

---

---

# A BILL FOR AN ACT

RELATING TO LAND USE.

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

1           SECTION 1. The legislature finds that the State's  
2 agricultural and rural areas have significant value, both  
3 economically and as open space, to Hawaii's residents and  
4 visitors. However, the state land use system does not currently  
5 promote rural and agricultural land use patterns and development  
6 practices that protect the open space character and historic  
7 form of Hawaii's rural communities and agricultural lands.

8           The state rural land use district offers an important tool  
9 for accommodating appropriately-scaled, non-agricultural rural  
10 uses such as recreational uses, the siting of agricultural  
11 support activities, and buffering agricultural and conservation  
12 district lands from urban land uses. With less than one per  
13 cent of all lands in the state classified in the rural land use  
14 district, the rural district is an underused tool in the  
15 statewide land use management system.

16           The purpose of this Act is to amend the rural district  
17 policies and standards to enable the rural district to play a



1 stronger role in preserving the State's agricultural lands and  
2 rural areas as permanent features of Hawaii's landscape. This  
3 Act provides broad policy and performance standards that will  
4 expand the counties' ability to plan and manage land use in  
5 rural areas while providing flexibility for accommodating rural  
6 development and rural economic opportunities within the rural  
7 landscape.

8 The legislature believes these amendments will allow the  
9 rural district to absorb development pressures that are  
10 currently directed at the agricultural district, threatening  
11 agricultural viability by increasing agricultural land values  
12 and nuisance complaints for agricultural producers.

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

16 "§46- Policies, standards, and procedures for land use  
17 and development in rural districts. Each county by ordinance  
18 shall establish the policies, standards, and procedures for the  
19 use and development of land in rural districts, as classified in  
20 chapter 205 and the orders and rules promulgated by the  
21 commission, including:

22 (1) Permitted uses of land;



- 1       (2) Allowable density and lot size; and  
2       (3) Standards for required infrastructure systems."

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

6       "§205-A Regional district boundary amendment petitions by  
7 counties; public hearing requirement. (a) Any county may  
8 petition the commission for a regional boundary amendment for a  
9 reclassification of land that conforms to the county general  
10 plans, and county development and community plans.

11       (b) At least one hearing shall be held in the county in  
12 which the regional district boundary amendment is being proposed  
13 prior to the final adoption of the amendment. Maps showing the  
14 proposed district boundaries shall be prepared by the commission  
15 prior to the hearing. Notice of the hearing shall be given as  
16 provided in section 205-4.

17       (c) Interested landowners, lessees, officials, agencies,  
18 and individuals may appear at the hearing to testify. They  
19 shall be allowed at least fifteen days following the final  
20 hearing to file with the commission a written protest or other  
21 comments or recommendations. The district boundary shall be  
22 adopted in final form not more than ninety days nor less than



1 forty-five days after the last hearing. The commission shall  
2 prepare and submit to the county and the office of planning  
3 copies of the classification maps showing the district  
4 boundaries adopted in final form.

5 **§205-B Permissible uses within the urban districts.**

6 Within the urban district, all lands shall be restricted to the  
7 activities or uses permitted by county ordinance or regulation  
8 within which the urban district is situated pursuant to the  
9 master plan or general plan of the county.

10 **§205-C Permissible uses within the rural districts.**

11 Within the rural district, all lands shall be restricted to the  
12 activities or uses permitted by county ordinance or regulation  
13 within which the rural district is situated pursuant to the  
14 master plan or general plan of the county; provided that the  
15 activities and uses are consistent with section 205-2(c)."

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

18 "§205-2 Districting and classification of lands[-];  
19 criteria. (a) There shall be four major land use districts in  
20 which all lands in the [State] state shall be placed: urban,  
21 rural, agricultural, and conservation. The land use commission  
22 shall group contiguous land areas suitable for inclusion in one



1 of these four major districts. The commission shall set  
2 standards for determining the boundaries of each district [~~7~~  
3 ~~provided that~~].

