



GOV. MSG. NO. 921

EXECUTIVE CHAMBERS

HONOLULU

July 9, 2008

LINDA LINGLE
GOVERNOR

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

Re: Senate Bill No. 2646 SD2 HD2 CD1

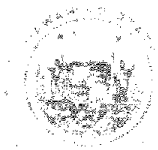
On July 8, 2008, Senate Bill No. 2646, entitled "A Bill for an Act Relating to Important Agricultural Lands" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to encourage landowners to designate their lands as important agricultural lands.

In 1978 the voters of Hawaii approved Article XI, Section 3 of the State Constitution that established a framework for the preservation of important agricultural lands. In 2005, twenty-seven years later, my Administration supported and I signed Act 183 that established the standards, criteria, and procedures to identify important agricultural lands. This bill finally puts in place a package of incentives to encourage public and private landowners to make important agricultural land designations.

Although there are many important components to this bill, it contains a number of provisions that raise concerns.

This bill lists certain requirements when a reclassification is accompanied by a petition to designate lands as important agricultural lands. However, these requirements do not specifically include the evaluation criteria currently required for land reclassification set forth in section 205-17, Hawaii Revised Statutes. It is unclear whether the Land Use Commission is expected to apply the existing criteria under section 205-17 for reclassification determinations or a different set of criteria when the reclassification is coupled with a designation of land as important agricultural land. Further, it is unclear whether the Office of Planning may provide input into the reclassification deliberations.



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and Members of the Senate
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Part II of this bill requires the Department of Agriculture to review housing plans, a function outside of its scope of responsibility and for which it is not equipped. The counties raised concerns that this section of the bill, along with other provisions calling for priority processing of permits, adversely impinges upon county functions, contrary to home rule.

The granting of a refundable tax credit is troubling since businesses will be able to claim the credit without actually carrying through on plans for agricultural operations. This credit also comes at a time when the State is facing severe financial constraints. A loss of \$7.5 million per year not within the State balanced budget plan will mean these revenues must be made up from other sources. Additionally, the Department of Taxation has raised technical and definitional concerns that will make it difficult to administer this credit.

Finally, the insertion of the Legislature into the process to remove important agricultural land designations is troubling and should be a matter left in the hands of the body that oversees land classifications, the Land Use Commission.

For the foregoing reasons, I allowed Senate Bill No. 2646 to become law as Act 233, effective July 8, 2008, without my signature.

Sincerely,



LINDA LINGLE

A BILL FOR AN ACT

RELATING TO IMPORTANT AGRICULTURAL LANDS.

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

PART I

SECTION 1. In 1978, voters approved article XI, section 3, of the Constitution of the State of Hawaii, which sets out the framework for state policies to promote agriculture and the conservation of productive agricultural lands in the State.

Article XI, section 3, reads as follows:

"The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self sufficiency and assure the availability of agriculturally suitable lands. The legislature shall provide standards and criteria to accomplish the foregoing.

Lands identified by the State as important agricultural lands needed to fulfill the purposes above shall not be reclassified by the State or rezoned by its political subdivisions without meeting the standards and criteria established by the



1 legislature and approved by a two-thirds vote of the
2 body responsible for the reclassification or rezoning
3 action."

4 To address the issue of important agricultural lands,
5 Act 183, Session Laws of Hawaii 2005, established standards,
6 criteria, and mechanisms to identify important agricultural
7 lands and to implement the intent and purpose of article XI,
8 section 3, of the Hawaii Constitution.

9 Act 183 also recognized that while the supply of lands
10 suitable for agriculture is critical, the long-term viability of
11 agriculture also depends on other factors, including:

- 12 (1) Commodity prices;
- 13 (2) Availability of water for irrigation;
- 14 (3) Agricultural research and outreach;
- 15 (4) Application of production technologies;
- 16 (5) Marketing; and
- 17 (6) Availability and cost of transportation services.

18 The purpose of this Act is to establish a variety of
19 incentives that meet the requirements of Act 183 by:

- 20 (1) Providing incentives and protections to establish and
21 sustain viable agricultural operations on important
22 agricultural lands; and



- 1 (2) Providing for the designation of important
2 agricultural lands on public lands by:
- 3 (A) Requiring the department of agriculture and
4 department of land and natural resources to
5 jointly identify the state-owned lands that
6 should be designated as "important agricultural
7 lands";
- 8 (B) Transferring management authority over those
9 lands to the department of agriculture; and
- 10 (3) Providing for the combined designation of important
11 agricultural land and reclassification to other land
12 use districts by declaratory order of the land use
13 commission.

PART II

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

18 "§205- Important agricultural land; farm dwellings and
19 employee housing. A landowner whose agricultural lands are
20 designated as important agricultural lands may develop,
21 construct, and maintain farm dwellings and employee housing for



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

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

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

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



- 1 (4) The farm dwellings and employee housing units shall
2 meet all applicable building code requirements;
- 3 (5) Notwithstanding section 205-4.5(a)(12), the landowner
4 shall not plan or develop a residential subdivision on
5 the important agricultural land;
- 6 (6) Consideration may be given to the cluster development
7 of farm dwellings and employee housing units to
8 maximize the land area available for agricultural
9 production; and
- 10 (7) The plans for farm dwellings and employee housing
11 units shall be supported by agricultural plans that
12 are approved by the department of agriculture."

