

S.B. NO. 3052

JAN 26 2022

A BILL FOR AN ACT

RELATING TO IMPORTANT AGRICULTURAL LANDS.

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

1 SECTION 1. In 2008, the legislature passed a package of
2 incentives for lands designated as important agricultural lands
3 pursuant to section 3 of article XI of the Hawaii state
4 constitution. Enacted as Act 233, Session Laws of Hawaii 2008,
5 the incentives were intended to promote agricultural viability,
6 sustained growth of the agricultural industry, and the long-term
7 use and protection of lands designated as important agricultural
8 lands.

9 Act 233, Session Laws of Hawaii 2008, included a provision
10 for landowners to develop, construct, and maintain farm
11 dwellings and employee housing for farmers, employees, and their
12 immediate family members on lands designated as important
13 agricultural lands, provided that occupants of these dwellings
14 are actively engaged in farming. Although intended as an
15 incentive for the designation and agricultural use of important
16 agricultural lands, it is unclear whether this provision,
17 codified as section 205-45.5, Hawaii Revised Statutes, imposes

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1 more restrictive standards for farm dwellings and employee
2 housing on important agricultural lands than the existing
3 standards for farm dwellings and employee housing on lands in
4 the agricultural land use district in chapter 205, Hawaii
5 Revised Statutes.

6 The lack of affordable housing for farmers and farm labor
7 is an impediment to increasing food and non-food agricultural
8 production in Hawaii. The legislature finds there is still a
9 need for a means to develop housing for farmers and farm
10 employees on lands designated as important agricultural lands
11 that both reduces the cost and time required to supply such
12 housing and ensures that the housing is used in conjunction with
13 and located on an active farm and occupied by bona fide farmers
14 and farm employees. This measure is also intended to ensure
15 reduced infrastructure requirements for important agricultural
16 lands pursuant to section 205-51, Hawaii Revised Statutes, to
17 facilitate the provision of certain farmer and farm employee
18 housing to meet agricultural industry needs.

19 The purposes of this Act are to:

20 (1) Establish a new section for applications to the
21 counties that would facilitate development of housing
22 for farmers and farm employees, provided that

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1 occupancy is restricted to active farmers and farm
2 employees and their immediate family members, and
3 clustering of the units is required to minimize the
4 land taken out of agricultural production. The
5 benefits and incentives of the county application
6 process would include the following:

7 (A) Relief from county subdivision and certain
8 infrastructure requirements; and

9 (B) Relief from applicable minimum lot sizes and
10 dwelling unit limitations of the underlying
11 county zoning;

12 (2) Amend section 205-46.5, Hawaii Revised Statutes, to
13 include farm dwelling and farm employee housing
14 clusters under a county priority permit processing
15 procedure for facilities on lands designated as
16 important agricultural lands; and

17 (3) Repeal section 205-45.5, Hawaii Revised Statutes, to
18 eliminate what is perceived to be a restriction on
19 farm dwellings on important agricultural lands that is
20 stricter than what is allowed under the definition of
21 farm dwelling in section 205-4.5(a)(4).

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

"§205-A Important agricultural lands incentive; farm cluster housing. (a) The purpose of this incentive is to provide an alternative means to develop housing for farmers and farm employees who actively and currently farm important agricultural lands that reduces costs and time while ensuring that the housing developed does not contribute to the loss of agricultural land to non-agricultural residential uses or residential sprawl.

(b) Notwithstanding section 205-51(b) and any other law to the contrary, a landowner or lessee of agricultural lands that are designated as important agricultural lands may apply to a county to develop, construct, and maintain farm cluster housing on the lands for rent to farmers and farm employees who actively and currently farm on important agricultural lands and their immediate family members. For the purposes of this section, "farm cluster housing" means a housing development that concentrates housing units and shared infrastructure in a compact area within the larger lot and minimizes the land area occupied by the housing development.

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(c) Each county shall enact ordinances to allow farm cluster housing on important agricultural lands, which ordinance shall provide for:

(1) Conformance with the conditions in subsection (d);

(2) Exemption from subdivision of the land and other county subdivision ordinances;

(3) Priority review and processing;

(4) More units per lot than allowed by right by the underlying county zoning; and

(5) Submittal to the county of an agricultural plan or agricultural business plan that supports the plan for the farm cluster housing and evidence of a real property tax agricultural dedication granted by the county. The agricultural plan and agricultural tax dedication verification shall be submitted to the department of agriculture for review and comment prior to county action on the application.

