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A BILL FOR AN ACT

RELATING TO MACADAMIA NUTS.

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

1	SECTION 1. Chapter 148, Hawaii Revised Statutes, is
2	amended by adding a new part to be appropriately designated and
3	to read as follows:
4	"PART . MACADAMIA NUT COMMISSION
5	§148-A Definitions. For purposes of this part:
6	"Processor" and "first handler":
7	(1) Mean any person, within the State, engaged in the
8	operation of hulling and roasting macadamia nuts:
9	(A) That the person produced, purchased, or acquired
10	from a producer; or
11	(B) On behalf of a producer, as owner, agent,
12	employee, broker, or otherwise.
13	(2) Does not include a retailer, except for a retailer who
14	purchases or acquires from, or hulls and roasts on
15	behalf of any producer, macadamia nuts that were not
16	previously subject to regulation by the commission.



"Producer" or "grower" means any person who is engaged in
 this State in the business of producing or causing to be
 produced for market macadamia nuts.

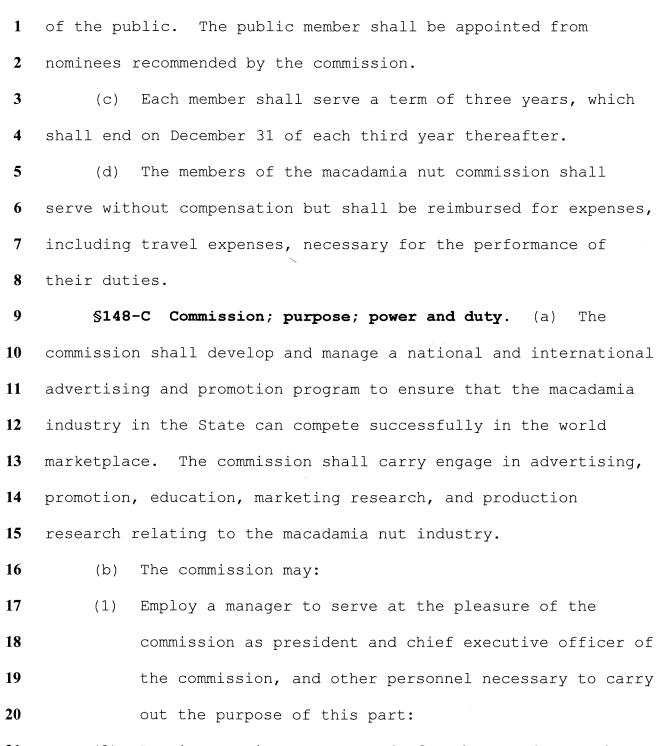
Producer-supplier" means any producer who engages in the operations of selling, marketing, or distributing macadamia nuts that the person has produced, or purchased or acquired from a processor. The term does not include a retailer, except a retailer who purchases or acquires from, or sells, markets, or distributes on behalf of a producer, macadamia nuts that were not previously subject to regulation by the commission.

11 §148-B Macadamia nut commission; established; members.
12 (a) There is established within the department of agriculture
13 for administrative purposes the macadamia nut commission
14 consisting of members appointed by the chairperson of the board
15 of agriculture.

(b) The members shall be appointed from a list of nominees
submitted by organizations and individuals in the macadamia nut
industry who, commencing on September 1, 2008, and by September
1, every two years thereafter, shall submit a list of nominees
to the chairperson. Members shall include eight representatives
of large and small growers and processors and one representative



H.B. NO. 1988



21 (2) Appoint committees composed of members and nonmembers
22 to advise the commission;



1 Establish an office and incur expenses, invest funds (3) 2 in permissible investments, enter into contracts and 3 agreements, create liabilities and borrow funds in 4 advance of receipt of assessments as necessary; 5 (4) Promote the sale of macadamia nuts by advertising and 6 other promotional means, including cost-sharing 7 advertising of macadamia nuts or other complimentary 8 products and brand credit advertising to maintain and 9 expand present markets and create new markets; 10 (5) Recommend to the chairperson of the board of 11 agriculture adoption of macadamia nut quality 12 standards, product labeling, or other activity 13 authorized under this chapter; 14 Serve in an advisory capacity to the chairperson of (6) 15 the board of agriculture on all matters relating to 16 this part; 17 Educate the public on the uses, healthful properties, (7) 18 and nutritional value of macadamia nuts; 19 (8) Require processors and producers-suppliers to provide 20 records and other information necessary for the 21 commission to carry out its duties, including 22 information regarding inventories, shipment



Page 4

1 destinations, and related information. These records and information shall be preserved by the processor or 2 3 producer-supplier for two years and shall be submitted 4 for inspection at any reasonable time upon written 5 demand of the commission; 6 (9) Educate and instruct wholesale and retail trade 7 regarding proper methods of handling and selling 8 macadamia nuts, including market surveys and analysis, factual presentations, and negotiations with state, 9 10 federal, and foreign agencies relating to marketing of 11 macadamia nuts: 12 (10)Contract to render service in formulating and 13 conducting plans and programs, and other agreements 14 the commission may determine necessary to promote the 15 sale of macadamia nuts: (11) Conduct or contract for others to conduct scientific 16 17 research, including the study, analysis, 18 dissemination, and accumulation of information obtain 19 from research regarding cultural and production 20 practices, and marketing and distribution of macadamia 21 nuts;



Page 5

Page 6

H.B. NO. 1988

6

1	(12)	Accept gifts, contributions, or appropriations of	
2		private, state, or federal funds;	
3	(13)	Establish an assessment rate to defray operating costs	
4		of the commission;	
5	(14)	Establish an annual budget pursuant to accepted	
6		accounting practices;	
7	(15)	Administer any governmental program establishing	
8		quality standards for the macadamia nut industry upon	
9		request of an authorized agent of a governmental	
10		agency; and	
11	(16)	Other things necessary to carry out the purpose of	
12		this part.	
13	§148	-D Moneys received by commission; agent; bond. All	
14	moneys re	ceived from assessments or otherwise received by the	
15	commission shall be deposited into any bank the commission may		
16	designate	. Moneys shall be disbursed by the commission through	
17	any agent designated by the commission for that purpose. Any		
18	agent shall be bonded by a fidelity bond, executed by a surety		
19	company authorized to transact business in the State in favor of		
20	the commission in the amount of not less than \$25,000.		