PART III

14 SECTION 3. Tax incentives are a critical component of the
15 long-term viability of agriculture on important agricultural
16 lands in the State. The legislature finds that it is in the
17 public's interest to assist agricultural businesses in
18 establishing and sustaining viable agricultural operations on
19 important agricultural lands by providing incentives such as
20 income tax credits.

21 The purpose of this part is to establish an important
22 agricultural land qualified agricultural cost tax credit to



1 establish and sustain viable agricultural operations on
2 important agricultural lands.

3 SECTION 4. Chapter 235, Hawaii Revised Statutes, is
4 amended by adding a new section to be appropriately designated
5 and to read as follows:

6 "§235- Important agricultural land qualified
7 agricultural cost tax credit. (a) There shall be allowed to
8 each taxpayer an important agricultural land qualified
9 agricultural cost tax credit that may be claimed in taxable
10 years beginning after the taxable year during which the tax
11 credit under section 235-110.46 is repealed, exhausted, or
12 expired. The credit shall be deductible from the taxpayer's net
13 income tax liability, if any, imposed by this chapter for the
14 taxable year in which the credit is properly claimed. The tax
15 credit amount shall be determined as follows:

- 16 (1) In the first year in which the credit is claimed,
17 twenty-five per cent of the lesser of the following:
18 (A) The qualified agricultural costs incurred by the
19 taxpayer after July 1, 2008; or
20 (B) \$625,000;
21 (2) In the second year in which the credit is claimed,
22 fifteen per cent of the lesser of the following:



1 (A) The qualified agricultural costs incurred by the
2 taxpayer after July 1, 2008; or

3 (B) \$250,000; and

4 (3) In the third year in which the credit is claimed, ten
5 per cent of the lesser of the following:

6 (A) The qualified agricultural costs incurred by the
7 taxpayer after July 1, 2008; or

8 (B) \$125,000.

9 The taxpayer may incur qualified agricultural costs during a
10 taxable year in anticipation of claiming the credit in future
11 taxable years during which the credit is available. The
12 taxpayer may claim the credit in any taxable year after the
13 taxable year during which the taxpayer incurred the qualified
14 agricultural costs upon which the credit is claimed. The
15 taxpayer also may claim the credit in consecutive or
16 inconsecutive taxable years until exhausted.

17 (b) No other credit may be claimed under this chapter for
18 qualified agricultural costs for which a credit is claimed under
19 this section for the taxable year.

20 (c) The amount of the qualified agricultural costs
21 eligible to be claimed under this section shall be reduced by
22 the amount of funds received by the taxpayer during the taxable



1 year from the irrigation repair and maintenance special fund
2 under section 167-24.

3 (d) The cost upon which the tax credit is computed shall
4 be determined at the entity level. In the case of a
5 partnership, S corporation, estate, trust, or other pass through
6 entity, distribution and share of the credit shall be determined
7 pursuant to section 235-110.7(a).

8 If a deduction is taken under Section 179 (with respect to
9 election to expense depreciable business assets) of the Internal
10 Revenue Code, no tax credit shall be allowed for that portion of
11 the qualified agricultural cost for which a deduction was taken.

12 The basis of eligible property for depreciation or
13 accelerated cost recovery system purposes for state income taxes
14 shall be reduced by the amount of credit allowable and claimed.
15 No deduction shall be allowed for that portion of otherwise
16 deductible qualified agricultural costs on which a credit is
17 claimed under this section.

18 (e) If the credit under this section exceeds the
19 taxpayer's net income tax liability for the taxable year, the
20 excess of the credit over liability shall be refunded to the
21 taxpayer; provided that no refunds or payments on account of the



1 credits allowed by this section shall be made for amounts less
2 than \$1.

3 All claims for a tax credit under this section, including
4 amended claims, shall be filed on or before the end of the
5 twelfth month following the close of the taxable year for which
6 the credit is claimed. Failure to comply with the foregoing
7 provision shall constitute a waiver of the right to claim the
8 credit.

9 (f) The director of taxation:

10 (1) Shall prepare any forms that may be necessary to claim
11 a credit under this section;

12 (2) May require the taxpayer to furnish information to
13 ascertain the validity of the claim for credit made
14 under this section; and

15 (3) May adopt rules pursuant to chapter 91 to effectuate
16 this section.

17 (g) The department of agriculture shall:

18 (1) Maintain records of the total amount of qualified
19 agricultural costs for each taxpayer claiming a
20 credit;

21 (2) Verify the amount of the qualified agricultural costs
22 claimed;



1 (3) Total all qualified agricultural costs claimed; and

2 (4) Certify the total amount of the tax credit for each
3 taxable year.

