

JAN 24 2013

A BILL FOR AN ACT

RELATING TO IMPORTANT AGRICULTURAL LANDS.

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

1 SECTION 1. The purpose of this Act is to identify
2 permissible and accessory uses and activities on important
3 agricultural lands identified and designated pursuant to part
4 III of chapter 205, Hawaii Revised Statutes.

5 To date, the land use commission has designated 89,859
6 acres of agricultural lands as important agricultural lands.
7 While the purpose of the important agricultural lands law is to
8 protect designated important agricultural lands by promoting
9 agricultural uses and activities through incentives, the law
10 does not specify the permissible uses and activities on
11 important agricultural lands. As such, there are a variety of
12 uses and activities provided for in part I of chapter 205 that
13 are permissible on important agricultural lands and may have an
14 effect contrary to the promotion of viable agricultural use over
15 the long term. These uses and activities include: open air
16 recreational facilities, agricultural-based commercial
17 operations, solar energy facilities not related to agricultural
18 activities, day camps, and riding stables. Further,

1 agricultural subdivision without agricultural production, a
2 minimum lot size of one acre, and special use permits for a wide
3 variety of "reasonable and unusual" uses and activities are also
4 possible on important agricultural lands. These uses and
5 activities may increase the value of important agricultural
6 lands beyond its value for agricultural production and reduce
7 their affordability to farmers seeking to undertake agricultural
8 production. This outcome would not be in consonance with
9 section 205-43, Hawaii Revised Statutes, that requires state and
10 county agricultural policies, tax policies, land use plans,
11 ordinances, and rules to promote the long-term viability of
12 agricultural use of important agricultural lands.

13 SECTION 2. Chapter 205, Hawaii Revised Statutes, is
14 amended by adding to part III a new section to be appropriately
15 designated and to read as follows:

16 "§205- _____ Permissible uses within designated important
17 agricultural lands. (a) Notwithstanding any law to the
18 contrary, lands designated as important agricultural lands
19 pursuant to sections 205-45 and 205-49 shall be restricted to
20 the following permitted uses:

- 1 (1) Cultivation of crops, including crops for bioenergy,
2 flowers, vegetation, foliage, fruits, forage, and
3 timber;
- 4 (2) Game and fish propagation;
- 5 (3) Raising of livestock, including poultry, bees, fish,
6 or other animal or aquatic life that are propagated
7 for economic use;
- 8 (4) Farm dwellings, farm labor, or farm employee housing
9 pursuant to section 205-45.5; provided that "farm
10 dwelling", as used in this paragraph, means a single-
11 family dwelling located on and used in connection with
12 a farm for occupancy by the operator, employees, or
13 laborers of a farming operation as defined in section
14 165-2;
- 15 (5) Roadside stands for the sale of agricultural products
16 grown on the premises;
- 17 (6) Buildings and uses, including mills, storage, and
18 processing facilities, maintenance facilities, vehicle
19 and equipment storage areas, irrigation water storage
20 tanks and dams, and appurtenant small buildings such
21 as booster pumping stations that are directly
22 accessory to the uses in paragraph (1);

- 1 (7) Agricultural parks;
- 2 (8) Wind energy facilities, including the appurtenances
- 3 associated with the production and transmission of
- 4 wind generated energy; provided that the wind energy
- 5 facilities and appurtenances are compatible with
- 6 agriculture uses and cause minimal adverse impact on
- 7 designated important agricultural lands;
- 8 (9) Agricultural-energy facilities, including
- 9 appurtenances necessary for an agricultural-energy
- 10 enterprise; provided that the primary activity of the
- 11 agricultural-energy enterprise is agricultural
- 12 activity. To be considered the primary activity of an
- 13 agricultural-energy enterprise, the total acreage
- 14 devoted to agricultural activity shall be not less
- 15 than ninety per cent of the total acreage of the
- 16 agricultural-energy enterprise. The agricultural-
- 17 energy facility shall be limited to lands owned,
- 18 leased, licensed, or operated by the entity conducting
- 19 the agricultural activity.

20 As used in this paragraph:

21 "Agricultural activity" means any activity

22 described in paragraph (1).

1 "Agricultural-energy enterprise" means an
2 enterprise that integrally incorporates an
3 agricultural activity with an agricultural-energy
4 facility.

