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## A BILL FOR AN ACT

RELATING TO AGRICULTURE.

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

1           SECTION 1. The legislature finds that supporting Hawaii's  
2 agriculture is imperative to increasing our economic base and  
3 creating economic diversity. Eighty-five to ninety per cent of  
4 Hawaii's food is imported. Additionally, an estimated  
5 \$3,000,000,000 is annually spent on imported food in Hawaii.  
6 Finally, Hawaii only has a seven-day supply of food in the event  
7 of an emergency. The legislature finds that using existing  
8 resources to invest in Hawaii's agriculture is the most prudent  
9 course in these fiscally-challenging times.

10           SECTION 2. Chapter 235, Hawaii Revised Statutes, is  
11 amended by adding a new section to be appropriately designated  
12 and to read as follows:

13           "§235-           Livestock feed tax credit. (a) There shall be  
14 allowed to each qualified producer subject to the tax imposed by  
15 this chapter a livestock feed tax credit which shall be applied  
16 to the taxpayer's net income tax liability, if any, imposed by  
17 this chapter.



1 For each taxable year, a qualified producer may claim a tax  
2 credit of the lesser of fifteen per cent of livestock feed costs  
3 incurred by the qualified producer or \$200,000.

4 (b) No other credit may be claimed under this chapter for  
5 qualified livestock feed costs for which a credit is claimed  
6 under this section for the taxable year.

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

12 If a deduction is taken under section 179 (with respect to  
13 election expense depreciable business assets) of the Internal  
14 Revenue Code, no tax credit shall be allowed for that portion of  
15 the qualified livestock feed cost for which a deduction was  
16 taken.

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



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

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

13           (e) The director of taxation:

14           (1) Shall prepare any forms that may be necessary to claim  
15 a credit under this section;

16           (2) May require the taxpayer to furnish information to  
17 ascertain the validity of the claim for credit made  
18 under this section; and

19           (3) May adopt rules pursuant to chapter 91 to effectuate  
20 this section.

21           (f) The department of agriculture shall:



- 1        (1) Maintain records of the total amount of qualified  
2        livestock feed costs for each taxpayer claiming a  
3        credit;
- 4        (2) Verify the amount of the livestock feed costs claimed  
5        by each taxpayer claiming the tax credit for each  
6        taxable year;
- 7        (3) Calculate the total livestock feed costs claimed by  
8        all taxpayers claiming the tax credit in each taxable  
9        year; and
- 10       (4) Certify the total amount of the tax credit claimed for  
11       each taxpayer and for all taxpayers claiming the  
12       credit in each taxable year.

13       The department of agriculture shall issue a certificate to  
14       the taxpayer verifying the taxpayer's qualifying producer  
15       status, the amount of qualified livestock feed costs claimed by  
16       the taxpayer, and the credit amount certified for the taxpayer  
17       for each taxable year, upon such determination.

18       The taxpayer shall file the certificate with the taxpayer's  
19       tax return filed with the department of taxation.

20       Notwithstanding the department of agriculture's certification  
21       authority under this section, the director of taxation may audit  
22       and adjust the certification for accuracy.



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

4        (g) If in the taxable year beginning after December 31,  
5 2011, the annual amount of certified credits claimed under this  
6 section reaches \$1,500,000 in the aggregate, the department of  
7 agriculture shall immediately discontinue certifying credits and  
8 shall notify the department of taxation of the discontinuation.

9 In no instance shall the department of agriculture certify a  
10 total amount of livestock feed tax credits exceeding \$1,500,000  
11 in the taxable year beginning after December 31, 2011. To  
12 comply with this restriction, the department of agriculture  
13 shall certify livestock feed tax credits on a first come, first  
14 served basis.

15        (h) As used in this section:

16        "Livestock feed costs" means the purchase amount of all  
17 edible materials consumed by cows, goats, poultry, sows, and  
18 beef cattle, which contribute energy or nutrients to the  
19 animal's diet, and which are distributed or imported.

20        "Qualified producer" means any person that at the time of  
21 application for and receipt of the tax credit under this section  
22 is in the business of producing:



- 1        (1) Milk from a herd, located in Hawaii, of not fewer than  
2        three hundred fifty cows or one hundred lactating  
3        milking goats;
- 4        (2) Poultry products from a flock, raised and located in  
5        Hawaii, of not fewer than three hundred birds;
- 6        (3) Pork from a herd, raised and located in Hawaii, of not  
7        fewer than fifty sows; or
- 8        (4) Beef that is grown, slaughtered, processed, and  
9        marketed in Hawaii; provided that producers who finish  
10       at least one hundred head of beef cattle annually  
11       shall be eligible for this tax credit."