4 [~~(1)~~] (b) In the establishment of boundaries of urban  
5 districts, the commission shall include:

6 (1) [~~these~~] Those lands that are now in urban use; and

7 (2) [~~a~~] A sufficient reserve area for foreseeable urban  
8 growth [~~shall be included~~].

9 [~~(2)~~] (c) In the establishment of boundaries for rural  
10 districts, the commission shall include:

11 (1) [~~areas~~] Areas of land composed primarily of ranches  
12 and small farms;

13 (2) Low-density residential lots and residential  
14 subdivisions on agricultural lands existing before  
15 January 1, 2009;

16 (3) Areas to preserve and maintain natural landscapes and  
17 vistas, open space, and the rural character of the  
18 area;

19 (4) Clusters of settlements or historic plantation camps  
20 and communities that do not function as a suburb of a  
21 major urban center; and



1        (5) Areas not suited to agricultural and ancillary  
2        activities by reason of topography and other related  
3        characteristics. [~~mixed with very low density~~  
4        residential lots, which may be shown by a minimum  
5        density of not more than one house per one half acre  
6        and a minimum lot size of not less than one half acre  
7        shall be included, except as herein provided;

8        ~~(3)]~~ (d) In the establishment of the boundaries of  
9        agricultural districts, the greatest possible protection shall  
10       be given to those lands with a high capacity for intensive  
11       cultivation [~~and~~].

12       ~~(4)]~~ (e) In the establishment of the boundaries of  
13       conservation districts, the commission shall include lands where  
14       the greatest possible protection shall be given to valuable  
15       natural resources including:

- 16       (1) Watersheds and water sources;  
17       (2) Indigenous or endemic plants, fish and wildlife,  
18       including those that are threatened or endangered;  
19       (3) Park lands, wilderness, and beach reserves;  
20       (4) Shoreline and coastal resources;  
21       (5) Native forests and other forested areas;  
22       (6) Wetlands, natural streams, and lakes;



- 1        (7) Scenic, historic, archaeological, and cultural areas;  
2            and  
3        (8) Recreational resources and areas highly susceptible to  
4            erosion, landslides, flooding, volcanic hazards, and  
5            other conditions that may threaten lives or property.

6    The "forest and water reserve zones" provided in Act 234,  
7    section 2, Session Laws of Hawaii 1957, are renamed  
8    "conservation districts" and, effective as of July 11, 1961, the  
9    boundaries of the forest and water reserve zones theretofore  
10   boundaries of the forest and water reserve zones theretofore  
11   established pursuant to Act 234, section 2, Session Laws of  
12   Hawaii 1957, shall constitute the boundaries of the conservation  
13   districts; provided that thereafter the power to determine the  
14   boundaries of the conservation districts shall be in the  
15   commission. Areas not suited to agricultural activities by  
16   reason of topography or other characteristics may be included in  
17   conservation districts.

17        (f) In establishing the boundaries of the districts in  
18   each county, the commission shall give consideration to the  
19   [~~master plan or~~] general plan [~~of~~] or community and development  
20   plans adopted by the county.



1       ~~[(b) Urban districts shall include activities or uses as~~  
2 ~~provided by ordinances or regulations of the county within which~~  
3 ~~the urban district is situated.~~

4       ~~(c) Rural districts shall include activities or uses as~~  
5 ~~characterized by low density residential lots of not more than~~  
6 ~~one dwelling house per one half acre, except as provided by~~  
7 ~~county ordinance pursuant to section 46 4(c), in areas where~~  
8 ~~"city like" concentration of people, structures, streets, and~~  
9 ~~urban level of services are absent, and where small farms are~~  
10 ~~intermixed with low density residential lots except that within~~  
11 ~~a subdivision, as defined in section 484 1, the commission for~~  
12 ~~good cause may allow one lot of less than one half acre, but not~~  
13 ~~less than 18,500 square feet, or an equivalent residential~~  
14 ~~density, within a rural subdivision and permit the construction~~  
15 ~~of one dwelling on such lot, provided that all other dwellings~~  
16 ~~in the subdivision shall have a minimum lot size of one half~~  
17 ~~acre or 21,780 square feet. Such petition for variance may be~~  
18 ~~processed under the special permit procedure. These districts~~  
19 ~~may include contiguous areas which are not suited to low density~~  
20 ~~residential lots or small farms by reason of topography, soils,~~  
21 ~~and other related characteristics. Rural districts shall also~~