5 "Agricultural-energy facility" means a facility
6 that generates, stores, or distributes renewable
7 energy as defined in section 269-91 or renewable fuel
8 including electrical or thermal energy or liquid or
9 gaseous fuels from products of agricultural activities
10 from agricultural lands located in the State.

11 "Appurtenances" means operational infrastructure
12 of the appropriate type and scale for the economic
13 commercial generation, storage, distribution, and
14 other similar handling of energy, including equipment,
15 feedstock, fuels, and other products of agricultural-
16 energy facilities; and

17 (10) Agricultural education programs conducted on a farming
18 operation as defined in section 165-2, for the
19 education and participation of the general public;
20 provided that the agricultural education programs are
21 accessory and secondary to the principal agricultural
22 use of the parcels or lots on which the agricultural

1 education programs are to occur and do not interfere
2 with surrounding farm operations. For the purposes of
3 this section, "agricultural education programs" means
4 activities or events designed to promote knowledge and
5 understanding of agricultural activities and practices
6 conducted on a farming operation as defined in section
7 165-2.

8 (b) Uses not expressly permitted in subsection (a) shall
9 be prohibited, except non-conforming uses pursuant to section
10 205-8, and construction of single-family dwellings on lots of
11 record existing before June 4, 1976. Any other law to the
12 contrary notwithstanding, no subdivision or establishment of a
13 condominium property regime on designated important agricultural
14 lands shall be approved by the State or counties, or instruments
15 of conveyance recorded with the bureau of conveyances, unless
16 the designated important agricultural lands are made subject to
17 the restriction on uses and activities as prescribed in this
18 section and to the condition that the uses and activities shall
19 solely be in pursuit of a commercial agricultural business as
20 defined in subsection (a)."

21 SECTION 3. Section 205-2, Hawaii Revised Statutes, is
22 amended by amending subsection (a) to read as follows:

1 "(a) There shall be four major land use districts in which
2 all lands in the State shall be placed: urban, rural,
3 agricultural, and conservation. The land use commission shall
4 group contiguous land areas suitable for inclusion in one of
5 these four major districts. The commission shall set standards
6 for determining the boundaries of each district, provided that:

7 (1) In the establishment of boundaries of urban districts
8 those lands that are now in urban use and a sufficient
9 reserve area for foreseeable urban growth shall be
10 included;

11 (2) In the establishment of boundaries for rural
12 districts, areas of land composed primarily of small
13 farms mixed with very low density residential lots,
14 which may be shown by a minimum density of not more
15 than one house per one-half acre and a minimum lot
16 size of not less than one-half acre shall be included,
17 except as herein provided;

18 (3) In the establishment of the boundaries of agricultural
19 districts the greatest possible protection shall be
20 given to those lands with a high capacity for
21 intensive cultivation[+] or lands designated as

1 important agricultural lands pursuant to this chapter;

2 and

3 (4) In the establishment of the boundaries of conservation
4 districts, the "forest and water reserve zones"
5 provided in Act 234, section 2, Session Laws of Hawaii
6 1957, are renamed "conservation districts" and,
7 effective as of July 11, 1961, the boundaries of the
8 forest and water reserve zones theretofore established
9 pursuant to Act 234, section 2, Session Laws of Hawaii
10 1957, shall constitute the boundaries of the
11 conservation districts; provided that thereafter the
12 power to determine the boundaries of the conservation
13 districts shall be in the commission.

14 In establishing the boundaries of the districts in each county,
15 the commission shall give consideration to the master plan or
16 general plan of the county."

17 SECTION 4. Section 205-4.5, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "§205-4.5 Permissible uses on land within the agricultural
20 districts ~~[-]~~ not designated as important agricultural lands. (a)
21 Within the agricultural district, excluding designated important
22 agricultural lands that shall be governed by section 205- ,

1 [all] lands with soil classified by the land study bureau's
2 detailed land classification as overall (master) productivity
3 rating class A or B shall be restricted to the following
4 permitted uses:

5 (1) Cultivation of crops, including crops for bioenergy,
6 flowers, vegetables, foliage, fruits, forage, and
7 timber;

8 (2) Game and fish propagation;

9 (3) Raising of livestock, including poultry, bees, fish,
10 or other animal or aquatic life that are propagated
11 for economic or personal use;

