

JAN 26 2011

A BILL FOR AN ACT

RELATING TO AGRICULTURE.

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

1 SECTION 1. Chapter 205, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§205- Dams and reservoirs. All dams and related
5 reservoir areas classified as important agricultural lands shall
6 remain subject to the jurisdiction of the department of land and
7 natural resources and the provisions of chapter 179D; provided
8 that dams and related reservoir areas designated as important
9 agricultural lands shall also be eligible for inclusion in the
10 total acreage calculation pursuant to section 205-45(h) and
11 incentives pursuant to section 205-46."

12 SECTION 2. Chapter 235, Hawaii Revised Statutes, is
13 amended by adding four new sections to be appropriately
14 designated and to read as follows:

15 "§235-A Dam remediation tax credit. (a) There shall be
16 allowed to each taxpayer subject to the tax imposed by this
17 chapter, a credit for remediation of dams pursuant to an order
18 of the department of land and natural resources under section



1 179D-6(b)(16), which shall be deductible from the taxpayer's
2 net income tax liability, if any, imposed by this chapter for
3 the taxable year in which the credit is properly claimed.

4 (b) The amount of the credit determined under this section
5 for the taxable year shall be equal to seventy-five per cent of
6 the cost of all remediation measures taken to comply with an
7 order of the department of land and natural resources issued
8 pursuant to section 179D-6(b)(16).

9 (c) For purposes of this section:

10 "Dam" has the same meaning as in section 179D-3.

11 "Remediation" means any work performed or measures taken to
12 comply with an order of the department of land and natural
13 resources issued pursuant to section 179D-6(b)(16); provided
14 that remediation shall not include any measures taken pursuant
15 to an order issued pursuant to section 179D-24(f).

16 (d) The following costs and expenses are ineligible to be
17 claimed for this credit:

18 (1) Costs recoverable by the department of land and
19 natural resources pursuant to subsection 179D-24(c)
20 for emergency measures taken by the department to
21 protect life or property;



1 (2) Attorney's fees recoverable by the department of land
2 and natural resources pursuant to subsection
3 179D-24(d); and

4 (3) Costs incurred in complying with an order of the
5 department of land and natural resources issued
6 pursuant to subsection 179D-24(f), regardless of
7 whether the taxpayer is ultimately successful in any
8 challenge to that order.

9 (e) A successor landowner of a remediated dam subject to
10 this section shall not be eligible to claim the tax credit
11 allowed by this section.

12 (f) The credit allowed under this section shall be claimed
13 against net income tax liability for the taxable year. A tax
14 credit under this section that exceeds the taxpayer's income tax
15 liability may be used as a credit against the taxpayer's income
16 tax liability in subsequent years until exhausted.

17 (g) All claims for tax credits under this section,
18 including any amended claims, shall be filed on or before the
19 end of the twelfth month following the close of the taxable year
20 for which the credits may be claimed. Failure to comply with
21 the foregoing provision shall constitute a waiver of the right
22 to claim the credit.



1 (h) No deduction shall be allowed for that portion of the
2 cost of remediation paid or incurred for the taxable year that
3 is equal to the amount of the credit determined under this
4 section.

5 (i) The director of taxation may adopt any rules under
6 chapter 91 and forms necessary to carry out this section.

7 **§235-B Aquacultural facilities tax credit.** (a) There
8 shall be allowed to each taxpayer subject to the tax imposed by
9 this chapter, a credit for the cost of capital investments in
10 aquacultural facilities, which shall be deductible from the
11 taxpayer's net income tax liability, if any, imposed by this
12 chapter for the taxable year in which the credit is properly
13 claimed.

14 (b) The amount of the credit determined under this section
15 for the taxable year shall be equal to twenty-five per cent of
16 the amount of capital investments in aquacultural facilities.

17 (c) For purposes of this section:

18 "Aquacultural facilities" means infrastructure used in the
19 propagation, cultivation, or farming of aquatic plants and
20 animals in controlled or selected environments for commercial
21 purposes or authorized stock enhancement purposes including
22 hatcheries; on-shore and off-shore farms including ponds and off



1 shore cages or nets; harvesting facilities; and processing
2 facilities.

