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# A BILL FOR AN ACT

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RELATING TO LAND USE.

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

1 SECTION 1. Section 205-4.5, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§205-4.5 Permissible uses within the agricultural**  
4 **districts.** (a) Within the agricultural district, all lands  
5 with soil classified by the land study bureau's detailed land  
6 classification as overall (master) productivity rating class A  
7 or B shall be restricted to the following permitted uses:

- 8 (1) Cultivation of crops, including but not limited to  
9 flowers, vegetables, foliage, fruits, forage, and  
10 timber;
- 11 (2) Game and fish propagation;
- 12 (3) Raising of livestock, including but not limited to  
13 poultry, bees, fish, or other animal or aquatic life  
14 that are propagated for economic or personal use;
- 15 (4) Farm dwellings, employee housing, farm buildings, or  
16 activity or uses related to farming and animal  
17 husbandry. Farm dwelling as used in this paragraph  
18 means a single-family dwelling located on and used in



1 connection with a farm, including clusters of single-  
2 family farm dwellings permitted within agricultural  
3 parks developed by the State, or where agricultural  
4 activity provides income to the family occupying the  
5 dwelling;

6 (5) Public institutions and buildings that are necessary  
7 for agricultural practices;

8 (6) Public and private open area types of recreational  
9 uses, including day camps, picnic grounds, parks, and  
10 riding stables, but not including dragstrips,  
11 airports, drive-in theaters, golf courses, golf  
12 driving ranges, country clubs, and overnight camps;

13 (7) Public, private, and quasi-public utility lines and  
14 roadways, transformer stations, communications  
15 equipment buildings, solid waste transfer stations,  
16 major water storage tanks, and appurtenant small  
17 buildings such as booster pumping stations, but not  
18 including offices or yards for equipment, material,  
19 vehicle storage, repair or maintenance, ~~or~~ treatment  
20 plants, ~~or~~ corporation yards, or other like  
21 structures;



- 1 (8) Retention, restoration, rehabilitation, or improvement  
2 of buildings or sites of historic or scenic interest;
- 3 (9) Roadside stands for the sale of agricultural products  
4 grown on the premises;
- 5 (10) Buildings and uses, including but not limited to  
6 mills, storage, and processing facilities, maintenance  
7 facilities, and vehicle and equipment storage areas  
8 that are normally considered directly accessory to the  
9 abovementioned uses and are permitted under section  
10 205-2(d);
- 11 (11) Agricultural parks; or
- 12 (12) Wind energy facilities, including the appurtenances  
13 associated with the production and transmission of  
14 wind generated energy; provided that such facilities  
15 and appurtenances are compatible with agriculture uses  
16 and cause minimal adverse impact on agricultural land.
- 17 (b) Uses not expressly permitted in subsection (a) shall  
18 be prohibited, except the uses permitted as provided in sections  
19 205-6 and 205-8, and construction of single-family dwellings on  
20 lots existing before June 4, 1976. Any other law to the  
21 contrary notwithstanding, no subdivision of land within the  
22 agricultural district with soil classified by the land study



1 bureau's detailed land classification as overall (master)  
2 productivity rating class A or B shall be approved by a county  
3 unless ~~[the said]~~ those A and B lands within the subdivision  
4 ~~[shall be]~~ are made subject to the restriction on uses as  
5 prescribed in this section and to the condition that the uses  
6 shall be primarily in pursuit of an agricultural activity.

7 Any deed, lease, agreement of sale, mortgage, or other  
8 instrument of conveyance covering any land within the  
9 agricultural subdivision shall expressly contain the restriction  
10 on uses and the condition, as prescribed in this section that  
11 ~~[the restriction and condition]~~ these restrictions and  
12 conditions shall be encumbrances running with the land until  
13 such time that the land is reclassified to a land use district  
14 other than agricultural district.

15 If the foregoing requirement of encumbrances running with  
16 the land jeopardizes the owner or lessee ~~[from]~~ in obtaining  
17 mortgage financing from any of the mortgage lending agencies set  
18 forth ~~[hereinbelow,]~~ in the following paragraph, and the  
19 requirement is the sole reason for failure to obtain mortgage  
20 financing, then ~~[such]~~ the requirement of encumbrances shall,  
21 insofar as ~~[the]~~ such mortgage financing is ~~[so]~~ jeopardized, be  
22 conditionally waived by the appropriate county enforcement



1 officer; provided that the conditional waiver shall [~~thereafter~~]  
2 become effective only in the event that the property is  
3 subjected to foreclosure proceedings by the mortgage lender.