12 (4) Farm dwellings, employee housing, farm buildings, or
13 activities or uses related to farming and animal
14 husbandry. "Farm dwelling", as used in this
15 paragraph, means a single-family dwelling located on
16 and used in connection with a farm, including clusters
17 of single-family farm dwellings permitted within
18 agricultural parks developed by the State, or where
19 agricultural activity provides income to the family
20 occupying the dwelling;

21 (5) Public institutions and buildings that are necessary
22 for agricultural practices;

- 1 (6) Public and private open area types of recreational
2 uses, including day camps, picnic grounds, parks, and
3 riding stables, but not including dragstrips,
4 airports, drive-in theaters, golf courses, golf
5 driving ranges, country clubs, and overnight camps;
- 6 (7) Public, private, and quasi-public utility lines and
7 roadways, transformer stations, communications
8 equipment buildings, solid waste transfer stations,
9 major water storage tanks, and appurtenant small
10 buildings such as booster pumping stations, but not
11 including offices or yards for equipment, material,
12 vehicle storage, repair or maintenance, treatment
13 plants, corporation yards, or other similar
14 structures;
- 15 (8) Retention, restoration, rehabilitation, or improvement
16 of buildings or sites of historic or scenic interest;
- 17 (9) Agricultural-based commercial operations as described
18 in section 205-2(d)(15);
- 19 (10) Buildings and uses, including mills, storage, and
20 processing facilities, maintenance facilities,
21 photovoltaic, biogas, and other small-scale renewable
22 energy systems producing energy solely for use in the

1 agricultural activities of the fee or leasehold owner
2 of the property, and vehicle and equipment storage
3 areas that are normally considered directly accessory
4 to the above-mentioned uses and are permitted under
5 section 205-2(d);

6 (11) Agricultural parks;

7 (12) Plantation community subdivisions, which as used in
8 this chapter means an established subdivision or
9 cluster of employee housing, community buildings, and
10 agricultural support buildings on land currently or
11 formerly owned, leased, or operated by a sugar or
12 pineapple plantation; provided that the existing
13 structures may be used or rehabilitated for use, and
14 new employee housing and agricultural support
15 buildings may be allowed on land within the
16 subdivision as follows:

17 (A) The employee housing is occupied by employees or
18 former employees of the plantation who have a
19 property interest in the land;

20 (B) The employee housing units not owned by their
21 occupants shall be rented or leased at affordable
22 rates for agricultural workers; or

1 (C) The agricultural support buildings shall be
2 rented or leased to agricultural business
3 operators or agricultural support services;

4 (13) Agricultural tourism conducted on a working farm, or a
5 farming operation as defined in section 165-2, for the
6 enjoyment, education, or involvement of visitors;
7 provided that the agricultural tourism activity is
8 accessory and secondary to the principal agricultural
9 use and does not interfere with surrounding farm
10 operations; and provided further that this paragraph
11 shall apply only to a county that has adopted
12 ordinances regulating agricultural tourism under
13 section 205-5;

14 (14) Agricultural tourism activities, including overnight
15 accommodations of twenty-one days or less, for any one
16 stay within a county; provided that this paragraph
17 shall apply only to a county that includes at least
18 three islands and has adopted ordinances regulating
19 agricultural tourism activities pursuant to section
20 205-5; provided further that the agricultural tourism
21 activities coexist with a bona fide agricultural
22 activity. For the purposes of this paragraph, "bona

1 fide agricultural activity" means a farming operation
2 as defined in section 165-2;

3 (15) Wind energy facilities, including the appurtenances
4 associated with the production and transmission of
5 wind generated energy; provided that the wind energy
6 facilities and appurtenances are compatible with
7 agriculture uses and cause minimal adverse impact on
8 agricultural land;

9 (16) Biofuel processing facilities, including the
10 appurtenances associated with the production and
11 refining of biofuels that is normally considered
12 directly accessory and secondary to the growing of the
13 energy feedstock; provided that biofuel processing
14 facilities and appurtenances do not adversely impact
15 agricultural land and other agricultural uses in the
16 vicinity.

17 For the purposes of this paragraph:

18 "Appurtenances" means operational infrastructure
19 of the appropriate type and scale for economic
20 commercial storage and distribution, and other similar
21 handling of feedstock, fuels, and other products of
22 biofuel processing facilities.