1 ~~include golf courses, golf driving ranges, and golf related~~  
2 ~~facilities.~~

3 ~~(d) Agricultural districts shall include:~~

4 ~~(1) Activities or uses as characterized by the cultivation~~  
5 ~~of crops, crops for bioenergy, orchards, forage, and~~  
6 ~~forestry;~~

7 ~~(2) Farming activities or uses related to animal husbandry~~  
8 ~~and game and fish propagation;~~

9 ~~(3) Aquaculture, which means the production of aquatic~~  
10 ~~plant and animal life within ponds and other bodies of~~  
11 ~~water;~~

12 ~~(4) Wind generated energy production for public, private,~~  
13 ~~and commercial use;~~

14 ~~(5) Biofuel production, as described in section 205-~~  
15 ~~4.5(a)(15), for public, private, and commercial use;~~

16 ~~(6) Solar energy facilities; provided that this paragraph~~  
17 ~~shall apply only to land with soil classified by the~~  
18 ~~land study bureau's detailed land classification as~~  
19 ~~overall (master) productivity rating class D or E;~~

20 ~~(7) Bona fide agricultural services and uses that support~~  
21 ~~the agricultural activities of the fee or leasehold~~  
22 ~~owner of the property and accessory to any of the~~



- 1 ~~above activities, regardless of whether conducted on~~  
2 ~~the same premises as the agricultural activities to~~  
3 ~~which they are accessory, including farm dwellings as~~  
4 ~~defined in section 205 4.5(a)(4), employee housing,~~  
5 ~~farm buildings, mills, storage facilities, processing~~  
6 ~~facilities, agricultural energy facilities as defined~~  
7 ~~in section 205 4.5(a)(16), vehicle and equipment~~  
8 ~~storage areas, roadside stands for the sale of~~  
9 ~~products grown on the premises, and plantation~~  
10 ~~community subdivisions as defined in section 205-~~  
11 ~~4.5(a)(12);~~
- 12 ~~(8) Wind machines and wind farms;~~
- 13 ~~(9) Small scale meteorological, air quality, noise, and~~  
14 ~~other scientific and environmental data collection and~~  
15 ~~monitoring facilities occupying less than one half~~  
16 ~~acre of land; provided that these facilities shall not~~  
17 ~~be used as or equipped for use as living quarters or~~  
18 ~~dwellings;~~
- 19 ~~(10) Agricultural parks;~~
- 20 ~~(11) Agricultural tourism conducted on a working farm, or a~~  
21 ~~farming operation as defined in section 165 2, for the~~  
22 ~~enjoyment, education, or involvement of visitors;~~



1 ~~provided that the agricultural tourism activity is~~  
2 ~~accessory and secondary to the principal agricultural~~  
3 ~~use and does not interfere with surrounding farm~~  
4 ~~operations; and provided further that this paragraph~~  
5 ~~shall apply only to a county that has adopted~~  
6 ~~ordinances regulating agricultural tourism under~~  
7 ~~section 205-5; and~~

8 ~~(12) Open area recreational facilities.~~

9 ~~Agricultural districts shall not include golf courses and golf~~  
10 ~~driving ranges, except as provided in section 205-4.5(d).~~

11 ~~Agricultural districts include areas that are not used for, or~~  
12 ~~that are not suited to, agricultural and ancillary activities by~~  
13 ~~reason of topography, soils, and other related characteristics.~~

