



1           **§ -1 Purpose.** The legislature finds that Hawaii's  
2 quality of life is dependent upon the vitality and viability of  
3 its agricultural industry. The sustainability of agriculture in  
4 Hawaii depends on factors relating to agricultural business  
5 viability, and affordable access to productive agricultural  
6 lands. The State has a compelling interest in ensuring the  
7 continuance of key agricultural enterprises while providing a  
8 strategic agricultural land base that is affordable to farmers,  
9 the industry, and current and future agricultural entrepreneurs.

10           The voluntary acquisition of easements that restrict  
11 agricultural use on lands identified and designated as important  
12 agricultural lands under part III, chapter 205, will enable the  
13 State to ensure that agricultural lands remain affordable and  
14 protected for long-term agricultural use.

15           **§ -2 Agricultural land protection foundation.** (a)  
16 There is established the Hawaii agricultural land protection  
17 foundation to assist the State in the acquisition of  
18 agricultural easements. The foundation shall be placed within  
19 the department of agriculture for administrative purposes.

20           (b) The foundation shall consist of seven voting members  
21 and three ex officio nonvoting members; provided that:



- 1           (1) Seven voting members shall be appointed by the  
2           governor as provided in section 26-34; provided that:
- 3           (A) Four members shall be farmers actively engaged in  
4           or retired from farming who represent each county  
5           and shall each be appointed from a list of three  
6           nominees submitted by the mayor of each  
7           respective county;
- 8           (B) One member shall be appointed from a list of  
9           three nominees submitted by the speaker of the  
10          house of representatives;
- 11          (C) One member shall be appointed from a list of  
12          three nominees submitted by the senate president;  
13          and
- 14          (D) One member shall be appointed from a list of  
15          three nominees submitted by the Hawaii Farm  
16          Bureau Federation;
- 17          (2) The chairperson of the board of agriculture or the  
18          chairperson's designee shall serve as an ex-officio  
19          nonvoting member;
- 20          (3) The director of finance or the director's designee  
21          shall serve as an ex-officio nonvoting member; and



1           (4) The director of the office of planning or the  
2           director's designee shall serve as an ex-officio  
3           nonvoting member.

4 The members of the board shall elect a chairperson from among  
5 the seven voting members. A majority of the members serving at  
6 any one time constitutes a quorum for the transaction of  
7 business.

8           (c) The members shall receive no compensation for  
9 services, but shall be entitled to necessary expenses including  
10 travel expenses incurred in the performance of their duties.

11         §   -3   **Rules and procedures of the foundation.** The  
12 foundation shall adopt rules pursuant to chapter 91 to carry out  
13 the purposes of this chapter. The rules shall include but not  
14 be limited to criteria and procedures for:

15           (1) Evaluation and selection criteria for the acquisition  
16           of agricultural easements on important agricultural  
17           land, as defined under part III, chapter 205;

18           (2) Acquisition of agricultural easements including  
19           options for installment purchase agreements;

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



- 1 (4) Management of easements by the State, counties, or  
2 other nonprofit entities;
- 3 (5) Allowable uses within agricultural easements;
- 4 (6) Monitoring and evaluation of the state agricultural  
5 land protection program set forth in this chapter; and
- 6 (7) Administration of the agricultural land protection  
7 fund.

8 **§ -4 Responsibilities of the foundation.** (a) From  
9 funds appropriated by the legislature to carry out the purposes  
10 of this chapter or received from other sources, the foundation  
11 may pay an amount to any owner of agricultural land identified  
12 and designated as important agricultural land under part III,  
13 chapter 205, for an agricultural easement. The amount paid may  
14 be equitable in consideration of the benefits to the public, but  
15 shall not exceed the difference between the fair market value of  
16 the land and the fair market value of the land restricted to  
17 agricultural purposes. Title to the agricultural easement shall  
18 be held in the name of the State; provided that if the county in  
19 which the land is located provides financial assistance required  
20 for the purchase, the county may hold title to the agricultural  
21 easement jointly with the State.



