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# A BILL FOR AN ACT

RELATING TO LAND USE.

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

1           SECTION 1. Section 46-4, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3           "(a) This section and any ordinance, rule, or regulation  
4 adopted in accordance with this section shall apply to lands  
5 located within rural and urban districts. This section and any  
6 ordinance, rule, or regulation adopted in accordance with this  
7 section shall not apply to lands contained within the forest  
8 reserve boundaries as established on January 31, 1957, or as  
9 subsequently amended[~~-~~], or any lands located within a  
10 conservation or agricultural district. Lands located within a  
11 conservation or agricultural district shall be governed by the  
12 state land use commission.

13           Zoning in all counties shall be accomplished within the  
14 framework of a long-range, comprehensive general plan prepared  
15 or being prepared to guide the overall future development of the  
16 county. Zoning shall be one of the tools available to the  
17 county to put the general plan into effect in an orderly manner.



1 Zoning in the counties of Hawaii, Maui, and Kauai means the  
2 establishment of districts of such number, shape, and area, and  
3 the adoption of regulations for each district to carry out the  
4 purposes of this section. In establishing or regulating the  
5 districts, full consideration shall be given to all available  
6 data as to soil classification and physical use capabilities of  
7 the land to allow and encourage the most beneficial use of the  
8 land consonant with good zoning practices. The zoning power  
9 granted herein shall be exercised by ordinance which may relate  
10 to:

- 11 (1) The areas within which [~~agriculture, forestry,~~  
12 industry, trade, and business may be conducted;
- 13 (2) The areas in which residential uses may be regulated  
14 or prohibited;
- 15 (3) The areas bordering natural watercourses, channels,  
16 and streams, in which trades or industries, filling or  
17 dumping, erection of structures, and the location of  
18 buildings may be prohibited or restricted;
- 19 (4) The areas in which particular uses may be subjected to  
20 special restrictions;



- 1 (5) The location of buildings and structures designed for  
2 specific uses and designation of uses for which  
3 buildings and structures may not be used or altered;
- 4 (6) The location, height, bulk, number of stories, and  
5 size of buildings and other structures;
- 6 (7) The location of roads, schools, and recreation areas;
- 7 (8) Building setback lines and future street lines;
- 8 (9) The density and distribution of population;
- 9 (10) The percentage of a lot that may be occupied, size of  
10 yards, courts, and other open spaces;
- 11 (11) Minimum and maximum lot sizes; and
- 12 (12) Other regulations the boards or city council find  
13 necessary and proper to permit and encourage the  
14 orderly development of land resources within their  
15 jurisdictions.

16 The council of any county shall prescribe rules,  
17 regulations, and administrative procedures and provide personnel  
18 it finds necessary to enforce this section and any ordinance  
19 enacted in accordance with this section. The ordinances may be  
20 enforced by appropriate fines and penalties, civil or criminal,  
21 or by court order at the suit of the county or the owner or  
22 owners of real estate directly affected by the ordinances.



1 Any civil fine or penalty provided by ordinance under this  
2 section may be imposed by the district court, or by the zoning  
3 agency after an opportunity for a hearing pursuant to chapter  
4 91. The proceeding shall not be a prerequisite for any  
5 injunctive relief ordered by the circuit court.

6 Nothing in this section shall invalidate any zoning  
7 ordinance or regulation adopted by any county or other agency of  
8 government pursuant to the statutes in effect prior to July 1,  
9 1957.

10 The powers granted herein shall be liberally construed in  
11 favor of the county exercising them and in such a manner as to  
12 promote the orderly development of each county or city and  
13 county in accordance with a long-range, comprehensive general  
14 plan to ensure the greatest benefit for the State as a whole.  
15 This section shall not be construed to limit or repeal any  
16 powers of any county to achieve these ends through zoning and  
17 building regulations, except insofar as forest and water reserve  
18 zones are concerned and as provided in subsections (c) and (d).

