

ACT 233

S.B. NO. 2646

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 legislature and approved by a two-thirds vote of the body responsible for the reclassification or rezoning action.”

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

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

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

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

- (1) Providing incentives and protections to establish and sustain viable agricultural operations on important agricultural lands; and
- (2) Providing for the designation of important agricultural lands on public lands by:
 - (A) Requiring the department of agriculture and department of land and natural resources to jointly identify the state-owned lands that should be designated as “important agricultural lands”;
 - (B) Transferring management authority over those lands to the department of agriculture; and

- (3) Providing for the combined designation of important agricultural land and reclassification to other land use districts by declaratory order of the land use commission.

PART II

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

“§205- Important agricultural land; farm dwellings and employee housing. A landowner whose agricultural lands are designated as important agricultural lands may develop, construct, and maintain farm dwellings and employee housing for farmers, employees, and their immediate family members on these lands; provided that:

- (1) The farm dwellings and employee housing units shall be used exclusively by farmers and their immediate family members who actively and currently farm on important agricultural land upon which the dwelling is situated; provided further that the immediate family members of a farmer may live in separate dwelling units situated on the same designated land;
- (2) Employee housing units shall be used exclusively by employees and their immediate family members who actively and currently work on important agricultural land upon which the housing unit is situated; provided further that the immediate family members of the employee shall not live in separate housing units and shall live with the employee;
- (3) The total land area upon which the farm dwellings and employee housing units and all appurtenances are situated shall not occupy more than five per cent of the total important agricultural land area controlled by the farmer or the employee’s employer or fifty acres, whichever is less;
- (4) The farm dwellings and employee housing units shall meet all applicable building code requirements;
- (5) Notwithstanding section 205-4.5(a)(12), the landowner shall not plan or develop a residential subdivision on the important agricultural land;
- (6) Consideration may be given to the cluster development of farm dwellings and employee housing units to maximize the land area available for agricultural production; and
- (7) The plans for farm dwellings and employee housing units shall be supported by agricultural plans that are approved by the department of agriculture.”

PART III

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

The purpose of this part is to establish an important agricultural land qualified agricultural cost tax credit to establish and sustain viable agricultural operations on important agricultural lands.

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

“§235- Important agricultural land qualified agricultural cost tax credit.

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

- (1) In the first year in which the credit is claimed, twenty-five per cent of the lesser of the following:
 - (A) The qualified agricultural costs incurred by the taxpayer after July 1, 2008; or
 - (B) \$625,000;
- (2) In the second year in which the credit is claimed, fifteen per cent of the lesser of the following:
 - (A) The qualified agricultural costs incurred by the taxpayer after July 1, 2008; or
 - (B) \$250,000; and
- (3) In the third year in which the credit is claimed, ten per cent of the lesser of the following:
 - (A) The qualified agricultural costs incurred by the taxpayer after July 1, 2008; or
 - (B) \$125,000.

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

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

(c) The amount of the qualified agricultural costs eligible to be claimed under this section shall be reduced by the amount of funds received by the taxpayer during the taxable year from the irrigation repair and maintenance special fund under section 167-24.

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

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

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

(e) If the credit under this section exceeds the taxpayer’s net income tax liability for the taxable year, the excess of the credit over liability shall be refunded to the taxpayer; provided that no refunds or payments on account of the credits allowed by this section shall be made for amounts less than \$1.

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

- (f) The director of taxation:
- (1) Shall prepare any forms that may be necessary to claim a credit under this section;
 - (2) May require the taxpayer to furnish information to ascertain the validity of the claim for credit made under this section; and
 - (3) May adopt rules pursuant to chapter 91 to effectuate this section.
- (g) The department of agriculture shall:
- (1) Maintain records of the total amount of qualified agricultural costs for each taxpayer claiming a credit;
 - (2) Verify the amount of the qualified agricultural costs claimed;
 - (3) Total all qualified agricultural costs claimed; and
 - (4) Certify the total amount of the tax credit for each taxable year.

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

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

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

(h) If in any taxable year the annual amount of certified credits reaches \$7,500,000 in the aggregate, the department of agriculture shall immediately discontinue certifying credits and notify the department of taxation. In no instance shall the department of agriculture certify a total amount of credits exceeding \$7,500,000 per taxable year. To comply with this restriction, the department of agriculture shall certify credits on a first come, first served basis.