1 (b) The foundation shall report to the legislature its  
2 findings and recommendations for any proposed amendments to this  
3 chapter, including but not limited to:

4 (1) Developing mechanisms for long term funding for the  
5 foundation;

6 (2) Developing enforcement mechanisms to ensure that the  
7 intent of agricultural easements is met; and

8 (3) Developing mechanisms to enact amendments as needed to  
9 carry out the purposes of this chapter.

10 § -5 **Functions: agricultural preservation advisory**

11 **board.** The foundation shall serve as an agricultural  
12 preservation advisory board for each county. The purpose of  
13 serving this function shall be:

14 (1) To assist each county in identifying priority  
15 standards and criteria for agricultural land  
16 preservation;

17 (2) To assist each county in identifying long-term funding  
18 mechanisms;

19 (3) To identify monitoring mechanisms for preserving  
20 agricultural lands;

21 (4) To promote the preservation of agriculture within each  
22 county by providing information and assistance to



1 farmers relating to the designation of important  
2 agricultural lands and the purchase of easements; and  
3 (5) To perform other related duties for each county, as  
4 necessary.

5 § -6 **State matching of county agricultural land**  
6 **protection purchases; guidelines.** The board of agriculture  
7 shall adopt guidelines and procedures pursuant to chapter 91 for  
8 county purchases of agricultural easements that are matched by  
9 state agricultural land protection funds. State funds requested  
10 as a match for county or other sources of funding shall only be  
11 used by entities participating in an agricultural land  
12 protection program adopted by each county that meets these  
13 guidelines. The foundation shall coordinate and cooperate with  
14 the board of agriculture to carry out the purposes of this  
15 section.

16 § -7 **Eligibility for tax incentives.** The sale or the  
17 donation of any agricultural easement on important agricultural  
18 lands that is acquired or whose acquisition is matched with  
19 state funds pursuant to this chapter shall entitle the landowner  
20 to be eligible to the extent allowable for tax incentives  
21 enacted to promote the protection of important agricultural  
22 land. An agricultural business with agricultural operations on



1 important agricultural lands with an agricultural easement that  
2 is acquired or whose acquisition is matched with state funds  
3 pursuant to this chapter shall be eligible for tax incentives  
4 enacted to promote long-term agricultural use of important  
5 agricultural lands.

6       **§ -8 Use of land for which easement purchased.** Uses on  
7 lands subject to an agricultural easement shall be restricted to  
8 agricultural uses, and normal agricultural operations including  
9 but not limited to the sale of farm products produced on the  
10 land subject to the agricultural easement.

11       **§ -9 Termination of easement.** (a) The easement  
12 purchased under this chapter shall be held by the State in  
13 perpetuity. If circumstances have changed and farming is no  
14 longer feasible on the land under easement, then the easement  
15 may be terminated only in the manner and at the time specified  
16 under this section. Notwithstanding any other law to the  
17 contrary, any easement purchased under this chapter that is to  
18 be matched by funds from the federal farm and ranch lands  
19 protection program pursuant to 7 Code of Federal Regulations  
20 Part 1491, as amended, shall be held by the State in perpetuity.

21       (b) At any time after thirty years from the date of  
22 purchase of an easement, the landowner may request that the



1 easement be reviewed for possible termination of the easement.  
2 Upon a request for review, an inquiry shall be conducted by the  
3 foundation to determine whether conditions on the land subject  
4 to an agricultural easement have changed so significantly that  
5 agricultural production is no longer viable and it has become  
6 impossible to fulfill the easement's purposes. The inquiry  
7 shall be concluded and a decision reached by the foundation  
8 within one hundred eighty days after the request for  
9 termination, and shall include:

10 (1) An on-site inspection of the land; and  
11 (2) A public hearing conducted by the foundation within  
12 the county containing the land after adequate public  
13 notice.

