RELATING TO AGRICULTURAL LANDS.

Chairs Tokuda and Hee, Vice Chairs English and Kokubun, and Members of the Senate Committees on Agriculture and Hawaiian Affairs and Water and Land.

The Office of Planning (OP) supports the intent of HB 2357, HD 1, and urges the Committees to pass this measure with amendments that: (1) provide uniform definitions for agricultural businesses across the various incentives; (2) address land use concerns related to the measure for agricultural housing on important agricultural land; and (3) reintroduce a fiscally-responsible tax incentive for county real property tax payments on important agricultural lands. OP defers to the Departments of Agriculture and Taxation on the technical aspects of the bill, and limits our testimony to the items noted above.

HB 2357, HD 1 provides a set of agricultural incentives that will help sustain agriculture in Hawaii by offsetting our higher production and distribution costs, and helping our products be more competitive in local and global markets. A strong agricultural industry contributes to a strong rural economy and promotes economic

diversity and food and energy security for our island state. The enactment of a set of agricultural incentives as set forth in this and other bills being considered this session is also critical to the initiation of processes for the designation of important agricultural lands statewide.

Amendments to Address Specific Concerns

1. **Uniform definitions.**

The incentives in Sections 2, 8, 12, and 14/15 use different terms and definitions in defining agricultural business, agribusiness, etc. that will be eligible for these incentives. This variability in definition could unnecessarily complicate the use and administration of these incentives. OP recommends that a uniform set of definitions be used, which could either: (1) be included in a definitions section in one chapter and referenced by the respective sections; or (2) be incorporated verbatim in each HRS section.

2. **Section 6, Important agricultural land; residential housing.**

Section 6 of the bill would allow agricultural housing for farmers and agricultural employees on important agricultural land (IAL). OP is very concerned that the measure as written does not: (1) fully support the policy intent of limiting this use of IAL to bona fide agricultural housing; or (2) ensure that the area used for agricultural housing is minimized and does not fragment productive IAL. The following amendments would address these concerns.

a. **Page 7, lines 8-12, Clarify and strengthen the agricultural housing focus,**
as follows.

“§205- Important agricultural land; [residential] agricultural housing. A landowner [qualifying under section 205-44] may develop, construct, and maintain dwelling units for lease to farmers, agricultural employees, and their families on land designated as important agricultural land pursuant to this part; provided that:...”

- b. Page 8, lines 5-9, Limit the area developed for agricultural housing. OP supports limiting the amount of IAL that will be removed from production for housing. As there will be considerable variation in how IAL leases and parcels will be configured, this poses difficulty in setting the policy standard for this element. At a minimum, we recommend:
- 1) Limiting the total land area per dwelling to the minimum lot size allowed under the Department of Health's (DOH) individual or community wastewater system rules, with a maximum cap on the number of acres allowed for agricultural housing; and
 - 2) Requiring the housing to be clustered on a contiguous land area, sited away from the most productive agricultural land, and infrastructure and site improvements limited to those appropriate for rural areas.
- c. Page 8, line 18, Include a requirement for lease provisions that ensures that agricultural housing will be maintained for agricultural purposes, as follows:
- “(7) The renewal and termination of dwelling unit leases shall be contingent upon active agricultural operations or agricultural employment on the land controlled by the farmer or the agribusiness employer.”
- d. Section 8, Important agricultural land qualified agricultural cost tax credit, Paragraph (D), agricultural housing.
- Section 6 of the bill establishes standards for agricultural housing on IAL in Chapter 205. Rather than define a separate set of standards for agricultural housing in the tax codes, it would be more appropriate and consistent to replace the language in paragraph D with a reference to the provision of agricultural housing as defined in Section 6 of the bill, as follows

1) Page 15, line 18 through page 16, line 11. Replace this language with the following:

“(D) Agricultural housing as defined in section 205- of section 6 of this Act.”

3. Reinstatement of a fiscally-responsible incentive for real property tax payments.

The Office would be happy to work with the Departments of Taxation and Agriculture to develop language for a fiscally-responsible incentive for real property tax payments. Many states and local authorities use relief from real property tax payments on dedicated agricultural land as a major tool in their agricultural land conservation programs to help offset the costs of farming.