3 (d) A successor owner of aquacultural facilities subject
4 to this section shall not be eligible to claim the tax credit
5 allowed by this section.

6 (e) The credit allowed under this section shall be claimed
7 against net income tax liability for the taxable year. A tax
8 credit under this section that exceeds the taxpayer's income tax
9 liability may be used as a credit against the taxpayer's income
10 tax liability in subsequent years until exhausted.

11 (f) All claims for tax credits under this section,
12 including any amended claims, shall be filed on or before the
13 end of the twelfth month following the close of the taxable year
14 for which the credits may be claimed. Failure to comply with
15 the foregoing provision shall constitute a waiver of the right
16 to claim the credit.

17 (g) No deduction shall be allowed for that portion of the
18 capital investment paid or incurred for the taxable year that is
19 equal to the amount of the credit determined under this section.

20 (h) The director of taxation may adopt any rules under
21 chapter 91 and forms necessary to carry out this section.



1 §235-C Qualified agricultural food processing facilities

2 tax credit. (a) There shall be allowed to each taxpayer
3 subject to the tax imposed by this chapter, a credit for the
4 cost of capital investments in qualified agricultural food
5 processing facilities, which shall be deductible from the
6 taxpayer's net income tax liability, if any, imposed by this
7 chapter for the taxable year in which the credit is properly
8 claimed. The tax credit amount shall be determined as follows:

9 (1) In the first year in which the credit is claimed,
10 twenty per cent of the capital investments made by the
11 taxpayer for the qualified agricultural food
12 processing facility after July 1, 2011;

13 (2) In the second year in which the credit is claimed,
14 twenty per cent of the capital investments made by the
15 taxpayer for the qualified agricultural food
16 processing facility after July 1, 2011;

17 (3) In the third year in which the credit is claimed,
18 twenty per cent of the capital investments made by the
19 taxpayer for the qualified agricultural food
20 processing facility after July 1, 2011;

21 (4) In the fourth year in which the credit is claimed,
22 twenty per cent of the capital investments made by the



1 taxpayer for the qualified agricultural food
2 processing facility after July 1, 2011; and
3 (5) In the fifth year in which the credit is claimed,
4 twenty per cent of the capital investments made by the
5 taxpayer for the qualified agricultural food
6 processing facility after July 1, 2011.

7 (b) No other credit shall be claimed under this chapter
8 for capital investments in qualified agricultural food
9 processing facilities for which a credit is properly claimed
10 under this section for the taxable year.

11 (c) For purposes of this section:

12 "Agricultural commodity" means fresh fruits and fresh
13 vegetables of every kind and character, whether or not frozen or
14 packed in ice, whether produced in the State or imported; nuts,
15 and coffee, whether cherry or parchment; green beans that have
16 been produced in the State; and raw unprocessed honey, whether
17 produced in the State or imported.

18 "Qualified agricultural food processing facility" means a
19 facility that produces products for human consumption from raw
20 agricultural commodities, including a facility that prepares
21 agricultural commodities for sale to consumers; provided that at
22 least fifty per cent by volume of the agricultural commodities



1 processed at the facility are derived from important
2 agricultural lands.

3 (d) A successor owner of qualified agricultural food
4 processing facilities subject to this section shall not be
5 eligible to claim the tax credit allowed by this section.

6 (e) The credit allowed under this section shall be claimed
7 against net income tax liability for the taxable year. A tax
8 credit under this section that exceeds the taxpayer's income tax
9 liability may be used as a credit against the taxpayer's income
10 tax liability in subsequent years until exhausted.

11 (f) All claims for tax credits under this section,
12 including any amended claims, shall be filed on or before the
13 end of the twelfth month following the close of the taxable year
14 for which the credits may be claimed. Failure to comply with
15 the foregoing provision shall constitute a waiver of the right
16 to claim the credit.

17 (g) No deduction shall be allowed for that portion of the
18 capital investment paid or incurred for the taxable year that is
19 equal to the amount of the credit determined under this section.

