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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. Article XI, section 3, of the Hawaii  
2 Constitution provides, among other things, that the "State shall  
3 conserve and protect agricultural lands, promote diversified  
4 agriculture, increase agricultural self-sufficiency and assure  
5 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, of the Hawaii Constitution, to protect  
7 the State's agricultural land with the highest productivity  
8 potential and ensure its use in agribusiness and other  
9 permissible activities on "real 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



1           demonstrate the feasibility of agribusiness as the  
2           primary activity undertaken on the land. Evidence of  
3           feasibility shall include:

4           (A) Consideration of sufficiency in quantity,  
5           storage, and distribution of irrigation water for  
6           each proposed lot to meet anticipated maximum  
7           demand;

8           (B) Adequacy of infrastructure, such as internal  
9           roadways, utilities, and areas for the common use  
10          of lot owners;

11          (C) The proposed agribusiness uses and their  
12          agronomic suitability for the area, cost of  
13          production, potential income, and market outlook;  
14          and

15          (D) The form of organization of lot owners and how it  
16          will optimize agribusiness uses.

17          Upon receipt of subdivision approval, the applicant  
18          shall record with the bureau of conveyances or land  
19          court, deed restrictions or covenants that shall be  
20          enforced by the appropriate county authority,  
21          requiring that the lot owner or lessee use the lot  
22          primarily for agribusiness as long as the land is



1 classified in the agricultural land use district and  
2 such deed restrictions or covenants shall be in  
3 conformance with the intent and purpose of chapter 165  
4 and section 205-4.6, and such restrictions or  
5 covenants shall run with the land; and

6 (2) For any building permit for construction of a farm  
7 dwelling, as defined in section 205-4.5(a)(4), the  
8 county shall require that the applicant for the  
9 building permit demonstrate an established and  
10 substantial agribusiness activity. Evidence of an  
11 established and substantial agribusiness activity  
12 shall include:

13 (A) Annual income from agribusiness;

14 (B) Capital expenditures for agribusiness; and

15 (C) A farm plan demonstrating substantial progress in  
16 achieving a successful agribusiness activity.

17 Upon receipt of building permit approval, if not  
18 already done, the applicant shall record with the  
19 bureau of conveyances or land court, deed restrictions  
20 or covenants that shall be enforced by the appropriate  
21 county authority, requiring that the lot owner or  
22 lessee use the lot primarily for agribusiness as long



1           as the land is classified in the agricultural land use  
2           district and such deed restrictions or covenants shall  
3           be in conformance with the intent and purpose of  
4           chapter 165 and section 205-4.6, and such restrictions  
5           or covenants shall run with the land.

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

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

12          (d) This section shall not apply to family subdivisions,  
13          unless:

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

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

19          (e) Nothing in this section shall prevent lawful uses or  
20          activities in existence on the effective date of this Act from  
21          continuing as legal nonconforming uses.



1       (f) For the purposes of this section, the following terms  
2 shall have the following meanings:

3       "Agribusiness" means a business licensed for the sale of  
4 products in processed or unprocessed form, derived from the uses  
5 permitted in section 205-4.5(a)(1), (2), and (3), and grown or  
6 raised on lands subject to sections 46- and 205-4.5.

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

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

17       "Subdivision" means the division of improved or unimproved  
18 land or interests in land into two or more lots, parcels, sites,  
19 or other divisions of land, including condominiums under chapter  
20 514A or 514B, for the purpose, whether immediate or future, of  
21 the sale, lease, rental, transfer of title to, or interest in,  
22 any or all such lots, parcels, sites, or other divisions of



1 land. The term may include a consolidation and resubdivision  
2 and, when appropriate to the context, shall relate to the land  
3 subdivided."

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

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



1           (A) Means a single-family dwelling [~~located on~~  
2           accessory to and used in connection with [a  
3           ~~farm,~~] agribusiness, including clusters of  
4           single-family farm dwellings permitted within  
5           agricultural parks developed by the State, [~~or~~  
6           ~~where agricultural activity provides income to~~  
7           ~~the family occupying the dwelling,~~] but excluding  
8           single-family dwellings in a subdivided  
9           development where there is little or no  
10          agribusiness established; and

11          (B) Excludes guest cottages;

12          (5) Public institutions and buildings that are necessary  
13          for agricultural practices;

14          (6) Public and private open area types of recreational  
15          uses, including day camps, picnic grounds, parks, and  
16          riding stables, but not including dragstrips,  
17          airports, drive-in theaters, golf courses, golf  
18          driving ranges, country clubs, and overnight camps;

19          (7) Public, private, and quasi-public utility lines and  
20          roadways, transformer stations, communications  
21          equipment buildings, solid waste transfer stations,  
22          major water storage tanks, and appurtenant small





- 1 buildings such as booster pumping stations, but not  
2 including offices or yards for equipment, material,  
3 vehicle storage, repair or maintenance, treatment  
4 plants, corporation yards, or other similar  
5 structures;
- 6 (8) Retention, restoration, rehabilitation, or improvement  
7 of buildings or sites of historic or scenic interest;
- 8 (9) Roadside stands for the sale of agricultural products  
9 grown on the premises;
- 10 (10) Buildings and uses, including mills, storage, and  
11 processing facilities, maintenance facilities, and  
12 vehicle and equipment storage areas that are [~~normally~~  
13 ~~considered~~] directly accessory to the [~~above-mentioned~~  
14 ~~uses and are~~] agribusiness permitted [~~under~~] in this  
15 section and section 205-2(d);
- 16 (11) Agricultural parks;
- 17 (12) Plantation community subdivisions, which as used in  
18 this chapter means an established subdivision or  
19 cluster of employee housing, community buildings, and  
20 agricultural support buildings on land currently or  
21 formerly owned, leased, or operated by a sugar or  
22 pineapple plantation; provided that the existing