14 ~~(c) Conservation districts shall include areas necessary~~  
15 ~~for protecting watersheds and water sources; preserving scenic~~  
16 ~~and historic areas; providing park lands, wilderness, and beach~~  
17 ~~reserves; conserving indigenous or endemic plants, fish, and~~  
18 ~~wildlife, including those which are threatened or endangered;~~  
19 ~~preventing floods and soil erosion; forestry; open space areas~~  
20 ~~whose existing openness, natural condition, or present state of~~  
21 ~~use, if retained, would enhance the present or potential value~~  
22 ~~of abutting or surrounding communities, or would maintain or~~



1 ~~enhance the conservation of natural or scenic resources, areas~~  
2 ~~of value for recreational purposes, other related activities,~~  
3 ~~and other permitted uses not detrimental to a multiple use~~  
4 ~~conservation concept.] "~~

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

7 "**§205-5 Zoning.** (a) Except as [~~herein~~] provided[~~7~~] in  
8 this chapter, the powers granted to counties under section 46-4  
9 shall govern the zoning within the urban, rural, and  
10 agricultural districts [~~7, other than in conservation districts~~].  
11 Conservation districts shall be governed by the department of  
12 land and natural resources pursuant to chapter 183C.  
13 (b) Within agricultural districts, uses compatible [~~to~~]  
14 with the activities described in [~~section~~] sections 205-2 and  
15 205-4.5 as determined by the commission shall be permitted;  
16 provided that accessory agricultural uses and services described  
17 in sections 205-2 and 205-4.5 may be further defined by each  
18 county by zoning ordinance. Each county shall adopt ordinances  
19 setting forth procedures and requirements, including provisions  
20 for enforcement, penalties, and administrative oversight, for  
21 the review and permitting of agricultural tourism uses and  
22 activities as an accessory use on a working farm, or farming



1 operation as defined in section 165-2; provided that  
2 agricultural tourism activities shall not be permissible in the  
3 absence of a bona fide farming operation. Ordinances shall  
4 include but not be limited to:

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

16 Each county may require an environmental assessment under  
17 chapter 343 as a condition to any agricultural tourism use and  
18 activity. Other uses may be allowed by special permits issued  
19 pursuant to this chapter.

20 The minimum lot size in agricultural districts shall be  
21 determined by each county by zoning ordinance, subdivision  
22 ordinance, or other lawful means; provided that the minimum lot



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

20 ~~[(c) Unless authorized by special permit issued pursuant~~  
21 ~~to this chapter, only the following uses shall be permitted~~  
22 ~~within rural districts.~~



- 1       ~~(1) Low density residential uses,~~  
2       ~~(2) Agricultural uses,~~  
3       ~~(3) Golf courses, golf driving ranges, and golf related~~  
4               ~~facilities; and~~  
5       ~~(4) Public, quasi public, and public utility facilities.~~

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

10       SECTION 6. Section 205-6, Hawaii Revised Statutes, is  
11 amended by amending subsection (a) to read as follows:

12       "(a) Subject to this section, the county planning  
13 commission may permit certain unusual and reasonable uses within  
14 the agricultural [~~and rural districts~~] district other than those  
15 for which the district is classified. Any person who desires to  
16 use the person's land within an agricultural [~~or rural~~] district  
17 [~~other than~~] for [~~an agricultural or rural use, as the case may~~  
18 ~~be,~~] a use other than a use permitted under sections 205-2(d)  
19 and 205-4.5, may petition the planning commission of the county  
20 within which the person's land is located for permission to use  
21 the person's land in the manner desired. Each county may  
22 establish the appropriate fee for processing the special permit



1 petition. Copies of the special permit petition shall be  
2 forwarded to the land use commission, the office of planning,  
3 and the department of agriculture for their review and comment."