19 Neither this section nor any ordinance enacted pursuant to  
20 this section shall prohibit the continued lawful use of any  
21 building or premises for any trade, industrial, residential,  
22 agricultural, or other purpose for which the building or



1 premises is used at the time this section or the ordinance takes  
2 effect; provided that a zoning ordinance may provide for  
3 elimination of nonconforming uses as the uses are discontinued,  
4 or for the amortization or phasing out of nonconforming uses or  
5 signs over a reasonable period of time in commercial,  
6 industrial, resort, and apartment zoned areas only. In no event  
7 shall such amortization or phasing out of nonconforming uses  
8 apply to any existing building or premises used for residential  
9 (single-family or duplex) or agricultural uses. Nothing in this  
10 section shall affect or impair the powers and duties of the  
11 director of transportation as set forth in chapter 262."

12 SECTION 2. Section 205-3.1, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 **"§205-3.1 Amendments to district boundaries. (a)**

15 District boundary amendments involving lands in the conservation  
16 district, land areas greater than fifteen acres, [~~or~~] lands  
17 [~~delineated as important~~] in the agricultural district, or lands  
18 in the rural district shall be processed by the land use  
19 commission pursuant to section 205-4.

20 (b) Any department or agency of the State, and department  
21 or agency of the county in which the land is situated, or any  
22 person with a property interest in the land sought to be



1 reclassified may petition the appropriate county land use  
2 decision-making authority of the county in which the land is  
3 situated for a change in the boundary of a district involving  
4 lands less than fifteen acres presently in the [~~rural and~~] urban  
5 [~~districts~~] district [~~and lands less than fifteen acres in the~~  
6 ~~agricultural district that are not designated as important~~  
7 ~~agricultural lands~~].

8 (c) District boundary amendments involving land areas of  
9 fifteen acres or less [~~, except as provided in subsection (b),~~]  
10 in urban districts, shall be determined by the appropriate  
11 county land use decision-making authority for the district and  
12 shall not require consideration by the land use commission  
13 pursuant to section 205-4; provided that such boundary  
14 amendments and approved uses are consistent with this chapter.  
15 The appropriate county land use decision-making authority may  
16 consolidate proceedings to amend state land use district  
17 boundaries pursuant to this subsection, with county proceedings  
18 to amend the general plan, development plan, zoning of the  
19 affected land, or such other proceedings. Appropriate  
20 ordinances and rules to allow consolidation of such proceedings  
21 may be developed by the county land use decision-making  
22 authority.



1 (d) The county land use decision-making authority shall  
2 serve a copy of the application for a district boundary  
3 amendment to the land use commission and the department of  
4 business, economic development, and tourism and shall notify the  
5 commission and the department of the time and place of the  
6 hearing and the proposed amendments scheduled to be heard at the  
7 hearing. A change in the state land use district boundaries  
8 pursuant to this subsection shall become effective on the day  
9 designated by the county land use decision-making authority in  
10 its decision. Within sixty days of the effective date of any  
11 decision to amend state land use district boundaries by the  
12 county land use decision-making authority, the decision and the  
13 description and map of the affected property shall be  
14 transmitted to the land use commission and the department of  
15 business, economic development, and tourism by the county  
16 planning director."

17 SECTION 3. Section 205-4, Hawaii Revised Statutes, is  
18 amended by amending subsection (a) to read as follows:

19 "(a) Any department or agency of the State, any department  
20 or agency of the county in which the land is situated, or any  
21 person with a property interest in the land sought to be  
22 reclassified, may petition the land use commission for a change



1 in the boundary of a district. This section applies to all  
2 petitions for changes in district boundaries of lands within  
3 conservation districts, [~~lands designated or sought to be~~  
4 ~~designated as important agricultural lands,~~] agricultural  
5 districts, rural districts, and lands greater than fifteen acres  
6 [~~in the agricultural, rural, and~~] within urban districts, except  
7 as provided in section 201H-38. The land use commission shall  
8 adopt rules pursuant to chapter 91 to implement section  
9 201H-38."

