

---

## A BILL FOR AN ACT

RELATING TO LAND USE.

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

1           SECTION 1. Article XI, section 3, of the Constitution of  
2 the State of Hawaii provides, among other things, that the  
3 "State shall conserve and protect agricultural lands, promote  
4 diversified agriculture, increase agricultural self-sufficiency  
5 and assure the availability of agriculturally suitable lands."

6           Some of the best agricultural lands in the State are also  
7 lands that, because of topography, location, and climate, are  
8 desirable for development of upscale housing. The legislature  
9 finds that, in the recent past, hundreds of acres of  
10 agricultural land have been subdivided and converted into  
11 developments that feature luxury homes and minimal if any  
12 agricultural activity, or agribusiness, despite the statutory  
13 requirement that single-family dwellings on class "A" and "B"  
14 agricultural lands are to be used in connection with a farm.  
15 Although the homeowners may cultivate a few fruit trees or an  
16 herb garden, no meaningful agricultural activity takes place,  
17 even though the developments are often called "agricultural  
18 subdivisions".

1           The legislature further finds that the loss of agricultural  
2 lands in this manner results in the loss of the State's ability  
3 to develop sustainable agriculture that could increase food and  
4 fuel self-sufficiency for Hawaii's people.

5           The purpose of this Act is to comply with the requirements  
6 of article XI, section 3, to protect the State's agricultural  
7 land with the highest productivity potential and ensure its use  
8 in agribusiness and other permissible activities on "real  
9 farms".

10           SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended  
11 by adding a new section to be appropriately designated and to  
12 read as follows:

13           "§46-           Subdivisions and building permits on agricultural  
14 land. (a) Except as provided in this section, each subdivision  
15 of land and each building permit to construct farm dwellings in  
16 the agricultural land use district with soil classified by the  
17 land study bureau's detailed land classification as overall  
18 (master) productivity rating class A or B shall be subject to  
19 the following conditions:

20           (1) For any subdivision application in which farm  
21           dwellings will be among the uses on the subdivided  
22           lots, the county shall require that the applicant

A.B. NO. 1008

1 demonstrate the feasibility of agribusiness as the  
2 primary activity undertaken on the land. Evidence of  
3 feasibility shall include consideration of sufficiency  
4 in quantity, storage, and distribution of irrigation  
5 water for each proposed lot to meet anticipated  
6 maximum demand; adequacy of infrastructure, such as  
7 internal roadways, utilities, and areas for the common  
8 use of lot owners; the proposed agribusiness uses and  
9 their agronomic suitability for the area, cost of  
10 production, potential income, and market outlook; and  
11 the form of organization of lot owners and how it will  
12 optimize agribusiness uses. Upon receipt of  
13 subdivision approval, the applicant shall record with  
14 the bureau of conveyances or land court, deed  
15 restrictions or covenants that shall be enforced by  
16 the appropriate county authority, requiring that the  
17 lot owner or lessee use the lot primarily for  
18 agribusiness as long as the land is classified in the  
19 agricultural land use district and such deed  
20 restriction or covenants shall be in conformance with  
21 the intent and purpose of chapter 165 and section 205-

1           4.6, and such restrictions or covenants shall run with  
2           the land; and

3           (2) For any building permit for construction of a farm  
4           dwelling, as defined in section 205-4.5(a)(4), the  
5           county shall require that the applicant for the  
6           building permit demonstrate an established and  
7           substantial agribusiness activity. Evidence of an  
8           established and substantial agribusiness activity  
9           shall include annual income from agribusiness; capital  
10           expenditures for agribusiness; and a farm plan  
11           demonstrating substantial progress in achieving a  
12           successful agribusiness activity. Upon receipt of  
13           building permit approval, if not already done, the  
14           applicant shall record with the bureau of conveyances  
15           or land court, deed restrictions or covenants that  
16           shall be enforced by the appropriate county authority,  
17           requiring that the lot owner or lessee use the lot  
18           primarily for agribusiness as long as the land is  
19           classified in the agricultural land use district and  
20           such deed restriction or covenants shall be in  
21           conformance with the intent and purpose of chapter 165

1           and section 205-4.6, and such restrictions or  
2           covenants shall run with the land.

3           (b) For the purposes of this section, the following terms  
4           shall have the following meanings:

5           "Agribusiness" means a business licensed for the sale of  
6           products in processed or unprocessed form, derived from the uses  
7           permitted in section 205-4.5(a) (1), (2), and (3), and grown or  
8           raised on lands subject to this measure.