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

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

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

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

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

(k) As used in this section:

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

- (1) The care and production of livestock and livestock products, poultry and poultry products, apiary products, and plant and animal production for nonfood uses;
- (2) The planting, cultivating, harvesting, and processing of crops; and
- (3) The farming or ranching of any plant or animal species in a controlled salt, brackish, or freshwater environment;

provided that the principal place of the agricultural business is maintained in the State and more than fifty per cent of the land the agricultural business owns or leases, excluding land classified as conservation land, is important agricultural land.

“Important agricultural lands” means lands identified and designated as important agricultural lands pursuant to part III of chapter 205.

“Net income tax liability” means income tax liability reduced by all other credits allowed under this chapter.

“Qualified agricultural costs” means expenditures for:

- (1) The plans, design, engineering, construction, renovation, repair, maintenance, and equipment for:
 - (A) Roads or utilities, primarily for agricultural purposes, where the majority of the lands serviced by the roads or utilities, excluding lands classified as conservation lands, are important agricultural lands;
 - (B) Agricultural processing facilities in the State, primarily for agricultural purposes, where the majority of the crops or livestock processed, harvested, treated, washed, handled, or packaged are from agricultural businesses;
 - (C) Water wells, reservoirs, dams, water storage facilities, water pipelines, ditches, or irrigation systems in the State, primarily for agricultural purposes, providing water for lands, the majority of which, excluding lands classified as conservation lands, are important agricultural lands; and
 - (D) Agricultural housing in the State, exclusively for agricultural purposes; provided that:
 - (i) The housing units are occupied solely by farmers or employees for agricultural businesses and their immediate family members;
 - (ii) The housing units are owned by the agricultural business;
 - (iii) The housing units are in the general vicinity, as determined by the department of agriculture, of agricultural lands owned or leased by the agricultural business; and
 - (iv) The housing units conform to any other conditions that may be required by the department of agriculture;
- (2) Feasibility studies, regulatory processing, and legal and accounting services related to the items under paragraph (1);
- (3) Equipment, primarily for agricultural purposes, used to cultivate, grow, harvest, or process agricultural products by an agricultural business; and
- (4) Regulatory processing, studies, and legal and other consultant services related to obtaining or retaining sufficient water for agricultural activities and retaining the right to farm on lands identified as important agricultural lands.

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

SECTION 5. The department of taxation, in consultation with the department of agriculture, shall submit to the legislature an annual report, no later than twenty days prior to the convening of each regular session, beginning with the regular session of 2010, regarding the quantitative and qualitative assessment of the impact of the important agricultural land qualified agricultural cost tax credit.

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

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

PART IV

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

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

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

“§155- Loan guaranty; important agricultural lands; agricultural and aquacultural loans. (a) From July 1, 2009, the chairperson of the board of agriculture may guarantee loans made by commercial lenders authorized to do business in this State, to agricultural producers for the purpose of developing and implementing agricultural projects; provided that the chairperson of the board of agriculture shall determine that:

- (1) The agricultural projects are located on lands designated as important agricultural lands pursuant to part III of chapter 205; and
- (2) The commercial lender has completed its due diligence in approving the loan, including ensuring adequate collateral;

The chairperson of the board of agriculture may impose other conditions that the chairperson deems reasonable to implement the loan guaranty.

(b) In addition to the conditions that the chairperson of the board of agriculture may impose under subsection (a), any loan guaranty made pursuant to this section shall meet the following conditions:

- (1) For any loan that finances operating costs, the maximum term of the loan shall be ten years;
- (2) For any loan that finances capital improvement costs, the maximum term of the loan shall be twenty years;
- (3) The interest rate charged on any loan shall be one per cent below the commercial lender's prime rate for as long as the loan guaranty is in effect;
- (4) The loan guaranty may be up to eighty-five per cent of the outstanding principal amount of any single loan, but shall not include any fees or accrued interest associated with the loan or its collection; and
- (5) The total principal amount of the guaranteed portion of all loans outstanding at any time shall not exceed \$2,500,000.