1 "Biofuel processing facility" means a facility
2 that produces liquid or gaseous fuels from organic
3 sources such as biomass crops, agricultural residues,
4 and oil crops, including palm, canola, soybean, and
5 waste cooking oils; grease; food wastes; and animal
6 residues and wastes that can be used to generate
7 energy;

8 (17) Agricultural-energy facilities, including
9 appurtenances necessary for an agricultural-energy
10 enterprise; provided that the primary activity of the
11 agricultural-energy enterprise is agricultural
12 activity. To be considered the primary activity of an
13 agricultural-energy enterprise, the total acreage
14 devoted to agricultural activity shall be not less
15 than ninety per cent of the total acreage of the
16 agricultural-energy enterprise. The agricultural-
17 energy facility shall be limited to lands owned,
18 leased, licensed, or operated by the entity conducting
19 the agricultural activity.

20 As used in this paragraph:

21 "Agricultural activity" means any activity
22 described in paragraphs (1) to (3) of this subsection.

1 "Agricultural-energy enterprise" means an
2 enterprise that integrally incorporates an
3 agricultural activity with an agricultural-energy
4 facility.

5 "Agricultural-energy facility" means a facility
6 that generates, stores, or distributes renewable
7 energy as defined in section 269-91 or renewable fuel
8 including electrical or thermal energy or liquid or
9 gaseous fuels from products of agricultural activities
10 from agricultural lands located in the State.

11 "Appurtenances" means operational infrastructure
12 of the appropriate type and scale for the economic
13 commercial generation, storage, distribution, and
14 other similar handling of energy, including equipment,
15 feedstock, fuels, and other products of agricultural-
16 energy facilities;

17 (18) Construction and operation of wireless communication
18 antennas; provided that, for the purposes of this
19 paragraph, "wireless communication antenna" means
20 communications equipment that is either freestanding
21 or placed upon or attached to an already existing
22 structure and that transmits and receives

1 electromagnetic radio signals used in the provision of
2 all types of wireless communications services;
3 provided further that nothing in this paragraph shall
4 be construed to permit the construction of any new
5 structure that is not deemed a permitted use under
6 this subsection;

7 (19) Agricultural education programs conducted on a farming
8 operation as defined in section 165-2, for the
9 education and participation of the general public;
10 provided that the agricultural education programs are
11 accessory and secondary to the principal agricultural
12 use of the parcels or lots on which the agricultural
13 education programs are to occur and do not interfere
14 with surrounding farm operations. For the purposes of
15 this section, "agricultural education programs" means
16 activities or events designed to promote knowledge and
17 understanding of agricultural activities and practices
18 conducted on a farming operation as defined in section
19 165-2;

20 (20) Solar energy facilities that do not occupy more than
21 ten per cent of the acreage of the parcel, or twenty
22 acres of land, whichever is lesser; provided that this

1 use shall not be permitted on lands with soil
2 classified by the land study bureau's detailed land
3 classification as overall (master) productivity rating
4 class A; or

5 [†] (21) [†] Geothermal resources exploration and geothermal
6 resources development, as defined under section 182-
7 1."

8 (b) Uses not expressly permitted in subsection (a) shall
9 be prohibited, except the uses permitted as provided in sections
10 205-6 and 205-8, and construction of single-family dwellings on
11 lots existing before June 4, 1976. Any other law to the
12 contrary notwithstanding, no subdivision of land within the
13 agricultural district with soil classified by the land study
14 bureau's detailed land classification as overall (master)
15 productivity rating class A or B shall be approved by a county
16 unless those A and B lands within the subdivision are made
17 subject to the restriction on uses as prescribed in this section
18 and to the condition that the uses shall be primarily in pursuit
19 of an agricultural activity.

20 Any deed, lease, agreement of sale, mortgage, or other
21 instrument of conveyance covering any land within the
22 agricultural subdivision shall expressly contain the restriction

1 on uses and the condition, as prescribed in this section that
2 these restrictions and conditions shall be encumbrances running
3 with the land until such time that the land is reclassified to a
4 land use district other than agricultural district.

5 If the foregoing requirement of encumbrances running with
6 the land jeopardizes the owner or lessee in obtaining mortgage
7 financing from any of the mortgage lending agencies set forth in
8 the following paragraph, and the requirement is the sole reason
9 for failure to obtain mortgage financing, then the requirement
10 of encumbrances shall, insofar as such mortgage financing is
11 jeopardized, be conditionally waived by the appropriate county
12 enforcement officer; provided that the conditional waiver shall
13 become effective only in the event that the property is
14 subjected to foreclosure proceedings by the mortgage lender.

