A BILL FOR AN ACT

RELATING TO IMPORTANT AGRICULTURAL LANDS.

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

SECTION 1. In 1978, voters approved article XI, section 3 of the Hawaii State Constitution, which sets out the framework for state policies to promote agriculture and the conservation of productive agricultural lands in the State of Hawaii. 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."

The legislature finds that there is a compelling need to provide standards and criteria and mechanisms to fulfill the intent and purpose of article XI, section 3 of the State
Constitution and enable implementation of the constitutional mandate.

The legislature further finds that while land is the basic resource for agriculture and the supply of lands suitable for agriculture is an irreplaceable resource, the long-term viability of agriculture also depends on factors that affect the profitability of agriculture, such as commodity prices, the availability of water for irrigation, agricultural research and outreach, the application of production technologies, marketing, and the availability and cost of transportation services. Hawaii’s agricultural producers face operating costs that increasingly threaten the viability of their agricultural operations and the sustainability of agriculture in Hawaii.

Thus, the intent of this legislation is to not only set policies for important agricultural lands and to identify important agricultural lands, but to also provide for the development of incentives for agricultural viability in Hawaii, and in particular, for agricultural enterprises farming important agricultural lands and the landowners of important agricultural lands. These incentives would be designed to promote the retention of important agricultural lands for productive agricultural use for the long-term or in perpetuity.
The purpose of this Act is to further implement article XI, section 3 of the State Constitution by:

(1) Establishing a new part in Chapter 205, Hawaii Revised Statutes, setting forth policies and procedures for the identification and management of important agricultural lands to the State, to include:

(A) Policies to assure the conservation and availability of important agricultural lands to the State for long-term agricultural use;

(B) Standards and criteria for the identification of important agricultural lands to the State;

(C) A process for the identification of important agricultural lands to the State;

(D) Standards and criteria for the reclassification and rezoning of lands identified as important agricultural lands to the State; and

(E) Policies for incentives for the long-term or permanent retention of important agricultural lands to the State for agricultural use; and

(2) Providing for a process to develop proposals for state and county incentives to promote agricultural viability and the long-term use of important agricultural lands for agricultural use.

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

"PART A. IMPORTANT AGRICULTURAL LANDS

§205-A Declaration of policy. It is declared that the people of Hawaii have a substantial interest in the health and sustainability of agriculture as an industry in the State. There is a compelling state interest in conserving the State’s agricultural land resource base and assuring the long-term availability of agricultural lands for agricultural use to achieve the purposes of conserving and protecting agricultural lands, promoting diversified agriculture, increasing agricultural self-sufficiency, and assuring the availability of agriculturally suitable lands pursuant to article XI, section 3 of the Hawaii State Constitution.

§205-B Important agricultural land; definition and objectives. As used in this part, unless the context otherwise requires, "important agricultural lands" means those lands identified pursuant to this part that:

(1) Are capable of producing sustained high agricultural yields when treated and managed according to accepted farming methods and technology;

(2) Contribute to the economic base of the State and produce agricultural commodities for export or local consumption; or
(3) Are needed to promote the expansion of agricultural activities and income for the future, even if currently not in production.

(b) The objective for the identification of important agricultural land is to identify and plan for the maintenance of a strategic agricultural land resource base that can support a diversity of agricultural activities and opportunities, which expand agricultural income and job opportunities and increase agricultural self-sufficiency for current and future generations. In order to achieve this objective, the State shall promote agricultural development and land use planning that delineates blocks of productive agricultural land and areas of agricultural activity for protection from the encroachment of non-agricultural uses, and establish incentives that promote the long-term viability of agriculture and the long-term agricultural use of these productive agricultural lands.

