

# TAX FOUNDATION OF HAWAII

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**LATE**

SUBJECT: INCOME, Extend Important Agricultural Land Tax Credit

BILL NUMBER: HB 1584, SD-1

INTRODUCED BY: Senate Committees on Water and Land and Agriculture and Environment

EXECUTIVE SUMMARY: Section 4 of the bill extends the important agricultural land tax credit by ten years. The bill adds contradictory provisions to the credit, and the conflict should be resolved. Also, given the sparse utilization of the credit to date, the need for the extension is questionable.

SYNOPSIS: Amends HRS section 235-110.93 to provide that the cumulative amount of the credit for all years claimed shall be \$1 million per taxpayer. While the credit is presently a three-year credit, the measure provides that 10% of qualified agricultural costs incurred, up to \$125,000, be allowed in the third year and each year thereafter.

Provides that for taxable years beginning after December 31, 2017, the taxpayer may only claim the credit in the taxable year in which the taxpayer incurred the qualified agricultural costs.

Provides that the department of agriculture shall cease certifying credits after the fourteenth taxable year following the taxable year during which the credits are first claimed, namely 2027. Without the amendment, the credit would become ineffective after 2017.

EFFECTIVE DATE: July 1, 2050.

STAFF COMMENTS: The legislature by Act 233, 2008, enacted the important agricultural land qualified agricultural cost tax credit.

In the department of agriculture's most recent report on the credit, representing activity for the 2015 tax year, the department reported that it certified \$375,000 in credits for two applicants. It reported that none of the counties have submitted their approved plans and maps identifying potential important agricultural lands (IAL) to the Land Use Commission for IAL designation as required under Section 205-47, HRS. As of December 2016, seven private land owners have applied for and received designation of their lands as IAL from the Land Use Commission. The total area designated as IAL as of December 2016 was 131,555 acres. The department in its report recommended an extension of the sunset date of the credit, which otherwise would expire at the end of 2017.

Given that the amount of credits certified was negligible and the applicant base was extremely small, one must ask whether the objectives of the original legislation are being met, and whether there is any prospect of return on our investment of public dollars. The legislature may find that it is pointless to keep watering the basalt in the hopes that something will sprout from it.

In any event, the credit language now contains contradictory provisions. At the end of HRS section 235-110.93(a), existing language provides that the taxpayer may claim the credit in consecutive or inconsecutive taxable years until exhausted, in other words, that carryover of the credit is allowed. This conflicts with new language providing that the taxpayer may only claim the credit in the taxable year in which the taxpayer incurred the qualified agricultural costs.

Digested 3/30/2017



SENATE COMMITTEE ON WAYS AND MEANS

Thursday, March 30, 2017 1:40PM Room 211

In SUPPORT **HB 1584 HD 2** Relating to Important Agricultural Lands

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Aloha Chairwoman Tokuda and members of the Ways & Means Committee,

On behalf of our 20,000 members and supporters throughout the State, the Sierra Club of Hawai‘i strongly supports the intent of HB 1584 HD2, which will require the counties to make recommendations for important agricultural lands (IAL) by June 30, 2019 and provides a mechanism for the Land Use Commission to identify and develop maps of IAL in the event that a county does not meet the proposed June 30, 2019 deadline. The bill will also amend the important agricultural land qualified agricultural cost tax credit by extending it by 10 years and increasing the tax credit amount.

The Sierra Club strongly supports this bill because it improves protections for agricultural lands by specifically identifying lands set aside for agricultural production. Protecting these lands from future development is one important step towards advancing the state’s goals to double local food production.

HB 1584 HD2 is consistent with the purpose of HRS §§ 205-41 - 52 by assisting the State in carrying out its constitutional duty, as expressed in Article XI, Section 3 of the Hawai‘i State Constitution, to “conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands.” The bill aims to incentivize efforts by each county in identifying and mapping IAL by providing grants-in-aid to county’s that submit their respective recommendations and maps of IAL by the proposed deadline.