(d) Farm cluster housing shall be subject to the following conditions:

(1) Farm cluster housing shall be allowed only on lots of record that are greater than or equal to ten acres;

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- 1 (2) The primary occupant of each farm cluster housing unit
2 shall be a farmer or farm employee who actively and
3 currently farms the important agricultural lands upon
4 which the farm cluster housing units are situated;
- 5 (3) The total land area upon which the farm cluster
6 housing units and all appurtenances are situated shall
7 occupy a contiguous block or area not more than five
8 per cent of the lot of record or ten acres, whichever
9 is less;
- 10 (4) The farm cluster housing units shall meet building
11 code requirements and infrastructure requirements and
12 standards reduced to the minimum necessary to ensure
13 safe and healthful occupancy;
- 14 (5) Short-term vacation rental use of the farm cluster
15 housing units shall be prohibited;
- 16 (6) The landowner or master lessee shall be responsible
17 for ensuring compliance with the restriction of
18 occupancy of the farm cluster housing units to farmers
19 or farm employees who are actively and currently
20 farming the land, and their immediate family members,
21 which restriction on use shall be clearly stated in
22 the rental documents; and

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(7) If farm cluster housing units are vacated as a result of the cessation of any agricultural operations on the land, the landowner or master lessee may rent the farm cluster housing units under the same restrictions imposed by this section to farmers or farm employees who are actively and currently farming other agricultural lands.

(e) The appropriate officer or agency charged with the administration of county zoning laws within each county shall be authorized to enforce the building and use restrictions in this section and impose penalties for violations of any provision of this section or the county permit.

(f) Farm dwellings and employee housing units on lands designated as important agricultural lands that are not processed as farm cluster housing pursuant to this section shall be subject to all applicable state laws, county ordinances, and rules."

SECTION 3. Section 205-46.5, Hawaii Revised Statutes, is amended to read as follows:

"[+] §205-46.5 [+] **Agricultural processing facilities; farm cluster housing; permits; priority.** (a) Any agency subject to this chapter [~~ex title 13~~] that issues permits shall establish

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and implement a procedure for the priority processing of permit applications and renewals, at no additional cost to the applicant, for ~~[agricultural]~~ the following:

(1) Agricultural processing facilities that process crops or livestock from an agribusiness; or

(2) Farm cluster housing developed pursuant to section 205-A,

provided that the majority of the lands held, owned, or used by the agribusiness or farm cluster housing applicant shall be land designated as important agricultural lands pursuant to this part, excluding lands held, owned, or used by the agribusiness or applicant in a conservation district.

Any priority permit processing procedure established pursuant to this section shall not provide or imply that any permit application filed under the priority processing procedure shall be automatically approved.

(b) As used in this section, "agribusiness" means a business primarily engaged in the care and production of livestock, livestock products, poultry, poultry products, apiary, horticultural or floricultural products, the planting, cultivating, and harvesting of crops or trees, or the farming or

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1 ranching of any plant or animal species in a controlled salt,
2 brackish, or fresh water environment."

3 SECTION 4. Section 205-45.5, Hawaii Revised Statutes, is
4 repealed.

5 ~~["§205-45.5] Important agricultural land, farm dwellings~~
6 ~~and employee housing. A landowner whose agricultural lands are~~
7 ~~designated as important agricultural lands may develop,~~
8 ~~construct, and maintain farm dwellings and employee housing for~~
9 ~~farmers, employees, and their immediate family members on these~~
10 ~~lands, provided that:~~

11 ~~(1) The farm dwellings and employee housing units shall be~~
12 ~~used exclusively by farmers and their immediate family~~
13 ~~members who actively and currently farm on important~~
14 ~~agricultural land upon which the dwelling is situated,~~
15 ~~provided further that the immediate family members of~~
16 ~~a farmer may live in separate dwelling units situated~~
17 ~~on the same designated land;~~

18 ~~(2) Employee housing units shall be used exclusively by~~
19 ~~employees and their immediate family members who~~
20 ~~actively and currently work on important agricultural~~
21 ~~land upon which the housing unit is situated; provided~~
22 ~~further that the immediate family members of the~~

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~~employee shall not live in separate housing units and shall live with the employee;~~

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

~~(4) The farm dwellings and employee housing units shall meet all applicable building code requirements;~~

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

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

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

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and permit proceedings

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1 begun before its effective date under the use and district
2 standards for the state agricultural land use district and
3 underlying county zoning.