4 The mortgage lending agencies [~~mentioned hereinabove~~]  
5 referred to in the preceding paragraph are the Federal Housing  
6 Administration, Federal National Mortgage Association, Veterans  
7 Administration, Small Business Administration, United States  
8 Department of Agriculture, Federal Land Bank of Berkeley,  
9 Federal Intermediate Credit Bank of Berkeley, Berkeley Bank for  
10 Cooperatives, and any other federal, state, or private mortgage  
11 lending agency qualified to do business in Hawaii, and their  
12 respective successors and assigns.

13 (c) Within the agricultural district all lands[~~7~~] with  
14 soil classified by the land study bureau's detailed land  
15 classification as overall (master) productivity rating class C,  
16 D, E, or U shall be restricted to the uses permitted for  
17 agricultural districts as set forth in section 205-5(b).

18 (d) Notwithstanding any other provision of this chapter to  
19 the contrary, golf courses and golf driving ranges approved by a  
20 county before July 1, 2005, for development within the  
21 agricultural district shall be permitted uses within the  
22 agricultural district.



1        (e) Notwithstanding any other law to the contrary,  
2 agricultural lands may be subdivided and leased for the  
3 agricultural uses or activities permitted in subsection (a);  
4 provided that:

5        (1) The principal use of the leased land is agriculture;  
6        (2) No permanent or temporary dwellings or farm dwellings,  
7        including trailers and campers, are constructed on the  
8        leased area. This restriction shall not prohibit the  
9        construction of storage sheds, equipment sheds, or  
10       other structures appropriate to the agricultural  
11       activity carried on within the lot; and

12       (3) The lease term for a subdivided lot shall be for at  
13       least as long as the greater of:

14       (A) The minimum real property tax agricultural  
15       dedication period of the county in which the  
16       subdivided lot is located; or

17       (B) Five years.

18 Lots created and leased pursuant to this section shall be legal  
19 lots of record for mortgage lending purposes and shall be exempt  
20 from county subdivision standards."

21       SECTION 2. Section 484-3, Hawaii Revised Statutes, is  
22 amended by amending subsection (a) to read as follows:

1           "(a) Unless the method of disposition is adopted for the  
2 purpose of evasion of this chapter, or unless the subdivider  
3 files in writing with the director that this chapter shall apply  
4 to the subdivider's subdivision, this chapter shall not apply to  
5 offers or dispositions of an interest in land:

6           (1) By a purchaser of subdivided lands for the purchaser's  
7 own account in a single or isolated transaction;

8           (2) If fewer than twenty separate lots, parcels, units, or  
9 interests in subdivided lands are offered by a person  
10 in a period of twelve months;

11           (3) Where the division of lands is a leasehold  
12           agricultural lot within state agricultural districts  
13           on which no dwelling structures are constructed as  
14           provided in section 205-4.5(e);

15           ~~(3)~~ (4) On which there is a residential, commercial, or  
16 industrial building, or as to which there is a legal  
17 obligation on the part of the seller to construct a  
18 building on the land within two years from the date of  
19 disposition; provided that the obligation to construct  
20 shall not be, directly or indirectly, transferred to  
21 or otherwise imposed upon the purchaser;



1        [~~(4)~~] (5) To persons who are engaged in, and are duly  
2                    licensed to engage in, the business of construction of  
3                    buildings for resale, or to persons who acquire an  
4                    interest in subdivided lands for the purpose of  
5                    engaging, and do engage in, and are duly licensed to  
6                    engage in, the business of construction of buildings  
7                    for resale;

8        [~~(5)~~] (6) Pursuant to court order;

9        [~~(6)~~] (7) By any government or government agency;

10       [~~(7)~~] (8) As cemetery lots or interests; or

11       [~~(8)~~] (9) Registered as a condominium property regime  
12                    pursuant to chapter [~~514A.~~] 514B."

13       SECTION 3. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15       SECTION 4. This Act shall take effect on July 1, 2006.



HB NO. 2146 HDI  
SDI  
CDI

**Report Title:**

Agriculture; Lease; County Exemption

**Description:**

Allows agricultural lands used for certain activities to be subdivided and leased without having to satisfy county subdivision ordinances or the Uniform Land Sales Practice Act; provided that the land shall be used for agricultural uses only.  
(HB2146 CD1)