In furthering the the State’s Constitutional duties in regards to agricultural lands and agricultural sustainability, HB 1584 HD2 will also have a tremendous effect on the economy and help protect our environment. In 2008, it was estimated that replacing even 10% of the food we import with locally grown food could result in up to \$6 million in state tax revenues and create more than 2,300 jobs.<sup>1</sup> Further, increasing the amount of local agriculture production will lower the risk of invasive species introductions and greatly reduce our carbon footprint.

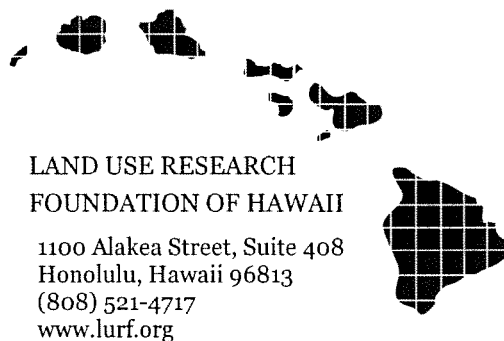
Thank you very much for this opportunity to provide testimony on this important issue.

Mahalo,  
Marti Townsend  
Director

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<sup>1</sup>PingSun Leung & Matthew Loke, College of Tropical Agriculture and Human Resources, University of Hawaii at Manoa, *Economic Impacts of Increasing Hawai‘i’s Food Self-Sufficiency*, p.6 (Dec. 2008) available at: <http://hdoa.hawaii.gov/add/files/2012/12/FoodSSReport.pdf>

**LATE**



LAND USE RESEARCH  
FOUNDATION OF HAWAII

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www.lurf.org

March 29, 2017

Senator Jill N. Tokuda, Chair  
Senator Donovan M. Dela Cruz, Vice Chair  
Senate Committee on Ways and Means

**Support and Proposed Amendment of HB 1584, HD2, SD1 Relating to Agriculture (Requires the counties to make recommendations for important agricultural lands by 6/30/2019 or forfeit that right to the Land Use Commission. Extends the period to claim important agricultural land qualified agricultural cost tax credits by 10 years and limits cumulative tax credit to \$1,000,000 per tax payer. Appropriates unspecified funds for identification and mapping of important agricultural lands.)**

**WAM Hrg: Thursday, March 30, 2017, at 1:40 p.m., in Conf. Rm. 211**

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. LURF's mission is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources, and public health and safety.

LURF **supports the intent** of HB 1584, HD2, SD1. However, LURF **objects to a clear conflict of interest in this measure**, which requires the Land Use Commission (LUC) to be its own investigator, petitioner, judge and jury for the involuntary designation of private lands as Important Agricultural Lands (IAL), if a county fails to submit its IAL recommendations and maps by the deadline of June 30, 2019. LURF **respectfully recommends amendments to designate the Office of Planning (instead of the LUC) as the agency responsible for submitting IAL recommendations and maps**, if any county fails to meet the deadline.

**Background.** As shown by the attached letter, dated April 15, 2008, the Hawaii Farm Bureau Federation (Hawaii Farm Bureau) and LURF have been the major proponents of IAL, and have contributed to the drafting of the IAL laws, Acts 183 (SLH 2005) and Act 233 (SLH 2008). LURF members include private property owners, farmers and ranchers who own, maintain, and engage in a wide array of diverse agricultural enterprises, and who consider such activities and ventures critical to the conduct of their operations and to help sustain their businesses. Several of these LURF members have already designated over fifty percent (50%) of their private lands as IAL.

**HB 1584, HD2, SD1.** The purpose of this measure is to implement Act 183 (SLH 2005) in accordance with the State's constitutional duty to protect IAL, by providing a monetary incentive to the counties for the identification and mapping of IAL; and to amend the IAL qualified agricultural cost credit. This bill also requires the counties to submit IAL recommendations and maps by June 30, 2019, or forfeit those rights to the LUC; extends the period to claim IAL qualified agricultural cost tax credits by ten (10) years; limits cumulative tax credit to \$1,000,000 per tax payer; and appropriates unspecified funds for identification and mapping of important agricultural lands. This measure also has a *defective* effective date of July 1, 2015.

