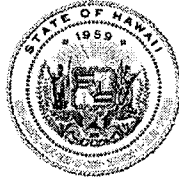


**SB 1559**

**SD 1**



NEIL ABERCROMBIE  
GOVERNOR

BRIAN SCHATZ  
LT. GOVERNOR

STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
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KEALI'I S. LOPEZ  
DIRECTOR

EVERETT KANESHIGE  
DEPUTY DIRECTOR

TO THE SENATE COMMITTEE ON WAYS AND MEANS

TWENTY-SIXTH LEGISLATURE  
Regular Session of 2011

Tuesday, March 1, 2011  
9:20 a.m.

**WRITTEN TESTIMONY ONLY**

**TESTIMONY ON SENATE BILL NO. 1559, S.D. 1 – RELATING TO IMPORTANT AGRICULTURAL LANDS.**

TO THE HONORABLE DAVID IGE, CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is Gordon Ito, State Insurance Commissioner (“Commissioner”), testifying on behalf of the Department of Commerce and Consumer Affairs (“Department”).

The Department limits its comments to Part V or section 5 of the bill and has concerns about this section.

Section 5 of the bill adds a new section to Article 10E of the Insurance Code, Hawaii Revised Statutes (“HRS”) chapter 431, that allows insurers to provide “preferential insurance rates” to owners or lessees of important agricultural lands designated pursuant to HRS §§ 205-44 and 205-45.

Insurance rates must be filed with the Insurance Division, pursuant to Article 14 of the Insurance Code, to ensure that rates are not excessive, inadequate, or unfairly discriminatory. It is unclear what is meant by the term “preferential insurance rates” and whether this rate could be deemed unfairly discriminatory by agricultural landowners or lessees who are subject to higher insurance rates because their property has not been designated or identified as “important agricultural lands”.

We thank this Committee for the opportunity to present testimony on this matter.

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
WILLIAM J. AILA, JR.  
Chairperson**

**Before the Senate Committee on  
WAYS AND MEANS**

**Tuesday, March 1, 2011  
9:20 A.M.  
State Capitol, Conference Room 211**

**In consideration of  
SENATE BILL 1559, SENATE DRAFT 1  
RELATING TO IMPORTANT AGRICULTURAL LANDS**

Senate Bill 1559, Senate Draft 1 proposes to establish incentives for important agricultural lands, including the reduction of unnecessary infrastructure requirements, expediting permitting procedures and tax incentives. The Department of Land and Natural Resources (Department) defers to the Department of Taxation on the cost implications of this measure. The Department supports the intent of this measure as it appears to assist certain landowners in bringing their dams and reservoirs into compliance with safety standards. The Senate Draft 1 has addressed the concerns the Department had on specific provisions of the original measure.

Thank you for the opportunity to comment.

WILLIAM J. AILA, JR.  
INTERIM CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI  
FIRST DEPUTY

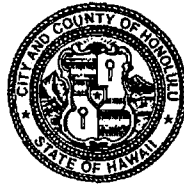
WILLIAM M. TAM  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

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PETER B. CARLISLE  
MAYOR



DAVID K. TANOUE  
DIRECTOR

JIRO A. SUMADA  
DEPUTY DIRECTOR

March 1, 2011

The Honorable David Y. Ige, Chair  
and Members of the Committee on Ways and Means  
State Senate  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Ige and Members:

**Subject: Senate Bill No. 1559, SD1  
Relating to Important Agricultural Lands**

The Department of Planning and Permitting (DPP) **opposes** Senate Bill No. 1559, SD1. It proposes certain incentives for Important Agricultural Lands (IAL), including priority permit processing, additional requirements for county general plans, real property exemptions, preferential energy consumption rate, and preferential insurance rates. Further, the Bill requires the Department of Agriculture (DOA) to take the place of our department in determining a project's required infrastructure improvements.

Our position is based on the following concerns:

1. PART I, County building permits; priority processing. Building permits are currently processed on a first-come, first-served basis. Priority processing of a permit application involving IAL would place all other permit applications behind the priority application. The loss of time for these "sidetracked" applications will likely cause an increase in their carrying costs. This is not a fair and equitable process, and ultimately bad for the rest of the economy.