Limiting the availability of such a tax credit to landowners or farmers with designated IAL enrolled in the counties’ real property agricultural tax dedication programs would be one of several ways to craft a fiscally-responsible tax credit. The counties’ agricultural tax dedication programs are designed to base tax payments on much lower agricultural use values rather than highest and best use, and typically enroll landowners for 10-year renewable terms.

Thank you for the opportunity to testify.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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MUFI HANNEMANN
MAYOR

HENRY ENG, FAICP
DIRECTOR

DAVID K. TANOUJE
DEPUTY DIRECTOR

March 13, 2008

The Honorable Jill N. Tokuda, Chair
and Members of the Committee on Agriculture and
Hawaiian Affairs

The Honorable Clayton Hee, Chair
and members of the Committee on Water and Land
The Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chairs Tokuda, Hee and Members:

**Subject: House Bill 2357 HD1
Relating to Agricultural Lands**

The Department of Planning and Permitting **opposes** certain elements of House Bill 2357 HD1, which would provide incentives to establish and sustain agricultural operations on Important Agricultural Lands (IAL).

We are deeply supportive of designating and protecting IAL lands. We appreciate the financial incentives offered by this measure. However, we cannot support the land use provisions of House Bill 2357, HD1 with respect to farm dwellings and expedited processing, and the exemption from the county surcharge on state tax.

With respect to farm dwellings, we recognize the importance of providing for them in the state agricultural district. However, Section 6 of the measure imposes more caveats on farm dwellings. It creates a distinction between farmers' dwellings and employee dwellings. We fail to see why this is critical; the only purpose for this distinction appears to be to allow a farmer's immediate family to live separately from the farmer, while an employee's family cannot. We question whether this is a compelling state interest under Chapter 205, which governs the land use commission and the statewide districting of lands. We believe this is far too detailed for statewide application, and should be better addressed by county zoning and other regulatory codes.

Section 6 of the House Bill 2357 HD1 would also regulate the amount of land area which is occupied by dwellings and all appurtenances, although the exact limit is yet to be determined. However, rather than fix a standard across all farm lands, it may be more prudent to determine the allowable amount based on the merits of the request and the characteristics of the land on

The Honorable Jill N. Tokuda, Chair
and Members of the Committee on Agriculture and
Hawaiian Affairs

The Honorable Clayton Hee, Chair
and members of the Committee on Water and Land
The Senate
Re: House Bill 2357 HD1
March 13, 2008
Page 2

which the dwellings are to be located. For example, on Oahu, an agricultural lot may only have 2 farm dwellings as of right; any more will require either subdivision action or cluster approval. Also, for your information, each farm dwelling, including all accessory uses is limited to 5,000 square feet of land.

We note that under a proposed new sub-section 205-_(5), residential subdivisions would not be allowed on IAL. Please be aware that under the city's zoning code, the only type of dwellings allowed under agricultural zoning is a farm dwelling, which must be tied to agricultural income from the same lot. Therefore, we do not process a subdivision request for strictly residential use.

Part VII of the bill would mandate priority processing for any permits under Titles 13 and 19, HRS, with respect to agricultural processing facilities. From a land use perspective, this would affect state land use boundary amendments, state special permits, special management area use permits, and shoreline setback variances. It may also affect "201H" affordable housing requests that have a relationship with agriculture, but we assume it does not affect Chapter 343 environmental documents.

We reiterate our support for the protection of IAL and the need for new incentives to keep these lands in active agricultural use. However, agricultural processing facilities, and many other uses are noble public initiatives, but cannot all be assigned permit priority. When one project is given priority, it means placing that application ahead of all others, which means the processing of applications for other projects will be delayed even longer.

Your Committee must be cautious not to short circuit time-tested procedures in a rush to support the latest cause *du jour*. It seems that more and more causes are emerging with each seeking to expedite processing in the name of promoting or protecting a particular need or interest. We ask that if the legislature is adamant on establishing permit priorities, it does so within the full context of considering all types of projects, a formidable task. If the legislature is so inclined, we are ready to participate in such a discussion.

Lastly, we are concerned about the potential loss of income to the county transit project by the proposed GET exemption under Section 3 of the bill. While we do not object to excluding agricultural lease income from GET, we request that this income not be excluded from the surcharge tax.