§205-C  Important agricultural lands; policies.  (a)
State and county agricultural policies, tax policies, land use plans, ordinances, and rules shall promote the long-term viability of agricultural use of important agricultural lands, and shall be consistent with and implement the following policies:

(1) Promote the retention of important agricultural lands in blocks of contiguous, intact, and
functional land units large enough to allow
flexibility in agricultural production and
management;

(2) Discourage the fragmentation of important
agricultural lands and the conversion of these lands
to non-agricultural uses;

(3) Direct non-agricultural uses and activities from
important agricultural lands to other areas and
ensure that uses on important agricultural lands are
agricultural uses;

(4) Buffer important agricultural lands from urban or
incompatible uses and minimize nuisance conflicts
that could impair agricultural activities;

(5) Limit physical improvements on important
agricultural lands to maintain affordability of
these lands for agricultural purposes;

(6) Provide a basic level of infrastructure and services
limited to the minimum necessary to support
agricultural uses and activities;

(7) Facilitate the long-term dedication of important
agricultural lands for future agricultural use;

(8) Facilitate access of farmers to important
agricultural lands for long-term agricultural use;

and

(9) Promote the maintenance of essential agricultural
infrastructure systems, including irrigation systems.

§205-D Standards and criteria for the identification of important agricultural lands. The standards and criteria in this section shall be used to identify important agricultural lands to the State. Lands identified as important agricultural lands need not meet every standard and criteria listed below; rather, lands meeting any of the criteria below 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 in order to meet the constitutionally mandated purposes in article XI, section 3 of the State Constitution and the policy objectives for important agricultural lands in sections 205-B and 205-C. The standards and criteria are as follows:

(1) Land currently in 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, and unique agricultural crops and uses,
such as coffee, vineyards, and energy production;
(5) Land with sufficient quantities of water that
support viable agricultural production;
(6) Land whose designation as important agricultural
lands is consistent with county general and
development or community plans;
(7) Land which contributes to maintaining a critical
land mass important to agricultural operating
productivity;
(8) Land with, or close to, support infrastructure
conducive to agricultural productivity (e.g.,
transportation to markets, water, or power); and
(9) Land that will provide a margin for future
agricultural needs and opportunities.

§205-E  Incentives for important agricultural lands. (a)
To achieve the long-term protection of important agricultural
lands, the State and each county shall ensure that their
respective agricultural development, land use and tax
policies, and agricultural land protection programs enable and
promote the economic sustainability of agriculture conducted
on lands identified as important agricultural lands to the
State. Persons with a property interest in lands identified
as important agricultural lands, and agricultural operations
(b) State and county incentive programs shall provide preference to important agricultural lands and agricultural businesses on important agricultural lands. The State and each county shall cooperate in program development to prevent duplication and to streamline and consolidate access to programs and services for agricultural businesses located on important agricultural lands.

(c) Incentive and protection programs shall be designed to provide a mutually supporting framework of programs and measures that enhance agricultural viability on important agricultural lands, including but not limited to the following:

(1) Grant assistance;
(2) Real property tax systems that support the needs of agriculture, including property tax assessments based on agricultural use valuation;
(3) Reduced infrastructure requirements and facilitated building permit processes for dedicated agricultural structures;
(4) Tax incentives to offset operational costs, promote agricultural business viability, and promote the long-term protection of important agricultural lands;

(5) Agricultural business planning and implementation grants;

(6) Tax incentives and programs for equity investments and financing for agricultural operations;

(7) Other programs and mechanisms that promote investment in agricultural businesses or agricultural land protection, such as the purchase of development rights;

(8) State funding mechanisms to fund business viability and land protection programs; and

(9) Other measures that would ensure that state capital investments, projects, programs, and rules are consistent with this part.

(d) State and county agencies shall review the protection and incentive measures enacted for important agricultural lands and agricultural viability pursuant to this Act, at a minimum, every three years, to determine their effectiveness in sustaining agriculture in Hawaii, assuring agricultural diversification, and increasing agricultural self-sufficiency, and to modify measures and programs as needed.
§205-F  Identification of important agricultural lands; county process.  (a) Each county shall identify and map important agricultural lands within its respective jurisdiction based on the standards and criteria in section 205-D.

