
A BILL FOR AN ACT

RELATING TO LAND USE.

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

1 SECTION 1. Chapter 205, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§205- Satisfaction of state or county affordable
5 housing requirements in the rural district. (a) In lieu of
6 satisfying a state or county affordable housing assessment in
7 the urban district, a project landowner subject to subsection
8 (b) may fulfill the assessment by providing affordable housing
9 in the rural district in accordance with section 205-2(c)(7).

10 (b) This section shall apply only to a project landowner
11 who has been granted a declaratory order from the land use
12 commission to designate all or some of the landowner's land as
13 important agricultural land pursuant to section 205-45."

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

16 "(c) Rural districts shall include [~~activities~~]:

17 (1) Activities or uses as characterized by low density
18 residential lots of not more than one dwelling house



1 per one-half acre, except as provided by county
2 ordinance pursuant to section 46-4(c), in areas where
3 "city-like" concentration of people, structures,
4 streets, and urban level of services are absent [~~7~~ and
5 where small];

6 (2) Small farms [~~are~~] intermixed with low density
7 residential lots, except that within a subdivision, as
8 defined in section 484-1, the commission, for good
9 cause and on petition for a special permit, may allow
10 one lot of less than one-half acre, but not less than
11 [~~18,500~~] eighteen thousand five hundred square feet,
12 or an equivalent residential density, within a rural
13 subdivision and permit the construction of one
14 dwelling on such lot [~~7~~] provided that all other
15 dwellings in the subdivision shall have a minimum lot
16 size of one-half acre or [~~21,780~~] twenty-one thousand
17 seven hundred eighty square feet [~~. Such petition for~~
18 ~~variance may be processed under the special permit~~
19 ~~procedure. These districts may include contiguous~~];

20 (3) Contiguous areas [~~which~~] that are not suited to low
21 density residential lots or small farms by reason of



1 topography, soils, and other related characteristics[-
2 ~~Rural districts shall also include golf~~];

3 (4) Golf courses, golf driving ranges, and golf-related
4 facilities[-];

5 (5) Agribusiness activities, including horticulture,
6 apiculture, aquaculture, plant nurseries, and the
7 raising and keeping of livestock;

8 (6) Farm worker housing; and

9 (7) Affordable housing, without a special permit; provided
10 that the housing is:

11 (A) Affordable to households with incomes at or below
12 one hundred forty per cent of the median family
13 income as determined by the United States
14 Department of Housing and Urban Development; and

15 (B) Situated on land reclassified to the rural
16 district under a declaratory order issued
17 pursuant to section 205-45 that also designates
18 important agricultural land."

19 SECTION 3. Section 205-5, Hawaii Revised Statutes, is
20 amended by amending subsection (c) to read as follows:



1 "(c) Unless authorized by special permit issued pursuant
2 to this chapter, only the following uses shall be permitted
3 within rural districts:

4 (1) Low density residential uses[+], with a minimum lot
5 size of one-half acre and one dwelling unit per lot,
6 except as provided in section 205-2(c);

7 (2) Agricultural uses;

8 (3) Golf courses, golf driving ranges, and golf-related
9 facilities; [~~and~~]

10 (4) Public, quasi-public, and public utility
11 facilities[~~-~~];

12 (5) Agribusiness activities, as provided in section
13 205-2(c);

14 (6) Farm worker housing; and

15 (7) Affordable housing meeting the requirements of section
16 205-2(c)(7), with density established by county
17 zoning.

18 ~~[In addition, the minimum lot size for any low density~~
19 ~~residential use shall be one-half acre and there shall be but~~
20 ~~one dwelling house per one-half acre, except as provided for in~~
21 ~~section 205-2.]"~~



1 SECTION 4. Section 205-44, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+]§205-44[+] Standards and criteria for the
4 identification of important agricultural lands. (a) The
5 standards and criteria in this section shall be used to identify
6 important agricultural lands. Lands identified as important
7 agricultural lands need not meet every standard and criteria
8 listed below. Rather, lands meeting any of the criteria below
9 shall be given initial consideration; provided that the
10 designation of important agricultural lands shall be made by
11 weighing the standards and criteria with each other to meet the
12 constitutionally mandated purposes in article XI, section 3, of
13 the [~~state constitution~~] Hawaii Constitution and the objectives
14 and policies for important agricultural lands in sections 205-42
15 and 205-43.