20 (h) The director of taxation may adopt any rules under
21 chapter 91 and forms necessary to carry out this section.



1 §235-D Qualified agricultural worker housing tax credit.

2 (a) There shall be allowed to each taxpayer subject to the tax
3 imposed by this chapter, a credit for the cost of capital
4 investments in qualified agricultural worker housing, which
5 shall be deductible from the taxpayer's net income tax
6 liability, if any, imposed by this chapter for the taxable year
7 in which the credit is properly claimed.

8 (b) The amount of the credit determined under this section
9 for the taxable year shall be equal to thirty-five per cent of
10 the cost of constructing qualified agricultural worker housing.

11 (c) For purposes of this section:

12 "Agricultural activities" means:

13 (1) Cultivation of crops, including crops for bioenergy,
14 flowers, vegetables, foliage, fruits, forage, and
15 timber;

16 (2) Game and fish propagation; and

17 (3) Raising of livestock, including poultry, bees, fish,
18 or other animals or aquatic life that are propagated
19 for economic or personal use.

20 "Qualified agricultural worker housing" means a single-
21 family dwelling located on or occupied by workers employed in



1 agricultural activities located on important agricultural lands,
2 as defined by section 205-42, and their families.

3 (d) A successor landowner of agricultural water housing
4 subject to this section shall not be eligible to claim the tax
5 credit allowed by this section.

6 (e) The credit allowed under this section shall be claimed
7 against net income tax liability for the taxable year. A tax
8 credit under this section that exceeds the taxpayer's income tax
9 liability may be used as a credit against the taxpayer's income
10 tax liability in subsequent years until exhausted.

11 (f) All claims for tax credits under this section,
12 including any amended claims, shall be filed on or before the
13 end of the twelfth month following the close of the taxable year
14 for which the credits may be claimed. Failure to comply with
15 the foregoing provision shall constitute a waiver of the right
16 to claim the credit.

17 (g) No deduction shall be allowed for that portion of the
18 cost of constructing qualified agricultural worker housing paid
19 or incurred for the taxable year that is equal to the amount of
20 the credit determined under this section.

21 (h) The director of taxation may adopt any rules under
22 chapter 91 and forms necessary to carry out this section."



1 SECTION 3. Chapter 266, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§266- Priority for aquacultural activities. (a) At
5 all harbors and waterfront improvements belonging to or
6 controlled by the State, aquacultural enterprises shall have
7 priority of access over leisure crafts and houseboats.

8 (b) For purposes of this section, "aquacultural
9 enterprises" means persons or entities actively engaged in the
10 propagation, cultivation, or farming of aquatic plants and
11 animals in controlled or selected environments for commercial
12 purposes, including stock enhancement."

13 SECTION 4. Section 166-2, Hawaii Revised Statutes, is
14 amended by amending the definition of "agricultural activities"
15 to read as follows:

16 "Agricultural activities" means the care and production of
17 livestock, livestock products, poultry, or poultry products, or
18 apiary, horticultural, or floricultural products, or aquatic
19 life, or the planting, cultivating, and harvesting of crops or
20 trees, including tree farms."



1 SECTION 5. Section 201-1, Hawaii Revised Statutes, is
2 amended by amending the definition of "agriculture" to read as
3 follows:

4 "Agriculture" and "agricultural" mean the planting,
5 cultivating, and harvesting of crops~~[7]~~ or aquatic life,
6 including ~~[these so]~~ crops and aquatic life that are planted,
7 cultivated, and harvested for food, ornamental, grazing, or
8 forest purposes~~[-. Once the]~~; provided that once crops or
9 aquatic life are harvested and transported to a point of
10 distribution, they cease to be agricultural ~~[in the terms]~~ for
11 purposes of this part."

