A BILL FOR AN ACT

RELATING TO IMPORTANT AGRICULTURAL LANDS.

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

SECTION 1. The legislature finds that article XI, section 3 of the Hawaii State Constitution requires the State to conserve and protect agricultural lands and assure the long-term availability of agriculturally suitable lands. These lands are critical to the long-term viability of agriculture as a major export industry and as a means to increase Hawaii's self-sufficiency and diversification in agriculture.

The purpose of this Act is to establish a state agricultural land protection program for the voluntary acquisition of agricultural easements on lands identified as important agricultural land to the State.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

STATE AGRICULTURAL LAND PROTECTION PROGRAM

§ 1 Purpose. The legislature finds that the quality of life of the people of Hawaii is dependent in many ways upon the vitality and viability of the agricultural industry. The
sustainability of agriculture in Hawaii will depend on factors related to agricultural business viability and affordable access to productive agricultural lands. The State has a compelling interest in ensuring a strategic agricultural land base that is affordable to farmers and the industry as a whole for current and future agricultural entrepreneurs. The voluntary acquisition of easements on lands identified as important agricultural lands to the State that restrict use of the land to agricultural use is an important tool in the State’s efforts to ensure that agricultural land remains affordable to farmers and that the State’s important agricultural lands are protected for long-term agricultural use. Thus, the legislature finds and declares that the use of moneys for the acquisition of agricultural easements on important agricultural lands to the State is in the public interest and will promote the public health, safety, and general welfare of the people of this State.

§ -2 Agricultural land protection program. (a) The chairperson of the board of agriculture shall establish a program to assist the State in the acquisition of agricultural easements as defined in section 198-1, for land identified as important agricultural land to the State pursuant to article XI, section 3 of the Hawaii State Constitution. The chairperson may from funds appropriated to carry out the provisions of this chapter or received from other sources, pay any owner of agricultural land identified as important
agricultural land to the State and as approved by the
agricultural land protection board, an amount as is determined
to be equitable in consideration of the benefits to the
public, but not to exceed the difference between the fair
market value of such land and the fair market value of the
land restricted to agricultural purposes.

(b) Title to the agricultural easement shall be held in
the name of the State; provided, that the county in which such
land is located and which provides assistance or a portion of
the funds required for the purchase, may hold title to such
land jointly with the State.

§ -3 Agricultural land protection board. (a) There
is established within the department of agriculture for
administrative purposes the agricultural land protection board
consisting of five members appointed by the governor as
provided in section 26-34. Two of the members shall be
appointed from a list of nominees submitted by the speaker of
the house of representatives and two shall be appointed from a
list of nominees submitted by the president of the senate.
The members of the agricultural land protection board shall
include at a minimum one farmer, and shall include but not be
limited to members with expertise in agriculture, agricultural
economics, and real property appraisal.

(b) The members of the agricultural land protection
board shall serve without compensation but shall be reimbursed
for expenses, including travel expenses, necessary for the
performance of their duties.

(d) The agricultural land protection board shall evaluate and accept proposals for the acquisition of agricultural easements. In so evaluating, the board shall consider at a minimum the following:

(1) The factors which led to the land’s identification as important agricultural land pursuant to article XI, section 3 of the Hawaii State Constitution;

(2) The suitability of the land as to soil classification and other criteria for agricultural use, such as determined by the Agricultural Lands of Importance to the State of Hawaii (ALISH) classification system adopted by the board of agriculture on January 28, 1977, or similar agricultural productivity rating systems;

(3) The fair market value of the land and the fair market value of the land when used for agricultural purposes as determined by independent appraisals;

(4) The degree to which the acquisition would result in the protection of a critical mass or contiguous blocks of agriculturally productive land; and

§ -4 Rules and procedures. The board of agriculture shall adopt rules pursuant to chapter 91 necessary for the purposes of this chapter. The rules shall include but not be
limited to criteria and procedures for:

(1) Evaluation and selection criteria for the acquisition of agricultural easements on important agricultural land;

(2) Acquisition of agricultural easements;

(3) Guidelines for county programs that would be eligible for state matching funds;

(4) Management of easements by the State, counties, or other non-profit entities;

(5) Monitoring and evaluation of the agricultural land protection program; and

(6) Administration of the agricultural land protection fund.

§ -5 State matching of county agricultural land protection purchases; guidelines. The board of agriculture shall adopt guidelines and procedures for county purchases of agricultural easements that are matched by state agricultural land protection funds. State funds requested as a match for county or other sources of funding shall only be used by entities participating in an agricultural land protection program adopted by each county that meets these guidelines.

§ -6 Funding for acquisition; dedicated funding source. The purchase of agricultural easements shall be financed by the state. Funds collected from the shall be deposited into the state agricultural land protection fund established under section
-10, and shall be used solely for the acquisition of agricultural easements on lands identified as important agricultural lands to the State.

§ -7 Eligibility for tax incentives. The sale or the donation of an agricultural easement on important agricultural lands that is acquired or whose acquisition is matched with state funds pursuant to this chapter shall entitle the landowner to be eligible to the extent allowable for tax incentives enacted to promote the protection of important agricultural land. An agricultural business with agricultural operations on important agricultural lands with an agricultural easement that is acquired or whose acquisition is matched with state funds pursuant to this chapter shall be eligible for tax incentives enacted to promote long-term agricultural use of important agricultural lands.