15 The mortgage lending agencies referred to in the preceding
16 paragraph are the Federal Housing Administration, Federal
17 National Mortgage Association, Veterans Administration, Small
18 Business Administration, United States Department of
19 Agriculture, Federal Land Bank of Berkeley, Federal Intermediate
20 Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and any
21 other federal, state, or private mortgage lending agency

1 qualified to do business in Hawaii, and their respective
2 successors and assigns.

3 (c) Within the agricultural district, excluding designated
4 important agricultural lands that shall be governed by section
5 205- , all lands with soil classified by the land study
6 bureau's detailed land classification as overall (master)
7 productivity rating class C, D, E, or U shall be restricted to
8 the uses permitted for agricultural districts as set forth in
9 section 205-5(b).

10 (d) Notwithstanding any other provision of this chapter to
11 the contrary, golf courses and golf driving ranges approved by a
12 county before July 1, 2005, for development within the
13 agricultural district shall be permitted uses within the
14 agricultural district.

15 (e) Notwithstanding any other provision of this chapter to
16 the contrary, plantation community subdivisions as defined in
17 this section shall be permitted uses within the agricultural
18 district, and section 205-8 shall not apply.

19 [†] (f) [†] Notwithstanding any other law to the contrary,
20 agricultural lands and designated important agricultural lands
21 may be subdivided and leased [~~for the agricultural uses or~~
22 ~~activities permitted in subsection (a)~~]; provided that:

S.B. NO. 996

- 1 (1) The principal use of the leased land is agriculture;
- 2 (2) No permanent or temporary dwellings or farm dwellings,
3 including trailers and campers, are constructed on the
4 leased area. This restriction shall not prohibit the
5 construction of storage sheds, equipment sheds, or
6 other structures appropriate to the agricultural
7 activity carried on within the lot; and
- 8 (3) The lease term for a subdivided lot shall be for at
9 least as long as the greater of:
- 10 (A) The minimum real property tax agricultural
11 dedication period of the county in which the
12 subdivided lot is located; or
- 13 (B) Five years.

14 Lots created and leased pursuant to this section shall be legal
15 lots of record for mortgage lending purposes and shall be exempt
16 from county subdivision standards."

17 SECTION 5. Section 205-4.6, Hawaii Revised Statutes, is
18 amended to read as follows:

19 **"§205-4.6 Private restrictions on agricultural uses and**
20 **activities; not allowed.** Agricultural uses and activities as
21 defined in sections 205-2(d) [~~and~~], 205-4.5(a), and 205- on
22 lands classified as agricultural or designated as important

1 agricultural lands shall not be restricted by any private
2 agreement contained in any deed, agreement of sale, or other
3 conveyance of land recorded in the bureau of conveyances after
4 July 8, 2003, that subject such agricultural lands to any
5 servitude, including but not limited to covenants, easements, or
6 equitable and reciprocal negative servitudes. Any such private
7 restriction limiting or prohibiting agricultural use or activity
8 shall be voidable, subject to special restrictions enacted by
9 the county ordinance pursuant to section 46-4; except that
10 restrictions taken to protect environmental or cultural
11 resources, agricultural leases, utility easements, and access
12 easements shall not be subject to this section.

13 For purposes of this section, "agricultural leases" means
14 leases where the leased land is primarily utilized for purposes
15 set forth in section 205-4.5(a) [-] or 205- ."

16 SECTION 6. Section 205-5, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "§205-5 Zoning. (a) Except as herein provided, the
19 powers granted to counties under section 46-4 shall govern the
20 zoning within the districts, other than in conservation
21 districts. Conservation districts shall be governed by the

1 department of land and natural resources pursuant to chapter
2 183C.

3 (b) Within agricultural districts, excluding designated
4 important agricultural lands, uses compatible to the activities
5 described in section 205-2 as determined by the commission shall
6 be permitted; provided that accessory agricultural uses and
7 services described in sections 205-2 and 205-4.5 may be further
8 defined by each county by zoning ordinance. Each county shall
9 adopt ordinances setting forth procedures and requirements,
10 including provisions for enforcement, penalties, and
11 administrative oversight, for the review and permitting of
12 agricultural tourism uses and activities as an accessory use on
13 a working farm, or farming operation as defined in section
14 165-2. Ordinances shall include but not be limited to:

- 15 (1) Requirements for access to a farm, including road
16 width, road surface, and parking;
- 17 (2) Requirements and restrictions for accessory facilities
18 connected with the farming operation, including gift
19 shops and restaurants;
- 20 (3) Activities that may be offered by the farming
21 operation for visitors;
- 22 (4) Days and hours of operation; and

1 (5) Automatic termination of the accessory use upon the
2 cessation of the farming operation.