(b) Each county shall develop maps of lands to be considered for designation as important agricultural lands to the State in consultation and cooperation with the state department of agriculture, agricultural interest groups, including representatives from the Hawaii Farm Bureau Federation and other farmer organizations, landowners, the United States Department of Agriculture – Natural Resources Conservation Service, and other groups as necessary.

(c) Each county through its planning department shall develop an inclusive process for public involvement in the identification of potential lands and the development of maps of lands to be recommended as important agricultural lands to the State, to include a series of public meetings throughout the identification and mapping process. The county planning departments may also establish one or more citizen advisory committees on important agricultural lands so as to provide further public input. In formulating its final recommendations to the respective county councils, the planning departments shall report on the following:

(1) The manner in which the land identified as important
agricultural lands relates to the standards and
criteria set forth in section 205-D; and

(2) How the important agricultural lands mapping relates
to and supports the county’s adopted land use plans.

(d) The important agricultural lands maps shall be
submitted to the county council for decision-making. The
county council shall adopt the maps, with or without changes,
by resolution. The adopted maps shall be transmitted to the
state land use commission for further action pursuant to
section 205-G.

§205-G Adoption of maps of important agricultural lands;
land use commission. (a) The land use commission shall
consider the county recommendations and adopt maps delineating
important agricultural lands to the State, through notice and
public meetings in accordance with chapter 92. The land use
commission shall act within ninety days of the land use
commission acceptance of the county’s report and maps. The
adoption of the maps of important agricultural lands shall be
approved by two-thirds of the membership to which the land use
commission is entitled.

(b) The department of agriculture and the office of
planning shall review the county report and recommendations
and provide comments to the land use commission within forty-
five days of the acceptance of the report and maps by the land
use commission. The land use commission may consult with the
(c) State agency and land use commission review and decision-making shall be based on an evaluation of:

(1) The degree to which the county recommendations result in an identified resource base that meets the definition of important agricultural land and the objectives and policies for important agricultural lands in sections 205-B and 205-C;

(2) The degree to which the county has met the minimum standards for the mapping process in sections 205-D and 205-F; and

(3) The degree to which the county recommendations are consistent with the county’s adopted general and community or development plans.

(d) The land use commission shall conduct at least one public hearing in each county to solicit comments and concerns regarding the recommendations for the delineation of important agricultural lands. At the time the commission adopts the maps delineating important agricultural lands, the commission shall adopt a report or findings to include:

(1) Comments received in the public meeting process;

(2) The basis for the delineation of important agricultural lands;

(3) Concerns or issues related to the identified lands;
(4) Any information that may be required to identify the general boundaries of delineated important agricultural lands; and

(5) The availability of important agricultural land incentives enacted by the legislature.

(e) The land use commission may adopt the county recommendations for important agricultural lands, or return the county recommendations to the county for reconsideration and revision, in whole or in part. If the land use commission does not concur with county recommendations in part, the commission shall return that portion of the county recommendations to the county for reconsideration and revision; provided that those recommendations approved by the commission shall have full force and effect. Any revisions proposed by the county shall be subject to public notice and at least one public hearing on the proposed revisions. Any revision and resubmittal to the land use commission shall be approved by the county council by resolution. Submittal of revisions, state agency review, and land use commission decision-making on revisions shall be in accordance with this part. The important agricultural lands maps adopted by the land use commission shall not take effect until incentive programs for important agricultural lands have been enacted by the legislature.

(f) Copies of the maps of important agricultural lands
adopted under this section shall be transmitted to each county planning department and county council, the department of agriculture, the agribusiness development corporation, the office of planning, and other state agencies involved in land use matters. The maps of important agricultural lands shall guide all decision-making on the proposed reclassification or rezoning of important agricultural lands, state agricultural development programs, and other state and county land use planning and decision-making.

(g) The land use commission shall have the sole authority to interpret the adopted map boundaries delineating the important agricultural lands to the State of Hawaii.

§205-H Standards and criteria for the reclassification or rezoning of important agricultural lands. (a) Any land use district boundary amendment or change in zoning involving important agricultural lands identified pursuant to this chapter shall be subject to this section.