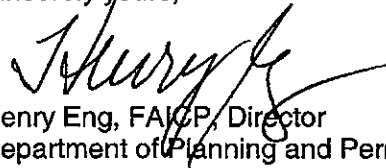
To sum, if House Bill 2357 HD1 will be forwarded, please drop Sections 6, 14 and 15 from the bill, and modify Section 3.

The Honorable Jill N. Tokuda, Chair
and Members of the Committee on Agriculture and
Hawaiian Affairs

The Honorable Clayton Hee, Chair
and members of the Committee on Water and Land
The Senate
Re: House Bill 2357 HD1
March 13, 2008
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Thank you for the opportunity to testify.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Henry Eng", with a long horizontal flourish extending to the right.

Henry Eng, FAICP, Director
Department of Planning and Permitting

HE: jmf
hb2357hd1-kh.doc

TESTIMONY BY GEORGINA K. KAWAMURA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEES ON AGRICULTURE AND HAWAIIAN AFFAIRS
AND WATER AND LAND
HOUSE BILL NO. 2357, H.D. 1

March 13, 2008

RELATING TO IMPORTANT AGRICULTURAL LANDS.

House Bill No. 2357, H.D. 1, proposes, among other things, to amend Chapter 155, Hawaii Revised Statutes, by adding a new section that would authorize the chairperson of the board of agriculture to guarantee loans relating to agricultural projects located on important agricultural lands.

The Department opposes the wording contained in the proposed section below and recommends language in Part VI, Section 12 be amended as follows:

“§155-____...(3) The department of agriculture possesses sufficient funds to provide an appropriate reserve for the loan guaranty and which, in the chairperson of the board of agriculture’s judgment, are in excess of the amounts necessary for meeting the immediate requirements of the department of agriculture and will not impede or hamper the fulfillment of the financial obligations of the department of agriculture.”

In addition, we recommend that the Department of Agriculture (AGR) establish a maximum loan guaranty cap as the amount guaranteed will count against the State’s debt limit.

Furthermore, the AGR should also determine a reasonable reserve requirement for each loan guaranteed under this section. As the bill authorizes the AGR to guarantee

loans, it is prudent for the AGR to both establish a reasonable reserve requirement and manage such reserve in order to ensure the making of the loan guarantees will not impact the AGR's ability to meet its financial obligations.

**HAWAII FARM BUREAU FEDERATION
2343 ROSE STREET
HONOLULU, HI 96819**

LATE

MARCH 13, 2008

HEARING BEFORE THE
SENATE COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS
AND
SENATE COMMITTEE ON WATER AND LAND

TESTIMONY ON

**HB 2357, HD 1
RELATING TO IMPORTANT AGRICULTURAL LANDS**

Chair Tokuda and Chair Hee and Members of the Committees:

My name is Alan Takemoto, Executive Director, of the Hawaii Farm Bureau Federation, which is the largest non-profit general agriculture organization representing approximately 1,600 farm and ranch family members statewide.

The Hawaii Farm Bureau Federation **strongly supports HB 2357, HD 1, providing mechanisms to begin the IAL process.** Since enactment of the Constitutional Mandate, HFBF has consistently worked for passage of IAL legislation. Working with the landowners, we finally see that this vision can become a reality. But we need the support of the Legislature, the Administration and County Governments.

The incentives within this package were developed over time with many discussions. They cover a wide range of incentives covering the critical areas for long term agricultural expansion in Hawaii. We understand as these incentives are passed, a similar package must be passed by the Counties. We respectfully request that the Legislature lead the path. Please do not put us in a position of the State waiting for the Counties and the Counties waiting for the State to enact incentives first. The lead by the State will send a loud message to the Counties that the IAL process can happen if everyone cooperates in the process.

The price tag for this measure is often called to question. HFBF believes agriculture is key to increasing Hawaii's self sufficiency as well as an important component to fighting invasive species ...a key topic in discussion. So, the question should be, what is the price for self sufficiency?

We continue to believe that some assurance of water for IAL is critical. We would like to add on page 16, another subparagraph (4) to read:

- (4) Regulatory processing, studies, legal and other consultant services related to obtaining or retaining sufficient water for agricultural activities and retaining the right to farm on lands identified as important agricultural lands

This qualified cost will provide the needed assurance.

We respectfully request your strong support in passing HB 2357 and getting the IAL process started. We must not forget, IAL only happens because there are farmers and ranchers. IAL is not a land use initiative. It is an agricultural viability initiative.

