

JAN 26 2009

A BILL FOR AN ACT

RELATING TO PUBLIC LANDS WHICH ARE IMPORTANT AGRICULTURAL LANDS.

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

1 SECTION 1. Part IX of Act 233, Session Laws of Hawaii 2008
2 added a new section to chapter 205, Hawaii Revised Statutes,
3 that requires the identification and designation of certain
4 public lands under the management of the department of land and
5 natural resources as important agricultural lands (IAL),
6 followed by the transfer of these lands to the department of
7 agriculture, along with the appropriations and non-personnel
8 assets related to the department of land and natural resources'
9 management of these lands. Designation of public lands as IAL
10 will allow existing and future lessees of these public lands to
11 have access to the IAL incentives found in Act 233, such as the
12 qualified agricultural cost tax credit.

13 Allowing farmers on public lands designated IAL to utilize
14 certain IAL incentives will help stabilize and improve their
15 agricultural operations. However, the classification of public
16 lands as IAL will have unintended consequences that will
17 jeopardize the integrity of the department of agriculture's
18 agricultural park program (chapter 166, Hawaii Revised Statutes)

1 and non-agricultural park lands program (chapter 166E, Hawaii
2 Revised Statutes), the two programs were transferred
3 agricultural public lands are situated and managed. Pursuant to
4 part III of chapter 205, section 205-43 will be used to
5 determine what are permissible uses on IAL public lands, however
6 this section does not contain a list of permissible uses on IAL.
7 By default, the permissible uses found in section 205-2 and
8 section 205-4.5 would apply to IAL-designated public lands.
9 These permissible uses include farm dwellings, employee housing,
10 plantation community subdivisions, agricultural tourism, open
11 area recreation, parks, riding stables, communications antennas,
12 etc. Other "unusual and reasonable" uses may be located on
13 agricultural land by special permit and include schools,
14 churches, gas stations, commercial and medical offices, etc.

15 Several of the permissible and "unusual and reasonable"
16 uses under section 205-2 and section 205-4.5 are in conflict
17 with the intent, purpose, and rules of the agricultural parks
18 program (chapter 166) and the non-agricultural parks program
19 (chapter 166E). The department of agriculture utilizes a
20 thorough qualification process to ensure potential lessees will
21 undertake substantial agricultural activity. Farm dwellings or
22 employee housing are often not allowed. Uses and activities not

1 directly related to agricultural production are strictly
2 controlled. The majority of the total annual income of lessees
3 is required to come from agricultural activities. The purpose,
4 rules, and management of these public lands by the department of
5 agriculture are unmatched in their support of agricultural
6 production and, unlike the privately owned lands under the IAL
7 act, are not subject to reclassification, subdivision, lack of
8 monitoring, and special permitted uses. The legislature
9 recognizes that the public land management programs of the
10 department of agriculture closely emulate and even surpass the
11 purpose and intent of part III of chapter 205, the Important
12 Agricultural Lands Act.

13 The purpose of this measure is to clarify that public lands
14 that are transferred by executive order from the department of
15 land and natural resources to the department of agriculture
16 shall be subject to the same criteria and standards for
17 identifying and designating important agricultural lands, and
18 have access to certain IAL incentives, provided that those
19 incentives do not contradict or otherwise violate the conditions
20 and requirements of chapters 166 and 166E under which chapters
21 the department of agriculture will manage the important public
22 agricultural lands.

1 SECTION 2. Chapter 166, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§166- Important agricultural lands. Notwithstanding
5 any other law to the contrary, for public lands designated as
6 important agricultural lands and managed under this chapter, the
7 board shall determine which incentives or uses for important
8 agricultural lands shall be made available to leases managed
9 under this chapter and establish conditions thereon."

10 SECTION 3. Chapter 166E, Hawaii Revised Statutes, is
11 amended by adding a new section to be appropriately designated
12 and to read as follows:

13 "§166E- Important agricultural lands. Notwithstanding
14 any other law to the contrary, for public lands designated as
15 important agricultural lands and managed under this chapter, the
16 board shall determine which incentives or uses for important
17 agricultural lands shall be made available to leases managed
18 under this chapter and establish conditions thereon."