As an alternative, the state could provide grants to qualifying projects to use the Third Party Review option. The use of certified plan checkers would expedite the review process, but not affect our queue lines.

The new Part I proposal is vague about its applicability. Does reference to "development related permits" include zoning permits and subdivision approval? The proposed new subsection (b) is not needed, as our building code already exempts minor agricultural structures from obtaining a building permit, and additional exemptions are being contemplated.

The Honorable David Y. Ige, Chair  
and Members of the Committee on Ways and Means  
State Senate  
Re: Senate Bill No. 1559, SD1  
March 1, 2011  
Page 2

2. Part II, County general plans. The City and County of Honolulu's General Plan is a comprehensive document of broad objectives and policies which sets for the long-range aspirations of Oahu's residents and the strategies and actions to achieve them. Although we believe the purpose of defining IAL is fulfilled by existing objectives in our current General Plan, we could consider specific reference to IAL. However, it is not the appropriate venue to replicate a State law that has statewide implications, nor is it the vehicle to identify incentives and implementation plans to any degree of detail. This may be more appropriately a function of the State Department of Agriculture (DOA).

We are also concerned that this proposed Part II essentially amends Chapter 205, HRS, and potentially creates a conflict for the counties. This Part would add new criteria for county identification of IAL, but does not similarly amend the criteria to be used by the State Land Use Commission on the final decision on IAL designation. We may end up with two different sets of IAL.

3. Part VII, IAL and infrastructure. Developments will often trigger various infrastructure upgrades depending on associated impacts. Issues of basic health and safety are involved. While the DOA is regularly consulted on agricultural subdivision applications regarding farming uses, they are not experts on infrastructure standards, including county, state and federal requirements. Moreover, we do not believe they have qualified engineers to review infrastructure plans nor qualified inspectors to perform the field inspections done by the city. Lastly, if the improvements are not built to city standards, the city will not accept them as part of the city system, and therefore, will not maintain them. Thus, it would be prudent for development to comply with the county ordinances and rules.

In short, we have many concerns about this measure. Please hold Senate Bill No. 1559, SD1. Thank you for the opportunity to testify.

Very truly yours,



David K. Tanoue, Director  
Department of Planning and Permitting

DKT: jmf

sb1559sd1-IAL-mh.doc

# TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

**SUBJECT:** REAL PROPERTY, MISCELLANEOUS, Exemption from real property tax

**BILL NUMBER:** SB 1559, SD-1

**INTRODUCED BY:** Senate Committee on Water, Land and Housing

**BRIEF SUMMARY:** Adds a new section to HRS chapter 246 to provide that any permanent structure constructed or installed on any taxable real property designated as important agricultural lands, for activities related to growing of crops or maintaining of livestock, processing of products grown or raised on such lands, or value added production, shall be exempted in determining and assessing the value of that taxable real property for 10 years or for a period of 10 years from the first day of January following commencement of construction or installation of the structure on the property; provided that any temporary structure constructed or installed for such purpose shall be exempted without being subject to the 10-year limitation; provided further that such exemption shall continue only so long as the structure is maintained in good condition. Stipulates that only structures used for commercial agricultural or horticultural purposes shall be included in this exemption.

Defines "important agricultural lands" and "structures associated with important agricultural lands" for the purposes of the measure.

Adds a new section to HRS chapter 246 to exempt from real property taxation, any portion of real property that is designated as important agricultural lands pursuant to part III of HRS chapter 205 and shall continue only so long as the property remains classified as important agricultural lands.

Adds a new section to HRS chapter 209E to provide that all lands designated as important agricultural lands shall be declared to be an enterprise zone. Qualified persons who engage in qualified agricultural activities who do not meet the eligibility requirements of HRS section 209E-9 shall be entitled to the important agricultural lands enterprise zone tax credits.

