

S.B. NO. 1293

JAN 25 2023

A BILL FOR AN ACT

RELATING TO IMPORTANT AGRICULTURAL LANDS.

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

1 SECTION 1. The important agricultural lands designation
2 serves as a resource overlay, a comprehensive statewide resource
3 map, to identify those lands that are of significant
4 agricultural value to the State. This resource overlay or map
5 is intended to broadly inform decision-makers of those lands
6 that are needed to sustain Hawaii's agricultural industry and
7 for which agricultural incentives should be targeted to promote
8 and support high levels of agricultural production over the
9 long-term.

10 Section 205-47, Hawaii Revised Statutes, establishes a
11 process for the counties to identify lands to be recommended for
12 designation as important agricultural lands by the state land
13 use commission. Section 205-49, Hawaii Revised Statutes,
14 describes a process for land use commission decision-making on
15 the county maps that is ambiguous as to whether this is a
16 rulemaking or contested case proceeding. Section 15-15-125(d),
17 Hawaii Administrative Rules, of the state land use commission's
18 rules states that the adoption of county maps of important

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1 agricultural lands is through rulemaking. The rule recognizes
2 that this resource mapping involves hundreds of parcels and
3 cannot in practical terms be designated through hundreds of
4 individual contested case hearings, but must rather be
5 designated through public hearings and a quasi-legislative
6 process. In this respect, the land use commission rule mirrors
7 the method by which the counties adopt their regional community
8 and development plans.

9 Accordingly, the purposes of this bill are to:

- 10 (1) Amend section 205-49, Hawaii Revised Statutes, to
11 clarify that adoption of maps from a county is through
12 rulemaking in conformance with existing land use
13 commission rules; and
- 14 (2) Repeal section 205-45.5, Hawaii Revised Statutes, to
15 remove an unclear incentive related to farm dwellings
16 on lands designated as important agricultural lands
17 that hinders adoption of county important agricultural
18 lands maps.

19 SECTION 2. Section 205-49, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:

21 "(a) After receipt of the maps of eligible important
22 agricultural lands from the counties and the recommendations of

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1 the department of agriculture and the office of planning and
2 sustainable development, the commission shall then proceed to
3 identify and designate important agricultural lands, subject to
4 section 205-45. The decision shall consider the county maps of
5 eligible important agricultural lands; declaratory orders issued
6 by the commission designating important agricultural lands
7 during the three year period following the enactment of
8 legislation establishing incentives and protections contemplated
9 under section 205-46, as provided in section 9 of Act 183,
10 Session Laws of Hawaii 2005; landowner position statements and
11 representations; and any other relevant information.

12 In designating important agricultural lands in the State,
13 pursuant to the recommendations of individual counties, the
14 commission shall consider the extent to which:

- 15 (1) The proposed lands meet the standards and criteria
16 under section 205-44;
- 17 (2) The proposed designation is necessary to meet the
18 objectives and policies for important agricultural
19 lands in sections 205-42 and 205-43; and
- 20 (3) The commission has designated lands as important
21 agricultural lands, pursuant to section 205-45;
22 provided that if the majority of landowners'

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1 landholdings is already designated as important
2 agricultural lands, excluding lands held in the
3 conservation district, pursuant to section 205-45 or
4 any other provision of this part, the commission shall
5 not designate any additional lands of that landowner
6 as important agricultural lands except by a petition
7 pursuant to section 205-45.

8 ~~[Any decision regarding the designation of lands as~~
9 ~~important agricultural lands and the adoption of maps of those~~
10 ~~lands pursuant to this section shall be based upon written~~
11 ~~findings of fact and conclusions of law, presented in] The~~
12 commission shall conduct at least one public hearing [conducted]
13 in the county where the land is located [in accordance with
14 chapter 91, that the subject lands] to receive testimony from
15 the public. The commission shall subsequently designate lands
16 as important agricultural lands by adopting a map of the county
17 recommendations, in whole or in part, of those lands that meet
18 the standards and criteria set forth in section 205-44, and the
19 adoption of maps shall be approved by two-thirds of the
20 membership to which the commission is entitled.

21 The adoption of maps designating important agricultural
22 lands pursuant to this section shall not be through a contested

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1 case hearing, but rather through rulemaking pursuant to section
2 91-3."

3 SECTION 3. 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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1 ~~employee shall not live in separate housing units and~~
2 ~~shall live with the employee;~~

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

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

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

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

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

21 SECTION 4. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.

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1 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: *W. H. M.*

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BY REQUEST

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Report Title:

Important Agricultural Lands; Adoption of County Maps of Lands to Be Designated as Important Agricultural Lands

Description:

Clarifies the decision-making process for the Land Use Commission adoption of maps of Important Agricultural Lands and repeals the farm dwelling and farm employee housing incentive for lands designated as Important Agricultural Lands in 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 that State Land Use Commission (LUC) decision-making on maps submitted by a county for the designation of Important Agricultural Lands (IAL) be conducted through rule-making not contested case hearings.

MEANS: Amend section 205-49, Hawaii Revised Statutes (HRS); and repeal section 205-45.5, HRS.

JUSTIFICATION: Section 205-49 in part III of chapter 205, HRS, requires that any decision of the LUC regarding the designation of IAL pursuant to a county petition be based on written findings of fact and conclusions of law presented in a public hearing held in accordance with chapter 91, HRS. This conflicts with LUC rules adopted following the enactment of part III by Act 153, Session Laws of Hawaii (SLH) 2005. LUC rule, section 15-15-125(d), Hawaii Administrative Rules (HAR), effective November 2, 2013, states that the county IAL designation process shall be conducted as a rulemaking proceeding in accordance with LUC rules.

In the first county petition for IAL filed in 2021 by the City and County of Honolulu, the LUC heard hours of testimony in opposition from small landowners and homeowners on properties included in the City recommendations for reclassification. Given the ambiguity in section 205-49, HRS, the LUC determined that a contested case hearing is required for county IAL petitions.

A contested case hearing on an island-wide or regional basis, where there are potentially hundreds of parties, is practicably impossible. This discourages counties from submitting recommendations or otherwise participating in the LUC designation of IAL after years of study and development of recommendations at the county level.

In addition, repeal of section 205-45.5, HRS, removes a perceived barrier to IAL designation by eliminating unclear language that has been interpreted as imposing greater restrictions on farm dwelling uses on lands designated as IAL.

Both of these provisions are essential to clarify the process for county IAL petitions and remove obstacles to the implementation of section 3 of article XI of the Constitution of the State of Hawaii, to conserve and protect agricultural lands and promote agriculture self-sufficiency and agricultural diversification. By allowing IAL designations through rulemaking, the bill will facilitate the designation of IAL and protect good agricultural lands for future generations, consistent with the Governor's plans for agricultural resilience and food sustainability.

Impact on the public: Continued progress on the designation of IAL statewide would promote greater awareness of the importance of conserving and protecting the State's limited productive agricultural lands and provide greater direction to how incentives are used to promote and facilitate agricultural viability in support of Hawaii's food resilience and agricultural sustainability.

Impact on the department and other agencies: There should be no negative impact on the department or other State agencies. The amendment would facilitate and reduce the

cost of county IAL designation proceedings 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.