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# A BILL FOR AN ACT

RELATING TO IMPORTANT AGRICULTURAL LANDS.

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

1 PART I

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

11 Section 205-47, Hawaii Revised Statutes, establishes a  
12 process for the counties to identify lands to be recommended for  
13 designation by the state land use commission as important  
14 agricultural lands. Section 205-49, Hawaii Revised Statutes,  
15 sets forth the land use commission's process and decision-making  
16 criteria in designating important agricultural lands based on  
17 the county maps but is ambiguous as to whether this is



1 rulemaking or a contested case proceeding. Section  
2 15-15-125(d), Hawaii Administrative Rules, states that the land  
3 use commission may adopt county maps of important agricultural  
4 lands through a rulemaking proceeding. The rule recognizes that  
5 resource mapping involves hundreds of parcels of land and  
6 cannot, in practical terms, be designated through hundreds of  
7 individual contested case hearings, but must be designated  
8 through public hearings and a quasi-legislative process. In  
9 this respect, the rule applied by the land use commission  
10 mirrors the method by which the counties adopt their regional  
11 community and development plans.

12 Accordingly, the purpose of this part is to clarify that  
13 the land use commission's adoption of county maps identifying  
14 important agricultural lands shall occur through rulemaking in  
15 conformance with existing Hawaii Administrative Rules.

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

18 "(a) After receipt of the maps of eligible important  
19 agricultural lands from the counties and the recommendations of  
20 the department of agriculture and the office of planning and  
21 sustainable development, the commission shall then proceed to



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

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

- 14 (1) The proposed lands meet the standards and criteria  
15 under section 205-44;
- 16 (2) The proposed designation is necessary to meet the  
17 objectives and policies for important agricultural  
18 lands in sections 205-42 and 205-43; and
- 19 (3) The commission has designated lands as important  
20 agricultural lands[7] pursuant to section 205-45;  
21 provided that if the majority of landowners'



1 landholdings is already designated as important  
2 agricultural lands, excluding lands held in the  
3 conservation district<sup>[7]</sup> 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 eligible  
17 important agricultural lands submitted by the county, in whole  
18 or in part, of those lands that meet the standards and criteria  
19 set forth in section 205-44, and the adoption of maps shall be  
20 approved by two-thirds of the membership to which the commission  
21 is entitled.



1 The adoption of maps designating important agricultural  
2 lands pursuant to this section shall not be through a contested  
3 case hearing but a rulemaking proceeding pursuant to section  
4 91-3."

5 PART II

6 SECTION 3. The legislature further finds that, in 2008,  
7 the legislature passed a package of incentives for lands  
8 designated as important agricultural lands pursuant to section 3  
9 of article XI of the Hawaii State Constitution. Act 233,  
10 Session Laws of Hawaii 2008 (Act 233), provided incentives  
11 intended to promote agricultural viability, sustained growth of  
12 the agricultural industry, and the long-term use and protection  
13 of lands designated as important agricultural lands.

14 Act 233 included a provision allowing landowners to  
15 develop, construct, and maintain farm dwellings and employee  
16 housing for farmers, employees, and their immediate family  
17 members on lands designated as important agricultural lands;  
18 provided that occupants of these dwellings are actively engaged  
19 in farming. Although this provision was intended as an  
20 incentive for the designation and agricultural use of important  
21 agricultural lands, it is unclear whether the provision, as



1 codified in section 205-45.5, Hawaii Revised Statutes, imposes  
2 more restrictive standards for farm dwellings and employee  
3 housing on important agricultural lands than the existing  
4 standards applied to farm dwellings and employee housing on  
5 lands in the state agricultural land use district pursuant to  
6 chapter 205, Hawaii Revised Statutes.

7       The legislature recognizes that the lack of affordable  
8 housing for farmers and farm labor is an impediment to  
9 increasing food and non-food agricultural production in Hawaii.  
10 There is still a need for a means to develop housing for farmers  
11 and farm employees on lands designated as important agricultural  
12 lands that both reduces the cost and time required to supply  
13 such housing and ensures that the housing is used in conjunction  
14 with, and located on, an active farm and is occupied by bona  
15 fide farmers and farm employees.

16       Accordingly, the purpose of this part is to amend  
17 infrastructure standards for important agricultural lands to  
18 meet agricultural needs by facilitating the provision of certain  
19 farmer and farm employee housing. More specifically, the  
20 purpose of this part is to:



- 1 (1) Establish an important agricultural lands incentive to  
2 facilitate the development of farm cluster housing for  
3 farmers and farm employees who actively and currently  
4 farm important agricultural lands;
- 5 (2) Include farm cluster housing under a priority permit  
6 processing procedure for facilities on lands  
7 designated as important agricultural lands; and
- 8 (3) Repeal the existing requirements for farm dwellings  
9 and employee housing on important agricultural lands  
10 to eliminate any restrictions that may be stricter  
11 than what is allowed under the definition of a farm  
12 dwelling.