12       SECTION 3. Chapter 235, Hawaii Revised Statutes, is  
13       amended by adding a new section to be appropriately designated  
14       and to read as follows:

15       **"§235-       Livestock feed development tax credit program.**

16       (a) There shall be allowed to each qualified producer subject  
17       to the tax imposed by this chapter a livestock feed development  
18       tax credit which shall be applied to the taxpayer's net income  
19       tax liability, if any, imposed by this chapter.

20       A qualified producer may claim a tax credit of the lesser  
21       of ten per cent of livestock feed development costs incurred by  
22       the qualified producer or \$225,000 for livestock feed



1 development costs incurred by the qualified producer during the  
2 taxable year ending before January 1, 2014, and the lesser of  
3 five per cent of livestock feed development costs or \$225,000  
4 for the taxable year ending before January 1, 2015.

5 (b) The department of agriculture shall:

6 (1) Maintain records of the total amount of qualified  
7 agriculture expenditures for livestock feed  
8 development for each taxpayer claiming a credit;

9 (2) Verify the amount of the livestock feed development  
10 costs claimed by each taxpayer claiming the tax credit  
11 for each taxable year;

12 (3) Calculate the total livestock feed development costs  
13 claimed by all taxpayers claiming the tax credit for  
14 each taxable year; and

15 (4) Certify the total amount of the tax credit claimed for  
16 each taxpayer and for all taxpayers claiming the  
17 credit in each taxable year.

18 The department of agriculture shall issue a certificate to  
19 the taxpayer verifying the taxpayer's qualifying producer  
20 status, the amount of qualified livestock feed development costs  
21 claimed by the taxpayer, and the credit amount certified for the  
22 taxpayer each taxable year, upon such determination.



1       The taxpayer shall file the certificate with the taxpayer's  
2 tax return filed with the department of taxation.

3 Notwithstanding the department of agriculture's certification  
4 authority under this section, the director of taxation may audit  
5 and adjust certification for accuracy.

6       (c) If in any year, the annual amount of certified credits  
7 claimed under this section reaches \$500,000 in the aggregate,  
8 the department of agriculture shall immediately discontinue  
9 certifying livestock feed development tax credits and shall  
10 notify the department of taxation of the discontinuation. In no  
11 instance shall the total amount of certified livestock feed  
12 development tax credits exceed \$500,000 per year.

13 Notwithstanding any other law to the contrary, this information  
14 shall be available for public inspection and dissemination under  
15 chapter 92F.

16       (d) No other credit may be claimed under this chapter for  
17 qualified livestock feed development costs for which a credit is  
18 claimed by the taxpayer under this section for the taxable year.

19       (e) The cost upon which the tax credit is computed shall  
20 be determined at the entity level. In the case of a  
21 partnership, S corporation, estate, trust, or other pass through





1 entity, distribution and share of the credit shall be determined  
2 pursuant to section 235-110.7(a).

3 If a deduction is taken under section 179 (with respect to  
4 election expense depreciable business assets) of the Internal  
5 Revenue Code, no tax credit shall be allowed for that portion of  
6 the qualified livestock feed development cost for which a  
7 deduction was taken.

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

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

20 All claims for a tax credit under this section, including  
21 amended claims, shall be filed on or before the end of the  
22 twelfth month following the close of the taxable year for which



1 the credit is claimed. Failure to comply with the foregoing  
2 provision shall constitute a waiver of the right to claim the  
3 credit.

4 (g) The director of taxation:

5 (1) Shall prepare any forms that may be necessary to claim  
6 a credit under this section;

7 (2) May require the taxpayer to furnish information to  
8 ascertain the validity of the claim for credit made  
9 under this section; and

10 (3) May adopt rules pursuant to chapter 91 to effectuate  
11 this section.

12 (h) As used in this section:

13 "Qualified producer" means any person that at the time of  
14 application for and receipt of the tax credit under this section  
15 is in the business of producing:

16 (1) Milk from a herd, located in Hawaii, of not fewer than  
17 three hundred fifty cows or one hundred lactating  
18 milking goats;

19 (2) Poultry products from a flock, raised and located in  
20 Hawaii, of not fewer than three hundred birds;

21 (3) Pork from a herd, raised and located in Hawaii, of not  
22 fewer than fifty sows; or



1        (4) Beef that is grown, slaughtered, processed, and  
 2        marketed in Hawaii; provided that producers who finish  
 3        at least one hundred head of beef cattle annually  
 4        shall be eligible for this tax credit.

5        "Feed development costs" means the purchase amount of  
 6        materials or equipment needed to produce edible materials  
 7        consumed by cows, goats, poultry, sows, and beef cattle, which  
 8        contribute energy or nutrients to the animal's diet, including  
 9        seeds, fertilizer, insecticides, and fungicides used for the  
 10       purposes of producing feed."