12 SECTION 6. Section 205-41, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "[+]§205-41[+] Declaration of policy. (a) It is declared
15 that the people of Hawaii have a substantial interest in the
16 health and sustainability of agriculture as an industry in the
17 State. There is a compelling state interest in conserving the
18 State's agricultural land resource base and assuring the long-
19 term availability of agricultural lands for agricultural use to
20 achieve the purposes of:

21 (1) Conserving and protecting agricultural lands;



- 1 (2) Promoting diversified agriculture~~[7]~~, including the
2 cultivation of aquatic plants and animals;
3 (3) Increasing agricultural self-sufficiency; and
4 (4) Assuring the availability of agriculturally suitable
5 lands,
6 pursuant to article XI, section 3, of the Hawaii state
7 constitution.

8 (b) For purposes of this part, the term "agriculture"
9 shall include the propagation, cultivation, or farming of
10 aquatic plants and animals in controlled or selected
11 environments for commercial purposes, including stock
12 enhancement."

13 SECTION 7. Section 205-44, Hawaii Revised Statutes, is
14 amended by amending subsection (c) to read as follows:

15 "(c) The standards and criteria shall be as follows:

- 16 (1) Land currently used for agricultural production;
17 (2) Land with soil qualities and growing conditions that
18 support agricultural production of food, fiber, or
19 fuel- and energy-producing crops;
20 (3) Land identified under agricultural productivity rating
21 systems, such as the agricultural lands of importance



- 1 to the State of Hawaii (ALISH) system adopted by the
2 board of agriculture on January 28, 1977;
- 3 (4) Land types associated with traditional native Hawaiian
4 agricultural uses, such as taro cultivation, or unique
5 agricultural crops and uses, such as coffee,
6 vineyards, aquaculture, and energy production;
- 7 (5) Land with sufficient quantities of water to support
8 viable agricultural production;
- 9 (6) Land whose designation as important agricultural lands
10 is consistent with general, development, and community
11 plans of the county;
- 12 (7) Land that contributes to maintaining a critical land
13 mass important to agricultural operating productivity;
14 and
- 15 (8) Land with or near support infrastructure, including
16 dams and reservoirs, conducive to agricultural
17 productivity, such as transportation to markets,
18 water, or power."

19 SECTION 8. Section 205-45, Hawaii Revised Statutes, is
20 amended by amending subsection (h) to read as follows:

21 "(h) A petitioner granted a declaratory order that
22 designates important agricultural land, whether or not combined



1 with the reclassification of land to the rural, urban, or
2 conservation district, shall earn credits if the amount of land
3 reclassified to the rural, urban, or conservation district is
4 less than fifteen per cent of the total acreage of land subject
5 to the order. The "total acreage of land subject to the order"
6 means the total acreage, including dams and reservoirs that
7 support the land designated as important agricultural land,
8 designated as important agricultural land and, if applicable,
9 reclassified to the rural, urban, or conservation district by
10 the declaratory order.

11 The credits shall equal the difference between the
12 following, rounded to the nearer tenth of an acre:

- 13 (1) The number that is fifteen per cent of the total
14 acreage of land subject to the order; less
15 (2) The amount of the petitioner's land that is
16 reclassified from the agricultural district to the
17 rural, urban, or conservation district by the
18 declaratory order.

19 A petitioner with credits earned within a county may
20 petition the commission for a declaratory order to reclassify
21 any of the petitioner's other land in the same county from the
22 agricultural district to the rural, urban, or conservation



1 district until the credits are exhausted or expired. The
2 "petitioner's other land in the same county" means land owned by
3 the petitioner that is in the same county as the land designated
4 or reclassified under the petition. The commission may issue
5 the declaratory order if it finds that the land is suitable for
6 reclassification in accordance with section 205-2 and that the
7 reclassification is consistent with the relevant county general
8 and community, development, or community development plans. The
9 petitioner may petition for such reclassification until all of
10 the petitioner's credits are exhausted. Any unexhausted credits
11 shall expire and become unusable ten years after the granting of
12 the declaratory order that designated the important agricultural
13 land and, if applicable, reclassified land to the rural, urban,
14 or conservation district.