Thank you.



Maui County Farm Bureau

*An Affiliate of the American Farm Bureau Federation and Hawaii Farm Bureau Federation
Serving Maui's Farmers and Ranchers*

LATE

TESTIMONY

HB2357 HD1: RELATING TO AGRICULTURAL LANDS

HEARING BEFORE THE COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS and COMMITTEE ON WATER AND LAND

Chair Tokuda, Chair Hee and Committee Members:

My name is Warren Watanabe, Executive Director of the Maui County Farm Bureau, a non-profit general agriculture organization and an affiliate of the Hawaii Farm Bureau Federation.

Maui County Farm Bureau, on behalf of its member farmers, ranchers and agricultural organizations **strongly SUPPORTS** HB2357, an IAL Omnibus Bill providing incentives to begin the IAL process.

Important Agricultural Lands is a Agricultural Viability initiative. While there are examples of agricultural successes across the state we have more examples of agriculture struggling or failing. During the past year we have seen dairies close so now we only have dairies on the Big Island after next month. Egg farms now can be counted on one hand. I think both of these industries are agricultural commodities critical to self sufficiency, yet we are loosing them. What will be next? When will the people of Hawaii get excited that we may be loosing agriculture and do something about it?

This Initiative is the chance. It provides the incentives needed to have farmers and landowners commit to long term agricultural operations.

One of the incentives is working with the Counties for a package. On Maui I saw a project we were very excited about fall to the wayside because of delayed permitting. An expansion that originally was expected to cost \$600,000 and provide an opportunity for two of the siblings to return from college to work on the farm was lost. These farm youngsters were taking college classes to prepare them in business and marketing to take over this operation. Yet, delayed permitting made this vision just a dream. The \$600,000 price tag mushroomed to \$1.2 million ...beyond the reach of the farmers. We must not let these opportunities continue to pass us.

The cost associated with the tax incentives with questions about the level at which a cap should be placed has been raised. The Hawaii Department of Agriculture estimates the ANNUAL cost to control the little fire ant to be in the neighborhood of \$210 million. The estimated revenue loss due to the tax incentives is not even half of the amount. Instituting the IAL program and encouraging locally grown

high risk crops will reduce our risk of introduction of these invasive species. These initiatives should not only be looked at as an investment towards Hawaii's sustainability and increased self sufficiency but also as a cost containment measure.

We respectfully request that this **Bill be passed with focus placed on enacting incentives this year** so landowners will designate their lands as Important Agricultural Lands as soon as possible. We support all amendments proposed by HFBF. Time is of the urgency. We cannot lose any more farmers or ranchers.



KAMEHAMEHA SCHOOLS

March 13, 2008

The Honorable Jill Tokuda, Chair and Members
Committee on Agriculture and Hawaiian Affairs
The Honorable Clayton Hee, Chair and Members
Committee on Water and Land
The Senate
Hawaii State Capitol
415 South Beretania Street, Room 224
Honolulu, Hawaii 96813

Dear Chair Tokuda, Chair Hee and Members:

Testimony in Support with Concerns re House Bill No 2357 HD1 Relating to Agricultural Lands

I am Kapu C. Smith, Senior Land Asset Manager for Kamehameha Schools' Kawailoa Plantation in Waialua, Oahu. Although we are in support of HB 2357 HD1 we do so with concerns because it does not include all landowner incentives such as those proposed in HB2807 HD 1. For this reason, we continue to take the position that HB 2357 HD1 will not address the needs of all landowners but are valuable to those it benefits. As such, we would like to see equal consideration given to HB2807 HD1 which would provide the following incentives:

- The amendment of the current criteria in Section 205-44 Hawaii Revised Statutes to a more objective standard which would ensure that only IAL lands are designated. Under the existing eight point criteria both land which is capable of producing high agricultural yields and non productive agricultural lands will be given the IAL designation.
- A voluntary designation process which includes the ability to reclassify land which are not "important agricultural land" (IAL) and clarifies the existing Declaratory Order process.

Thank you for the opportunity to express our views on this matter.



MAUI LAND & PINEAPPLE COMPANY, INC.