4 Upon each determination, the department of agriculture
5 shall issue a certificate to the taxpayer verifying the
6 qualifying agricultural costs and the credit amount certified
7 for each taxable year. For a taxable year, the department of
8 agriculture may certify a credit for a taxpayer who could have
9 claimed the credit in a previous taxable year, but chose not to
10 because the maximum annual credit amount under subsection (h)
11 was reached in that taxable year.

12 The taxpayer shall file the certificate with the taxpayer's
13 tax return with the department of taxation. Notwithstanding the
14 department of agriculture's certification authority under this
15 section, the director of taxation may audit and adjust
16 certification to conform to the facts.

17 Notwithstanding any other law to the contrary, the
18 information required by this subsection shall be available for
19 public inspection and dissemination under chapter 92F.

20 (h) If in any taxable year the annual amount of certified
21 credits reaches \$7,500,000 in the aggregate, the department of
22 agriculture shall immediately discontinue certifying credits and



1 notify the department of taxation. In no instance shall the
2 department of agriculture certify a total amount of credits
3 exceeding \$7,500,000 per taxable year. To comply with this
4 restriction, the department of agriculture shall certify credits
5 on a first come, first served basis.

6 The department of taxation shall not allow the aggregate
7 amount of credits claimed to exceed that amount per taxable
8 year.

9 (i) The department of agriculture, in consultation with
10 the department of taxation, shall annually determine the
11 information necessary to provide a quantitative and qualitative
12 assessment of the outcomes of the tax credit.

13 Every taxpayer, no later than the last day of the taxable
14 year following the close of the taxpayer's taxable year in which
15 the credit is claimed, shall submit a certified written
16 statement to the department of agriculture. Failure to provide
17 the information shall result in ineligibility and a recapture of
18 any credit already claimed for that taxable year. The amount of
19 the recaptured tax credit shall be added to the taxpayer's tax
20 liability for the taxable year in which the recapture occurs.

21 Notwithstanding any law to the contrary, a statement
22 submitted under this subsection shall be a public document.



1 (j) The department of agriculture, in consultation with
2 the department of taxation, shall annually submit a report
3 evaluating the effectiveness of the tax credit. The report
4 shall include but not be limited to findings and recommendations
5 to improve the effectiveness of the tax credit to further
6 encourage the development of agricultural businesses.

7 (k) As used in this section:

8 "Agricultural business" means any person with a commercial
9 agricultural, silvicultural, or aquacultural facility or
10 operation, including:

11 (1) The care and production of livestock and livestock
12 products, poultry and poultry products, apiary
13 products, and plant and animal production for nonfood
14 uses;

15 (2) The planting, cultivating, harvesting, and processing
16 of crops; and

17 (3) The farming or ranching of any plant or animal species
18 in a controlled salt, brackish, or freshwater
19 environment;

20 provided that the principal place of the agricultural business
21 is maintained in the State and more than fifty per cent of the



1 land the agricultural business owns or leases, excluding land
2 classified as conservation land, is important agricultural land.

3 "Important agricultural lands" means lands identified and
4 designated as important agricultural lands pursuant to part III
5 of chapter 205.

6 "Net income tax liability" means income tax liability
7 reduced by all other credits allowed under this chapter.

8 "Qualified agricultural costs" means expenditures for:

- 9 (1) The plans, design, engineering, construction,
10 renovation, repair, maintenance, and equipment for:
11 (A) Roads or utilities, primarily for agricultural
12 purposes, where the majority of the lands
13 serviced by the roads or utilities, excluding
14 lands classified as conservation lands, are
15 important agricultural lands;
16 (B) Agricultural processing facilities in the State,
17 primarily for agricultural purposes, where the
18 majority of the crops or livestock processed,
19 harvested, treated, washed, handled, or packaged
20 are from agricultural businesses;
21 (C) Water wells, reservoirs, dams, water storage
22 facilities, water pipelines, ditches, or



1 irrigation systems in the State, primarily for
2 agricultural purposes, providing water for lands,
3 the majority of which, excluding lands classified
4 as conservation lands, are important agricultural
5 lands; and

6 (D) Agricultural housing in the State, exclusively
7 for agricultural purposes; provided that:

8 (i) The housing units are occupied solely by
9 farmers or employees for agricultural
10 businesses and their immediate family
11 members;

12 (ii) The housing units are owned by the
13 agricultural business;

14 (iii) The housing units are in the general
15 vicinity, as determined by the department of
16 agriculture, of agricultural lands owned or
17 leased by the agricultural business; and

18 (iv) The housing units conform to any other
19 conditions that may be required by the
20 department of agriculture;



1 (2) Feasibility studies, regulatory processing, and legal
2 and accounting services related to the items under
3 paragraph (1);

4 (3) Equipment, primarily for agricultural purposes, used
5 to cultivate, grow, harvest, or process agricultural
6 products by an agricultural business; and

7 (4) Regulatory processing, studies, and legal and other
8 consultant services related to obtaining or retaining
9 sufficient water for agricultural activities and
10 retaining the right to farm on lands identified as
11 important agricultural lands.