9           "Approval" means final approval of a proposed subdivision  
10          where the actual division of land into smaller parcels is  
11          sought, final approval of a building permit, or final approval  
12          of a farm plan, as the context may require.

13          "Family subdivision" means the division of improved or  
14          unimproved land or interests in land of less than fifteen acres  
15          into two or more lots, parcels, sites, or other divisions of  
16          land, including condominiums under chapter 514A or 514B, and for  
17          the purpose of transfer of title to the children of the owner of  
18          the land.

19          "Subdivision" means the division of improved or unimproved  
20          land or interests in land into two or more lots, parcels, sites,  
21          or other divisions of land, including condominiums under chapter  
22          514A or 514B, for the purpose, whether immediate or future, of

1 sale, lease, rental, transfer of title to, or interest in, any  
2 or all such lots, parcels, sites, or other divisions of land.  
3 The term may include a consolidation and resubdivision and, when  
4 appropriate to the context, shall relate to the land subdivided.

5 (c) Nothing in this section shall prevent the county from  
6 imposing other requirements or specifying the format or  
7 additional content of the application.

8 (d) This section shall not apply to any subdivision or  
9 building permit application received by a county on or before  
10 the effective date of this Act.

11 (e) This section shall not apply to family subdivisions,  
12 unless:

13 (1) The lot is subdivided subsequent to the effective date  
14 of this Act; or

15 (2) The lot is resold to a non-family member within  
16 twenty-five years after sale, except as may be  
17 required by law or court order.

18 (f) Nothing in this section shall prevent legal  
19 nonconforming uses or activities in existence on the effective  
20 date of this Act from continuing as permissible uses."

21 SECTION 3. Section 205-4.5, Hawaii Revised Statutes, is  
22 amended to read as follows:

- 1           "§205-4.5 Permissible uses within the agricultural  
2 districts. (a) Within the agricultural district, all lands  
3 with soil classified by the land study bureau's detailed land  
4 classification as overall (master) productivity rating class A  
5 or B shall be restricted to the following permitted uses:
- 6           (1) Cultivation of crops, including crops for bioenergy,  
7                 flowers, vegetables, foliage, fruits, forage, fiber,  
8                 and timber;
- 9           (2) Game and fish propagation;
- 10          (3) Raising of livestock, including poultry, bees, fish,  
11                 or other animal or aquatic life that are propagated  
12                 for [~~economic or personal use,~~] agribusiness purposes;
- 13          (4) Farm dwellings, employee housing, farm buildings, or  
14                 activities or uses related to farming and animal  
15                 husbandry. "Farm dwelling", as used in this  
16                 paragraph [~~, means~~] :
- 17           (A) Means a single-family dwelling [~~located on~~]  
18                 accessory to and used in connection with [~~a~~  
19                 ~~farm,~~] agribusiness, including clusters of  
20                 single-family farm dwellings permitted within  
21                 agricultural parks developed by the State, [~~or~~  
22                 ~~where agricultural activity provides income to~~

1           ~~the family occupying the dwelling,]~~ but excluding  
2           single-family dwellings in a subdivided  
3           development where there is little or no  
4           agribusiness established; and

5           (B) Excludes guest cottages;

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, treatment  
20           plants, corporation yards, or other similar  
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 mills, storage, and  
6 processing facilities, maintenance facilities, and  
7 vehicle and equipment storage areas that are [~~normally~~  
8 ~~considered~~] directly accessory to the [~~above-mentioned~~  
9 ~~uses and are~~] agribusiness permitted [~~under~~] in this  
10 section and section 205-2(d);
- 11 (11) Agricultural parks;
- 12 (12) Plantation community subdivisions, which as used in  
13 this chapter means an established subdivision or  
14 cluster of employee housing, community buildings, and  
15 agricultural support buildings on land currently or  
16 formerly owned, leased, or operated by a sugar or  
17 pineapple plantation; provided that the existing  
18 structures may be used or rehabilitated for use, and  
19 new employee housing and agricultural support  
20 buildings may be allowed on land within the  
21 subdivision as follows:

- 1 (A) The employee housing is occupied by employees or  
2 former employees of the plantation who have a  
3 property interest in the land;
- 4 (B) The employee housing units not owned by their  
5 occupants shall be rented or leased at affordable  
6 rates for agricultural workers; or
- 7 (C) The agricultural support buildings shall be  
8 rented or leased to agricultural business  
9 operators or agricultural support services;
- 10 (13) Agricultural tourism conducted on a working farm, or a  
11 farming operation as defined in section 165-2, for the  
12 enjoyment, education, or involvement of visitors;  
13 provided that the agricultural tourism activity is  
14 accessory and secondary to the principal agricultural  
15 use and does not interfere with surrounding farm  
16 operations; and provided further that this paragraph  
17 shall apply only to a county that has adopted  
18 ordinances regulating agricultural tourism under  
19 section 205-5;
- 20 (14) Wind energy facilities, including the appurtenances  
21 associated with the production and transmission of  
22 wind generated energy; provided that the wind energy

1 facilities and appurtenances are compatible with  
2 agriculture uses and cause minimal adverse impact on  
3 agricultural land;

4 (15) Biofuel processing facilities, including the  
5 appurtenances associated with the production and  
6 refining of biofuels that is normally considered  
7 directly accessory and secondary to the growing of the  
8 energy feedstock; provided that biofuels processing  
9 facilities and appurtenances do not adversely impact  
10 agricultural land and other agricultural uses in the  
11 vicinity.

12 For the purposes of this paragraph:

13 "Appurtenances" means operational infrastructure  
14 of the appropriate type and scale for economic  
15 commercial storage and distribution, and other similar  
16 handling of feedstock, fuels, and other products of  
17 biofuels processing facilities.

18 "Biofuel processing facility" means a facility  
19 that produces liquid or gaseous fuels from organic  
20 sources such as biomass crops, agricultural residues,  
21 and oil crops, including palm, canola, soybean, and  
22 waste cooking oils; grease; food wastes; and animal

1 residues and wastes that can be used to generate  
2 energy;  
3 (16) Agricultural-energy facilities, including  
4 appurtenances necessary for an agricultural-energy  
5 enterprise; provided that the primary activity of the  
6 agricultural-energy enterprise is agricultural  
7 activity. To be considered the primary activity of an  
8 agricultural-energy enterprise, the total acreage  
9 devoted to agricultural activity shall be not less  
10 than ninety per cent of the total acreage of the  
11 agricultural-energy enterprise. The agricultural-  
12 energy facility shall be limited to lands owned,  
13 leased, licensed, or operated by the entity conducting  
14 the agricultural activity.

15 As used in this paragraph:

16 "Agricultural activity" means any activity  
17 described in paragraphs (1) to (3) of this subsection.

18 "Agricultural-energy enterprise" means an  
19 enterprise that integrally incorporates an  
20 agricultural activity with an agricultural-energy  
21 facility.

1 "Agricultural-energy facility" means a facility  
2 that generates, stores, or distributes renewable  
3 energy as defined in section 269-91 or renewable fuel  
4 including electrical or thermal energy or liquid or  
5 gaseous fuels from products of agricultural activities  
6 from agricultural lands located in the State.

7 "Appurtenances" means operational infrastructure  
8 of the appropriate type and scale for the economic  
9 commercial generation, storage, distribution, and  
10 other similar handling of energy, including equipment,  
11 feedstock, fuels, and other products of agricultural-  
12 energy facilities; or

13 (17) Construction and operation of wireless communication  
14 antennas; provided that, for the purposes of this  
15 paragraph, "wireless communication antenna" means  
16 communications equipment that is either freestanding  
17 or placed upon or attached to an already existing  
18 structure and that transmits and receives  
19 electromagnetic radio signals used in the provision of  
20 all types of wireless communications services;  
21 provided further that nothing in this paragraph shall  
22 be construed to permit the construction of any new

1 structure that is not deemed a permitted use under  
2 this subsection.

3 (b) Uses not expressly permitted in subsection (a) shall  
4 be prohibited, except the uses permitted as provided in sections  
5 205-6 and 205-8, and construction of single-family dwellings on  
6 lots existing before June 4, 1976. Any other law to the  
7 contrary notwithstanding, no subdivision of land within the  
8 agricultural district with soil classified by the land study  
9 bureau's detailed land classification as overall (master)  
10 productivity rating class A or B shall be approved by a county  
11 unless those A and B lands within the subdivision are made  
12 subject to ~~the~~:

13 (1) The restriction on uses as prescribed in this section  
14 [and to the];

15 (2) The condition that the uses shall be primarily in  
16 pursuit of an agricultural activity[-] or  
17 agribusiness; and

18 (3) The condition that the land shall not be subdivided  
19 and used for development where the primary purpose of  
20 the development is the sale or development of  
21 residential homes.