19 SECTION 4. Section 141-1, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "§141-1 Duties in general. The department of agriculture
22 shall:

- 1 (1) Gather, compile, and tabulate, from time to time,
2 information and statistics concerning:
- 3 (A) Entomology and plant pathology: Insects, scales,
4 blights, and diseases injurious or liable to
5 become injurious to trees, plants, or other
6 vegetation, and the ways and means of
7 exterminating pests and diseases already in the
8 State and preventing the introduction of pests
9 and diseases not yet here; and
- 10 (B) General agriculture: Fruits, fibres, and useful
11 or ornamental plants and their introduction,
12 development, care, and manufacture or
13 exportation, with a view to introducing,
14 establishing, and fostering new and valuable
15 plants and industries;
- 16 (2) Encourage and cooperate with the agricultural
17 extension service and agricultural experiment station
18 of the University of Hawaii and all private persons
19 and organizations doing work of an experimental or
20 educational character coming within the scope of the
21 subject matter of chapters 141, 142, and 144 to 150A,

1 and avoid, as far as practicable, duplicating the work
2 of those persons and organizations;

- 3 (3) Enter into contracts, cooperative agreements, or other
4 transactions with any person, agency, or organization,
5 public or private, as may be necessary in the conduct
6 of the department's business and on such terms as the
7 department may deem appropriate; provided that the
8 department shall not obligate any funds of the State,
9 except the funds that have been appropriated to the
10 department. Pursuant to cooperative agreement with
11 any authorized federal agency, employees of the
12 cooperative agency may be designated to carry out, on
13 behalf of the State the same as department personnel,
14 specific duties and responsibilities under chapters
15 141, 142, 150A, and rules adopted pursuant to those
16 chapters, for the effective prosecution of pest
17 control and animal disease control and the regulation
18 of import into the State and intrastate movement of
19 regulated articles;

- 20 (4) Secure copies of the laws of other states,
21 territories, and countries, and other publications
22 germane to the subject matters of chapters 141, 142,

- 1 and 144 to 150A, and make laws and publications
2 available for public information and consultation;
- 3 (5) Provide buildings, grounds, apparatus, and
4 appurtenances necessary for the examination,
5 quarantine, inspection, and fumigation provided for by
6 chapters 141, 142, and 144 to 150A; for the obtaining,
7 propagation, study, and distribution of beneficial
8 insects, growths, and antidotes for the eradication of
9 insects, blights, scales, or diseases injurious to
10 vegetation of value and for the destruction of
11 injurious vegetation; and for carrying out any other
12 purposes of chapters 141, 142, and 144 to 150A;
- 13 (6) Formulate and recommend to the governor and
14 legislature additional legislation necessary or
15 desirable for carrying out the purposes of chapters
16 141, 142, and 144 to 150A;
- 17 (7) Publish at the end of each year a report of the
18 expenditures and proceedings of the department and of
19 the results achieved by the department, together with
20 other matters germane to chapters 141, 142, and 144 to
21 150A and that the department may deem proper;

- 1 (8) Administer a program of agricultural planning and
2 development, including the formulation and
3 implementation of general and special plans, including
4 but not limited to the functional plan for
5 agriculture; administer the planning, development, and
6 management of the agricultural park program; plan,
7 construct, operate, and maintain the state irrigation
8 water systems; review, interpret, and make
9 recommendations with respect to public policies and
10 actions relating to agricultural land and water use;
11 assist in research, evaluation, development,
12 enhancement, and expansion of local agricultural
13 industries; and serve as liaison with other public
14 agencies and private organizations for the above
15 purposes. In the foregoing, the department shall act
16 to conserve and protect agricultural lands and
17 irrigation water systems, promote diversified
18 agriculture, increase agricultural self-sufficiency,
19 and ensure the availability of agriculturally suitable
20 lands; and
- 21 (9) Manage, administer, and exercise control over any
22 public lands, as defined under section 171-2, that are

1 transferred to the department of agriculture pursuant
2 to chapter 166 or chapter 166E, and subsequently
3 identified, on a case-by-case basis, as potential
4 important agricultural lands and then designated as
5 important agricultural lands pursuant to [~~section 205-~~
6 ~~44.5, including but not limited to establishing~~
7 ~~priorities for the leasing of these public lands~~
8 ~~within the department's jurisdiction.] chapter 205."~~

9 SECTION 5. Section 171-3, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§171-3 Department of land and natural resources.** [~~(a)~~]

12 The department of land and natural resources shall be headed by
13 an executive board to be known as the board of land and natural
14 resources. The department shall manage, administer, and
15 exercise control over public lands, the water resources, ocean
16 waters, navigable streams, coastal areas (excluding commercial
17 harbor areas), and minerals and all other interests therein and
18 exercise such powers of disposition thereof as may be authorized
19 by law. The department shall also manage and administer the
20 state parks, historical sites, forests, forest reserves, aquatic
21 life, aquatic life sanctuaries, public fishing areas, boating,
22 ocean recreation, coastal programs, wildlife, wildlife

1 sanctuaries, game management areas, public hunting areas,
2 natural area reserves, and other functions assigned by law.