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

(d) As used in this section:

“Agricultural producer” means a farmer, cooperative association, or land-owner who derives at least fifty per cent of its gross income from agricultural or aquacultural activities.

“Agricultural project” means a project relating to agricultural or aquacultural operations or capital improvements.”

SECTION 9. The department of taxation, in consultation with the department of agriculture, shall submit to the legislature an annual report, no later than twenty days prior to the convening of each regular session, beginning with the regular session of 2010, that provides a quantitative and qualitative assessment of the impact of the loan guaranty program established in section 155- , Hawaii Revised Statutes.

PART VI¹

SECTION 10. Section 174C-31, Hawaii Revised Statutes, is amended by amending subsections (e) and (f) to read as follows:

“(e) The department of agriculture shall prepare a state agricultural water use and development plan for agricultural uses in the State in accordance with chapter 167 and this chapter, and subsequently modify and update the plan as necessary. The state agricultural water use and development plan shall include but not be limited to a master irrigation inventory plan ~~[which]~~ that shall:

- (1) Inventory ~~[the]~~ public and private irrigation water systems;
- (2) Identify the extent of rehabilitation needed for each system;
- (3) Identify sources of water used by agricultural operations and particularly those on lands identified and designated as important agricultural lands under part III of chapter 205;
- (4) Identify current and future water needs for agricultural operations and particularly those on lands identified and designated as important agricultural lands under part III of chapter 205;
- ~~[(3)]~~ (5) Subsidize the cost of repair and maintenance of the systems;
- ~~[(4)]~~ (6) Establish criteria to prioritize the rehabilitation of the systems;
- ~~[(5)]~~ (7) Develop a five-year program to repair the systems; and
- ~~[(6)]~~ (8) Set up a long-range plan to manage the systems.

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

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

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

PART VII¹

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

“§205- Agricultural processing facilities; permits; priority. (a) Any agency subject to this chapter or title 13 that issues permits shall establish and implement a procedure for the priority processing of permit applications and renewals, at no additional cost to the applicant, for agricultural processing facilities that process crops or livestock from an agribusiness; provided that the majority of the lands held, owned, or used by the agribusiness shall be land designated as important agricultural lands pursuant to this part, excluding lands held, owned, or used by the agribusiness in a conservation district.

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

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

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

“§321- Agricultural processing facilities; permits; priority. (a) Any agency subject to this chapter or title 19 that issues permits shall establish and implement a procedure for the priority processing of permit applications and renewals, at no additional cost to the applicant, for agricultural processing facilities that process crops or livestock from an agribusiness; provided that the majority of the lands held, owned, or used by the agribusiness shall be land designated as important agricultural lands pursuant to part III of chapter 205, excluding lands held, owned, or used by the agribusiness in a conservation district.

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

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

PART VIII¹

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

PART IX¹

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

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

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

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

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

“§141-1 Duties in general. The department of agriculture shall:

- (1) Gather, compile, and tabulate, from time to time, information and statistics concerning:
 - (A) Entomology and plant pathology: Insects, scales, blights, and diseases injurious[;] or liable to become injurious[;] to trees, plants, or other vegetation, and the ways and means of exterminating pests and diseases already in the State and preventing the introduction of [~~those~~] pests and diseases not yet here; and
 - (B) General agriculture: Fruits, fibres, and useful or ornamental plants and their introduction, development, care, and manufacture or exportation, with a view to introducing, establishing, and fostering new and valuable plants and industries;
- (2) Encourage and cooperate with the agricultural extension service and agricultural experiment station of the University of Hawaii and all private persons and organizations doing work of an experimental or educational character coming within the scope of the subject matter of chapters 141, 142, and 144 to 150A, and avoid, as far as practicable, duplicating the work of those persons and organizations;
- (3) Enter into contracts, cooperative agreements, or other transactions with any person, agency, or organization, public or private, as may be necessary in the conduct of the department’s business and on such terms as the department may deem appropriate; provided that the department shall not obligate any funds of the State, except the funds that have been appropriated to the department. Pursuant to cooperative agreement with any authorized federal agency, employees of the cooperative agency may be designated to carry out, on behalf of the State the same as department personnel, specific duties and responsibilities under chapters 141, 142, 150A, and rules adopted pursuant to those chapters, for the effective prosecution of pest control[;] and animal disease control[;] and the regulation of import into the State and intrastate movement of regulated articles;
- (4) Secure copies of the laws of other states, territories, and countries, and other publications germane to the subject matters of chapters 141, 142, and 144 to 150A, and make laws and publications available for public information and consultation;