March 11, 2008

The Honorable Senator Jill N. Tokuda, Chair
The Honorable Senator J. Kalani English, Vice Chair
Committee on Agriculture and Hawaiian Affairs
Hawaii State Senate
Hawaii State Capitol
415 South Beretania Street, Room 224
Honolulu, Hawaii 96813

The Honorable Senator Clayton Hee, Chair
The Honorable Senator Russell S. Kokubun, Vice Chair
Committee on Water and Land
Hawaii State Senate
Hawaii State Capitol
415 South Beretania Street, Room 224
Honolulu, Hawaii 96813

Subject: HB 2357, HD1 (HSCR904-08) – Relating to Agricultural Lands

Dear Honorable Chair Tokuda, Honorable Vice Chair English, Honorable Chair Hee,
Honorable Vice Chair Kokubun and Committee Members:

Maui Land & Pineapple Company, Inc. (“ML&P”) supports HB 2357, HD1 (HSCR904-08)
– Relating to Agricultural Lands.

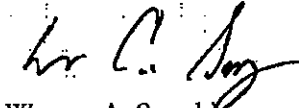
The subject legislation provides incentives that landowners with lands designated as Important Agricultural Lands will be able to benefit from. ML&P has consistently taken the position that the designation of agricultural lands as Important Agricultural Lands without further assistance being provided to the landowners and farmers will not insure that a viable agricultural activity will occur on the lands. In order for viable agricultural activity to occur on the Important Agricultural Lands, a comprehensive program of incentives is necessary. The incentives being provided by the subject legislation will provide some of the needed incentives.

Maui Land & Pineapple Company, Inc. respectfully requests your support of the subject legislation.

The Honorable Senator Jill N. Tokuda, Chair
The Honorable Senator J. Kalani English, Vice Chair
The Honorable Senator Clayton Hee, Chair
The Honorable Senator Russell S. Kokubun, Vice Chair
March 11, 2008
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We sincerely appreciate the opportunity to provide our testimony. If you have any questions or wish to discuss the testimony, please do not hesitate to contact me at (808) 877-3882.

Mahalo,

A handwritten signature in black ink, appearing to read "Warren A. Suzuki". The signature is written in a cursive style with some loops and flourishes.

Warren A. Suzuki
Senior Vice President



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March 13, 2007

The Honorable Jill N. Tokuda, Chair
Senate Committee on Agriculture and Hawaiian Affairs
The Honorable Clayton Hee, Chair
Senate Committee on Water and Land
State Capitol, Room 224
Honolulu, Hawaii 96813

RE: H.B. 2357, HD1 Relating to Agricultural Lands
Hearing Date: Thursday, March 13, 2008 @ 2:45 p.m., Room 224

Dear Chairs Tokuda and Hee and Members of the Joint Senate Committees on Agriculture and Hawaiian Affairs and Water and Land:

On behalf of our 10,000 members in Hawaii, the Hawaii Association of REALTORS® (HAR) **supports the intent of H.B. 2357, HD1**

H.B. 2357, HD1 provides mechanisms for incentives for the preservation of important agricultural lands (IAL). The preservation of IALs and long-term agricultural productivity in Hawaii is best assured through meaningful incentives for the designation of IALs.

HAR supports Part 2 of the bill which provides rental income incentives for the lease of land for agribusiness purposes; Part 3 which provides housing opportunities for farmers and their employees; Part 4 which provides tax incentives for costs incurred in the operation of agricultural business; Part 5 which provides low cost financing; Part 6 which identifies the viability of water for agricultural purposes; and Part 7 which provides a process for an expedited permitting process.

Mahalo for the opportunity to testify.



Hawaii Cattlemen's Council, Inc.

64-957 Mamalahoa Hwy

Kamuela HI 96743

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SENATE COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS AND
SENATE COMMITTEE ON WATER AND LAND

Thursday, March 13th at 2:45 p.m., room 224

HB 2357 HD1 RELATING TO IMPORTANT AGRICULTURAL LANDS.

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

Chairs Tokuda and Hee, and Members of the Committees on AHW/WTL:

My name is Alan Gottlieb, and I am the Vice President of the Hawaii Cattlemen's Council. The Hawaii Cattlemen's Council, Inc. (HCC) is the Statewide umbrella organization comprised of the five county level Cattlemen's Associations. Our 130+ member ranchers represent over 60,000 head of beef cows; more than 75% of all the beef cows in the State. Ranchers are the stewards of over 1 Million acres of land in Hawaii, 25% of the State's total land mass.