3 ~~[(b) Notwithstanding subsection (a), beginning January 1,~~
4 ~~2010, the authority to manage, administer, and exercise control~~
5 ~~over any public lands that are designated important agricultural~~
6 ~~lands pursuant to section 205 , shall be transferred to the~~
7 ~~department of agriculture.] "~~

8 SECTION 6. Section 205-44.5, Hawaii Revised Statutes, is
9 amended to read as follows:

10 " **[+] §205-44.5 [+] Important agricultural lands; public**
11 **lands.** (a) Notwithstanding any law to the contrary, before
12 ~~[December 31, 2009,]~~ June 30, 2010, the department of
13 agriculture and the department of land and natural resources
14 shall ~~[collaborate to identify]~~ utilize the processes described
15 in chapter 166 and chapter 166E and will have identified and
16 mapped by tax map key qualified encumbered and unencumbered
17 public lands, as defined under section 171-2, that should be
18 ~~designated important agricultural lands as defined in section~~
19 ~~205-42 and shall cause to be prepared maps delineating these~~
20 ~~lands.]~~ to be considered for transfer from the department of
21 land and natural resources to the department of agriculture. No
22 later than June 30, 2011, no less than fifty percent of the

1 parcels of public lands identified as qualified for transfer by
2 the department of agriculture shall be transferred from the
3 department of land and natural resources to the department of
4 agriculture. The remainder of the parcels of public lands
5 identified as qualified for transfer by the department of
6 agriculture shall be transferred no later than June 30, 2012.
7 The completion of the transfer of parcels of public lands for
8 the purpose of designation as important agricultural lands shall
9 not prevent or inhibit in any manner, any future consideration,
10 identification, and transfer of additional parcels of public
11 lands as provided in chapter 166 and chapter 166E. Upon the
12 transfer of the public lands, the department of agriculture with
13 the approval of the board of agriculture shall, on a case-by-
14 case basis, identify those transferred public lands, as well as
15 public lands already under the management of the department of
16 agriculture, that should be considered for designation by the
17 land use commission as important agricultural lands as defined
18 in section 205-42. In [~~making the designations,~~] identifying
19 potential important agricultural lands, the [~~departments~~]
20 department of agriculture shall use the standards and criteria
21 of section 205-44.

1 (b) The designation of public lands identified as
2 important agricultural lands pursuant to this section shall not
3 be subject to the district boundary amendment procedures of
4 section 205-3.1 or 205-4 or declaratory order procedures of
5 section 205-45.

6 (c) Notwithstanding any law to the contrary, [~~beginning~~
7 ~~January 1, 2010,~~] after receipt of the maps of public lands
8 identified as important agricultural lands pursuant to
9 subsection (a), the commission shall designate the public lands
10 as important agricultural lands and adopt the maps of those
11 public lands. Upon designation, the public lands shall be
12 subject to those provisions of this chapter[-] that are
13 identified and approved by the department and board of
14 agriculture to carry out the purpose and intent of this part,
15 and that do not violate the provisions contained in chapters 166
16 or 166E."

17 SECTION 7. Section 205-52, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§205-52 Periodic review and amendment of important**
20 **agricultural lands maps.** (a) The maps delineating important
21 agricultural lands shall be reviewed in conjunction with the
22 county general plan and community, development, or community

1 development plan revision process, or at least once every ten
2 years following the adoption of the maps by the land use
3 commission; provided that the maps shall not be reviewed more
4 than once every five years. Any review and amendment of the
5 maps of important agricultural lands shall be conducted in
6 accordance with this part. In these periodic reviews or
7 petitions by the farmers or landowners for declaratory rulings,
8 the "important agricultural lands" designation shall be removed
9 from those important agricultural lands where the commission has
10 issued a declaratory order that a sufficient supply of water is
11 no longer available to allow profitable farming of these lands
12 due to governmental actions, acts of God, or other causes beyond
13 the farmer's or landowner's reasonable control; provided that,
14 if the "important agricultural lands" were designated by a
15 declaratory order in combination with the reclassification of
16 land in the agricultural district to the rural, urban, or
17 conservation district pursuant to section 205-45, the commission
18 shall not remove the designation unless the legislature provides
19 prior authorization by adoption of a concurrent resolution in
20 accordance with section 205-45.

21 (b) Maps of important agricultural lands created pursuant
22 to section 205-44.5(a) are exempt from this section."