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

6 "§205-8 Nonconforming uses [–], structures, or lot sizes in  
7 the rural and agricultural districts. (a) The lawful use of  
8 land or buildings existing on the date of establishment of any  
9 interim agricultural district and rural district in final form  
10 may be continued although the use, including lot size, does not  
11 conform to this chapter; provided that no nonconforming building  
12 shall be replaced, reconstructed, or enlarged or changed to  
13 another nonconforming use and no nonconforming use of land shall  
14 be expanded or changed to another nonconforming use. In  
15 addition, if any nonconforming use of land or building is  
16 discontinued or held in abeyance for a period of one year, the  
17 further continuation of such use shall be prohibited.

18 (b) A lawful use or structure made nonconforming by an  
19 amendment to this chapter may be continued as a legal  
20 nonconforming use or structure; provided that no legal  
21 nonconforming use or structure shall be replaced, reconstructed,  
22 or enlarged or changed to another nonconforming use, except as





1 provided by county ordinance adopted pursuant to section 46-  
2 4(a).

3 (c) A legal lot of record approved by a county before the  
4 effective date of an amendment to this chapter that renders the  
5 lot size or dwelling unit density of the lot nonconforming, may  
6 be used; provided that:

7 (1) The proposed use shall be subject to county review and  
8 decision-making pursuant to subsection (d);

9 (2) No additional nonconforming lot shall be created from  
10 the existing lot of record; and

11 (3) If two or more contiguous lots are under the same  
12 ownership, the lots shall be subject to the minimum  
13 lot size or maximum density standards of this chapter,  
14 and any nonconforming lot shall not be considered as a  
15 separate parcel of land for the purposes of sale or  
16 development and shall be combined to create one or  
17 more conforming lots.

18 (d) Each county may adopt, by ordinance, procedures for  
19 the use of dwelling unit density of a legal nonconforming lot  
20 that exceeds the maximum density for the rural and agricultural  
21 districts set forth in this chapter; provided that, for the  
22 purposes of this section, "dwelling unit density" shall mean the



1 number of dwelling units permitted by the underlying county  
2 zoning on the effective date of an act that renders the  
3 allowable lot density nonconforming. The county may adopt a cap  
4 on the total amount of density that is allowed in excess of the  
5 district density standards of this chapter. Except as provided  
6 in section 205-A(c)(3), the additional dwelling units or density  
7 credits from legal nonconforming lots may be permitted, as  
8 determined by the county, only as follows:

- 9       (1) In projects in the urban district;  
10       (2) In existing or new rural centers as defined and  
11       designated by the county in an adopted county general,  
12       community, or development plan;  
13       (3) In projects that cluster dwelling units and structures  
14       on a portion of the property, and preserve no less  
15       than fifty per cent of the remainder of the property  
16       as contiguous open lands for agricultural use or open  
17       space; or  
18       (4) Through a county variance procedure, which allows the  
19       county to balance the higher density proposed with the  
20       protection and preservation of rural character and  
21       long-term use of rural and agricultural lands."



1 SECTION 8. This Act shall not invalidate county zoning in  
2 effect on the effective date of this Act, and all county  
3 ordinances and rules applicable to the underlying county zoning  
4 shall remain in full force and effect. The lawful use of land  
5 or buildings and legal lots of record existing in the rural or  
6 agricultural district on the effective date of this Act may be  
7 continued; provided that any proposed use of an existing lot of  
8 record that would exceed the maximum density allowed for the  
9 land use district shall be subject to county review and  
10 decision-making as provided in section 7 of this Act.

11 SECTION 9. This Act does not affect rights and duties that  
12 matured, penalties that were incurred, and proceedings that were  
13 begun, before its effective date.

14 SECTION 10. In codifying the new sections added by section  
15 3 and referenced in section 6 of this Act, the revisor of  
16 statutes shall substitute the appropriate section numbers for  
17 the letters used in designating the new sections in this Act.

18 SECTION 11. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

20 SECTION 12. This Act shall take effect on July 1, 2009.



**Report Title:**

Land Use

**Description:**

Gives the counties greater authority and flexibility to define uses and regulate land use in the State Rural District consistent with broad State policies and standards. (HB1048 HD1)