15 A petitioner with unused and unexhausted credits shall not
16 transfer the credits to another person."

17 SECTION 9. Section 205-45.5, Hawaii Revised Statutes, is
18 amended to read as follows:

19 " **[+]§205-45.5[+] Important agricultural land; farm**
20 **dwelling and employee housing.** (a) A landowner whose
21 agricultural lands are designated as important agricultural
22 lands may develop, construct, and maintain farm dwellings and



1 employee housing for farmers, employees, and their immediate
2 family members on these lands; provided that:

3 (1) The farm dwellings and employee housing units shall be
4 used exclusively by farmers and their immediate family
5 members who actively and currently farm on important
6 agricultural land upon which the dwelling is situated;
7 provided further that the immediate family members of
8 a farmer may live in separate dwelling units situated
9 on the same designated land;

10 (2) Employee housing units shall be used exclusively by
11 employees and their immediate family members who
12 actively and currently work on important agricultural
13 land upon which the housing unit is situated; provided
14 further that the immediate family members of the
15 employee shall not live in separate housing units and
16 shall live with the employee;

17 (3) The total land area upon which the farm dwellings and
18 employee housing units and all appurtenances are
19 situated shall not occupy more than five per cent of
20 the total important agricultural land area controlled
21 by the farmer or the employee's employer or fifty
22 acres, whichever is less;



1 (4) The farm dwellings and employee housing units shall
2 meet all applicable [~~building code~~] requirements[~~7~~]
3 established by the board pursuant to subsection (b);

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

7 (6) Consideration may be given to the cluster development
8 of farm dwellings and employee housing units to
9 maximize the land area available for agricultural
10 production; and

11 (7) The plans for farm dwellings and employee housing
12 units shall be supported by agricultural plans that
13 are approved by the department of agriculture.

14 (b) Notwithstanding any other state or county law to the
15 contrary, the board shall establish requirements for farm
16 dwellings and employee housing units on important agricultural
17 lands by rule pursuant to chapter 91. The board may waive any
18 otherwise applicable building codes or infrastructure
19 requirements; provided that the board may not waive any laws or
20 ordinances that result in compromising the health or safety of
21 any residents of farm dwellings or agricultural housing."



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

3 "§237-24.75 Additional exemptions. In addition to the
4 amounts exempt under section 237-24, this chapter shall not
5 apply to:

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

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

12 ~~]~~ (3) Amounts received[+] by a professional employment
13 organization from a client company equal to amounts
14 that are disbursed by the professional employment
15 organization for employee wages, salaries, payroll
16 taxes, insurance premiums, and benefits, including
17 retirement, vacation, sick leave, health benefits, and
18 similar employment benefits with respect to assigned
19 employees at a client company; provided that this
20 exemption shall not apply to a professional employment
21 organization upon failure of the professional
22 employment organization to collect, account for, and



1 pay over any income tax withholding for assigned
 2 employees or any federal or state taxes for which the
 3 professional employment organization is responsible.
 4 As used in this paragraph, "professional employment
 5 organization", "client company", and "assigned
 6 employee" shall have the meanings provided in section
 7 373K-1[-]; and

8 (4) Amounts received for the wholesale or retail business
 9 conducted by a qualified agricultural food processing
 10 facility, as defined in section 235-C, during the
 11 first five years of its operation."

12 SECTION 11. In codifying the new sections added by section
 13 2 of this Act, the revisor of statutes shall substitute
 14 appropriate section numbers for the letters used in designating
 15 the new sections in this Act.

16 SECTION 12. Statutory material to be repealed is bracketed
 17 and stricken. New statutory material is underscored.

18 SECTION 13. This Act shall take effect on July 1, 2011.

19

INTRODUCED BY: *[Signature]*
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Report Title:

Agriculture; Aquaculture; Tax Credits

Description:

Authorizes the inclusion of dams and reservoirs serving important agriculture lands in the total acreage calculation for important agriculture lands; provides tax credits for dam remediation, aquacultural facilities, certain agricultural processing facilities, and certain agricultural worker housing; grants priority to aquacultural activities at state-owned harbors; includes aquaculture in agricultural activities; authorizes the board to create standards for certain agricultural worker housing.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