10 SECTION 4. Section 205-4.5, Hawaii Revised Statutes, is  
11 amended by amending subsection (b) to read as follows:

12 "(b) Uses not expressly permitted in subsection (a) shall  
13 be prohibited, except the uses permitted as provided in sections  
14 205-6 and 205-8, and construction of single-family dwellings on  
15 lots existing before June 4, 1976. Any other law to the  
16 contrary notwithstanding, no subdivision of land within the  
17 agricultural district with soil classified by the land study  
18 bureau's detailed land classification as overall (master)  
19 productivity rating class A or B shall be approved by [~~a county~~]  
20 the commission unless those A and B lands within the subdivision  
21 are made subject to the restriction on uses as prescribed in





1 this section and to the condition that the uses shall be  
2 primarily in pursuit of an agricultural activity.

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

10 If the foregoing requirement of encumbrances running with  
11 the land jeopardizes the owner or lessee in obtaining mortgage  
12 financing from any of the mortgage lending agencies set forth in  
13 the following paragraph, and the requirement is the sole reason  
14 for failure to obtain mortgage financing, then the requirement  
15 of encumbrances shall, insofar as such mortgage financing is  
16 jeopardized, be conditionally waived by the appropriate [county]  
17 enforcement officer; provided that the conditional waiver shall  
18 become effective only in the event that the property is  
19 subjected to foreclosure proceedings by the mortgage lender.

20 The mortgage lending agencies referred to in the preceding  
21 paragraph are the Federal Housing Administration, Federal  
22 National Mortgage Association, Veterans Administration, Small



1 Business Administration, United States Department of  
2 Agriculture, Federal Land Bank of Berkeley, Federal Intermediate  
3 Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and any  
4 other federal, state, or private mortgage lending agency  
5 qualified to do business in Hawaii, and their respective  
6 successors and assigns."

7 SECTION 5. Section 205-4.6, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 **"§205-4.6 Private restrictions on agricultural uses and**  
10 **activities; not allowed.** Agricultural uses and activities as  
11 defined in sections 205-2(d) and 205-4.5(a) on lands classified  
12 as agricultural shall not be restricted by any private agreement  
13 contained in any deed, agreement of sale, or other conveyance of  
14 land recorded in the bureau of conveyances after July 8, 2003,  
15 that subject such agricultural lands to any servitude, including  
16 but not limited to covenants, easements, or equitable and  
17 reciprocal negative servitudes. Any such private restriction  
18 limiting or prohibiting agricultural use or activity shall be  
19 voidable, subject to special restrictions enacted by [~~the county~~  
20 ~~ordinance pursuant to section 46-4,~~] the commission, except that  
21 restrictions taken to protect environmental or cultural



1 resources, agricultural leases, utility easements, and access  
2 easements shall not be subject to this section.

3 For purposes of this section, "agricultural leases" means  
4 leases where the leased land is primarily utilized for purposes  
5 set forth in section 205-4.5(a)."

6 SECTION 6. Section 205-5, Hawaii Revised Statutes, is  
7 amended by amending subsections (a) and (b) to read as follows:

8 "(a) Except as herein provided, the powers granted to  
9 counties under section 46-4 shall govern the zoning within the  
10 [~~districts, other than in conservation districts.~~] rural and  
11 urban districts. Conservation districts shall be governed by  
12 the department of land and natural resources pursuant to chapter  
13 183C. Agricultural districts shall be governed by the  
14 commission pursuant to this chapter.

15 (b) Within agricultural districts, uses compatible to the  
16 activities described in section 205-2 as determined by the  
17 commission shall be permitted; provided that accessory  
18 agricultural uses and services described in sections 205-2 and  
19 205-4.5 may be further defined by [~~each county by zoning~~  
20 ~~ordinance. Each county~~] the commission. The commission shall  
21 adopt [~~ordinances~~] rules setting forth procedures and  
22 requirements, including provisions for enforcement, penalties,



1 and administrative oversight, for the review and permitting of  
2 agricultural tourism uses and activities as an accessory use on  
3 a working farm, or farming operation as defined in section  
4 165-2; provided that agricultural tourism activities shall not  
5 be permissible in the absence of a bona fide farming operation.