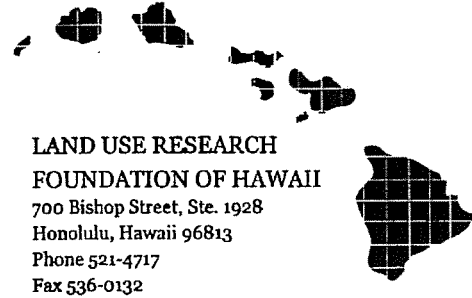
**LURF's Position.** LURF **supports the intent** of this measure to (1) provide a monetary incentive to the counties to complete their IAL maps and proposed designations; (2) establish deadlines for the counties to identify and designate IAL; and (3) facilitate the ability for agricultural landowners, farmers and operators to utilize IAL incentives to support the viability of agriculture in Hawaii. LURF believes that these provisions are consistent with the underlying intent and objectives of the IAL laws (Hawaii Revised Statutes [HRS], Sections 205-41 to 52), which were enacted to fulfill the mandate in Article XI, Section 3 of the Hawaii State Constitution, "to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands." As noted in HRS Section 205-41, the intent of Act 183 (2005) was to develop agricultural incentive programs to promote agricultural viability, sustained growth of the agricultural industry, and the long-term use and protection of important agricultural lands for agricultural use.

**LURF's Proposed Amendments.** Notwithstanding the above, LURF **objects to the portions of this bill which require conflict of interest roles for LUC** (acting as its own investigator, petitioner, judge and jury by requiring the LUC to approve its own recommendations and maps for the involuntary IAL designation of private lands) **and exempting the LUC from compliance with the process required by HRS §205-47.** Landowners whose lands are involuntarily designated as IAL, will likely be successful with lawsuits challenging LUC's conflicts of interests and failure to comply with the requirements of HRS §205-47 - especially given the fact that the Office of Planning is available, more qualified and better staffed to prepare the IAL recommendations and maps.

Attached are LURF's proposed amendments, which avoid LUC conflicts of interest by providing that the Office of Planning (instead of the LUC) will prepare and submit the IAL recommendations and maps for any counties which fail to do so by the statutory deadline; and require the Office of Planning to comply with the process in HRS §205-47. LUC will still approve all IAL designations and maps.

**Conclusion.** LURF respectfully urges this Committee to **favorably consider this measure** and to **adopt LURF's proposed amendments.**

Thank you for the opportunity to provide comments relating to this measure.



***"Encourage the viability of Hawaii's farmers and ranchers"***

April 15, 2008

Senate President Colleen Hanabusa  
The Honorable Clayton Hee  
The Honorable Jill N. Tokuda  
The Honorable Russell S. Kokubun  
The Honorable Carol Fukunaga  
The Honorable Rosalyn H. Baker  
The Honorable Paul Whalen  
The Honorable Sam Slom  
The State Senate  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Speaker of the House Calvin Say  
The Honorable Representative Ken Ito  
The Honorable Representative Clift Tsuji  
The Honorable Jon Riki Karamatsu  
The Honorable Tom Brower  
The Honorable Faye P. Hanohano  
The Honorable Colleen Rose Meyer  
The State House of Representatives  
Hawaii State Capitol  
Honolulu, Hawaii 96813

**Re: Conferences on SB 2646 HD2, relating to Important Agricultural Lands, and SB 546 SD2 HD1, relating to Land Use.**

Dear Senate President Hanabusa, Speaker Say, Conference Committee Chairs and Conference Committee Members:

On behalf of the Hawaii Farm Bureau Federation (HFBF) and the Land Use Research Foundation of Hawaii (LURF), we respectfully request your strong support for the passage of a comprehensive and meaningful incentives package for farmers, agribusiness operators and landowners who make a commitment—and sacrifice—to designate their agricultural lands as Important Agricultural Lands (IAL). These bills are based on a consensus of HFBF, LURF and other agricultural and government stakeholders, and are consistent with the goals and objectives of creating a viable agricultural industry and protecting IAL, as stated in Act 183 and the Hawaii Constitution. Act 183 and the proposed incentive legislation are based on the following principles:

- IAL is not an open space or land use initiative. It is an agricultural viability initiative;
- While land is the basic resource for agriculture, it alone will not save agriculture. The long-term viability of agriculture depends on a number of factors that affect the profitability of agriculture;
- The promotion of productive, viable agriculture and IAL are Constitutional and statutory mandates; keys to increasing Hawaii's food and energy self-sufficiency; and a major component in combating invasive species and thus should be of equal or a higher priority and importance to the people of Hawaii as the state tax benefits and funding support for the technology industry and funding of the preservation of open space on the North Shore and Central Oahu;

- State and County incentives and support are key to achieving a viable and sustainable agricultural industry in this state and thus ensuring the long-term use and protection of IAL for agricultural use;
- Opportunities should be made for farmers and landowners with the commitment and resources to advance and promote the long-term viability of agricultural use of lands;
- The more favorable the farmer incentives are, the higher the odds that there will be more farmers, and more successful farmers to maintain and grow viable agricultural operations on good agricultural lands; and
- The more favorable the landowner incentives are, the higher the likelihood that there will be more lands voluntarily identified by landowners—and maintained—for IAL designation.

**Background.** The genesis for IAL was a result of the 1978 Constitutional Convention, in which voters adopted Article XI, Section 3, to the Hawaii State Constitution “to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands.” This Article, which was passed when sugar cane and pineapple were major industries in Hawaii, set out the framework for state policies to promote agriculture and the conservation of productive agricultural lands.

**Act 183.** In 2005, approximately 27 years later, Act 183 was passed by the Legislature—after many, many years of unsuccessful efforts—to finally implement Article XI, Section 3. Act 183 set forth the policies and procedures to identify and designate IALs. In recognition of the realities of today, Act 183 is premised on protecting the viability of agricultural businesses rather than on protecting land uses. Act 183 recognizes that the only real, long-term way to ensure lands remain in agricultural use is to support viable agricultural operations on these lands. Accordingly, the Act provides for the development of incentives to assist agricultural viability on good agricultural lands in Hawaii— incentives that will help farmers farm profitably and help landowners viably make their lands available for farming activities.

**IAL Incentives Consensus Legislation - SB 2646, HD2 relating to Important Agricultural Lands, and SB 546, SD2 HD1 relating to Land Use.** Since the enactment of Act 183, HFBF and LURF have been working together and with the Department of Agriculture, Office of Planning and Department of Taxation to develop consensus on a comprehensive IAL incentives package that promotes the retention of IAL for viable agricultural use, by offering benefits to both farmers and landowners. The elements of this comprehensive package include a wide range of incentives which address the critical areas for long-term agricultural viability in Hawaii and were developed over time based on many discussions among the agricultural stakeholders. These incentives include, but are not limited to, various tax credits, farm worker housing, loan guarantees, recognition of water needs, expedited processing of agriculture-related permits, and a streamlined land use approval process which is consistent with the current County land use process.

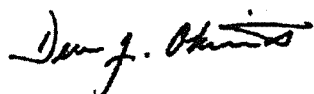
We believe that a sustainable agricultural industry needs to be nurtured and protected in our state and that the IAL incentive package is the perfect mechanism to both protect agriculture and agricultural lands. “A complete win-win.” By passing these bills, this legislature has the opportunity to take the visible lead in promoting IAL and agricultural

viability and sustainability. As such, we urge your Conference Committee to consider retaining these bills as a basis for the comprehensive IAL incentives package you will pass this session.