16 (b) In a petition for a declaratory order submitted under
17 section 205-45 that seeks to both designate lands as important
18 agricultural lands and reclassify lands in the agricultural
19 district to the rural or urban district, the lands shall be
20 deemed qualified for designation as important agricultural land
21 if the commission reasonably finds that the lands meet at least
22 the criteria of subsection (c)(4), (6), and (8) of this section.



1 If a petition seeks to only designate land as important
2 agricultural lands, then the commission shall evaluate the lands
3 in accordance with subsection (a).

4 (c) The standards and criteria shall be as follows:

5 (1) Land currently used for agricultural production;

6 (2) Land with soil qualities and growing conditions that
7 support agricultural production of food, fiber, or
8 fuel- and energy-producing crops;

9 (3) Land identified under agricultural productivity rating
10 systems, such as the agricultural lands of importance
11 to the State of Hawaii (ALISH) system adopted by the
12 board of agriculture on January 28, 1977;

13 (4) Land with soil classified by the land study bureau's
14 detailed land classification as overall (master)
15 productivity rating:

16 (A) Class A or B; or

17 (B) Class C or D if the land is currently in
18 agricultural production or could be put into
19 productive agricultural use with the
20 implementation of new technology or development
21 of irrigation water;



- 1 [~~(4)~~] (5) Land types associated with traditional native
2 Hawaiian agricultural uses, such as taro cultivation,
3 or unique agricultural crops and uses, such as coffee,
4 vineyards, aquaculture, and energy production;
- 5 [~~(5)~~] (6) Land with sufficient quantities of water to
6 support viable agricultural production;
- 7 [~~(6)~~] (7) Land whose designation as important agricultural
8 lands is consistent with general, development, and
9 community plans of the county;
- 10 [~~(7)~~] (8) Land that contributes to maintaining a critical
11 land mass important to agricultural operating
12 productivity; [~~and~~]
- 13 [~~(8)~~] (9) Land with or near support infrastructure
14 conducive to agricultural productivity, such as
15 transportation to markets, water, or power~~[-]~~; and
- 16 (10) Land that, although unsuited for agricultural use
17 because of topography, is part of a tax map key
18 parcel, most of which is comprised of land meeting at
19 least one of the standards and criteria listed in this
20 subsection. Land under this paragraph shall be
21 designated as important agricultural land only if the
22 entire tax map key parcel is so designated."



1 SECTION 5. Section 205-45, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[~~f~~]**\$205-45**[~~f~~] **Petition by farmer or landowner.** (a) A
4 farmer or landowner with lands qualifying under section 205-44
5 may file with the commission a petition for declaratory [~~ruling~~
6 ~~with the commission~~] order to designate the lands as important
7 agricultural lands in perpetuity. The petition may be filed at
8 any time in the designation process.

9 (b) Any law to the contrary notwithstanding, within the
10 same petition for declaratory order as described in subsection
11 (a), the petitioner may seek a reclassification of land in the
12 agricultural district to the rural district, urban district, or
13 a combination of both; provided that the:

14 (1) Land sought to be reclassified to the rural or urban
15 district is within the same county as the land sought
16 to be designated as important agricultural lands;

17 (2) Reclassification of the land to the rural or urban
18 district is consistent with the relevant county
19 general, development, and community plans; and

20 (3) Total acreage of the land sought to be designated or
21 reclassified in the petition complies with the
22 following proportions:



1 (A) At least eighty per cent of the total acreage is
2 sought to be designated as important agricultural
3 land; and

4 (B) The remainder of the acreage is sought to be
5 reclassified to the rural or urban district.