The Hawaii Cattlemen's Council strongly supports HB 2357 HD1.

While we strongly support the IAL incentives package that has been developed, we are concerned that one very important element remains unaddressed. It involves a fundamental property right which stands to be taken away from many property creating what might in hindsight be considered an "unintended consequence" of the Legislature's efforts to preserve the State's high quality agricultural land resource.

There are over 100,000 legal tax parcels in the State's Agricultural land use district. Many of these were kuleana or were subdivided and sold or often left by parents to children with the intent of there someday being usable as a buildable home site. There was no expectation at the time, nor any enforced restrictions to the contrary until recent years where a direct nexus to an agricultural use is frequently being imposed as a precondition to the right to build. The IAL process has substantially contributed to this discussion and brought focus to what should or should not be allowed in the AG district, whether IAL or otherwise.

We believe the failure to grandfather all existing parcels in the AG district with the right to build or maintain a home thereon regardless of ag activity or the land's designation as IAL (or non-IAL) will be an injustice to all the impacted owners, create an inequity between those that have built and those that have not yet done so, and will predictably lead to substantial litigation to resolve these inequities. If a land owner in the Conservation District (General subzone) is allowed to build one home on his property without any nexus between the home and the surrounding conservation purpose of the land, should not a landowner in the AG district be assured of no less a property right?

We also very strongly support refundable tax credits for items in this bill which allow for tax credits. We can't speak for other farming enterprises, but ranching in the State of Hawaii is marginal at best, and few if any ranchers currently make money in ranching, therefore many ranchers do not have much if any tax liability. Without refundable credits on such items as expenditures for infrastructure improvements, there is no incentive in this incentive bill.

Thank you for giving me the opportunity to testify in favor of this very important issue.

UNIFIED AFFILIATE OF THE NATIONAL CATTLEMEN'S BEEF ASSOCIATION

Hawaii Cattlemen's Association • Kauai Cattlemen's Association • Maui Cattlemen's Association

Molokai Grazer's Association • Oahu Cattlemen's Association



**Testimony to the Senate Committees on Agriculture and Hawaiian Affairs
and Water and Land
Thursday, March 13, 2008 at 2:45 p.m.
Room 224, State Capitol**

RE: H.B. 2357 HD1 Relating to Agricultural Lands

Chairs Tokuda and Hee, Vice Chairs English and Kokubun, and Members of the Committees:

My name is Christine H. Camp, Chair of The Chamber of Commerce of Hawaii, Land Use and Transportation Committee. The Chamber of Commerce of Hawaii supports the intent of H.B. No. 2357 HD1 with specific amendments.

The Chamber is the largest business organization in Hawaii, representing 1100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. The organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

H.B. No. 2357 HD 1 purposes to provide incentives and protections to establish and sustain viable agricultural operations on important agricultural lands. The bill incorporates many of the incentives listed in the original IAL Incentive bill, HB 2808.

We strongly supported the original comprehensive IAL Incentive Bill (HB 2808) in its entirety. We believe that meaningful incentives are needed to promote and the growth of agribusinesses in the State. It is through this growth that we will be able to preserve and protect viable agricultural operations in Hawaii.

The H.D. 1 deleted the real property tax credit and the Water Code amendments concerning the public trust doctrine. It also deleted the provisions relating to satisfying affordable housing requirements in the rural districts and the automatic reclassification of agricultural land to rural districts and instead addressed these incentives in House Bill No. 2807, H.D. 1.

Finally, the proposed H.D. 1 provides a finding that this measure, as amended, is a major step in the actual designation of "important agricultural land" as contemplated by article XI, section 3, of the state constitution that was ratified almost thirty years ago. The legislature believes that, with the H.D. 1, landowners will have sufficient incentives to voluntarily petition for designation of their lands.

Act 183, SLH 2005 established a process to identify important agricultural lands (IAL). The IAL designation was established during the 1978 Constitutional Convention. 27 years passed before Act 183 was passed.

Act 183 was based on the promoting agricultural viability and simply identification of agricultural lands believed to be important. Act 183 provides for incentives to be enacted that would assist in making agribusinesses viable and thus, allow for designation of IAL based on "growing" agribusiness.

Over the past two sessions, legislation has been introduced to create incentives to promote agricultural viability in Hawaii. In addition, attempts were also made to have the Counties enact incentives to promote agricultural viability in their respective counties. Neither of these efforts has resulted in meaningful incentives being put in place to stimulate interest in designating lands IAL.