3 Each county may require an environmental assessment under
4 chapter 343 as a condition to any agricultural tourism use and
5 activity. Other uses may be allowed by special permits issued
6 pursuant to this chapter. The minimum lot size in agricultural
7 districts shall be determined by each county by zoning
8 ordinance, subdivision ordinance, or other lawful means;
9 provided that the minimum lot size for any agricultural use
10 shall not be less than one acre, except as provided herein. If
11 the county finds that unreasonable economic hardship to the
12 owner or lessee of land cannot otherwise be prevented or where
13 land utilization is improved, the county may allow lot sizes of
14 less than the minimum lot size as specified by law for lots
15 created by a consolidation of existing lots within an
16 agricultural district and the resubdivision thereof; provided
17 that the consolidation and resubdivision do not result in an
18 increase in the number of lots over the number existing prior to
19 consolidation; and provided further that in no event shall a lot
20 which is equal to or exceeds the minimum lot size of one acre be
21 less than that minimum after the consolidation and resubdivision
22 action. The county may also allow lot sizes of less than the

1 minimum lot size as specified by law for lots created or used
2 for plantation community subdivisions as defined in section 205-
3 4.5(a)(12), for public, private, and quasi-public utility
4 purposes, and for lots resulting from the subdivision of
5 abandoned roadways and railroad easements.

6 (c) Unless authorized by special permit issued pursuant to
7 this chapter, only the following uses shall be permitted within
8 rural districts:

- 9 (1) Low density residential uses;
- 10 (2) Agricultural uses;
- 11 (3) Golf courses, golf driving ranges, and golf-related
12 facilities;
- 13 (4) Public, quasi-public, and public utility facilities;
14 and
- 15 (5) Geothermal resources exploration and geothermal
16 resources development, as defined under section 182-1.

17 In addition, the minimum lot size for any low density
18 residential use shall be one-half acre and there shall be but
19 one dwelling house per one-half acre, except as provided for in
20 section 205-2.

21 (d) Uses and activities on designated important
22 agricultural lands shall be restricted to those permitted in

1 section 205- . The minimum lot size on designated important
2 agricultural lands shall not be less than ten acres and no more
3 than one farm dwelling shall be permitted per lot of record."

4 SECTION 7. Section 205-6, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) Subject to this section, the county planning
7 commission may permit certain unusual and reasonable uses within
8 agricultural and rural districts other than those for which the
9 district is classified[-]; provided that special permits shall
10 be prohibited on lands designated as important agricultural
11 lands. Any person who desires to use the person's land within
12 an agricultural or rural district other than for an agricultural
13 or rural use, as the case may be, may petition the planning
14 commission of the county within which the person's land is
15 located for permission to use the person's land in the manner
16 desired. Each county may establish the appropriate fee for
17 processing the special permit petition. Copies of the special
18 permit petition shall be forwarded to the land use commission,
19 the office of planning, and the department of agriculture for
20 their review and comment."

21 SECTION 8. Section 205-8, Hawaii Revised Statutes, is
22 amended to read as follows:

1 "§205-8 **Nonconforming uses.** (a) The lawful use of land
2 or buildings existing on the date of establishment of any
3 interim agricultural district and rural district in final form
4 may be continued although the use, including lot size, does not
5 conform to this chapter; provided that no nonconforming building
6 shall be replaced, reconstructed, or enlarged or changed to
7 another nonconforming use and no nonconforming use of land shall
8 be expanded or changed to another nonconforming use. In
9 addition, if any nonconforming use of land or building is
10 discontinued or held in abeyance for a period of one year, the
11 further continuation of such use shall be prohibited.

12 (b) The lawful use of land or buildings existing on the
13 effective date of this Act on land designated as important
14 agricultural lands, which do not conform to the uses in section
15 205- may be continued; provided that no nonconforming use or
16 building shall be replaced, reconstructed, or enlarged or
17 changed to another nonconforming use and no nonconforming use of
18 land shall be expanded or changed to another nonconforming use.
19 Any use of land or buildings without a lawful permit shall be
20 terminated within two years of designation. Lots of record on
21 the effective date of this Act that do not conform to the

S.B. NO. 996

1 minimum lot size for lands designated as important agricultural
2 lands may be continued."

