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# A BILL FOR AN ACT

RELATING TO PERMISSIBLE USES WITHIN AGRICULTURAL DISTRICTS.

**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, in  
10 new ways. The reasoning of the decision, if applied throughout  
11 the agricultural district, would invalidate thousands of lots in  
12 agricultural subdivisions, forbid the construction of homes on  
13 those lots, and make it illegal for people to live in thousands  
14 of homes already built. According to the decision, homes may be  
15 constructed on lots subdivided in the agricultural district only  
16 if the county first determines that the owner will conduct  
17 agricultural activities on a scale commensurate with the  
18 investment in the home. The trial court decided that a



1 subdivision creating one-acre lots in the agricultural district  
2 had to go to the state land use commission for reclassification  
3 to urban, although state land use law specifically allows one-  
4 acre lots in the agricultural district.

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

17 This Act is intended to remove any doubt concerning the  
18 legality of single-family dwellings and projects containing  
19 them, in the state land use agricultural district, on lots  
20 created before the effective date of this Act, or within  
21 projects approved by county zoning ordinances and at least



1 partially built before the effective date of this Act, as long  
2 as they are on soils not primarily classified as A or B.

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

15 Although the statute applied only to A and B soils, the  
16 land use commission enacted an administrative rule using the  
17 same "farm dwellings" definition to refer to homes on C, D, E,  
18 and U soils. The land use commission did not, however, provide  
19 any minimum standards for the level of agriculture required for  
20 a "farm dwelling" nor make any allowance for the fact that the  
21 agricultural district contains lands not suited for agriculture.



1           Since 1976, the counties have approved the creation of  
2 several thousand lots in the agricultural district. Most of  
3 them have been purchased by individuals who thought that they  
4 could build a single-family home without engaging in substantial  
5 agricultural activity. There are many reasons for this.  
6 Chapter 205 mentions "farm dwellings" only with respect to A and  
7 B soils. Most of the agricultural subdivisions allowed by the  
8 counties after 1976 were on marginal agricultural lands; few  
9 involved A or B soils to any significant extent. Some county  
10 zoning codes expressly allowed single-family dwellings on  
11 agricultural lands and did not mention a "farm dwelling"  
12 requirement. Given the vagueness of the land use commission  
13 rule, the counties did not actively enforce agricultural uses as  
14 a prerequisite to building homes in the agricultural district.

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

19           In the case which gave rise to this uncertainty, the  
20 project did incorporate agriculture, but the trial court decided  
21 that the proposed agricultural activity, consisting of a minimum  
22 of twenty per cent of each lot devoted to income-producing



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

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

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

20       "(c) Within the agricultural district all lands, with soil  
21 classified by the land study bureau's detailed land



1 classification as overall (master) productivity rating class C,  
2 D, E, or U shall be restricted to [~~the~~]:

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

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

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

7 (B) Created within projects approved by county zoning  
8 ordinance where the developer has obtained final  
9 subdivision approval for at least a portion of  
10 the project, commenced construction of project  
11 infrastructure, and sold individual lots, prior  
12 to the effective date of this Act. Such  
13 projects, including all components thereof, shall  
14 be deemed an approved use in the agricultural  
15 district; provided that not more than ten per  
16 cent of the project area consists of soils  
17 classified as A or B."

18 SECTION 3. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

20 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: Calvin K. Y. Song

BY REQUEST  
JAN 28 2006

H.B.NO.2525

**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.