(b) Upon acceptance by the county for processing, any application for a special permit involving important agricultural lands shall be referred to the department of agriculture and the office of planning for review and comment.

(c) Any land use commission or county decision pursuant to this section shall specifically consider the following standards and criteria:

(1) The relative importance of the land for agriculture
based on the stock of similarly suited lands in the area and the State as a whole;

(2) The proposed district boundary amendment or zone change will not harm the productivity or viability of existing agricultural activity in the area, or adversely affect the viability of other agricultural activities or operations that share infrastructure, processing, marketing, or other production-related costs or facilities with the agricultural activities on the land in question;

(3) The district boundary amendment or zone change will not cause the fragmentation of or intrusion of non-agricultural uses into largely intact areas of lands identified by the State as important agricultural lands, which creates residual parcels of a size that would preclude viable agricultural use;

(4) The public benefit to be derived from the proposed action is justified by a need for additional lands for non-agricultural purposes; and

(5) The impact of the proposed district boundary amendment or zone change on the necessity and capacity of state and county agencies to provide and support additional agricultural infrastructure or services in the area.

Any decision pursuant to this section shall be based upon
a determination that on balance the public benefit from the proposed district boundary amendment or zone change outweighs the benefits of retaining the land for agricultural purposes, and that the proposed action will have no significant impact upon the viability of agricultural operations on adjacent agricultural lands.

(d) The standards and criteria of this section shall be in addition to the decision-making criteria of section 205-17 governing decisions of the land use commission under this chapter, and the decision-making criteria adopted by each county governing decisions of county decision-making authorities under this chapter.

(e) Any decision of the land use commission and any decision of any county on a land use district boundary amendment or change in zoning involving important agricultural lands shall be approved by the body responsible for the decision by a two-thirds vote of the membership to which the body is entitled.

§205-I 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 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 chapter. In these periodic reviews, serious consideration for removal of the important agricultural lands designation shall be given to those lands where a sufficient supply of water is no longer available to profitably farm these lands due to governmental actions, acts of God, or other causes beyond the landowner’s control.”

SECTION 3. Chapter 205, Hawaii Revised Statutes, is amended by amending subsection 205-17 to read as follows:

“§205-17 Land use commission decision-making criteria.
In its review of any petition for reclassification of district boundaries pursuant to this chapter, the commission shall specifically consider the following:

(1) The extent to which the proposed reclassification conforms to the applicable goals, objectives, and policies of the Hawaii state plan and relates to the applicable priority guidelines of the Hawaii state plan and the adopted functional plans;

(2) The extent to which the proposed reclassification conforms to the applicable district standards; [and]

(3) The impact of the proposed reclassification on the following areas of state concern:

(A) Preservation or maintenance of important natural systems or habitats;
(B) Maintenance of valued cultural, historical, or natural resources;

(C) Maintenance of other natural resources relevant to Hawaii's economy, including, but not limited to, agricultural resources;

(D) Commitment of state funds and resources;

(E) Provision for employment opportunities and economic development; and

(F) Provision for housing opportunities for all income groups, particularly the low, low-moderate, and gap groups; 

(4) The standards and criteria for the reclassification or rezoning of important agricultural lands in section 205-H; and

(5) The representations and commitments made by the petitioner in securing a boundary change."

SECTION 4. Each county shall submit its report and maps with recommendations for the designation of important agricultural lands to the land use commission no later than twenty-four months from the date of county receipt of state funds appropriated for the identification process. Upon receipt of the county maps, the land use commission shall review and adopt maps designating important agricultural lands to the State in accordance with section 205-G.

SECTION 5. There is appropriated out of the general
revenues of the State of Hawaii the sum of $2,000,000 for
fiscal year 2004-2005, for grants-in-aid to each of the
counties for the identification and mapping of important
agricultural lands pursuant to sections 2 and 4 of this Act.
Each county shall receive a grant-in-aid of the sum of
$500,000 for this purpose. The sum appropriated for each
county shall be expended by the planning department of each
county for the purposes of this Act.