12 (1) The department of agriculture shall cease certifying
13 credits pursuant to this section after the fourth taxable year
14 following the taxable year during which the credits are first
15 claimed; provided that a taxpayer with accumulated, but
16 unclaimed, certified credits may continue claiming the credits
17 in subsequent taxable years until exhausted."

18 SECTION 5. The department of taxation, in consultation
19 with the department of agriculture, shall submit to the
20 legislature an annual report, no later than twenty days prior to
21 the convening of each regular session, beginning with the
22 regular session of 2010, regarding the quantitative and



1 qualitative assessment of the impact of the important
2 agricultural land qualified agricultural cost tax credit.

3 SECTION 6. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$50,000, or so much
5 thereof as may be necessary for fiscal year 2008-2009 for the
6 department of agriculture to administer the important
7 agricultural land qualified agricultural cost tax credit.

8 The sum appropriated shall be expended by the department of
9 agriculture for the purposes of this part.

10 PART IV

11 SECTION 7. Financing is also a critical component of the
12 long-term viability of agriculture on important agricultural
13 lands in the State. The legislature finds that it is in the
14 public interest to assist agricultural producers in meeting
15 their financing needs for projects that are located on important
16 agricultural lands.

17 The purpose of this part is to further implement Act 183,
18 Session Laws of Hawaii 2005, by authorizing the chairperson of
19 the board of agriculture to guarantee loans relating to
20 agricultural projects located on important agricultural lands.



1 SECTION 8. Chapter 155, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§155- Loan guaranty; important agricultural lands;
5 agricultural and aquacultural loans. (a) From July 1, 2009,
6 the chairperson of the board of agriculture may guarantee loans
7 made by commercial lenders authorized to do business in this
8 State, to agricultural producers for the purpose of developing
9 and implementing agricultural projects; provided that the
10 chairperson of the board of agriculture shall determine that:
11 (1) The agricultural projects are located on lands
12 designated as important agricultural lands pursuant to
13 part III of chapter 205; and
14 (2) The commercial lender has completed its due diligence
15 in approving the loan, including ensuring adequate
16 collateral;
17 The chairperson of the board of agriculture may impose other
18 conditions that the chairperson deems reasonable to implement
19 the loan guaranty.
20 (b) In addition to the conditions that the chairperson of
21 the board of agriculture may impose under subsection (a), any



1 loan guaranty made pursuant to this section shall meet the
2 following conditions:

3 (1) For any loan that finances operating costs, the
4 maximum term of the loan shall be ten years;

5 (2) For any loan that finances capital improvement costs,
6 the maximum term of the loan shall be twenty years;

7 (3) The interest rate charged on any loan shall be one per
8 cent below the commercial lender's prime rate for as
9 long as the loan guaranty is in effect;

10 (4) The loan guaranty may be up to eighty-five per cent of
11 the outstanding principal amount of any single loan,
12 but shall not include any fees or accrued interest
13 associated with the loan or its collection; and

14 (5) The total principal amount of the guaranteed portion
15 of all loans outstanding at any time shall not exceed
16 \$2,500,000.

17 (c) The department of agriculture may adopt rules pursuant
18 to chapter 91 to effectuate this section.

19 (d) As used in this section:

20 "Agricultural producer" means a farmer, cooperative
21 association, or landowner who derives at least fifty per cent of
22 its gross income from agricultural or aquacultural activities.



1 (2) Identify the extent of rehabilitation needed for each
2 system;

3 (3) Identify sources of water used by agricultural
4 operations and particularly those on lands identified
5 and designated as important agricultural lands under
6 part III of chapter 205;

7 (4) Identify current and future water needs for
8 agricultural operations and particularly those on
9 lands identified and designated as important
10 agricultural lands under part III of chapter 205;

11 [~~+3~~] (5) Subsidize the cost of repair and maintenance of
12 the systems;

13 [~~+4~~] (6) Establish criteria to prioritize the
14 rehabilitation of the systems;

15 [~~+5~~] (7) Develop a five-year program to repair the
16 systems; and

17 [~~+6~~] (8) Set up a long-range plan to manage the systems.

18 The commission shall coordinate the incorporation of the state
19 agricultural water use and development plan into the state water
20 projects plan.

21 (f) Each county water use and development plan shall
22 include but not be limited to:



- 1 (1) Status of water and related land development,
2 including an inventory of existing water uses for
3 domestic, municipal, and industrial users,
4 agriculture, particularly agriculture on lands
5 designated as important agricultural lands under part
6 III of chapter 205, aquaculture, hydropower
7 development, drainage, reuse, reclamation, recharge,
8 and resulting problems and constraints;
- 9 (2) Future land uses and related water needs; and
- 10 (3) Regional plans for water developments, including
11 recommended and alternative plans, costs, adequacy of
12 plans, and relationship to the water resource
13 protection and water quality plans."