14 (c) In deciding whether to approve the request for  
15 termination, the foundation shall receive the recommendations  
16 from farming organizations in the county the land is situated.  
17 The decision of the foundation shall be made after the public  
18 hearing required under subsection (b).

19 (d) Upon the affirmative vote of a majority of the  
20 foundation, and upon the approval of the chairperson of the  
21 board of agriculture and the comptroller, the request for



1 termination shall be forwarded to the legislature for action to  
2 affirm by a concurrent resolution.

3 (e) If the request for termination is approved, an  
4 appraisal of the land shall be ordered by the foundation at the  
5 expense of the landowner requesting termination of the easement.  
6 No more than one hundred eighty days following the appraisal,  
7 the landowner may repurchase the easement by paying to the  
8 foundation the difference between the fair market value and the  
9 agricultural value of the subject land, as determined by the  
10 appraisal. For purposes of this section, the agricultural value  
11 is the price as of the valuation date that a vendor, willing but  
12 not obligated to sell, would accept, and that a purchaser,  
13 willing but not obligated to buy, would pay for comparable land  
14 that is restricted to agricultural use.

15 (f) In the case of the termination of an easement that was  
16 originally purchased under a matching purchase, the foundation  
17 shall deposit the state portion of the repurchase payment  
18 received under subsection (e) that is equal to the percentage of  
19 the original easement purchase price contributed by the State in  
20 the agricultural land protection fund. The foundation shall  
21 also distribute to the contributing county the portion of the



1 repurchase payment that is equal to the percentage of the  
2 original easement purchase price contributed by the county.

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

8 § -10 **Agricultural land protection fund.** (a) There is  
9 established in the state treasury the agricultural land  
10 protection fund, into which shall be deposited funds from state,  
11 federal, or private grants and appropriations that shall be a  
12 permanent source of funds to be restricted to program  
13 expenditures as authorized under this chapter.

14 (b) Moneys in the agricultural land protection fund shall  
15 be used to purchase agricultural easements or to match funds for  
16 the purchase of agricultural easements of important agricultural  
17 lands to be enrolled in the state agricultural land protection  
18 program pursuant to section -4.

19 (c) The fund shall be administered by the department of  
20 agriculture. Appropriations or authorizations from the fund  
21 shall be expended by the board of agriculture. The department  
22 may contract with other public or private entities for the



1 provision of all or a portion of the services necessary for the  
2 administration and implementation of the fund. The department  
3 may set fees or charges for fund management or technical  
4 assistance provided under this section.

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

7 § -11 **Annual report.** The foundation shall submit to the  
8 governor and the legislature no later than twenty days prior to  
9 the commencement of the 2008 regular session a report of its  
10 interim findings and recommendations including any proposed  
11 legislation. A final report shall be submitted to the governor  
12 and the legislature no later than twenty days prior to the  
13 commencement of the 2009 regular session. After that, the  
14 foundation and the department of agriculture shall submit to the  
15 governor and the legislature no later than twenty days prior to  
16 the commencement of each regular session, a complete report  
17 describing the activities and easements acquired and fund  
18 administration pursuant to this chapter."

19 SECTION 3. Section 198-1, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 "§198-1 **Conservation easement defined.** For the purposes  
22 of this chapter, a "conservation easement" is an interest in



1 real property created by deed, restrictions, covenants, or  
2 conditions, the purpose of which is to:

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

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

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

12 (4) In case of agricultural land, restrict use of the  
13 affected land to agricultural uses, and forbid or  
14 limit activities and uses that would adversely affect  
15 the land's current and future use for agriculture. A  
16 conservation easement on agricultural land shall be  
17 known as an "agricultural easement" for the purposes  
18 of this chapter and other programs and incentives  
19 relating to easements for agricultural purposes."

20 SECTION 4. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.

22 SECTION 5. This Act shall take effect on July 1, 2050.



**Report Title:**

Important Agricultural Lands

**Description:**

Establishes a state agricultural land protection program for the voluntary acquisition of agricultural easements on lands designated as important agricultural lands. (SD1)