11       SECTION 4. Section 235-110.93, Hawaii Revised Statutes, is  
 12       amended to read as follows:

13       **"[+]§235-110.93[+] Important agricultural land qualified**  
 14       **agricultural cost tax credit.** (a) There shall be allowed to  
 15       each taxpayer an important agricultural land qualified  
 16       agricultural cost tax credit that may be claimed in taxable  
 17       years beginning after the taxable year during which the tax  
 18       credit under section 235-110.46 is repealed, exhausted, or  
 19       expired. The credit shall be deductible from the taxpayer's net  
 20       income tax liability, if any, imposed by this chapter for the  
 21       taxable year in which the credit is properly claimed. The tax  
 22       credit amount shall be determined as follows:



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

16 The taxpayer may incur qualified agricultural costs during a  
17 taxable year in anticipation of claiming the credit in future  
18 taxable years during which the credit is available. The  
19 taxpayer may claim the credit in any taxable year after the  
20 taxable year during which the taxpayer incurred the qualified  
21 agricultural costs upon which the credit is claimed. The



1 taxpayer also may claim the credit in consecutive or  
2 inconsecutive taxable years until exhausted.

3 (b) Each taxpayer claiming a credit under subsection (a)  
4 may receive an additional refundable tax credit of fifteen per  
5 cent of the qualified credit amount received pursuant to  
6 subsection (a) for expenditures for drought mitigation projects  
7 providing water for lands, the majority of which, excluding  
8 lands classified as conservation lands, are important  
9 agricultural lands.

10 [~~(b)~~] (c) No other credit may be claimed under this  
11 chapter for qualified agricultural costs or drought mitigation  
12 project expenditures for which a credit is claimed under this  
13 section for the taxable year.

14 [~~(e)~~] (d) The amount of the qualified agricultural costs  
15 eligible to be claimed under this section shall be reduced by  
16 the amount of funds received by the taxpayer during the taxable  
17 year from the irrigation repair and maintenance special fund  
18 under section 167-24.

19 [~~(d)~~] (e) The cost upon which the tax credit is computed  
20 shall be determined at the entity level. In the case of a  
21 partnership, S corporation, estate, trust, or other pass through



1 entity, distribution and share of the credit shall be determined  
2 pursuant to section 235-110.7(a).

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

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

13 [~~(e)~~] (f) If the credit under this section exceeds the  
14 taxpayer's net income tax liability for the taxable year, the  
15 excess of the credit over liability shall be refunded to the  
16 taxpayer; provided that no refunds or payments on account of the  
17 credits allowed by this section shall be made for amounts less  
18 than \$1.

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



1 provision shall constitute a waiver of the right to claim the  
2 credit.

3 [~~f~~] (g) The director of taxation:

4 (1) Shall prepare any forms that may be necessary to claim  
5 a credit under this section;

6 (2) May require the taxpayer to furnish information to  
7 ascertain the validity of the claim for credit made  
8 under this section; and

9 (3) May adopt rules pursuant to chapter 91 to effectuate  
10 this section.

11 [~~g~~] (h) The department of agriculture shall:

12 (1) Maintain records of the total amount of qualified  
13 agricultural costs and drought mitigation project  
14 expenditures for each taxpayer claiming a credit;

15 (2) Verify the amount of the qualified agricultural costs  
16 claimed;

17 (3) Verify that drought mitigation project expenditures  
18 comply with the requirements of this section;

19 [~~3~~] (4) Total all qualified agricultural costs claimed;  
20 and

21 [~~4~~] (5) Certify the total amount of the tax credit for  
22 each taxable year.



1           Upon each determination, the department of agriculture  
2 shall issue a certificate to the taxpayer verifying the  
3 qualifying agricultural costs, the drought mitigation project  
4 compliance, and the credit amount certified for each taxable  
5 year. For a taxable year, the department of agriculture may  
6 certify a credit for a taxpayer who could have claimed the  
7 credit in a previous taxable year, but chose not to because the  
8 maximum annual credit amount under subsection ~~[(h)]~~ (i) was  
9 reached in that taxable year.

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

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

18           ~~[(h)]~~ (i) ~~[If in any taxable year the]~~ The aggregate annual  
19 amount of certified important agricultural land qualified  
20 agricultural tax credits ~~[reaches \$7,500,000 in the aggregate,]~~  
21 in any taxable year shall be:





- 1        (1) \$5,000,000 for the taxable year ending before January
- 2            1, 2013;
- 3        (2) \$7,000,000 per taxable year for the taxable years
- 4            beginning after December 31, 2012, and ending before
- 5            January 1, 2016; and
- 6        (3) \$7,500,000 per taxable year for all other successive
- 7            taxable years.