21 \$148-E Assessments. (a) Not later than October 1 of each
22 year, the commission shall establish an assessment for the



1 marketing season that begins September 1 and continues through
2 August 31 of the following year. The assessment shall not
3 exceed five per cent of the average price received by producers,
4 computed on a per pound basis or computed in any other manner
5 determined by the commission to be reasonably equivalent to the
6 per pound computation.

7 (b) The commission may revise the assessment established 8 prior to October 1 of each year if it determines, based on 9 information including crop volume, that the action is necessary 10 and the revision does not exceed assessment limitations 11 specified in this section. Any revision shall be made prior to 12 the date established by the commission for payment of the 13 assessment.

14 §148-F Producer assessments; processor liability. (a)
15 The first handler of macadamia nuts being assessed shall deduct
16 the assessment from amounts paid to the producer or collect the
17 assessment from the producer. The first handler shall be a
18 trustee of the funds until the assessment is paid to the
19 commission.

20 (b) Every processor shall be personally liable for payment21 of the collected assessments. Failure of the processor to



collect the assessment from any producer shall not exempt the
 processor from liability.

§148-G Failure to pay assessment. Any assessment levied
pursuant to this part is a personal debt of the producer
assessed. Failure of a processor to make payment of the
collected assessment to the commission shall not relieve the
producer of this obligation.

8 §148-H Penalties. (a) Any producer or processor who
9 fails to file a return or to pay any assessment within the time
10 requires by the commission shall pay to the commission a penalty
11 of ten per cent of the amount of the assessment determined to be
12 past due, in addition to interest on the unpaid balance at the
13 rate of 11.5 per cent per month.

(b) In addition to any other penalty, the commission may require any person who fails to pay any assessment or related charge to furnish and maintain a surety bond in a form and amount and for a period of time specified by the commission as assurance that payment to the commission will be made when due.

19 §148-I Exemptions. (a) This part does not apply to
20 macadamia nuts produced only for the producer's home use or to
21 macadamia nuts used only for ornamental purposes.



3 macadamia nuts are not produced for commercial purposes. 4 (c) Any production of macadamia nuts in excess of one 5 thousand pounds shall not be exempt from assessment established 6 in this part. 7 §148-J Processor records. (a) Processors shall keep a 8 complete and accurate record of all macadamia nuts processed, 9 including the name of the producer whose macadamia nuts were processed. The records shall contain information as the 10 commission shall prescribe. 11 12 Records shall be preserved by the processor for two (b) 13 years and shall be submitted for inspection at a reasonable time 14 upon the written request of the commission. **§148-K Liability.** (a) The State shall not be liable for 15 any act of the commission or its contracts. 16 17 (b) Payment of all claims arising by reason of the administration of this part or acts of the commission shall be 18 19 limited to the funds collected by the commission. 20 (c) No member, alternate member, or employee of the 21 commission shall be personally liable on any contract of the 22 commission or responsible individually to any producer, HB LRB 08-0251.doc

To claim the exemption, a producer shall file an

affidavit with the commission to establish that the producer's



(b)

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Page 10

H.B. NO. 1988

1 processor, producer-supplier, or any other person for any error 2 in judgment, mistake, or other act of commission or omission as 3 principal, agent, or employee, except for the individual's own 4 act or dishonesty or crime.

5 (d) No member or alternate member of the commissions shall
6 be responsible individually for any act or omission of any
7 member of the commission.

8 (e) Liability of the commissioners if several and not
9 joint, and no member is liable for the default of any other
10 member of the commission.

11 §148-L Proprietary information. (a) All proprietary 12 information obtained or received by the commission from 13 producers, processors, or producer-suppliers shall be 14 confidential and shall not be disclosed, except pursuant to a 15 court order after a hearing in a judicial proceeding involving 16 this part.

17 (b) Information on volume shipments, crop value, and other
18 related information required for reports to governmental
19 agencies, financial reports to the commission, or aggregate
20 sales and inventory information, and other information that
21 processors or producer-suppliers request from the commission to



receive in total, excluding individual process or producer-1 2 supplier information, may be disclosed by the commission." SECTION 2. There is appropriated out of the general 3 revenues of the State of Hawaii the sum of \$ or so much 4 thereof as may be necessary for fiscal year 2008-2009 for the 5 6 promotion and expansion of the macadamia nut industry in the State by the Hawaii Macadamia Nut Association and for the 7 establishment of the macadamia nut commission. 8 9 The sum appropriated shall be expended by the department of 10 agriculture for the purposes of this Act. SECTION 3. In codifying the new sections added by section 11 1 of this Act, the revisor of statutes shall substitute 12 appropriate section numbers for the letters used in designating 13 the new sections in this Act. 14 SECTION 4. This Act shall take effect upon its approval; 15 provided that section 2 shall take effect on July 1, 2008. 16

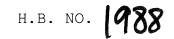
INTRODUCED BY:

Evan



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Report Title:

Macadamia Nut Commission; Appropriation

Description:

Establishes a macadamia nut commission to develop marketing and promotional programs for the macadamia nut industry in the State. Appropriation.