6 [~~Ordinances~~] Rules shall include but not be limited to:

- 7 (1) Requirements for access to a farm, including road  
8 width, road surface, and parking;
- 9 (2) Requirements and restrictions for accessory facilities  
10 connected with the farming operation, including gift  
11 shops and restaurants; provided that overnight  
12 accommodations shall not be permitted;
- 13 (3) Activities that may be offered by the farming  
14 operation for visitors;
- 15 (4) Days and hours of operation; and
- 16 (5) Automatic termination of the accessory use upon the  
17 cessation of the farming operation.

18 [~~Each county~~] The commission may require an environmental  
19 assessment under chapter 343 as a condition to any agricultural  
20 tourism use and activity. Other uses may be allowed by special  
21 permits issued pursuant to this chapter. The minimum lot size  
22 in agricultural districts shall be determined by [~~each county~~]



1 the commission by [~~zoning ordinance, subdivision ordinance,~~  
2 rule or other lawful means; provided that the minimum lot size  
3 for any agricultural use shall not be less than one acre, except  
4 as provided herein. If the [county] commission finds that  
5 unreasonable economic hardship to the owner or lessee of land  
6 cannot otherwise be prevented or where land utilization is  
7 improved, the [county] commission may allow lot sizes of less  
8 than the minimum lot size as specified by law for lots created  
9 by a consolidation of existing lots within an agricultural  
10 district and the resubdivision thereof; provided that the  
11 consolidation and resubdivision do not result in an increase in  
12 the number of lots over the number existing prior to  
13 consolidation; and provided further that in no event shall a lot  
14 which is equal to or exceeds the minimum lot size of one acre be  
15 less than that minimum after the consolidation and resubdivision  
16 action. The [county] commission may also allow lot sizes of  
17 less than the minimum lot size as specified by law for lots  
18 created or used for plantation community subdivisions as defined  
19 in section 205-4.5(a)(12), for public, private, and quasi-public  
20 utility purposes, and for lots resulting from the subdivision of  
21 abandoned roadways and railroad easements."



1 SECTION 7. Section 205-6, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§205-6 Special permit.** (a) Subject to this section, the  
4 ~~[county planning]~~ commission may permit certain unusual and  
5 reasonable uses within agricultural and rural districts other  
6 than those for which the district is classified. Any person who  
7 desires to use the person's land within an agricultural or rural  
8 district other than for an agricultural or rural use, as the  
9 case may be, may petition the ~~[planning commission of the county~~  
10 ~~within which the person's land is located]~~ commission for  
11 permission to use the person's land in the manner desired.  
12 ~~[Each county]~~ The commission may establish the appropriate fee  
13 for processing the special permit petition. Copies of the  
14 special permit petition shall be forwarded to ~~[the land use~~  
15 ~~commission]~~ the office of planning~~[7]~~ and the department of  
16 agriculture for their review and comment.

17 (b) The ~~[planning commission, upon consultation with the~~  
18 ~~central coordinating agency, except in counties where the~~  
19 ~~planning commission is advisory only in which case the central~~  
20 ~~coordinating agency,]~~ commission shall establish by rule ~~[or~~  
21 ~~regulation]~~, the time within which the hearing and action on  
22 petition for special permit shall occur. The ~~[county planning]~~



1 commission shall notify ~~[the land use commission and]~~ such  
2 persons and agencies that may have an interest in the subject  
3 matter of the time and place of the hearing.

4 (c) The ~~[county planning]~~ commission may, under such  
5 protective restrictions as may be deemed necessary, permit the  
6 desired use, but only when the use would promote the  
7 effectiveness and objectives of this chapter; provided that a  
8 use proposed for designated important agricultural lands shall  
9 not conflict with any part of this chapter. A decision in favor  
10 of the applicant shall require a majority vote of the total  
11 membership of the ~~[county planning]~~ commission.

12 (d) Special permits for land ~~[the area of which is greater~~  
13 ~~than fifteen acres or for lands]~~ designated as important  
14 agricultural lands shall be subject to approval by the ~~[land~~  
15 ~~use]~~ commission. The ~~[land use]~~ commission may impose  
16 additional restrictions as may be necessary or appropriate in  
17 granting the approval, including the adherence to  
18 representations made by the applicant.