8        If in any taxable year the annual amount of certified  
9        credits reaches the limit provided by this subsection, the  
10       department of agriculture shall immediately discontinue  
11       certifying credits and notify the department of taxation. In no  
12       instance shall the department of agriculture certify a total  
13       amount of credits exceeding [~~\$7,500,000 per taxable year.~~] the  
14       annual aggregate amount limit of certified credits per taxable  
15       year provided by this subsection. To comply with this  
16       restriction, the department of agriculture shall certify credits  
17       on a first come, first served basis.

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

21       ~~[(i)]~~ (j) The department of agriculture, in consultation  
22       with the department of taxation, shall annually determine the



1 information necessary to provide a quantitative and qualitative  
2 assessment of the outcomes of the tax credit.

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

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

13 [~~(j)~~] (k) The department of agriculture, in consultation  
14 with the department of taxation, shall annually submit a report  
15 evaluating the effectiveness of the tax credit. The report  
16 shall include but not be limited to findings and recommendations  
17 to improve the effectiveness of the tax credit to further  
18 encourage the development of agricultural businesses.

19 [~~(k)~~] (l) As used in this section:

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



1 (1) The care and production of livestock and livestock  
2 products, poultry and poultry products, apiary  
3 products, and plant and animal production for nonfood  
4 uses;

5 (2) The planting, cultivating, harvesting, and processing  
6 of crops; and

7 (3) The farming or ranching of any plant or animal species  
8 in a controlled salt, brackish, or freshwater  
9 environment;

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

14 "Important agricultural lands" means lands identified and  
15 designated as important agricultural lands pursuant to part III  
16 of chapter 205.

17 "Net income tax liability" means income tax liability  
18 reduced by all other credits allowed under this chapter.

19 "Qualified agricultural costs" means expenditures for:

20 (1) The plans, design, engineering, construction,  
21 renovation, repair, maintenance, and equipment for:



- 1 (A) Roads or utilities, primarily for agricultural  
2 purposes, where the majority of the lands  
3 serviced by the roads or utilities, excluding  
4 lands classified as conservation lands, are  
5 important agricultural lands;
- 6 (B) Agricultural processing facilities in the State,  
7 primarily for agricultural purposes, where the  
8 majority of the crops or livestock processed,  
9 harvested, treated, washed, handled, or packaged  
10 are from agricultural businesses;
- 11 (C) Water wells, reservoirs, dams, water storage  
12 facilities, water pipelines, ditches, or  
13 irrigation systems in the State, primarily for  
14 agricultural purposes, providing water for lands,  
15 the majority of which[7] excluding lands  
16 classified as conservation lands, are important  
17 agricultural lands; and
- 18 (D) Agricultural housing in the State[7] exclusively  
19 for agricultural purposes; provided that:
- 20 (i) The housing units are occupied solely by  
21 farmers or employees for agricultural



- 1                    businesses and their immediate family
- 2                    members;
- 3                    (ii) The housing units are owned by the
- 4                    agricultural business;
- 5                    (iii) The housing units are in the general
- 6                    vicinity, as determined by the department of
- 7                    agriculture, of agricultural lands owned or
- 8                    leased by the agricultural business; and
- 9                    (iv) The housing units conform to any other
- 10                   conditions that may be required by the
- 11                   department of agriculture;
- 12                   (2) Feasibility studies, regulatory processing, and legal
- 13                   and accounting services related to the items under
- 14                   paragraph (1);
- 15                   (3) Equipment, primarily for agricultural purposes, used
- 16                   to cultivate, grow, harvest, or process agricultural
- 17                   products by an agricultural business; and
- 18                   (4) Regulatory processing, studies, and legal and other
- 19                   consultant services related to obtaining or retaining
- 20                   sufficient water for agricultural activities and
- 21                   retaining the right to farm on lands identified as
- 22                   important agricultural lands.



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

7           ~~(m)~~ (n) The department of taxation, in consultation with  
8 the department of agriculture, shall submit to the legislature  
9 an annual report, no later than twenty days prior to the  
10 convening of each regular session, beginning with the regular  
11 session of 2010, regarding the quantitative and qualitative  
12 assessment of the impact of the important agricultural land  
13 qualified agricultural cost tax credit."

14           SECTION 5. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16           SECTION 6. This Act shall take effect upon its approval;  
17 provided that:

18           (1) Section 2 shall be effective on January 1, 2012, and  
19 shall apply to the taxable year beginning after  
20 December 31, 2011, and ending before January 1, 2013;  
21 and





# H.B. NO. 2668

**Report Title:**

Agriculture; Livestock Feed; livestock Feed Development; Drought Mitigation; Tax Credit

**Description:**

Amends important agricultural land tax credit to allow an additional fifteen per cent credit for drought mitigation and change the tax credit cap from \$7,500,000 per year to \$5,000,000 per year for the 2012 tax year and \$7,000,000 per year for the 2013, 2014, and 2015 tax years. Creates a livestock feed tax credit for 2013. Creates feed development tax credit program from January 1, 2013, to December 31, 2015.

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