**Conclusion.** A comprehensive IAL incentive package is urgently needed, and if not passed this session, we may see a continuation of the recent closures of farms, dairies and poultry operations on a state-wide basis. The State's policy to promote and mandate diversified agriculture is a complex and challenging task in light of the ever-changing economic, environmental, and political landscape. Economic stimuli (incentives) have long been the method to promote, enhance and encourage industry to make commitments. For IAL to succeed, commitments from both agribusinesses/farmers and landowners will be key, and therefore a comprehensive incentive program is needed. Thus, we respectfully urge your strong support to include the above provisions in any final IAL package that the Legislature moves this session. In closing, we would also like to emphasize that the above-referenced bills are a result of input and consensus between the HFBF, LURF and other agricultural stakeholders, and that the purpose of Act 183 and this IAL legislation is to promote agricultural viability on a sustained basis, so as to achieve the long-term protection of important agricultural lands for agricultural use. While we all agree that open space has a place in land planning for our communities, that is not the purpose of these bills. We ask that you maintain the focus on the viability and sustained growth of agriculture as you consider the proposed incentives for both farmers and landowners.

We humbly thank you and look forward to your favorable and timely consideration.

Sincerely,



Dean Okimoto  
President  
Hawaii Farm Bureau Federation



David Z. Arakawa  
Executive Director  
Land Use Research Foundation



**[§205-48] Receipt of maps of eligible important agricultural lands; land use commission.** (a) ~~[The land use commission shall receive the]~~ Each county shall submit its recommendations and maps developed pursuant to section 205-47 delineating those lands eligible to be designated important agricultural lands ~~[no sooner than the effective date of the legislative enactment of protection and incentive measures for important agricultural lands and agricultural viability, as provided in section 9 of Act 183, Session Laws of Hawaii 2005.]~~

(b) The department of agriculture and the office of planning shall review the county report and recommendations and provide comments to the land use commission within forty-five days of the receipt of the report and maps by the land use commission. The land use commission may also consult with the department of agriculture and the office of planning as needed.

(c) If a county fails to submit its recommendations and maps by June 30, 2019, the office of planning shall use the standards and criteria in section 205-44 to prepare and submit recommendations and maps developed pursuant to the process in section 205-47 delineating those lands eligible to be designated important agricultural lands.

(d) The department of agriculture and the applicable county planning department shall review the office of planning report and recommendations and provide comments to the land use commission within forty-five days of the receipt of the report and maps by the land use commission. The land use commission may also consult with the department of agriculture and the applicable county planning department as needed.

~~[(e)]~~ (e) ~~[State]~~ Government agency review shall be based on an evaluation of the degree that the:

- (1) [~~County~~] Recommendations result in an identified resource base that meets the definition of important agricultural land and the objectives and policies for important agricultural lands in sections 205-42 and 205-43; and
- (2) [County] The government entity submitting the recommendation and map has met the minimum standards and criteria for the identification and mapping process in sections 205-44 and 205-47. [L 2005, c 183, pt of §2]

**Note**

Section 9 of Act 183, Session Laws of Hawaii 2005, is printed after §205-41.

**[§205-49] Designation of important agricultural lands; adoption of important agricultural lands maps.**

(a) After receipt of the recommendations and maps of eligible important agricultural lands from the counties and the recommendations of the department of agriculture and the office of planning, the commission shall then proceed to identify and designate important agricultural lands, subject to section 205-45. If a county fails to submit its recommendations and maps by June 30, 2019, after receipt of the recommendations and maps of eligible important agricultural lands from the office of planning and the recommendations of the department of agriculture and the applicable county, the commission shall then proceed to identify and designate important agricultural lands, subject to section 205-45. The decision shall consider the ~~[county]~~ maps of eligible important agricultural lands; declaratory orders issued by the commission designating important agricultural lands during the three year period following the enactment of legislation establishing incentives and protections contemplated under section 205-46, as provided in section 9 of Act 183, Session Laws of Hawaii 2005; landowner position statements and representations; and any other relevant information.