19 (e) ~~[A copy of the decision, together with the complete~~  
20 ~~record of the proceeding before the county planning commission~~  
21 ~~on all special permit requests involving a land area greater~~  
22 ~~than fifteen acres or for lands designated as important~~



1 ~~agricultural lands, shall be transmitted to the land use~~  
2 ~~commission within sixty days after the decision is rendered.]~~

3 ~~Within forty five days after receipt of the complete record~~  
4 ~~from the county planning commission, the land use] The~~  
5 commission shall act to approve, approve with modification, or  
6 deny the petition. A denial [either] by the [county planning]  
7 commission [~~or by the land use commission,~~] or a modification by  
8 the [~~land use~~] commission, as the case may be, of the desired  
9 use shall be appealable to the circuit court of the circuit in  
10 which the land is situated and shall be made pursuant to the  
11 Hawaii rules of civil procedure.

12 (f) Land uses substantially involving or supporting  
13 educational ecotourism, related to the preservation of native  
14 Hawaiian endangered, threatened, proposed, and candidate  
15 species, that are allowed in an approved habitat conservation  
16 plan under section 195D-21 or safe harbor agreement under  
17 section 195D-22, which are not identified as permissible uses  
18 within the agricultural district under sections 205-2 and  
19 205-4.5, may be permitted in the agricultural district by  
20 special permit under this section, on lands with soils  
21 classified by the land study bureau's detailed land





1 classification as overall (master) productivity rating class C,  
2 D, E, or U."

3 SECTION 8. Section 205-7, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "**§205-7 Adoption, amendment or repeal of rules.** The [~~land~~  
6 ~~use~~] commission shall adopt, amend, or repeal rules relating to  
7 matters within its jurisdiction in the manner prescribed in  
8 chapter 91."

9 SECTION 9. Section 205-12, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "**§205-12 Enforcement.** The appropriate officer or agency  
12 charged with the administration of county zoning laws shall  
13 enforce within each county the restrictions on use and the  
14 conditions relating to rural and urban use classification  
15 districts adopted by the [~~land-use~~] commission [~~and~~]. The  
16 commission shall enforce the restriction on use and the  
17 condition relating to agricultural districts under section  
18 205-4.5 [~~and shall report to the commission all violations~~]."

19 SECTION 10. Section 205-43, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 "**[+]§205-43[+]** **Important agricultural lands; policies.**  
22 State [~~and county~~] agricultural policies, tax policies, land use



1 plans, [~~ordinances,~~] and rules shall promote the long-term  
2 viability of agricultural use of important agricultural lands  
3 and shall be consistent with and implement the following  
4 policies:

- 5 (1) Promote the retention of important agricultural lands  
6 in blocks of contiguous, intact, and functional land  
7 units large enough to allow flexibility in  
8 agricultural production and management;
- 9 (2) Discourage the fragmentation of important agricultural  
10 lands and the conversion of these lands to  
11 nonagricultural uses;
- 12 (3) Direct nonagricultural uses and activities from  
13 important agricultural lands to other areas and ensure  
14 that uses on important agricultural lands are actually  
15 agricultural uses;
- 16 (4) Limit physical improvements on important agricultural  
17 lands to maintain affordability of these lands for  
18 agricultural purposes;
- 19 (5) Provide a basic level of infrastructure and services  
20 on important agricultural lands limited to the minimum  
21 necessary to support agricultural uses and activities;



- 1           (6) Facilitate the long-term dedication of important  
2           agricultural lands for future agricultural use through  
3           the use of incentives;
- 4           (7) Facilitate the access of farmers to important  
5           agricultural lands for long-term viable agricultural  
6           use; and
- 7           (8) Promote the maintenance of essential agricultural  
8           infrastructure systems, including irrigation systems."