S.B. NO. 827

1 SECTION 8. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 9. This Act shall take effect upon its approval.

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INTRODUCED BY: _____

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6

BY REQUEST

Report Title:

Agriculture; Important Agricultural Lands; Public Land

Description:

Describes public land designated as important agricultural lands as equivalent to but distinct from important agricultural lands. Authorizes department of agriculture to select, identify and map potential important agricultural lands from all public lands transferred from department of land and natural resources as provided for and in compliance with chapters 166 and 166E, Hawaii Revised Statutes, using criteria and standards in chapter 205, Hawaii Revised Statutes. Authorizes board of agriculture to accept and transmit maps of public lands with potential as important agricultural lands for final designation by land use commission and to make final determination of what provisions of chapter 205, including important agricultural lands incentives, will apply or be made available for qualified public lands under jurisdiction of chapter 166 and chapter 166E.

JUSTIFICATION SHEET

DEPARTMENT: Agriculture

TITLE: A BILL FOR AN ACT RELATING TO PUBLIC LANDS WHICH ARE IMPORTANT AGRICULTURAL LANDS.

PURPOSE: To describe public land identified and designated as Important Agricultural Lands as equivalent to but distinct from private land identified and designated as Important Agricultural Lands. Authorizes Department of Agriculture and the Board of Agriculture to select, identify, and map potential Important Agricultural Lands from public lands transferred from Department of Land and Natural Resources in full compliance with chapters 166, (Agricultural Park Program) and 166E (Non-Agricultural Park Lands Program), Hawaii Revised Statutes, and using criteria and standards in chapter 205, Hawaii Revised Statutes. Authorizes Board of Agriculture to accept and transmit maps of public land with potential as Important Agricultural Lands for final designation by Land Use Commission, and to make final selection of the provisions and uses in chapter 205, including Important Agricultural Lands incentives, that will apply or be made available for qualified public land under jurisdiction of chapters 166 and 166E.

MEANS: Add a new section to chapters 166 and 166E and amend sections 141-1, 171-3, 205-44.5, and 205-52, Hawaii Revised Statutes.

JUSTIFICATION: Part IX of Act 233, Session Laws of Hawaii 2008, requires the identification and designation of certain public land under the management of the Department of Land and Natural Resources as Important Agricultural Lands (IAL), followed by the transfer of these lands to the Department of Agriculture, along with the appropriations and non-personnel assets related to the

Department of Land and Natural Resources' management of these lands. Designation of public lands as IAL will allow existing and future lessees of these public lands to have access to the IAL incentives found in Act 233, such as the Qualified Agricultural Cost Tax Credit.

Allowing farmers on public lands designated IAL to utilize certain IAL incentives will help stabilize and improve their agricultural operations. However, the classification of public lands as IAL will have unintended consequences that will jeopardize the integrity of the Department of Agriculture's Agricultural Park Program (chapter 166) and Non-Agricultural Park Lands Program (chapter 166E), the two programs where transferred agricultural public lands are situated and managed. Pursuant to part III of chapter 205, section 205-43 will be used to determine what are permissible uses on IAL public lands; however, this section does not contain a list of permissible uses on IAL. By default, the permissible uses found in section 205-2 and section 205-4.5 would apply to IAL-designated public lands. These permissible uses include farm dwellings, employee housing, plantation community subdivisions, agricultural tourism, open area recreation, parks, riding stables, communications antennas, etc. Other "unusual and reasonable" uses may be located on Agricultural land by special permit and include, for example, schools, churches, gas stations, commercial and medical offices.

The permissible uses under section 205-2 and section 205-4.5 are in or may conflict with the intent, purpose, and rules of the Agricultural Parks Program (chapter 166) or the Non-Agricultural Parks Program (chapter 166E). The Department utilizes a thorough qualification process to ensure potential lessees will undertake substantial agricultural activity. Farm dwellings or employee housing are often not allowed.

Uses and activities not directly related to agricultural production are strictly controlled. The majority of the total annual income of each lessee is required to come from agricultural activities. The legislature recognizes that the public land management programs of the Department of Agriculture closely emulate and even surpass the purpose and intent of part III of chapter 205, the Important Agricultural Lands Act. Unlike the privately owned lands under the IAL Act, these public lands are not subject to reclassification, subdivision, lack of monitoring, and special permitted uses.

Impact on the public: Protection of important public agricultural lands and promoting their proper use in agricultural production will enhance the well-being of the public inasmuch as it may increase food self-sufficiency for the State.

Impact on the department and other agencies: Reduces the possibility of unintended adverse impact on the two most important agricultural land management programs in the State while accomplishing the intent of part IX of Act 233, SLH 2008. Maintains the integrity of part III of chapter 205, the Important Agricultural Lands Act by not allowing final designation by the Land Use Commission and access to incentives no sooner than three years after the enactment of Act 233.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: Department of Land and Natural Resources, Land Use Commission, and Office of Planning.

EFFECTIVE DATE: Upon approval.