PART VII

15 SECTION 11. Chapter 205, Hawaii Revised Statutes, is
16 amended by adding a new section to part III to be appropriately
17 designated and to read as follows:

18 **"§205- Agricultural processing facilities; permits;**
19 **priority.** (a) Any agency subject to this chapter or title 13
20 that issues permits shall establish and implement a procedure
21 for the priority processing of permit applications and renewals,
22 at no additional cost to the applicant, for agricultural



1 processing facilities that process crops or livestock from an
2 agribusiness; provided that the majority of the lands held,
3 owned, or used by the agribusiness shall be land designated as
4 important agricultural lands pursuant to this part, excluding
5 lands held, owned, or used by the agribusiness in a conservation
6 district.

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

11 (b) As used in this section, "agribusiness" means a
12 business primarily engaged in the care and production of
13 livestock, livestock products, poultry, poultry products,
14 apiary, horticultural or floricultural products, the planting,
15 cultivating, and harvesting of crops or trees, or the farming or
16 ranching of any plant or animal species in a controlled salt,
17 brackish, or fresh water environment."

18 SECTION 12. Chapter 321, Hawaii Revised Statutes, is
19 amended by adding a new section to be appropriately designated
20 and to read as follows:

21 **"§321- Agricultural processing facilities; permits;**
22 **priority.** (a) Any agency subject to this chapter or title 19



1 that issues permits shall establish and implement a procedure
2 for the priority processing of permit applications and renewals,
3 at no additional cost to the applicant, for agricultural
4 processing facilities that process crops or livestock from an
5 agribusiness; provided that the majority of the lands held,
6 owned, or used by the agribusiness shall be land designated as
7 important agricultural lands pursuant to part III of chapter
8 205, excluding lands held, owned, or used by the agribusiness in
9 a conservation district.

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

14 (b) As used in this section, "agribusiness" means a
15 business primarily engaged in the care and production of
16 livestock, livestock products, poultry, poultry products,
17 apiary, horticultural or floricultural products, the planting,
18 cultivating, and harvesting of crops or trees, or the farming or
19 ranching of any plant or animal species in a controlled salt,
20 brackish, or fresh water environment."

21 PART VIII



1 SECTION 13. The legislature declares that this Act
2 establishes incentives for the designation of important
3 agricultural lands in satisfaction of section 205-46, Hawaii
4 Revised Statutes, and section 9 of Act 183, Session Laws of
5 Hawaii 2005.

6 PART IX

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

10 "§205- Important agricultural lands; public lands. (a)
11 Notwithstanding any law to the contrary, before December 31,
12 2009, the department of agriculture and the department of land
13 and natural resources shall collaborate to identify public lands
14 as defined under section 171-2 that should be designated
15 important agricultural lands as defined in section 205-42 and
16 shall cause to be prepared maps delineating those lands. In
17 making the designations, the departments shall use the standards
18 and criteria of section 205-44.

19 (b) The designation of important agricultural lands
20 pursuant to this section shall not be subject to the district
21 boundary amendment procedures of section 205-3.1 or 205-4 or
22 declaratory order procedures of section 205-45.



1 (c) Notwithstanding any law to the contrary, beginning
2 January 1, 2010, after receipt of the maps of public lands
3 identified as important agricultural lands pursuant to
4 subsection (a), the commission shall designate the public lands
5 as important agricultural lands and adopt the maps of those
6 public lands. Upon designation, the public lands shall be
7 subject to this chapter."

8 SECTION 15. Section 141-1, Hawaii Revised Statutes, is
9 amended to read as follows:

10 **"§141-1 Duties in general.** The department of agriculture
11 shall:

12 (1) Gather, compile, and tabulate, from time to time,
13 information and statistics concerning:

14 (A) Entomology and plant pathology: Insects, scales,
15 blights, and diseases injurious[] or liable to
16 become injurious[] to trees, plants, or other
17 vegetation, and the ways and means of
18 exterminating pests and diseases already in the
19 State and preventing the introduction of [~~these~~]
20 pests and diseases not yet here; and

21 (B) General agriculture: Fruits, fibres, and useful
22 or ornamental plants and their introduction,



1 development, care, and manufacture or
2 exportation, with a view to introducing,
3 establishing, and fostering new and valuable
4 plants and industries;

5 (2) Encourage and cooperate with the agricultural
6 extension service and agricultural experiment station
7 of the University of Hawaii and all private persons
8 and organizations doing work of an experimental or
9 educational character coming within the scope of the
10 subject matter of chapters 141, 142, and 144 to 150A,
11 and avoid, as far as practicable, duplicating the work
12 of those persons and organizations;

13 (3) Enter into contracts, cooperative agreements, or other
14 transactions with any person, agency, or organization,
15 public or private, as may be necessary in the conduct
16 of the department's business and on such terms as the
17 department may deem appropriate; provided that the
18 department shall not obligate any funds of the State,
19 except the funds that have been appropriated to the
20 department. Pursuant to cooperative agreement with
21 any authorized federal agency, employees of the
22 cooperative agency may be designated to carry out, on