9           SECTION 11. Section 205-46, Hawaii Revised Statutes, is  
10          amended by amending subsection (a) to read as follows:

11          "(a) To achieve the long-term agricultural viability and  
12          use of important agricultural lands, the State [~~and each county~~]  
13          shall ensure that [~~their~~] its:

- 14           (1) Agricultural development, land use, water use,  
15           regulatory, tax, and land protection policies; and
- 16           (2) Permitting and approval procedures,  
17          enable and promote the economic sustainability of agriculture.

18          Agricultural operations occurring on important agricultural  
19          lands shall be eligible for incentives and protections provided  
20          by the State and counties pursuant to this section to promote  
21          the viability of agricultural enterprise on important



1 agricultural lands and to assure the availability of important  
2 agricultural lands for long-term agricultural use."

3 SECTION 12. Section 205-47, Hawaii Revised Statutes, is  
4 amended by amending subsections (d) and (e) to read as follows:

5 "(d) The counties shall take notice of those lands that  
6 have already been designated as important agricultural lands by  
7 the commission.

8 Upon identification of potential lands to be recommended to  
9 the [~~county council~~] commission as potential important  
10 agricultural lands, the counties shall take reasonable action to  
11 notify each owner of those lands by mail or posted notice on the  
12 affected lands to inform them of the potential designation of  
13 their lands.

14 In formulating its final recommendations to the [~~respective~~  
15 ~~county councils,~~] commission, the county planning departments  
16 shall report on the manner in which the important agricultural  
17 lands mapping relates to, supports, and is consistent with the:

- 18 (1) Standards and criteria set forth in section 205-44;  
19 (2) [~~County's adopted land~~] Land use plans, as applied to  
20 both the identification and exclusion of important  
21 agricultural lands from such designation;



1 (3) Comments received from government agencies and others  
2 identified in subsection (b);

3 (4) Viability of existing agribusinesses; and

4 (5) Representations or position statements of the owners  
5 whose lands are subject to the potential designation.

6 (e) The important agricultural lands maps shall be  
7 submitted to the [~~county council~~] commission for decision-  
8 making. The [~~county council~~] commission shall adopt the maps,  
9 with or without changes, by resolution. The adopted maps shall  
10 be [~~transmitted to~~] used by the [~~land use~~] commission for  
11 further action pursuant to section 205-48."

12 SECTION 13. Section 205-48, Hawaii Revised Statutes, is  
13 amended by amending subsections (a) and (b) to read as follows:

14 "(a) The [~~land use~~] commission shall receive the county  
15 recommendations and maps delineating those lands eligible to be  
16 designated important agricultural lands no sooner than the  
17 effective date of the legislative enactment of protection and  
18 incentive measures for important agricultural lands and  
19 agricultural viability, as provided in section 9 of Act 183,  
20 Session Laws of Hawaii 2005.

21 (b) The department of agriculture and the office of  
22 planning shall review the county report and recommendations and



1 provide comments to the [~~land-use~~] commission within forty-five  
2 days of the receipt of the report and maps by the [~~land-use~~]  
3 commission. The [~~land-use~~] commission may also consult with the  
4 department of agriculture and the office of planning as needed."

5 SECTION 14. Section 205-50, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "~~§~~205-50~~§~~ Standards and criteria for the  
8 reclassification or rezoning of important agricultural lands.

9 (a) Any land use district boundary amendment or change in  
10 zoning involving important agricultural lands identified  
11 pursuant to this chapter shall be subject to this section.

12 (b) Upon acceptance by the [~~county~~] commission for  
13 processing, any application for a special permit involving  
14 important agricultural lands shall be referred to the department  
15 of agriculture and the office of planning for review and  
16 comment.

17 (c) Any decision by the [~~land-use~~] commission [~~or county~~]  
18 pursuant to this section shall specifically consider the  
19 following standards and criteria:

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



- 1           (2) The proposed district boundary amendment or zone  
2           change will not harm the productivity or viability of  
3           existing agricultural activity in the area, or  
4           adversely affect the viability of other agricultural  
5           activities or operations that share infrastructure,  
6           processing, marketing, or other production-related  
7           costs or facilities with the agricultural activities  
8           on the land in question;
- 9           (3) The district boundary amendment or zone change will  
10          not cause the fragmentation of or intrusion of  
11          nonagricultural uses into largely intact areas of  
12          lands identified by the State as important  
13          agricultural lands that create residual parcels of a  
14          size that would preclude viable agricultural use;
- 15          (4) The public benefit to be derived from the proposed  
16          action is justified by a need for additional lands for  
17          nonagricultural purposes; and
- 18          (5) The impact of the proposed district boundary amendment  
19          or zone change on the necessity and capacity of state  
20          and county agencies to provide and support additional  
21          agricultural infrastructure or services in the area.