6 ~~(b)~~ (c) The petition for declaratory ~~ruling~~ order
7 shall be submitted in accordance with subchapter 14 of the
8 commission's rules and shall include:

9 (1) Tax map keys of the land to be designated as important
10 agricultural lands and, if applicable, the land to be
11 reclassified from the agricultural district to the
12 rural or urban district, along with verification and
13 authorization from the applicable landowners;

14 (2) Proof of qualification for designation as important
15 agricultural lands under section 205-44, respecting a
16 regional perspective; ~~and~~

17 (3) The current or planned agricultural use of the area
18 sought to be designated~~[-]~~ as important agricultural
19 lands; and

20 (4) If applicable, the current or planned use of the area
21 sought to be reclassified to the rural or urban
22 district.



1 [~~(e)~~] (d) The commission shall review the petition and the
2 accompanying submissions to evaluate the qualifications of the
3 land for designation as important agricultural lands in
4 accordance with section 205-44.

5 If the petition also seeks the reclassification of land to
6 the rural or urban district, the commission shall review the
7 petition and accompanying submissions to evaluate the
8 suitability of the land for the reclassification in accordance
9 with section 205-2; consistency of the reclassification with the
10 relevant county general, development, and community plans; and
11 compliance with the other provisions of subsection (b).

12 If the commission, after its review [~~and evaluation~~], finds
13 that the [~~lands qualify for~~] designation [~~as important~~
14 ~~agricultural lands under this part,~~] and, if applicable,
15 reclassification sought in the petition should be approved, the
16 commission shall vote, by a two-thirds majority of the members
17 of the commission, to issue a declaratory order designating the
18 petitioner's identified lands as important agricultural lands[~~—~~]
19 and, if applicable, reclassifying the petitioner's identified
20 land from the agricultural district to the rural or urban
21 district.



1 With respect to a petition that seeks to both designate
2 important agricultural lands and reclassify agricultural lands
3 to the rural or urban district, if the commission finds that
4 either the designation or reclassification as proposed by the
5 petitioner should not be approved, the commission shall deny the
6 petition in its entirety.

7 [~~(d)~~ Designating important agricultural lands by the
8 ~~commission]~~ (e) The designation or reclassification of land
9 pursuant to subsection (a) or (b) shall not be [considered as an
10 amendment to district boundaries under] subject to the district
11 boundary amendment procedures of sections 205-3.1 and 205-4 or
12 become effective prior to legislative enactment of protection
13 and incentive measures for important agricultural land and
14 agricultural viability, as provided in section 9 of Act 183,
15 Session Laws of Hawaii 2005.

16 [~~(e)~~] (f) Farmers or landowners with lands qualifying
17 under section 205-44 may file petitions for a declaratory
18 [~~ruling]~~ order to designate lands as important agricultural
19 lands following the legislative enactment of protection and
20 incentive measures for important agricultural lands and
21 agricultural viability, as provided in section 9 of Act 183,
22 Session Laws of Hawaii 2005.



1 (g) After a declaratory order designates any land as
2 important agricultural land pursuant to this section, the
3 commission shall not remove that designation from any land so
4 designated in the order.

5 (h) The commission may adopt rules pursuant to chapter 91
6 to effectuate this section."

7 SECTION 6. Section 205-50, Hawaii Revised Statutes, is
8 amended as follows:

9 1. By amending subsections (c) and (d) to read:

10 "(c) Any decision by the land use commission or county
11 pursuant to this section shall specifically consider the
12 following standards and criteria:

13 (1) The relative importance of the land for agriculture
14 based on the stock of similarly suited lands in the
15 area and the State as a whole;

16 (2) The proposed district boundary amendment or zone
17 change will not harm the productivity or viability of
18 existing agricultural activity in the area, or
19 adversely affect the viability of other agricultural
20 activities or operations that share infrastructure,
21 processing, marketing, or other production-related