In designating important agricultural lands in the State, pursuant to the recommendations of individual counties, or pursuant to the process for identifying and mapping important agricultural lands if a county fails to submit its recommendations and maps by June 30, 2019, the commission shall consider the extent to which:

- (1) The proposed lands meet the standards and criteria under section 205-44;
- (2) The proposed designation is necessary to meet the objectives and policies for important agricultural lands in sections 205-42 and 205-43; and
- (3) The commission has designated lands as important agricultural lands, pursuant to

section 205-45; provided that if the majority of landowners' landholdings is already designated as important agricultural lands, excluding lands held in the conservation district, pursuant to section 205-45 or any other provision of this part, the commission shall not designate any additional lands of that landowner as important agricultural lands except by a petition pursuant to section 205-45.

Any decision regarding the designation of lands as important agricultural lands and the adoption of maps of those lands pursuant to this section shall be based upon written findings of fact and conclusions of law, presented in at least one public hearing conducted in the county where the land is located in accordance with chapter 91, that the subject lands meet the standards and criteria set forth in section 205-44 and shall be approved by two-thirds of the membership to which the commission is entitled.

(b) Copies of the maps of important agricultural lands adopted under this section shall be transmitted to each county planning department and county council, the department of agriculture, the agribusiness development corporation, the office of planning, and other state agencies involved in land use matters. The maps of important agricultural lands shall guide all decision-making on the proposed reclassification or rezoning of important agricultural lands, state agricultural development programs, and other state and county land use planning and decision-making.

(c) The land use commission shall have the sole authority to interpret the adopted map boundaries delineating the important agricultural lands.

(d) The land use commission may designate lands as important agricultural lands and adopt maps for a designation pursuant to:

- (1) A farmer or landowner petition for declaratory ruling under section 205-45 at any time; or

- (2) The county process for identifying and recommending lands for important agricultural lands under section 205-47 [~~no sooner than three years, after the enactment of legislation establishing incentives and protections contemplated under section 205-46, as provided in section 9 of Act 183, Session Laws of Hawaii 2005.~~] or the commission's process for identifying and mapping important agricultural lands if a county fails to submit its recommendations and maps by June 30, 2019. [L 2005, c 183, pt of §2]

**Note**

Section 9 of Act 183, Session Laws of Hawaii 2005, is printed after §205-41.



**LATE**

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March 30, 2017

HEARING BEFORE THE  
SENATE COMMITTEE ON WAYS AND MEANS

**TESTIMONY ON HB 1584, HD2, SD1**  
RELATING TO IMPORTANT AGRICULTURAL LANDS

Room 211  
1:40 PM

Aloha Chair Tokuda, Vice Chair Dela Cruz, and Members of the Committees:

I am Randy Cabral, President of the Hawaii Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,900 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interest of our diverse agricultural community.

**HFB supports HB 1584, HD2, SD1**, which requires the counties to make recommendations for important agricultural lands by 6/30/2019 and requires the Land Use Commission to identify and designate important agricultural lands by 6/30/2020 for any county that fails to meet the 6/30/2019 deadline.

Since the enactment of the Constitutional Mandate in 1978 to preserve and protect Important Agricultural Lands (IAL), HFBF came before the Legislature every year with proposals of how this measure could be implemented. It was only in 2005 when the standards and criteria to designate IAL was finally passed and in 2008 when the incentives were passed. It was a long road.

We were pleased when the first lands were designated by Alexander and Baldwin in 2009 totaling nearly 4000 acres in Kauai. Today, we have over 100,000 acres that were voluntarily designated by landowners across the State.

Nearly nine years have passed since the incentives were passed in 2008 and we remain in the phase in which counties will submit maps to the LUC identifying lands to be designated as IAL. Act 183 (SLH 2005) states that the counties will work on identification and mapping of important agricultural lands via funding from the State disbursed through the Land Use Commission. Most Counties have yet to receive funding and in turn the county IAL identification and mapping has not progressed as anticipated. HFB supports the Legislators support in implementing Act 183 by providing the funds necessary to identify and map IAL in each county.

Thank you for this opportunity to testify on this measure.