As presently drafted, the bill lacks any landowner incentives. The deletions of the provisions in the original bill, HB 2808 removed all of the landowner based incentives. Passage of this bill without reinstating the deleted provisions or passage of HB 2807 should not constitute fulfilling the spirit and intent of Act 183 when it was drafted.

Thank you for this opportunity to express our views.

**HB 2357 HD1
RELATING TO AGRICULTURAL LANDS**

**PAUL T. OSHIRO
MANAGER – GOVERNMENT RELATIONS
ALEXANDER & BALDWIN, INC.**

MARCH 13, 2008

Chair Tokuda, Chair Hee, and Members of the Senate Committees on
Agriculture & Hawaiian Affairs and Water & Land:

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin, Inc. (A&B) and its agricultural companies Hawaiian Commercial & Sugar Company and Kauai Coffee Company, Inc. on HB 2357 HD1 "A BILL FOR AN ACT RELATING TO AGRICULTURAL LANDS." We support this bill.

After over twenty five years of debate, negotiation, and compromise, the IAL Law was finally passed in the 2005 Legislative Session. After years of pursuing a land-use approach to this constitutional mandate, the IAL law that was successfully passed was one premised on the principle that the best way to preserve agricultural lands is to preserve agricultural businesses and agricultural viability. As such, Act 183 (2005) not only provides the standards, criteria, and processes to identify and designate important agricultural lands (IAL) to fulfill the intent and purpose of Article XI, Section 3 of the Hawaii State Constitution, it also provides for the passage of a package of incentives designated to support and encourage sustained, viable agricultural activity on IAL—prior to the designation of IAL. Once the package of incentives is passed, IAL may be designated in one of two ways --- by voluntary petition by the farmer/landowner to the

State Land Use Commission (LUC); or subsequently by the Counties filing a petition to designate lands as IAL pursuant to a County identification and mapping process. In either case, the LUC must find that the lands qualify for IAL designation pursuant to the standards, criteria, objectives, and policies set forth in the IAL Law prior to designation.

Rental Income On Agricultural Leases

This bill provides both an exclusion from gross income and an exemption from general excise taxes for rental income derived from agricultural leases on lands identified and designated as IAL. In addition to encouraging land owners to lease their IAL lands to active farming operations, these provisions should also result in a reduction in the amount of the rent charged to the farmer for the IAL parcel. We believe that this provision should assist in sustaining active agricultural operations on IAL designated lands.

Housing

Housing accommodations for farmers and their employees is an important component in the success of many agricultural operations. This provision will allow residential dwellings for farmers, their employees and their families on IAL subject to a list of conditions and criteria. With Hawaii's high housing costs and tight labor market, the ability for the farmer to have housing accommodations on IAL in the immediate vicinity of their crops is anticipated to be of significant benefit to IAL farming operations.

Infrastructure Tax Credit

Major infrastructure requirements such as irrigation systems, roads and utilities, and agricultural processing facilities play a critical role in the survival of many agricultural businesses, and the infrastructure tax credit portion of this bill will provide

important financial support for IAL related farming operations. In addition to assisting these agricultural operations in the repair and maintenance of their existing infrastructure, this tax credit will also serve as a stimulus to encourage these entities to expand their operations or to enhance their operating efficiencies through the installation of new agricultural infrastructure, equipment, and other related improvements to service their farming operations. Importantly, this bill also includes provisions to require the quantitative and qualitative assessment of this tax credit, so that the Legislature, and others, can have access to information on the effectiveness of this incentive program.

Loan Guaranty

The loan guarantee portion of this bill will authorize low cost loans for farmers to establish or expand their IAL related agricultural operations or to develop necessary IAL related infrastructure. These provisions will assist in providing farmers with a means of obtaining necessary financing to initiate, maintain, or to expand their agricultural businesses. We believe that this loan guarantee may especially be useful to the smaller farming operations that may experience difficulty in obtaining financing in the open financial market.

