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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           SECTION 1. The legislature finds that in 2008, the  
2 legislature passed incentives intended to promote agricultural  
3 viability, sustained growth of the agricultural industry, and  
4 the long-term use and protection of lands designated as  
5 important agricultural lands.

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

17           The legislature recognizes that the lack of affordable  
18 housing for farmers and farm employees is an impediment to

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1 increasing food and non-food agricultural production in Hawaii.  
2 There is still a need to develop housing for farmers and farm  
3 employees on lands designated as important agricultural lands  
4 that both reduces the cost and time required to supply such  
5 housing and ensures that the housing is used in conjunction  
6 with, and located on, an active farm and is occupied by bona  
7 fide farmers or farm employees.

8 The purposes of this Act are to:

- 9 (1) Establish an important agricultural lands incentive to  
10 facilitate the development of farm cluster housing for  
11 farmers, farm employees, and their immediate family  
12 members;
- 13 (2) Include farm cluster housing under a priority permit  
14 processing procedure for facilities on lands  
15 designated as important agricultural lands; and
- 16 (3) Repeal the existing requirements for farm dwellings  
17 and employee housing on important agricultural lands  
18 to eliminate any restrictions that may be stricter  
19 than what is allowed under the existing definition of  
20 a farm dwelling.

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

4 "§205- Important agricultural lands incentive; farm  
5 cluster housing. (a) There is established an important  
6 agricultural lands incentive to provide an alternative means to  
7 develop housing for farmers and farm employees who actively and  
8 currently farm lands that are designated as important  
9 agricultural lands. The incentive shall be used to support  
10 development of farmer and farm employee housing that reduces  
11 costs and time while ensuring that the housing developed does  
12 not contribute to the loss of agricultural land to non-  
13 agricultural residential uses or residential sprawl.

14 (b) Notwithstanding section 205-51(b) and any other law to  
15 the contrary, a landowner or lessee of lands that are designated  
16 as important agricultural lands may apply to a county for a  
17 permit, in a form to be determined by the county, that allows  
18 the landowner or lessee to develop, construct, and maintain farm  
19 cluster housing on the lands for rent to farmers and farm  
20 employees who actively and currently farm on important  
21 agricultural lands and their immediate family members.

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1        (c) Each county shall enact ordinances to allow farm  
2 cluster housing on important agricultural lands. The ordinances  
3 shall provide for:

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

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

7        (3) Priority review and processing pursuant to section  
8 205-46.5;

9        (4) The development of more units per lot than allowed by  
10 the underlying county zoning; and

11       (5) The submission to the county of the landowner or  
12 lessee's agricultural plan or agricultural business  
13 plan supporting the development of farm cluster  
14 housing and providing evidence of a real property tax  
15 agricultural dedication granted by the county. The  
16 agricultural plan and agricultural tax dedication  
17 verification shall be submitted to the appropriate  
18 county agency for review and comment and may be  
19 submitted by the county to the department of  
20 agriculture for review and comment, before any county  
21 action on the application.

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

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

5        (2) All farm cluster housing units shall be leased or  
6 rented to a farmer or farm employee who is farming the  
7 important agricultural lands upon which the farm  
8 cluster housing is situated. This restriction shall  
9 be stated in any applicable rental documents;

10       (3) The total land area upon which the farm cluster  
11 housing units and all appurtenances are situated shall  
12 occupy an area that is the lesser of:

13       (A) A contiguous block or area no more than five per  
14 cent of the lot of record; or

15       (B) A contiguous block or area not to exceed ten  
16 acres;

17       (4) The farm cluster housing units shall meet all  
18 applicable building code requirements and  
19 infrastructure requirements and standards necessary to  
20 ensure safe and healthful occupancy;

21       (5) The farm cluster housing units shall not be used for  
22 short-term vacation rentals;

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1       (6) The landowner or master lessee shall be responsible  
2           for ensuring compliance with the occupancy requirement  
3           set forth in subsection (d)(1) and the restriction on  
4           use set forth in subsection (d)(5); and

5       (7) If farm cluster housing units are vacated as a result  
6           of the cessation of any agricultural operations on the  
7           important agricultural lands, the landowner or master  
8           lessee may rent the farm cluster housing units under  
9           the same restrictions imposed by this section to a  
10          farmer or farm employee of a bona fide farming  
11          operation, as defined in section 165-2, on other  
12          agricultural lands, whether or not those lands have  
13          been designated as important agricultural lands.

14       (e) The officer or agency charged with the administration  
15       of county zoning laws within each county shall enforce the  
16       building and use restrictions in this section and impose  
17       penalties for violations of any provision of this section or of  
18       any related county permit.

19       (f) Farm dwellings and employee housing units on lands  
20       designated as important agricultural lands that are not  
21       processed as farm cluster housing pursuant to this section shall

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1 be subject to all applicable state laws, county ordinances, and  
2 rules.

3 (g) As used in this section, "farm cluster housing" means  
4 an agricultural housing development that concentrates farm  
5  dwellings and farm employee housing units and shared  
6  infrastructure in a compact area within the larger lot and  
7  minimizes the land area occupied by the housing development."