1 behalf of the State the same as department personnel,
2 specific duties and responsibilities under chapters
3 141, 142, 150A, and rules adopted pursuant to those
4 chapters, for the effective prosecution of pest
5 control[7] and animal disease control[7] and the
6 regulation of import into the State and intrastate
7 movement of regulated articles;

8 (4) Secure copies of the laws of other states,
9 territories, and countries, and other publications
10 germane to the subject matters of chapters 141, 142,
11 and 144 to 150A, and make laws and publications
12 available for public information and consultation;

13 (5) Provide buildings, grounds, apparatus, and
14 appurtenances necessary for the examination,
15 quarantine, inspection, and fumigation provided for by
16 chapters 141, 142, and 144 to 150A; for the obtaining,
17 propagation, study, and distribution of beneficial
18 insects, growths, and antidotes for the eradication of
19 insects, blights, scales, or diseases injurious to
20 vegetation of value and for the destruction of
21 injurious vegetation; and for carrying out any other
22 purposes of chapters 141, 142, and 144 to 150A;



- 1 (6) Formulate and recommend to the governor and
2 legislature additional legislation necessary or
3 desirable for carrying out the purposes of chapters
4 141, 142, and 144 to 150A;
- 5 (7) Publish at the end of each year a report of the
6 expenditures and proceedings of the department and of
7 the results achieved by the department, together with
8 other matters germane to chapters 141, 142, and 144 to
9 150A[7] and [~~which~~] that the department may deem
10 proper;
- 11 (8) Administer a program of agricultural planning and
12 development, including the formulation and
13 implementation of general and special plans, including
14 but not limited to the functional plan for
15 agriculture; administer the planning, development, and
16 management of the agricultural park program; plan,
17 construct, operate, and maintain the state irrigation
18 water systems; review, interpret, and make
19 recommendations with respect to public policies and
20 actions relating to agricultural land and water use;
21 assist in research, evaluation, development,
22 enhancement, and expansion of local agricultural



1 industries; and serve as liaison with other public
2 agencies and private organizations for the above
3 purposes. In the foregoing, the department [~~of~~
4 agriculture] shall act to conserve and protect
5 agricultural lands and irrigation water systems,
6 promote diversified agriculture, increase agricultural
7 self-sufficiency, and ensure the availability of
8 agriculturally suitable lands[-]; and

9 (9) Manage, administer, and exercise control over any
10 public lands, as defined under section 171-2, that are
11 designated important agricultural lands pursuant to
12 section 205- , including but not limited to
13 establishing priorities for the leasing of these
14 public lands within the department's jurisdiction."

15 SECTION 16. Section 171-3, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§171-3 Department of land and natural resources. (a)**

18 The department of land and natural resources shall be headed by
19 an executive board to be known as the board of land and natural
20 resources. The department shall manage, administer, and
21 exercise control over public lands, the water resources, ocean
22 waters, navigable streams, coastal areas (excluding commercial



1 harbor areas), and minerals and all other interests therein and
2 exercise such powers of disposition thereof as may be authorized
3 by law. The department shall also manage and administer the
4 state parks, historical sites, forests, forest reserves, aquatic
5 life, aquatic life sanctuaries, public fishing areas, boating,
6 ocean recreation, coastal programs, wildlife, wildlife
7 sanctuaries, game management areas, public hunting areas,
8 natural area reserves, and other functions assigned by law.

9 (b) Notwithstanding subsection (a), beginning January 1,
10 2010, the authority to manage, administer, and exercise control
11 over any public lands that are designated important agricultural
12 lands pursuant to section 205- , shall be transferred to the
13 department of agriculture."

14 SECTION 17. All appropriations, records, equipment,
15 machines, files, supplies, contracts, books, papers, documents,
16 maps, and other personal property heretofore made, used,
17 acquired, or held by the department of land and natural
18 resources relating to the functions transferred to the
19 department of agriculture shall be transferred by this Act with
20 the functions to which they relate.

21 PART X



1 SECTION 18. Section 205-44, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[~~f~~]**§205-44**[~~}]~~ **Standards and criteria for the**
4 **identification of important agricultural lands.** (a) The
5 standards and criteria in this section shall be used to identify
6 important agricultural lands. Lands identified as important
7 agricultural lands need not meet every standard and criteria
8 listed [~~below~~] in subsection (c). Rather, lands meeting any of
9 the criteria [~~below~~] in subsection (c) shall be given initial
10 consideration; provided that the designation of important
11 agricultural lands shall be made by weighing the standards and
12 criteria with each other to meet the constitutionally mandated
13 purposes in article XI, section 3, of the [~~state constitution~~]
14 Hawaii Constitution and the objectives and policies for
15 important agricultural lands in sections 205-42 and 205-43.

16 (b) In a petition for a declaratory order submitted under
17 section 205-45 that seeks to both designate lands as important
18 agricultural lands and reclassify lands in the agricultural
19 district to the rural, conservation, or urban district, the
20 lands shall be deemed qualified for designation as important
21 agricultural land if the commission reasonably finds that the



1 lands meet at least the criteria of subsection (c)(5) and (7) of
2 this section.

