

---

---

# A BILL FOR AN ACT

RELATING TO LAND USE.

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

1           SECTION 1. The purpose of this Act is to end damaging  
2 controversy over the legality of thousands of homes and lots  
3 located on agricultural lands throughout the state. This Act is  
4 necessary to protect the substantial investments of the owners  
5 of those homes and lots and to protect the counties and others  
6 against legal claims that may be asserted if those investments  
7 are devalued or lost.

8           In Hawaii, a recent trial court decision concerning one  
9 project has interpreted chapter 205, Hawaii Revised Statutes  
10 (HRS), in new ways. The reasoning of the decision, if applied  
11 throughout the agricultural district would:

- 12           (1) Invalidate thousands of lots in agricultural  
13 subdivisions;
- 14           (2) Forbid the construction of homes on those lots; and
- 15           (3) Make it illegal for people to live in thousands of  
16 homes already built.

17           According to the decision, homes may be constructed on lots  
18 subdivided in the agricultural district only if the county first



1 determines that the owner will conduct agricultural activities  
2 on a scale commensurate with the investment in the home. The  
3 trial court decided that a subdivision creating one-acre lots in  
4 the agricultural district had to go to the state land use  
5 commission for reclassification to urban, although state land  
6 use law specifically allows one acre lots in the agricultural  
7 district.

8       The trial court decision is at odds with practices followed  
9 by Hawaii's counties for decades. The counties and private  
10 developers have not sought approval from the state land use  
11 commission before moving forward with subdivisions in the  
12 agricultural district creating lots of the minimum one-acre size  
13 or larger, because they did not believe they were expected or  
14 required to do so. The counties have allowed construction of  
15 many homes in the agricultural district, in many cases with  
16 little or no agricultural activity connected with those homes.  
17 The trial court decision also brings into question the counties'  
18 authority under section 205-5(b), HRS, to define allowable  
19 accessory agricultural uses.

20       This Act is intended to remove any doubt concerning the  
21 legality of single-family dwellings and projects containing  
22 them, in the state land use agricultural district, on lots



1 created before the effective date of this Act, or within  
2 projects approved by county zoning ordinances and at least  
3 partially built before the effective date of this Act, as long  
4 as they are on soils not primarily classified as A or B.

5 In 1976, the legislature amended the state land use law to  
6 provide that on agricultural district lands in the A and B best  
7 soil classification, homes had to be "farm dwellings." The law  
8 defined a "farm dwelling" as "a single-family dwelling located  
9 on and used in connection with a farm, including clusters of  
10 single-family farm dwellings permitted within agricultural parks  
11 developed by the State, or where agricultural activity provides  
12 income to the family occupying the dwelling." At the same time,  
13 the law "grandfathered" the construction of "single-family  
14 dwellings" on existing lots, so that the "farm dwelling" law  
15 only applied to lots created by subdivisions on A and B soils  
16 after June 4, 1976, the effective date of the Act.

17 Although the statute applied only to A and B soils, the  
18 land use commission enacted an administrative rule using the  
19 same "farm dwellings" definition to refer to homes on C, D, E,  
20 and U soils. The land use commission did not, however, provide  
21 any minimum standards for the level of agriculture required for



1 a "farm dwelling" nor make any allowance for the fact that the  
2 agricultural district contains lands not suited for agriculture.

3 Since 1976, the counties have approved the creation of  
4 several thousand lots in the agricultural district. Most of  
5 them have been purchased by individuals who thought that they  
6 could build a single-family home without engaging in substantial  
7 agricultural activity. There are many reasons for this.

8 Chapter 205, HRS, mentions "farm dwellings" only with respect to  
9 A and B soils. Most of the agricultural subdivisions allowed by  
10 the counties after 1976 were on marginal agricultural lands; few  
11 involved A or B soils to any significant extent. Some county  
12 zoning codes expressly allowed single-family dwellings on  
13 agricultural lands and did not mention a "farm dwelling"  
14 requirement. Given the vagueness of the land use commission  
15 rule, the counties did not actively enforce agricultural uses as  
16 a prerequisite to building homes in the agricultural district.

17 The ability of these homeowners and lot purchasers to  
18 remain in their homes or build on their lots is at risk, if they  
19 are required to engage in significant agricultural activity to  
20 have a home.

21 In the case which gave rise to this uncertainty, the  
22 project did incorporate agriculture, but the trial court decided



1 that the proposed agricultural activity, consisting of a minimum  
2 of twenty per cent of each lot devoted to income-producing  
3 agriculture, was not enough to comply with the land use  
4 commission's "farm dwelling" rule. Hawaii county estimates that  
5 the trial court's standard would make the use of several hundred  
6 existing homes illegal and affect over three thousand other lot  
7 owners who hope to build on their lots. Kauai county's general  
8 plan estimates that ninety per cent of the homes in the  
9 agricultural district on the island will not qualify as "farm  
10 dwellings."

11 The trial court decision is on appeal to the state supreme  
12 court, but it may be some time before the supreme court is able  
13 to rule. In the meantime, the State, the counties, private  
14 property owners, lenders, and many others are exposed to unfair  
15 and debilitating uncertainty and risk of significant litigation  
16 and loss. To address and resolve these issues promptly, in the  
17 interests of all concerned, it is appropriate that the  
18 legislature act now to protect homes and home sites within the  
19 state land use agricultural district.

20 SECTION 2. Section 205-4.5, Hawaii Revised Statutes, is  
21 amended by amending subsection (c) to read as follows:

1       "(c) Within the agricultural district all lands, with soil  
2 classified by the land study bureau's detailed land  
3 classification as overall (master) productivity rating class C,  
4 D, E, or U shall be restricted to [~~the~~]:

5       (1) The uses permitted for agricultural districts as set  
6       forth in section 205-5(b) [-]; or

7       (2) The construction of single-family dwellings on lots:

8       (A) Existing on the effective date of this Act; or

9       (B) Created within projects approved by county zoning

10       ordinance where the developer has obtained final

11       subdivision approval for at least a portion of

12       the project, commenced construction of project

13       infrastructure, and sold individual lots, prior

14       to the effective date of this Act. Such

15       projects, including all components thereof, shall

16       be deemed an approved use in the agricultural

17       district; provided that not more than ten per

18       cent of the project area consists of soils

19       classified as A or B."

20       SECTION 3. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.

22       SECTION 4. This Act shall take effect on July 1, 2020.

HB 1368  
HD 2

**Report Title:**

Land Use; Permissible Use; Agricultural Districts

**Description:**

Deems certain single-family dwellings as approved uses in agricultural districts; provided that not more than 10% of the project area consists of soils classified as A or B. (HB1368 HD2)

HB1368 HD2 HMS 2006-2507