PART II

SECTION 6. (a) It is the intent of this Act to ensure
that agricultural incentive programs to promote agricultural
viability and the long-term use and protection of important
agricultural lands for agricultural use shall be developed
concurrently with the process of identifying important
agricultural lands to be conducted pursuant to sections 2 and
4 of this Act. The adoption of important agricultural lands
by the land use commission pursuant to section 4 of this Act
shall only take effect upon the enactment of legislation
establishing incentives for important agricultural lands.

(b) Pursuant to section 205-E, a task force shall be
convened to develop and recommend a package of proposals for
agricultural incentives and other measures that promote
sustained agricultural activity on important agricultural
lands and ensure the protection and availability of important
agricultural lands for agricultural use now and in the future.
The task force shall include members with diverse expertise to include, but not be limited to, tax policy, agricultural business development and financing, marketing, and agricultural land use techniques to assist in designing a comprehensive and integrated framework of incentives and programs that will promote sustained growth of the agricultural industry in Hawaii. The task force shall include representatives from farmer organizations, landowners, affected state and county agencies, and other stakeholders as necessary in the development of recommendations for incentive and agricultural land protection programs.

The task force shall submit its findings and recommendations to the legislature twenty days before the convening of the regular session of 2005. The task force report shall include an analysis of the impacts and benefits, and shall provide the supporting rationale for the incentives being proposed.

(c) Incentives and other programs to promote agricultural business viability and the long-term protection of important agricultural lands to be considered by the task force shall include, but not be limited to the following:

(1) Assistance in identifying federal, state, and private grant and loan resources for agricultural business planning and operations, assistance with grant and loan application processes and the
processing of grants and loans;

(2) Real property tax systems that support the needs of agriculture, including property tax assessment of land and improvements used or held only for use in agriculture based on agricultural use value rather than fair market value;

(3) Reduced infrastructure requirements and facilitated building permit processes for the construction of dedicated agricultural structures;

(4) Tax incentives including but not be limited to:

(A) Tax credits for capital investments in agricultural infrastructure, such as water reuse, delivery and storage systems, value-added equipment and technology development, and facilities for staging, storage, processing, or transportation of agricultural equipment and vehicles; and

(B) Tax credits for the sale or donation of agricultural easements on important agricultural lands;

(5) Incentives that promote investment in agricultural businesses or value-added agricultural development, and other agricultural financing mechanisms;

(6) Incentives and programs that promote long-term or permanent agricultural land protection, and the
establishment of a dedicated funding source for these programs;

(7) Establishment of a permanent state fund and dedicated funding sources to provide moneys for incentives and other programs;

(8) Establishment of a means to analyze the conformity of state-funded projects with the intent and purposes of part I of this Act, and a mechanism for mitigation measures when projects are not in conformance;

(9) Institution of a requirement for the preparation of agricultural impact statement that would include mitigation measures for adverse impacts for proposed state or county rule-making that may affect agricultural activities, operations, and agricultural businesses on important agricultural lands; and

(10) Other programs to carry out the intent of part I of this Act.

SECTION 7. Within one year of the adoption of maps of important agricultural lands by the land use commission for the lands within the jurisdiction of each county, all state agencies shall report to the department of agriculture on the impact of projects and programs on the designated important agricultural lands and sustained agricultural use of these
lands. State agencies shall develop implementation programs, as needed, to ensure that their programs are supportive of agriculture and consistent with the intent and purposes of this Act.

SECTION 8. There is appropriated out of the general revenues of the State of Hawaii the sum of $100,000 for fiscal year 2004-2005, for the development of proposals for incentives and other programs for agricultural development and agricultural land protection pursuant to section 6 of this Act. The sum appropriated shall be expended by

for the purposes of this Act.

PART III

SECTION 9. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 10. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 11. This Act shall take effect upon its approval; provided that sections 5 and 8 shall take effect on July 1, 2004.