Water

One of the most important factors in determining the long term viability of an agricultural operation on IAL is the availability of water for irrigation purposes. Water is the basic natural resource that may directly determine the success or failure of agricultural operations on IAL. We believe that the establishment of a water policy that

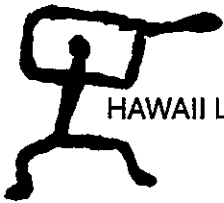
provides crops and livestock on IAL with a dependable source of affordable water will provide an opportunity for sustaining agricultural operations on IAL.

Expedited Permits

This bill will also establish and implement a procedure for the priority processing of permit applications and renewals for agricultural processing facilities that process crops or livestock from an IAL related agricultural business. It is anticipated that this bill will result in a total net time savings for an IAL related agricultural processing facility to obtain their necessary permits, which should result in an overall cost savings for the facility. We believe that this incentive may encourage agricultural processing facilities to process crops or livestock from IAL related agricultural businesses, thus increasing the availability of these services to IAL related agricultural businesses.

Based on the aforementioned, we respectfully request your favorable consideration on this bill.

Thank you for the opportunity to testify.



HAWAII LEEWARD PLANNING CONFERENCE

P.O. BOX 2159 • KAMUELA, HAWAII 96743-2159

In Consideration of
House Bill No. 2357, HD1
Relating to Agricultural Lands

Thursday, 13 March 2008
2:45 p.m. - Conference Room 224
Senate Committee on Agriculture & Hawaiian Affairs
Senate Committee on Water and Land

The Honorable Senator Jill Tokuda, Chair - AHW
The Honorable Senator Clayton Hee, Chair-WTL
The Honorable Senator J. Kalani English, Vice-Chair - AHW
The Honorable Senator Russell Kokubun, Vice-Chair - WTL
and Honorable Members of the Committees on AHW and WTL
State Capitol Senate Room 224, Honolulu, Hawaii 96813

Chairs Tokuda and Hee, Vice-Chairs English and Kokubun, and Members:

I am Jacqui Hoover, President of the Hawaii Leeward Planning Conference (HLPC), a member-based organization incorporated in 1974 whose seventy-five plus members are committed to sound planning, wise use of our resources, and effective government process.

HLPC supports the intent of HB 2357, HD1 which "Provides incentives and protections to establish and sustain viable agricultural operations on important agricultural lands" which is consistent with the intent of Act 183 (2005) which was intended to "set policies for and to establish the framework for identifying important agricultural lands".

It is imperative that LAND be recognized first and foremost as the key component to agricultural viability. Incentives and protections that benefit both farmers and ranchers, as well as, land owners must be identified and implemented.

HLPC also requests that thoughtful consideration be given to providing as a matter of law, a land owner's fundamental right to build a single family residence on any buildable parcel of land regardless of State or County Land Use classification or the level of agricultural income derived, if any. HLPC expects that the more restrictive State Conservation District subzones would be excluded. Such provisions would clarify and protect basic property rights on over 100,000 parcels in the State Agricultural District, many of which were created, purchased by, or bequeathed to their current owners with the specific intent of being a buildable, usable house site.

Thank you for this opportunity to express our views on this matter.

Respectfully submitted,

Jacqui L. Hoover, President
Hawaii Leeward Planning Conference

AKINAKA & ASSOCIATES, LTD.
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ARCHITECTS HAWAII, LIMITED
ASHFORD & WRISTON
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Commercial Aquaculture



HAWAIIAN MARINE ENTERPRISES

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March 11, 2008

Senator Jill Tokuda, Chair
Senate Committee on Agriculture and Hawaiian Affairs, and
Senator Carol Fukunaga, Chair
Senate Committee on Economic Development and Taxation, and
Senator Russell Kokubun, Chair
Senate Committee on Commerce, Consumer Protection, and Affordable Housing, and
Senator Clayton Hee, Chair
Senate Committee on Water and Land
State Capitol Building
415 S. Beretania St.
Honolulu, Hawaii 96813

Dear Chairs Tokuda, Fukunaga, Kokubun, and Hee and Members of the Committees:

I am sending this testimony to express my support for HB 2357 HD1, "Relating to Agricultural Lands." I am not convinced that incentives should be required in order to classify and protect important agricultural lands. Nevertheless, it is clear that incentives are desirable to help promote the development of agriculture on former plantation lands that would otherwise be targeted for development. I therefore encourage you to create these incentives by passing HB 2357 HD1.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink that reads "Frederick M. Mencher". The signature is written in a cursive, flowing style.

Frederick M. Mencher
General Partner