Adds a new section to HRS chapter 209E to require the department of business, economic development and tourism to certify annually to the department of taxation the applicability of the tax credit provided in this section for qualified persons against any taxes due the state. Except for the general excise tax, the credit shall be 80% of the tax due for the first tax year, 70% for the second tax year, 60% for the third year, 50% for the fourth year, 40% for the fifth year, 30% for the sixth year, and 20% for the seventh year. For qualified persons engaged in the producing or processing of agricultural products, the credit shall continue after the seventh year at the rate of 20% for each of the subsequent three tax years. Any unused tax credit shall not be applied to future tax years.

In the case of a partnership, or other pass-through entity, each partner shall be eligible for the tax credit on the partner's individual income tax return in proportion to the amount of income received by the partner from the partnership. Any qualified person having taxable income from qualified agricultural activity, both within and without important agricultural lands, shall allocate and apportion the person's

taxable income attributable to the conduct of business. Tax credits provided for in this section shall only apply to taxable income of a qualified person attributable to the conduct of agricultural activities within important agricultural lands located within the same county.

Also a qualified business shall be entitled to a tax credit against any taxes due the state equal to a percentage of unemployment taxes paid. The amount of the credit shall be 80% of the unemployment taxes paid during the first year, 70% during the second year, 60% during the third year, 50% during the fourth year, 40% during the fifth year, 30% during the sixth year, and 20% of the taxes paid during the seventh year. For qualified persons engaged in the producing or processing of agricultural products, the credit shall continue after the seventh year in an amount equal to 20% of the taxes paid during each of the subsequent three tax years. These tax credits shall only apply to the unemployment taxes paid on employees employed at the qualified person's establishment or establishments within important agricultural lands located within the same county. Any tax credit not usable shall not be applied to future tax years.

DBEDT shall certify annually to the department of taxation that any qualified business is exempt from the payment of general excise taxes on the gross proceeds from a qualified agricultural activity. The exemption shall extend for a period not to exceed seven years; provided that for qualified businesses engaged in the manufacturing of tangible personal property or the producing or processing of agricultural products, the exemption shall extend for a period not to exceed 10 years; provided further that if a force majeure event occurs, then the period of time shall be tolled until the force majeure event ceases.

Makes other nontax amendments relating to important agricultural lands.

EFFECTIVE DATE: Tax years beginning after December 31, 2012

STAFF COMMENTS: This measure proposes real property exemptions for: (1) structures constructed on important agricultural lands; and (2) lands designated as important agricultural lands. If the proposed measure is enacted, it would merely grant preferential tax treatment to a select group of taxpayers and do so without regard to the taxpayer's need for tax relief. It should also be noted that while this measure amends HRS chapter 246, as a result of the 1978 Constitutional Convention, the real property taxing powers have been transferred to the counties so any amendments made to this chapter will not have any effect.

This measure also proposes that all lands designated as important agricultural lands shall be declared to be an enterprise zone. In an enterprise zone, businesses are attracted and encouraged to relocate to the zone through tax incentives, bonds, and other appropriate measures. Businesses located in an enterprise zone may claim a credit against taxes paid for a period of seven years and also allows the sale of items sold by such businesses to be exempt from the general excise tax.

The use of enterprise zones merely exacerbates what is already considered a poor climate in which to do business. Singling out specific areas of the state merely confers preferences for those businesses located within those geographic areas at the expense of all other taxpayers who are not so favored. It should be remembered that those taxpayers who live and work in the zone will demand the same public services as those who are not as fortunate to be located in the zone. Who then will pay for these services?

SB 1559, SD-1 - Continued

Concurrent efforts must be made to improve Hawaii's business climate to enhance the economic prospects for all businesses. Enterprise zones are merely an abdication of government's responsibility to create a nurturing and supportive business climate so that all businesses can thrive in Hawaii and provide the jobs the people of Hawaii need.

The impetus for the establishment of enterprise zones is to attract businesses to locate in an economically depressed area, to create jobs for those living in that community. In that sense, all other taxpayers are being asked to subsidize these preferred businesses.