3 SECTION 9. Section 205-12, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§205-12 **Enforcement.** The appropriate officer or agency
6 charged with the administration of county zoning laws shall
7 enforce within each county the use classification districts
8 adopted by the land use commission and the [~~restriction~~]
9 restrictions on use and the [~~condition~~] conditions relating to
10 agricultural districts under section 205-4.5 and designated
11 important agricultural lands under section 205- and shall
12 report to the commission all violations."

13 SECTION 10. Section 205-13, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "§205-13 **Penalty for violation.** Any person who violates
16 any provision under section 205-4.5[7] or 205-, or any
17 [~~regulation established~~] rule adopted relating thereto, shall be
18 fined not more than \$5,000, and any person who violates any
19 other provision of this chapter, or any [~~regulation established~~]
20 rule adopted relating thereto, shall be fined not more than
21 \$1,000.

S.B. NO. 996

Report Title:

Important Agricultural Lands

Description:

Identifies permissible and accessory uses and activities on important agricultural lands.

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

JUSTIFICATION SHEET

DEPARTMENT: Agriculture

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

PURPOSE: Identify permissible and accessory uses and activities on designated important agricultural lands.

MEANS: Add a new section to chapter 205, Hawaii Revised Statutes, and amends chapter 205, sections -2, -4.5, -4.6, -5, -6, -8, -12, -13, Hawaii Revised Statutes.

JUSTIFICATION: The important agricultural lands law (Part III, Chapter 205) established methodologies, standards and criteria to identify, designate, and reclassify important agricultural lands (IAL), and required the provision of incentives to encourage the establishment of viable agricultural uses of IAL. To date, the land use commission has designated 89,859 acres of agricultural lands as IAL. The IAL incentives act (Act 233, Session Laws of Hawaii 2008) provides seven incentives that represent a significant public investment in support of agricultural production on IAL.

Sections 205-42 (Important agricultural lands; definitions and objectives) and 205-43 (Important agricultural lands; policies) specifies that the use of IAL is for agricultural uses, purposes, and activities and direct non-agricultural uses and activities from IAL to other areas.

However, neither the IAL Act (Act 183, SLH 2005) or part III of chapter 205 provide guidance as to whether IAL is subject to all of the permissible uses and activities found in part I of chapter 205 that apply to non-IAL agricultural land. This measure intends

to identify permissible and accessory uses and activities on IAL that are in consonance with the definitions, objectives and policies governing IAL.

The following summarizes some of the permissible uses and activities on non-IAL agricultural district lands as found in part I of chapter 205: open air recreational facilities on Land Study Bureau C, D, and E rated lands, agricultural-based commercial operations on all agricultural lands (Act 113, Session Laws of Hawaii 2012), solar energy facilities not related to agricultural activities on all except "A" rated lands, day camps, riding stables, and so forth.

Part I also provides for accessory uses such as farm dwellings and agricultural tourism with overnight accommodations (Act 329, Session Laws of Hawaii 2012); however, what constitutes bona fide agricultural activity is not defined. Further, agricultural subdivision (which has been particularly problematic on agricultural lands throughout the state), minimum lot sizes, and special use permits for a wide variety of "reasonable and unusual" uses and activities are also possible on non-IAL agricultural land.

These uses and activities may increase the value of important agricultural lands and reduce their affordability to farmers seeking to undertake agricultural production. This outcome would not be in consonance with section 205-43, Hawaii Revised Statutes, that requires state and county agricultural policies, tax policies, land use plans, ordinances, and rules to promote the long-term viability of agricultural use of important agricultural lands.

Impact on the public: This measure should raise the confidence of the general public that agricultural production on IAL is the primary use of the land and the production thereon increase as an important facet of Hawaii's economy. Further, continued movement towards food security will be assured with a stable agricultural land resource for farming businesses to locate.

Impact on the department and other agencies: AGR and Land Use Commission will need to monitor the effect of this measure on the uses and activities on designated IAL.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: AGR 192.

OTHER AFFECTED
AGENCIES: The counties will need to enact ordinances to carry out the provisions of this measure.

EFFECTIVE DATE: Upon approval.