3 If a petition seeks to only designate land as important
4 agricultural lands, then the commission shall evaluate the lands
5 in accordance with subsection (a).

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

7 (1) Land currently used for agricultural production;

8 (2) Land with soil qualities and growing conditions that
9 support agricultural production of food, fiber, or
10 fuel- and energy-producing crops;

11 (3) Land identified under agricultural productivity rating
12 systems, such as the agricultural lands of importance
13 to the State of Hawaii (ALISH) system adopted by the
14 board of agriculture on January 28, 1977;

15 (4) Land types associated with traditional native Hawaiian
16 agricultural uses, such as taro cultivation, or unique
17 agricultural crops and uses, such as coffee,
18 vineyards, aquaculture, and energy production;

19 (5) Land with sufficient quantities of water to support
20 viable agricultural production;



1 (6) Land whose designation as important agricultural lands
2 is consistent with general, development, and community
3 plans of the county;

4 (7) Land that contributes to maintaining a critical land
5 mass important to agricultural operating productivity;
6 and

7 (8) Land with or near support infrastructure conducive to
8 agricultural productivity, such as transportation to
9 markets, water, or power."

10 SECTION 19. Section 205-45, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "[~~f~~]**\$205-45**[~~+~~] **Petition by farmer or landowner.** (a) A
13 farmer or landowner with lands qualifying under section 205-44
14 may file with the commission a petition for declaratory [~~ruling~~
15 ~~with the commission~~] order to designate the lands as important
16 agricultural lands. The petition may be filed at any time in
17 the designation process.

18 (b) Any law to the contrary notwithstanding, within the
19 same petition for declaratory order as described in subsection
20 (a), the petitioner may seek a reclassification of land in the
21 agricultural district to the rural, urban, or conservation
22 district, or a combination thereof; provided that:



1 (1) The land sought to be reclassified to the rural,
2 urban, or conservation district is within the same
3 county as the land sought to be designated as
4 important agricultural lands;

5 (2) If the reclassification of the land is proposed to the
6 urban district, that reclassification to urban is
7 consistent with the relevant county general and
8 community, development, or community development
9 plans; and

10 (3) The total acreage of the land sought to be designated
11 or reclassified in the petition complies with the
12 following proportions:

13 (A) At least eighty-five per cent of the total
14 acreage is sought to be designated as important
15 agricultural land; and

16 (B) The remainder of the acreage is sought to be
17 reclassified to the rural, urban, or conservation
18 district.

19 ~~(b)~~ (c) The petition for declaratory ~~ruling~~ order
20 shall be submitted in accordance with subchapter 14 of the
21 commission's rules and shall include:



- 1 (1) Tax map [~~keys~~] key numbers of the land to be
2 designated as important agricultural lands and, if
3 applicable, the land to be reclassified from the
4 agricultural district to the rural, urban, or
5 conservation district, along with verification and
6 authorization from the applicable landowners;
- 7 (2) Proof of qualification for designation as important
8 agricultural lands under section 205-44, respecting a
9 regional perspective; [~~and~~]
- 10 (3) The current or planned agricultural use of the area
11 sought to be designated[-] as important agricultural
12 lands; and
- 13 (4) If applicable, the current or planned use of the area
14 sought to be reclassified to the rural, urban, or
15 conservation district.
- 16 (d) Prior to the commission considering a petition for a
17 declaratory order to designate important agricultural land in
18 combination with the reclassification of agricultural land to
19 the rural, urban, or conservation district, the petitioner shall
20 submit to the commission a certification issued by the
21 department of agriculture as to the quality of the land for



1 which designation as important agricultural land is being
2 sought.

3 ~~[(e)]~~ (e) The commission shall review the petition and the
4 accompanying submissions to evaluate the qualifications of the
5 land for designation as important agricultural lands in
6 accordance with section 205-44.

7 If the petition also seeks the reclassification of land to
8 the rural, urban, or conservation district, the commission shall
9 review the petition and accompanying submissions to evaluate:

10 (1) The suitability of the land for the reclassification
11 in accordance with section 205-2;

12 (2) If the reclassification of the land is proposed to the
13 urban district, that reclassification to urban is
14 consistent with the relevant county general and
15 community, development, or community development
16 plans; and

17 (3) Compliance with the other provisions of subsection
18 (b).

19 If the commission, after its review ~~[and evaluation]~~, finds
20 that the ~~[lands qualify for]~~ designation ~~[as important~~
21 ~~agricultural lands under this part,]~~ and, if applicable,
22 reclassification sought in the petition should be approved, the



1 commission shall vote, by a two-thirds majority of the members
2 of the commission, to issue a declaratory order designating the
3 petitioner's identified lands as important agricultural lands[-]
4 and, if applicable, reclassifying the petitioner's identified
5 land from the agricultural district to the rural, urban, or
6 conservation district. The commission may include reasonable
7 conditions in the declaratory order.