- (5) Provide buildings, grounds, apparatus, and appurtenances necessary for the examination, quarantine, inspection, and fumigation provided for by chapters 141, 142, and 144 to 150A; for the obtaining, propagation, study, and distribution of beneficial insects, growths, and antidotes for the eradication of insects, blights, scales, or diseases injurious to vegetation of value and for the destruction of injurious vegetation; and for carrying out any other purposes of chapters 141, 142, and 144 to 150A;
- (6) Formulate and recommend to the governor and legislature additional legislation necessary or desirable for carrying out the purposes of chapters 141, 142, and 144 to 150A;
- (7) Publish at the end of each year a report of the expenditures and proceedings of the department and of the results achieved by the department, together with other matters germane to chapters 141, 142, and 144 to 150A[;] and ~~which~~ that the department may deem proper;
- (8) Administer a program of agricultural planning and development, including the formulation and implementation of general and special plans, including but not limited to the functional plan for agriculture; administer the planning, development, and management of the agricultural park program; plan, construct, operate, and maintain the state irrigation water systems; review, interpret, and make recommendations with respect to public policies and actions relating to agricultural land and water use; assist in research, evaluation, development, enhancement, and expansion of local agricultural industries; and serve as liaison with other public agencies and private organizations for the above purposes. In the foregoing, the department ~~[of agriculture]~~ shall act to conserve and protect agricultural lands and irrigation water systems, promote diversified agriculture, increase agricultural self-sufficiency, and ensure the availability of agriculturally suitable lands[-]; and
- (9) Manage, administer, and exercise control over any public lands, as defined under section 171-2, that are designated important agricultural lands pursuant to section 205- , including but not limited to establishing priorities for the leasing of these public lands within the department's jurisdiction."

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

“§171-3 Department of land and natural resources. (a) The department of land and natural resources shall be headed by an executive board to be known as the board of land and natural resources. The department shall manage, administer, and exercise control over public lands, the water resources, ocean waters, navigable streams, coastal areas (excluding commercial harbor areas), and minerals and all other interests therein and exercise such powers of disposition thereof as may be authorized by law. The department shall also manage and administer the state parks, historical sites, forests, forest reserves, aquatic life, aquatic life sanctuaries, public fishing areas, boating, ocean recreation, coastal programs, wildlife, wildlife sanctuaries, game management areas, public hunting areas, natural area reserves, and other functions assigned by law.

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

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

PART X¹

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

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

(b) In a petition for a declaratory order submitted under section 205-45 that seeks to both designate lands as important agricultural lands and reclassify lands in the agricultural district to the rural, conservation, or urban district, the lands shall be deemed qualified for designation as important agricultural land if the commission reasonably finds that the lands meet at least the criteria of subsection (c)(5) and (7) of this section.

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

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

- (1) Land currently used for agricultural production;
- (2) Land with soil qualities and growing conditions that support agricultural production of food, fiber, or fuel- and energy-producing crops;
- (3) Land identified under agricultural productivity rating systems, such as the agricultural lands of importance to the State of Hawaii (ALISH) system adopted by the board of agriculture on January 28, 1977;
- (4) Land types associated with traditional native Hawaiian agricultural uses, such as taro cultivation, or unique agricultural crops and uses, such as coffee, vineyards, aquaculture, and energy production;
- (5) Land with sufficient quantities of water to support viable agricultural production;
- (6) Land whose designation as important agricultural lands is consistent with general, development, and community plans of the county;
- (7) Land that contributes to maintaining a critical land mass important to agricultural operating productivity; and
- (8) Land with or near support infrastructure conducive to agricultural productivity, such as transportation to markets, water, or power.”

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

“~~[(H)§205-45(H)]~~ **Petition by farmer or landowner.** (a) A farmer or landowner with lands qualifying under section 205-44 may file with the commission a petition

for declaratory ~~[ruling with the commission]~~ order to designate the lands as important agricultural lands. The petition may be filed at any time in the designation process.