13 SECTION 4. Chapter 205, Hawaii Revised Statutes, is  
14 amended by adding a new section to part III to be appropriately  
15 designated and to read as follows:

16 **"§205- Important agricultural lands incentive; farm**  
17 **cluster housing.** (a) There is established an important  
18 agricultural lands incentive to provide an alternative means of  
19 developing housing for farmers and farm employees who actively  
20 and currently farm important agricultural lands. The incentive  
21 shall be used to support housing development projects that



1 reduce costs and time while ensuring that the housing developed  
2 does not contribute to the loss of agricultural land to  
3 non-agricultural residential uses or residential sprawl.

4 (b) Notwithstanding section 205-51(b) or any other law to  
5 the contrary, a landowner or lessee of agricultural lands that  
6 are designated as important agricultural lands may apply to a  
7 county to develop, construct, and maintain farm cluster housing  
8 on the lands for rent to:

9 (1) Farmers and farm employees who actively and currently  
10 farm on important agricultural lands; and

11 (2) Immediate family members of the persons described in  
12 paragraph (1).

13 (c) Each county shall enact ordinances to allow farm  
14 cluster housing on important agricultural lands. The ordinances  
15 shall provide processes for:

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

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

19 (3) Priority review and processing;

20 (4) The development of more units per lot than allowed by  
21 the underlying county zoning requirements; and





1       (5) The submission to the county of the landowner or  
2       lessee's agricultural plan or agricultural business  
3       plan supporting the development of farm cluster  
4       housing and verification of a real property tax  
5       agricultural dedication granted by the county. The  
6       agricultural plan and agricultural tax dedication  
7       verification shall be submitted to the appropriate  
8       county agency for review and comment and may be  
9       submitted by the county to the department of  
10       agriculture for review and comment, before any county  
11       action on the application.

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

14       (1) Farm cluster housing shall be allowed only on lots of  
15       record that are at least ten acres;

16       (2) The primary occupant of each farm cluster housing unit  
17       shall be a farmer or farm employee who is actively and  
18       currently farming the important agricultural lands  
19       upon which the farm cluster housing unit is situated.  
20       This restriction shall be stated in any applicable  
21       rental documents;



- 1        (3) The total land area upon which the farm cluster  
2        housing units and all appurtenances are situated shall  
3        occupy the lesser of:
- 4        (A) A contiguous block or area comprising not more  
5        than five per cent of the lot of record; or
- 6        (B) Ten acres;
- 7        (4) The farm cluster housing units shall meet all  
8        applicable building code and infrastructure  
9        requirements and standards necessary to ensure safe  
10       and healthful occupancy;
- 11       (5) The farm cluster housing units shall not be used as  
12       short-term vacation rentals; and
- 13       (6) If farm cluster housing units are vacated as a result  
14       of the cessation of any agricultural operations on the  
15       land, the landowner or lessee may rent the farm  
16       cluster housing units under the same restrictions  
17       imposed by this section to farmers or farm employees  
18       who are actively and currently farming other  
19       agricultural lands.
- 20       (e) The officer or agency charged with the administration  
21       of county zoning laws within each county may enforce the



1 building and use restrictions in this section and impose  
2 penalties for violations of any provision of this section or the  
3 county permit.

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

9 (g) For purposes of this section, "farm cluster housing"  
10 means a housing development that concentrates housing units and  
11 shared infrastructure in a compact area within the larger lot  
12 and minimizes the land area occupied by the housing  
13 development."

14 SECTION 5. Section 205-46.5, Hawaii Revised Statutes, is  
15 amended by amending its title and subsection (a) to read as  
16 follows:

17 "[+]§205-46.5[+] **Agricultural processing facilities; farm**  
18 **cluster housing; permits; priority.** (a) Any agency subject to  
19 this chapter [~~or title 13~~] that issues permits shall establish  
20 and implement a procedure for the priority processing of permit



1 applications and renewals, at no additional cost to the  
2 applicant, for ~~[agricultural]~~ the following:

- 3       (1) Agricultural processing facilities that process crops  
4             or livestock from an agribusiness; and
- 5       (2) Farm cluster housing developed pursuant to  
6             section 205- ;

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

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

16       SECTION 6. Section 205-45.5, Hawaii Revised Statutes, is  
17 repealed.

18       ~~["~~§205-45.5~~ Important agricultural land; farm dwellings  
19 and 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~~



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

PART III

16 SECTION 7. This Act does not affect rights and duties that  
17 matured, penalties that were incurred, and permit proceedings  
18 begun before its effective date under the use and district  
19 standards for the state agricultural land use district and  
20 underlying county zoning.



1 SECTION 8. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 9. This Act shall take effect upon its approval.

4

INTRODUCED BY: 



# S.B. NO. 2596

**Report Title:**

LUC; Important Agricultural Lands; Adoption of County Maps;  
Incentive; Farm Cluster Housing

**Description:**

Clarifies that the Land Use Commission's decision-making for the adoption of county maps for the designation of important agricultural lands shall be through a rulemaking proceeding. Establishes an incentive that allows farm cluster housing on important agricultural lands under certain conditions and requires permitting agencies to establish a priority processing procedure for the farm cluster housings. Repeals existing law that governs farm dwellings and employee housing on important agricultural lands.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