1 costs or facilities with the agricultural activities
2 on the land in question;

3 (3) The district boundary amendment or zone change will
4 not cause the fragmentation of or intrusion of
5 nonagricultural uses into largely intact areas of
6 lands identified by the State as important
7 agricultural lands that create residual parcels of a
8 size that would preclude viable agricultural use;

9 (4) The public benefit to be derived from the proposed
10 action is justified by a need for additional lands for
11 nonagricultural purposes; [~~and~~]

12 (5) The impact of the proposed district boundary amendment
13 or zone change on the necessity and capacity of state
14 and county agencies to provide and support additional
15 agricultural infrastructure or services in the
16 area[-]; and

17 (6) Whether the important agricultural land was designated
18 as such in perpetuity by a declaratory order issued
19 under section 205-45.

20 (d) Any decision pursuant to this section shall be based
21 upon a determination that:



1 (1) On balance, the public benefit from the proposed
2 district boundary amendment or zone change outweighs
3 the benefits of retaining the land for agricultural
4 purposes; [~~and~~]

5 (2) The proposed action will have no significant impact
6 upon the viability of agricultural operations on
7 adjacent agricultural lands[-]; and

8 (3) The district boundary amendment does not remove the
9 important agricultural land designation from land so
10 designated in perpetuity by a declaratory order issued
11 under section 205-45."

12 2. By amending subsection (g) to read:

13 "(g) A farmer or landowner with qualifying lands may also
14 petition the land use commission to remove the "important
15 agricultural lands" designation from lands that were not
16 designated by a declaratory order issued under section 205-45 if
17 a sufficient supply of water is no longer available to allow
18 profitable farming of the land due to governmental actions, acts
19 of God, or other causes beyond the farmer's or landowner's
20 reasonable control."

21 SECTION 7. Section 205-52, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "[+]§205-52[+] **Periodic review and amendment of important**
2 **agricultural lands maps.** The maps delineating important
3 agricultural lands shall be reviewed in conjunction with the
4 county general plan and community and development plan revision
5 process, or at least once every ten years following the adoption
6 of the maps by the land use commission; provided that the maps
7 shall not be reviewed more than once every five years. Any
8 review and amendment of the maps of important agricultural lands
9 shall be conducted in accordance with this part. In these
10 periodic reviews [~~or petitions by the farmers or landowners for~~
11 ~~declaratory rulings~~], the "important agricultural lands"
12 designation [~~shall~~] may be removed from those [~~important~~
13 ~~agricultural lands where the commission has issued a declaratory~~
14 ~~order that a sufficient supply of water is no longer available~~
15 ~~to allow profitable farming of these lands due to governmental~~
16 ~~actions, acts of God, or other causes beyond the farmer's or~~
17 ~~landowner's reasonable control.] lands that were so designated
18 by district boundary amendment and not a declaratory order
19 issued under section 205-45."~~

20 SECTION 8. The legislature declares that this Act
21 establishes incentives for the designation of important
22 agricultural land in satisfaction of section 205-46, Hawaii



1 Revised Statutes, and section 9 of Act 183, Session Laws of
2 Hawaii 2005.

3 SECTION 9. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 10. This Act shall take effect upon its approval.



Report Title:

Incentives; Affordable Housing; Reclassification; Important
Agricultural Lands

Description:

Allows a landowner, who has been granted a declaratory order from the Land Use Commission (LUC) to designate all or some of the landowner's land as IAL, to fulfill a state or county affordable housing assessment (assessment) by providing affordable housing in lands zoned as rural in lieu of satisfying the assessment in the urban district; revises the landowner petition process for IAL designation by specifying that a farmer or landowner may petition LUC for declaratory order to designate lands as IALs in perpetuity and allowing farmers or landowners that petition the LUC for declaratory order to seek, in the same petition, a reclassification of land from the agricultural district to the rural district, urban district, or a combination of both, under certain conditions. (HB2807 HD2)