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

- ~~(1)~~ The land sought to be reclassified to the rural, urban, or conservation district is within the same county as the land sought to be designated as important agricultural lands;
- ~~(2)~~ If the reclassification of the land is proposed to the urban district, that reclassification to urban is consistent with the relevant county general and community, development, or community development plans; and
- ~~(3)~~ The total acreage of the land sought to be designated or reclassified in the petition complies with the following proportions:
 - ~~(A)~~ At least eighty-five per cent of the total acreage is sought to be designated as important agricultural land; and
 - ~~(B)~~ The remainder of the acreage is sought to be reclassified to the rural, urban, or conservation district.

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

- ~~(1)~~ Tax map ~~[keys]~~ key numbers of the land to be designated as important agricultural lands and, if applicable, the land to be reclassified from the agricultural district to the rural, urban, or conservation district, along with verification and authorization from the applicable landowners;
- ~~(2)~~ Proof of qualification for designation as important agricultural lands under section 205-44, respecting a regional perspective; ~~[and]~~
- ~~(3)~~ The current or planned agricultural use of the area sought to be designated~~[-]~~ as important agricultural lands; and
- ~~(4)~~ If applicable, the current or planned use of the area sought to be reclassified to the rural, urban, or conservation district.

~~(d)~~ Prior to the commission considering a petition for a declaratory order to designate important agricultural land in combination with the reclassification of agricultural land to the rural, urban, or conservation district, the petitioner shall submit to the commission a certification issued by the department of agriculture as to the quality of the land for which designation as important agricultural land is being sought.

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

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

- ~~(1)~~ The suitability of the land for the reclassification in accordance with section 205-2;
- ~~(2)~~ If the reclassification of the land is proposed to the urban district, that reclassification to urban is consistent with the relevant county general and community, development, or community development plans; and
- ~~(3)~~ Compliance with the other provisions of subsection (b).

If the commission, after its review ~~[and evaluation]~~, finds that the ~~[lands qualify for]~~ designation ~~[as important agricultural lands under this part,]~~ and, if applicable, reclassification sought in the petition should be approved, the commission shall vote, by a two-thirds majority of the members of the commission, to issue a declaratory order designating the petitioner's identified lands as important agricultural lands~~[-]~~ and, if applicable, reclassifying the petitioner's identified land from the

agricultural district to the rural, urban, or conservation district. The commission may include reasonable conditions in the declaratory order.

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

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

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

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

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

- (1) The number that is fifteen per cent of the total acreage of land subject to the order; less
- (2) The amount of the petitioner's land that is reclassified from the agricultural district to the rural, urban, or conservation district by the declaratory order.

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

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

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

(j) Land designated as important agricultural land pursuant to a declaratory order that both designates land as important agricultural land and reclassifies land in the agricultural district to the rural, urban, or conservation district, or a combination

thereof pursuant to this section shall be re-designated only with the prior authorization of the legislature. The authorization shall be expressed by the adoption of a concurrent resolution approved by a two-thirds vote of each house of the legislature voting separately. When making its decision, the legislature shall consider the standards and criteria in section 205-50.

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

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

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

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

~~[[§205-52]]~~ Periodic review and amendment of important agricultural lands maps. The maps delineating important agricultural lands shall be reviewed in conjunction with the county general plan and community ~~[and]~~ development, or community development plan revision process, or at least once every ten years following the adoption of the maps by the land use commission; provided that the maps shall not be reviewed more than once every five years. Any review and amendment of the maps of important agricultural lands shall be conducted in accordance with this part. In these periodic reviews or petitions by the farmers or landowners for declaratory rulings, the “important agricultural lands” designation shall be removed from those important agricultural lands where the commission has issued a declaratory order that a sufficient supply of water is no longer available to allow profitable farming of these lands due to governmental actions, acts of God, or other causes beyond the farmer’s or landowner’s reasonable control~~[-];~~ provided that, if the “important agricultural lands” were designated by a declaratory order in combination with the reclassification of land in the agricultural district to the rural, urban, or conservation district pursuant to section 205-45, the commission shall not remove the designation unless the legislature provides prior authorization by adoption of a concurrent resolution in accordance with section 205-45.”

PART XI¹

SECTION 22. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

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

(Became law on July 8, 2008, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.