§ -8 Use of land for which easement purchased. Uses on lands subject to an agricultural easement shall be restricted to agricultural uses, and normal agricultural operations including but not limited to the sale of farm products produced on the land with the easement purchased.

§ -9 Termination of easement. (a) It is the intent of the legislature that the easement purchased under this Act be held by the State in perpetuity. If circumstances have changed and it is determined that farming is no longer feasible on the land under easement, then an easement may be terminated only in the manner and at the time specified in
this section. Notwithstanding any other law to the contrary, any easement purchased under this Act that is to be matched by funds from the federal farm and ranch lands protection program pursuant to Title 7 Code of Federal Regulations Part 1491, as amended, shall be held by the State in perpetuity.

(b) At any time after thirty years from the date of purchase of an easement, the landowner may request that the easement be reviewed for possible termination of the easement. Upon a request for review of an easement for termination, an inquiry shall be conducted by the agricultural land protection board to determine whether conditions on the land subject to an agricultural easement have changed so significantly that agricultural production is no longer viable and it has become impossible to fulfill the easement’s purposes. The inquiry shall be concluded and a decision reached by the board within 180 days after the request for termination, and shall include:

(1) An on-site inspection of the subject land; and
(2) A public hearing conducted by the board within the county containing the subject land after adequate public notice.

(d) An easement may be terminated only with the approval of the governing body of the county containing the subject land. In deciding whether to approve the request for termination, the county governing body shall receive the recommendations of farming organizations on the island on
which the land is situated and the county’s agricultural land
protection if one is established. The decision of the county
governing body shall be made after the public hearing required
in paragraph (c). The county governing body shall notify the
agricultural land protection board of its decision within
thirty days after the conclusion of the public hearing
required in paragraph (c).

(e) Upon the affirmative vote of a majority of the
board, and upon the approval of the chairperson of the board
of agriculture and the state comptroller, the request for
termination shall be approved, and the landowner shall be
notified.

(f) If the request for termination is approved, an
appraisal of the subject land shall be ordered by the
agricultural land protection board at the expense of the
landowner requesting termination of the easement. No more
than one hundred eighty days following the appraisal, the
landowner may repurchase the easement by paying to the board
the difference between the fair market value and the
agricultural value of the subject land, as determined by the
appraisal. For purposes of this subsection, the agricultural
value is the price as of the valuation date which a vendor,
willing but not obligated to sell, would accept, and which a
purchaser, willing but not obligated to buy, would pay for
comparable land that is restricted to agricultural use.

(g) In the case of the termination of an easement that
was originally purchased under a matching purchase, the board shall deposit the state portion of the repurchase payment received under subsection (f) that is equal to the percentage of the original easement purchase price contributed by the State in the agricultural land protection fund. The board shall also distribute to the contributing county the portion of the repurchase payment that is equal to the percentage of the original easement purchase price contributed by the county. The county shall deposit these funds in a county special account established solely for the purchase of agricultural easements.

(h) If any of the funds deposited in the county's special account pursuant to this section have not been expended or committed within three years from the date of deposit into the special account, the county collector shall remit those funds to the state comptroller for deposit in the state agricultural land protection fund.

(i) If the request for termination is denied, or if the landowner fails to repurchase the easement within one hundred eighty days of the appraisal, the landowner may not again request termination of the easement until five years after his last request for termination.

§ -10 Agricultural land protection fund. (a) There is established in the state treasury the agricultural land protection fund, into which shall be deposited:

(1) Funds from state, federal, or private grants and
appropriations; and

(2) Funds from ____, which shall be a permanent source of funds to be restricted to program expenditures as authorized in this part.

(b) Moneys in the agricultural land protection fund shall be used to purchase agricultural easements or to match funds for the purchase of agricultural easements of important agricultural lands to be enrolled in the state agricultural land protection program pursuant to section -2 or county programs established for the purchase of agricultural easements.

(c) The fund shall be administered by the department of agriculture. Appropriations or authorizations from the fund shall be expended by the department. The department may contract with other public or private entities for the provision of all or a portion of the services necessary for the administration and implementation of the fund. The department may set fees or charges for fund management or technical assistance provided under this section.

(d) All interest earned on the deposit or investment of the moneys in the fund shall become a part of the fund.

§ -11 Annual report. The department shall submit to the governor and the legislature, at least twenty days prior to the start of any regular session, a complete report describing the activities and easements acquired and fund administration pursuant to this chapter.”
SECTION 3. Chapter 198, Hawaii Revised Statutes, is amended by amending section 198-1 to read as follows:

"§198-1 Conservation easement defined. For the purposes of this chapter, a "conservation easement" is an interest in real property created by deed, restrictions, covenants, or conditions, the purpose of which is to:

(1) Preserve and protect land predominantly in its natural, scenic, forested, or open-space condition;

(2) Preserve and protect the structural integrity and physical appearance of cultural landscapes, resources, and sites which perpetuate indigenous native Hawaiian culture; [or]

(3) Preserve and protect historic properties as defined in section 6E-2, and traditional and family cemeteries[.]; or

(4) In the case of agricultural land, restrict use of the affected land to agricultural use and forbid or limit activities and uses that would adversely affect the land’s current and future use for agriculture. A conservation easement on agricultural land shall be known as an “agricultural easement” for the purposes of this chapter and other programs and incentives enacted by the legislature for agricultural easements."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.
SECTION 5. This Act shall take effect upon its approval.

INTRODUCED BY: _________________________