8 SECTION 3. Section 205-46.5, Hawaii Revised Statutes, is  
9 amended by amending its title and subsection (a) to read as  
10 follows:

11 "[+] §205-46.5 [+] **Agricultural processing facilities; farm**  
12 **cluster housing; permits; priority.** (a) Any agency subject to  
13 this chapter or title 13 that issues permits for:

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

16 (2) Farm cluster housing developed pursuant to section  
17  205- ;

18 shall establish and implement a procedure for the priority  
19 processing of those permit applications and renewals, at no  
20 additional cost to the applicant [~~for agricultural processing~~  
21  ~~facilities that process crops or livestock from an~~  
22  ~~agribusiness]~~; provided that the majority of the lands held,

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1 owned, or used by the agribusiness or farm cluster housing  
2 applicant shall be land designated as important agricultural  
3 lands pursuant to this part, excluding lands held, owned, or  
4 used by the agribusiness or applicant in a conservation  
5 district.

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

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

12 [~~"[§205-45.5] Important agricultural land; farm dwellings~~  
13 ~~and employee housing. A landowner whose agricultural lands are~~  
14 ~~designated as important agricultural lands may develop,~~  
15 ~~construct, and maintain farm dwellings and employee housing for~~  
16 ~~farmers, employees, and their immediate family members on these~~  
17 ~~lands; provided that:~~

18 ~~(1) The farm dwellings and employee housing units shall be~~  
19 ~~used exclusively by farmers and their immediate family~~  
20 ~~members who actively and currently farm on important~~  
21 ~~agricultural land upon which the dwelling is situated;~~  
22 ~~provided further that the immediate family members of~~

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- 1           ~~a farmer may live in separate dwelling units situated~~  
2           ~~on the same designated land;~~
- 3       ~~(2) Employee housing units shall be used exclusively by~~  
4           ~~employees and their immediate family members who~~  
5           ~~actively and currently work on important agricultural~~  
6           ~~land upon which the housing unit is situated; provided~~  
7           ~~further that the immediate family members of the~~  
8           ~~employee shall not live in separate housing units and~~  
9           ~~shall live with the employee;~~
- 10       ~~(3) The total land area upon which the farm dwellings and~~  
11           ~~employee housing units and all appurtenances are~~  
12           ~~situated shall not occupy more than five per cent of~~  
13           ~~the total important agricultural land area controlled~~  
14           ~~by the farmer or the employee's employer or fifty~~  
15           ~~acres, whichever is less;~~
- 16       ~~(4) The farm dwellings and employee housing units shall~~  
17           ~~meet all applicable building code requirements;~~
- 18       ~~(5) Notwithstanding section 205-4.5(a)(12), the landowner~~  
19           ~~shall not plan or develop a residential subdivision on~~  
20           ~~the important agricultural land;~~
- 21       ~~(6) Consideration may be given to the cluster development~~  
22           ~~of farm dwellings and employee housing units to~~



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**Report Title:**

Important Agricultural Lands; Important Agricultural Lands Incentive; Farm Cluster Housing; Priority Permit Processing; Counties; County Ordinances

**Description:**

Repeals the provision authorizing farm dwellings and farm employee housing on important agricultural lands, amends the provision for priority permit processing to include farm cluster housing, and adopts a new provision establishing farm cluster housing to incentivize the designation of lands as important agricultural lands pursuant to chapter 205, HRS.

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

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## JUSTIFICATION SHEET

DEPARTMENT: Business, Economic Development, and Tourism

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

PURPOSE: To establish an important agricultural lands (IAL) incentive to facilitate the development of farm cluster housing for farmers and farm employees; to include farm cluster housing under a priority permit processing procedure; and to eliminate existing restrictions on farm dwellings and employee housing on IAL to the extent they are stricter than what is allowed under the definition of a farm dwelling.

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

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

Section 205-45.5, HRS, authorizes the development of farm dwellings and employee housing on lands designated as IAL under chapter 205, HRS. That section was intended to incentivize IAL designation by making it easier to provide farm dwellings and employee housing on IAL on the condition that occupants must be engaged in farming.

As written, section 205-45.5, HRS, creates several problems.

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

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

Thus, section 205-45.5, HRS, has been interpreted as imposing an additional restriction on farm dwellings, beyond those in the definition of farm dwelling in section 205-4.5(a)(4), HRS. The bill would resolve this issue by repealing the current section and adding a new section that requires the enactment of county ordinances that provide appropriate relief from density, lot, and subdivision standards for farm cluster housing, which would offer more of an incentive to designate land as IAL. Additionally, this bill will amend section 205-46.5, HRS, to require that the counties prioritize permits for farm cluster housing.

Impact on the public: Section 205-45.5, HRS, is being repealed, rather than amended, to avoid any association of this incentive with the controversial section 205-45.5, HRS, that so many landowners were opposed to during the previous county IAL proceedings before the Land Use Commission. Replacing the controversial section with a new one that more clearly defines the intended incentive will help reduce fears of landowners that the designation of lands as IAL would impose stricter restrictions than what are already imposed on agricultural lands under chapter 205, HRS. This would

hopefully reduce landowners' concerns about having land designated as IAL and enable designation of IAL by the counties to proceed. In addition, relaxing certain development standards through the new section would make this a more workable incentive for landowners and lessees of IAL to develop, construct, and maintain farm cluster housing on these lands.

Impact on the department and other agencies:

There should be no negative impact on the department or sister state agencies. The bill could facilitate the IAL designation process for the 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. These proposed revisions are not expected to any level of service or cost to the counties pursuant to section 5, article VIII of the Hawaii constitution because the revisions simply clarify existing requirements, and the counties are already responsible for enforcing regulations associated with chapter 205, HRS, which allows for farm dwellings and employee housing on IAL. However, should the counties determine that processing farm cluster housing requires more resources, the counties can charge fees to cover their costs.

EFFECTIVE DATE: Upon approval.