Digested 2/28/11





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**SB 1559 SD1  
RELATING TO IMPORTANT AGRICULTURAL LANDS**

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

**MARCH 1, 2011**

Chair Ige and Members of the Senate Committee on Ways & Means:

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin, Inc. (A&B), Hawaiian Commercial & Sugar Company (a division of A&B) and Kauai Coffee Company (a subsidiary of A&B), on SB 1559 SD1, "A BILL FOR AN ACT RELATING TO IMPORTANT AGRICULTURAL LANDS." We support this bill.

After over twenty five years of debate, negotiation, and compromise, an IAL Law and process was finally enacted in July 2008. After years of pursuing a land-use approach to this constitutional mandate, the IAL law that was successfully passed (Act 183 (2005) and Act 233 (2008)) was premised on the principle that the best way to preserve agricultural lands is to preserve agricultural businesses and agricultural viability. As such, the IAL Law not only provides the standards, criteria, and processes to identify and designate important agricultural lands to fulfill the intent and purpose of Article XI, Section 3 of the Hawaii State Constitution, it also provides for a package of incentives designated to support and encourage sustained, viable agricultural activity on IAL. With the enactment of this comprehensive package of IAL incentives, the long awaited IAL identification and designation process was finally started in July 2008.

The IAL Law authorizes the identification and designation of IAL in one of two ways --- by voluntary petition to the State Land Use Commission by the landowner or farmer (process started in July 2008); or subsequently by the Counties filing a petition to designate lands as IAL pursuant to a County identification and mapping process (process targeted to start in July 2011). The IAL Law further provides incentives to the landowner and/or farmer to conduct agricultural activities on IAL lands. The IAL Law provides an exclusive three-year window for landowners/farmers to volunteer lands for IAL designation before the County petitions can be considered. In either case, the LUC determines whether the petitioned lands qualify for IAL designation pursuant to the standards, criteria, objectives, and policies set forth in the IAL Law. To date, the IAL Law has resulted in the designation by the LUC of over 30,000 acres of agricultural lands as IAL from voluntary petitions by Alexander & Baldwin for its lands on Maui and Kauai, and we believe significantly more acreage will be designated through the voluntary landowner and County petition process. Two voluntary petitions have recently been announced and are pending LUC action.

This bill provides additional incentives designated to support and encourage sustained, viable agricultural activity on IAL. These incentives, which include items relating to County building permits and infrastructure requirements, preferred energy and insurance rates, and enterprise zone designation, will greatly assist farmers and other agricultural operations on IAL. In addition, this bill also clarifies the eligibility of lands used for grazing and other livestock operations in the County mapping of IAL lands.

Based on the aforementioned, we respectfully request your favorable consideration on this bill. Thank you for the opportunity to testify.



Hawaii Farm Bureau  
F E D E R A T I O N

2343 Rose Street, Honolulu, HI 96819  
PH: (808)848-2074; Fax: (808) 848-1921

February 1, 2011

**TESTIMONY**

**Re: SB1559 SD1 RELATING TO IMPORTANT AGRICULTURAL LANDS**

Chair Ige, and Members of the Committees:

Hawaii Farm Bureau Federation on behalf of our commercial farmers and ranchers in the State, **strongly supports SB1559 SD1**, establishing incentives for Important Agricultural Lands.

The Legislature enacted incentives associated with Important Agricultural Lands in 2008. Unfortunately, other than the income tax credit, other credits have not been implemented as required by law. Other incentives, though recommended were never implemented. **This measure seeks to complete the enactment of incentives, encouraging landowners and farmers and ranchers to designate their lands as Important Agricultural Lands.**

On July 2011, the IAL law allows the Counties to begin mapping and designating Important Agricultural Lands with the LUC approval. It is important that adequate incentives be in place to preclude any implications of a taking. Nationally, downzoning without compensation loses in court. This measure is a critical part of meeting the Constitutional Mandate to preserve and protect Important Agricultural Lands.

We respectfully request your strong support of this measure. If there are any questions, please contact Warren Watanabe at 2819718.

Thank you.