4 SECTION 6. In codifying the new section added by section 2
5 and referenced in section 3 of this Act, the revisor of statutes
6 shall substitute appropriate section numbers for the letter used
7 in designating the new section in this Act.

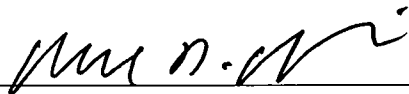
8 SECTION 7. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 8. This Act shall take effect upon approval.

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INTRODUCED BY:



13

BY REQUEST

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Report Title:

Important Agricultural Lands

Description:

Repeals the provision for farm dwelling and farm employee housing on Important Agricultural Lands and adopts a new provision for farm cluster housing as an incentive for the designation of lands as Important Agricultural Lands pursuant to chapter 205, Hawaii Revised Statutes.

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: Business, Economic Development, and Tourism

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

PURPOSE: To clarify the provision for farm dwellings and employee housing on lands designated as Important Agricultural Lands (IAL) by repealing and inserting a new provision.

MEANS: Add a new section to chapter 205, part III, Hawaii Revised Statutes (HRS); amend section 205-46.5, HRS; and repeal section 205-45.5, HRS.

JUSTIFICATION: Section 205-45.5, HRS, was enacted as one of several incentives in Act 233, Session Laws of Hawaii (SLH) 2008. Act 233, SLH 2008, was intended to provide incentives to establish and sustain viable agricultural operations on lands designated as IAL pursuant to section 3 of article XI of the Constitution of the State of Hawaii. Act 183, SLH 2005, which established the standards and criteria for the designation of IAL to effectuate implementation of section 3 of article XI of the Constitution of the State of Hawaii, required the enactment of incentives prior to the designation of any IAL by the State Land Use Commission.

Section 205-45.5, HRS, authorizes the development of farmer and farmworker dwellings on lands designated as IAL under chapter 205. The provision was intended to incentivize IAL designation by making it easier to provide farmer and farmworker housing on IAL lands on the condition that occupants must be engaged in farming. As written, the language of section 205-45.5 creates several problems in application.

First, the language has been interpreted as imposing a blanket requirement that all occupants of farm dwellings and employee housing on IAL, including immediate family members, must be actively farming the land.

Second, section 205-45.5 does not provide relief from current limitations on the number of farm dwellings allowed per lot and minimum lot sizes that make it difficult to cost-effectively cluster the units, or from residential subdivision standards or processes.

Thus, section 205-45.5 is being interpreted as an additional restriction on farm dwellings, beyond those in the definition of farm dwelling in section 205-4.5(a)(4), HRS. The bill would resolve this issue by repealing the current provision. The second issue is addressed in the bill by authorizing the enactment of county ordinances that provide appropriate relief from density, lot, and subdivision standards for farm cluster housing, which would offer more of an incentive to designate land as IAL.

Impact on the public: Repeal of section 205-45.5, HRS, and replacement with a new section with clearer definition of the intended incentive will help to clarify the limited application of this provision and help to allay fears of landowners, small and large, that the designation of lands as IAL would impose stricter restrictions on the occupants of farm dwellings under section 205-4.5, HRS, on IAL lands. It is hoped that this would reduce reluctance to designate productive agricultural lands as IAL and enable designation of IAL by the counties to proceed. In addition, amending the section to relax certain development standards would make this a more workable incentive for agricultural landowners and lessees.

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Impact on the department and other agencies:

There should be no negative impact on the department or sister State agencies. The amendment could facilitate the IAL designation process for the State Land Use Commission and reduce the length and contentiousness of the county IAL proceedings for both the State and the counties.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: BED-144.

OTHER AFFECTED
AGENCIES: Land Use Commission, Department of
Agriculture, and County planning
departments.

EFFECTIVE DATE: Upon approval.