8 With respect to a petition that seeks to both designate
9 important agricultural lands and reclassify agricultural lands
10 to the rural, urban, or conservation district, if the commission
11 finds that either the designation or reclassification as
12 proposed by the petitioner should not be approved, the
13 commission shall deny the petition in its entirety.

14 [~~(d) Designating important agricultural lands by the~~
15 ~~commission]~~ (f) The designation or reclassification of land
16 pursuant to subsection (a) or (b) shall not be [~~considered as an~~
17 amendment to district boundaries under] subject to the district
18 boundary amendment procedures of sections 205-3.1 and 205-4 or
19 become effective prior to legislative enactment of protection
20 and incentive measures for important agricultural land and
21 agricultural viability, as provided in section 9 of Act 183,
22 Session Laws of Hawaii 2005.

1 [~~(e)~~] (g) Farmers or landowners with lands qualifying
2 under section 205-44 may file petitions for a declaratory
3 [~~ruling~~] order to designate lands as important agricultural
4 lands following the legislative enactment of protection and
5 incentive measures for important agricultural lands and
6 agricultural viability, as provided in section 9 of Act 183,
7 Session Laws of Hawaii 2005.

8 (h) A petitioner granted a declaratory order that
9 designates important agricultural land, whether or not combined
10 with the reclassification of land to the rural, urban, or
11 conservation district, shall earn credits if the amount of land
12 reclassified to the rural, urban, or conservation district is
13 less than fifteen per cent of the total acreage of land subject
14 to the order. The "total acreage of land subject to the order"
15 means the total acreage designated as important agricultural
16 land and, if applicable, reclassified to the rural, urban, or
17 conservation district by the declaratory order.

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

20 (1) The number that is fifteen per cent of the total
21 acreage of land subject to the order; less



1 (2) The amount of the petitioner's land that is
2 reclassified from the agricultural district to the
3 rural, urban, or conservation district by the
4 declaratory order.

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



1 A petitioner with unused and unexhausted credits shall not
2 transfer the credits to another person.

3 (i) Notwithstanding any other law to the contrary, the
4 land use commission may grant declaratory orders pursuant to
5 this section before the commission receives from any county a
6 map delineating recommended important agricultural lands.

7 (j) Land designated as important agricultural land
8 pursuant to a declaratory order that both designates land as
9 important agricultural land and reclassifies land in the
10 agricultural district to the rural, urban, or conservation
11 district, or a combination thereof pursuant to this section
12 shall be re-designated only with the prior authorization of the
13 legislature. The authorization shall be expressed by the
14 adoption of a concurrent resolution approved by a two-thirds
15 vote of each house of the legislature voting separately. When
16 making its decision, the legislature shall consider the
17 standards and criteria in section 205-50.

18 (k) The commission may adopt rules pursuant to chapter 91
19 to effectuate this section."

20 SECTION 20. Section 205-50, Hawaii Revised Statutes, is
21 amended by amending subsection (g) to read as follows:



1 "(g) A farmer or landowner with qualifying lands may also
2 petition the land use commission to remove the "important
3 agricultural lands" designation from lands if a sufficient
4 supply of water is no longer available to allow profitable
5 farming of the land due to government actions, acts of God, or
6 other causes beyond the farmer's or landowner's reasonable
7 control. If the "important agricultural lands" were designated
8 by a declaratory order in combination with the reclassification
9 of land in the agricultural district to the rural, urban, or
10 conservation district pursuant to section 205-45, the commission
11 shall not remove the designation unless the legislature provides
12 prior authorization by adoption of a concurrent resolution in
13 accordance with section 205-45."

14 SECTION 21. Section 205-52, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "[+]§205-52[+] **Periodic review and amendment of important**
17 **agricultural lands maps.** The maps delineating important
18 agricultural lands shall be reviewed in conjunction with the
19 county general plan and community [~~and~~], development, or
20 community development plan revision process, or at least once
21 every ten years following the adoption of the maps by the land
22 use commission; provided that the maps shall not be reviewed



1 more than once every five years. Any review and amendment of
2 the maps of important agricultural lands shall be conducted in
3 accordance with this part. In these periodic reviews or
4 petitions by the farmers or landowners for declaratory rulings,
5 the "important agricultural lands" designation shall be removed
6 from those important agricultural lands where the commission has
7 issued a declaratory order that a sufficient supply of water is
8 no longer available to allow profitable farming of these lands
9 due to governmental actions, acts of God, or other causes beyond
10 the farmer's or landowner's reasonable control[-]; provided
11 that, if the "important agricultural lands" were designated by a
12 declaratory order in combination with the reclassification of
13 land in the agricultural district to the rural, urban, or
14 conservation district pursuant to section 205-45, the commission
15 shall not remove the designation unless the legislature provides
16 prior authorization by adoption of a concurrent resolution in
17 accordance with section 205-45."

18 PART XI

19 SECTION 22. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

21 SECTION 23. This Act shall take effect on July 1, 2008.



S.B. NO. 2646
S.D. 2
H.D. 2
C.D. 1

APPROVED this day of , 2008

GOVERNOR OF THE STATE OF HAWAII