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

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

19 The mortgage lending agencies referred to in the preceding  
20 paragraph are the Federal Housing Administration, Federal  
21 National Mortgage Association, Veterans Administration, Small  
22 Business Administration, United States Department of

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

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

11 (d) Notwithstanding any other provision of this chapter to  
12 the contrary, golf courses and golf driving ranges approved by a  
13 county before July 1, 2005, for development within the  
14 agricultural district shall be permitted uses within the  
15 agricultural district.

16 (e) Notwithstanding any other provision of this chapter to  
17 the contrary, plantation community subdivisions as defined in  
18 this section shall be permitted uses within the agricultural  
19 district, and section 205-8 shall not apply.

20 [†] (f) [†] Notwithstanding any other law to the contrary,  
21 agricultural lands may be subdivided and leased for the



1 agricultural uses or activities permitted in subsection (a);  
2 provided that:

3 (1) The principal use of the leased land is [~~agriculture,~~]  
4 for agricultural activity or agribusiness;

5 (2) No permanent or temporary dwellings or farm dwellings,  
6 including trailers and campers, are constructed or  
7 placed on the leased area. This restriction shall not  
8 prohibit the construction of storage sheds, equipment  
9 sheds, or other structures appropriate to the  
10 agricultural activity or agribusiness carried on  
11 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 (g) For the purposes of this section, the following terms  
22 shall have the following meanings:

1       "Agribusiness" means a business licensed for the sale of  
2 products in processed or unprocessed form, derived from the uses  
3 permitted in section 205-4.5(a) (1), (2), and (3), and grown or  
4 raised on lands subject to this measure.

5       "Approval" means final approval of a proposed subdivision  
6 where the actual division of land into smaller parcels is  
7 sought, final approval of a building permit, or final approval  
8 of a farm plan, as the context may require.

9       "Subdivision" means the division of improved or unimproved  
10 land or interests in land into two or more lots, parcels, sites,  
11 or other divisions of land, including condominiums under chapter  
12 514A or 514B, for the purpose, whether immediate or future, of  
13 sale, lease, rental, transfer of title to, or interest in, any  
14 or all of the lots, parcels, sites, or other divisions of land.  
15 The term may include a consolidation and resubdivision and, when  
16 appropriate to the context, shall relate to the land  
17 subdivided."

18       SECTION 4. The lawful use of land or improvements on the  
19 effective date of this Act may be continued as a legal  
20 nonconforming use although the use does not conform to this Act.

H.B. NO. 1008

1 SECTION 5. Nothing in this Act shall invalidate any county  
2 subdivision approval or building permit granted or issued on or  
3 prior to the effective date of this Act.

4 SECTION 6. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 7. This Act shall take effect upon its approval.

7  
8  
9

INTRODUCED BY:

Edw. K. Ay  
BY REQUEST

JAN 26 2009

**Report Title:**

Land Use; Agricultural Land; Subdivision

**Description:**

Protects and promotes the proper use of Hawaii's best agricultural lands by requiring conditions of approval for subdivisions of agricultural land into smaller lots and farm dwellings, thereby ensuring meaningful agricultural use.

JUSTIFICATION SHEET

DEPARTMENT: Agriculture

TITLE: A BILL FOR AN ACT RELATING TO LAND USE.

PURPOSE: The purposes of this bill are to protect and promote the proper use of Hawaii's best agricultural land by imposing new requirements for subdivisions of agricultural lands and building permits for farm dwellings, thereby ensuring meaningful agricultural use.

MEANS: Add a new section to chapter 46 and amend section 205-4.5, Hawaii Revised Statutes.

JUSTIFICATION: Article XI, section 3, of the State Constitution provides, among other things, that "[t]he State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands." Some of the best agricultural lands in the State are also the most desirable for large-lot subdivision developments where the principal use is residential rather than agricultural. Loss of prime agricultural lands to these developments or "fake farms" inhibits the ability of the State to become more self-sufficient in food and energy.

Impact on the public: Protection of agricultural lands and their proper use in agricultural production will enhance the well-being of the public by contributing to food and fuel self-sufficiency for the State.

Impact on the department and other agencies: This bill would give direction to the counties on how to protect agricultural lands. The Land Use Commission is likely to see an increase in the number of petitions for district boundary amendments.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: None.

OTHER AFFECTED  
AGENCIES: Land Use Commission, Office of Planning,  
County planning and permitting departments.

EFFECTIVE DATE: Upon approval.