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

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

7 (2) The proposed action will have no significant impact  
8 upon the viability of agricultural operations on  
9 adjacent agricultural lands.

10 (e) The standards and criteria of this section shall be in  
11 addition to:

12 (1) The decision-making criteria of section 205-17  
13 governing decisions of the [~~land use~~] commission under  
14 this chapter; and

15 (2) The decision-making criteria adopted by [~~each county~~  
16 ~~to govern decisions of county decision making~~  
17 ~~authorities~~] the commission under this chapter.

18 (f) Any decision of the [~~land use~~] commission [~~and any~~  
19 ~~decision of any county~~] on a land use district boundary  
20 amendment or change in zoning involving important agricultural  
21 lands shall be approved [~~by the body responsible for the~~





1 ~~decision]~~ by a two-thirds vote of the membership [~~to which the~~  
2 ~~body is entitled.]~~ of the commission.

3 (g) A farmer or landowner with qualifying lands may also  
4 petition the [~~land use]~~ commission to remove the "important  
5 agricultural lands" designation from lands if a sufficient  
6 supply of water is no longer available to allow profitable  
7 farming of the land due to governmental actions, acts of God, or  
8 other causes beyond the farmer's or landowner's reasonable  
9 control."

10 SECTION 15. Section 205-51, Hawaii Revised Statutes, is  
11 amended to read as follows.

12 "~~{}~~**§205-51**~~{}~~ **Important agricultural lands; [county**  
13 **ordinances.] rules.** (a) [~~Each county]~~ The commission shall  
14 adopt [~~ordinances]~~ rules that reduce infrastructure standards  
15 for important agricultural lands no later than the effective  
16 date of [~~the legislative enactment of protection and incentive~~  
17 ~~measures for important agricultural lands and agricultural~~  
18 ~~viability, as provided in section 9 of Act 183, Session Laws of~~  
19 ~~Hawaii 2005.]~~ \_\_\_\_\_.

20 (b) [~~For counties without ordinances]~~ Where no rules are  
21 adopted pursuant to subsection (a), important agricultural lands



1 designated pursuant to this part may be subdivided without  
2 [~~county~~] commission processing or standards; provided that:

3 (1) None of the resulting lots shall be used solely for  
4 residential occupancy; and

5 (2) The leasehold lots shall return to the original lot of  
6 record upon expiration or termination of the lease."

7 SECTION 16. Section 205-52, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 " ~~[§]205-52[§]~~ **Periodic review and amendment of important**  
10 **agricultural lands maps.** The maps delineating important  
11 agricultural lands shall be reviewed [~~in conjunction with the~~  
12 ~~county general plan and community and development plan revision~~  
13 ~~process, or~~] at least once every ten years following the  
14 adoption of the maps by the [~~land-use~~] commission; provided that  
15 the maps shall not be reviewed more than once every five years.  
16 Any review and amendment of the maps of important agricultural  
17 lands shall be conducted in accordance with this part. In these  
18 periodic reviews or petitions by the farmers or landowners for  
19 declaratory rulings, the "important agricultural lands"  
20 designation shall be removed from those important agricultural  
21 lands where the commission has issued a declaratory order that a  
22 sufficient supply of water is no longer available to allow



1 profitable farming of these lands due to governmental actions,  
2 acts of God, or other causes beyond the farmer's or landowner's  
3 reasonable control."

4 SECTION 17. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 18. This Act shall take effect on July 1, 2050.



**Report Title:**

Jurisdiction of Lands in Agricultural Districts

**Description:**

Establishes State's sole jurisdiction over land in agricultural districts. (SD1)