1 structures may be used or rehabilitated for use, and  
2 new employee housing and agricultural support  
3 buildings may be allowed on land within the  
4 subdivision as follows:

5 (A) The employee housing is occupied by employees or  
6 former employees of the plantation who have a  
7 property interest in the land;

8 (B) The employee housing units not owned by their  
9 occupants shall be rented or leased at affordable  
10 rates for agricultural workers; or

11 (C) The agricultural support buildings shall be  
12 rented or leased to agricultural business  
13 operators or agricultural support services;

14 (13) Agricultural tourism conducted on a working farm, or a  
15 farming operation as defined in section 165-2, for the  
16 enjoyment, education, or involvement of visitors;  
17 provided that the agricultural tourism activity is  
18 accessory and secondary to the principal agricultural  
19 use and does not interfere with surrounding farm  
20 operations; and provided further that this paragraph  
21 shall apply only to a county that has adopted



1 ordinances regulating agricultural tourism under  
2 section 205-5;

3 (14) Wind energy facilities, including the appurtenances  
4 associated with the production and transmission of  
5 wind generated energy; provided that the wind energy  
6 facilities and appurtenances are compatible with  
7 agriculture uses and cause minimal adverse impact on  
8 agricultural land;

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

17 For the purposes of this paragraph:

18 "Appurtenances" means operational infrastructure  
19 of the appropriate type and scale for economic  
20 commercial storage and distribution, and other similar  
21 handling of feedstock, fuels, and other products of  
22 biofuels processing facilities.



1 "Biofuel processing facility" means a facility  
2 that produces liquid or gaseous fuels from organic  
3 sources such as biomass crops, agricultural residues,  
4 and oil crops, including palm, canola, soybean, and  
5 waste cooking oils; grease; food wastes; and animal  
6 residues and wastes that can be used to generate  
7 energy;

8 (16) Agricultural-energy facilities, including  
9 appurtenances necessary for an agricultural-energy  
10 enterprise; provided that the primary activity of the  
11 agricultural-energy enterprise is agricultural  
12 activity. To be considered the primary activity of an  
13 agricultural-energy enterprise, the total acreage  
14 devoted to agricultural activity shall be not less  
15 than ninety per cent of the total acreage of the  
16 agricultural-energy enterprise. The agricultural-  
17 energy facility shall be limited to lands owned,  
18 leased, licensed, or operated by the entity conducting  
19 the agricultural activity.

20 As used in this paragraph:

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



1 "Agricultural-energy enterprise" means an  
2 enterprise that integrally incorporates an  
3 agricultural activity with an agricultural-energy  
4 facility.

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

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

17 (17) Construction and operation of wireless communication  
18 antennas; provided that, for the purposes of this  
19 paragraph, "wireless communication antenna" means  
20 communications equipment that is either freestanding  
21 or placed upon or attached to an already existing  
22 structure and that transmits and receives



1 electromagnetic radio signals used in the provision of  
2 all types of wireless communications services;  
3 provided further that nothing in this paragraph shall  
4 be construed to permit the construction of any new  
5 structure that is not deemed a permitted use under  
6 this subsection.

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

17 (1) The restriction on uses as prescribed in this section  
18 ~~[and to the];~~

19 (2) The condition that the uses shall be primarily in  
20 pursuit of an agricultural activity~~[-]~~ or  
21 agribusiness; and



1        (3) The condition that the land shall not be subdivided  
2        and used for development where the primary purpose of  
3        the development is the sale or development of  
4        residential homes.

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

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



1           The mortgage lending agencies referred to in the preceding  
2 paragraph are the Federal Housing Administration, Federal  
3 National Mortgage Association, Veterans Administration, Small  
4 Business Administration, United States Department of  
5 Agriculture, Federal Land Bank of Berkeley, Federal Intermediate  
6 Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and any  
7 other federal, state, or private mortgage lending agency  
8 qualified to do business in Hawaii, and their respective  
9 successors and assigns.

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

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

20           (e) Notwithstanding any other provision of this chapter to  
21 the contrary, plantation community subdivisions as defined in





1 this section shall be permitted uses within the agricultural  
2 district, and section 205-8 shall not apply.

3 [†](f)[†] Notwithstanding any other law to the contrary,  
4 agricultural lands may be subdivided and leased for the  
5 agricultural uses or activities permitted in subsection (a);  
6 provided that:

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

9 (2) No permanent or temporary dwellings or farm dwellings,  
10 including trailers and campers, are constructed or  
11 placed on the leased area. This restriction shall not  
12 prohibit the construction of storage sheds, equipment  
13 sheds, or other structures appropriate to the  
14 agricultural activity or agribusiness carried on  
15 within the lot; and

16 (3) The lease term for a subdivided lot shall be for at  
17 least as long as the greater of:

18 (A) The minimum real property tax agricultural  
19 dedication period of the county in which the  
20 subdivided lot is located; or

21 (B) Five years.



1 Lots created and leased pursuant to this section shall be legal  
2 lots of record for mortgage lending purposes and shall be exempt  
3 from county subdivision standards.

4 (g) Nothing in this section shall prevent lawful uses or  
5 activities in existence on the effective date of this Act from  
6 continuing as legal nonconforming uses.

7 (h) For the purposes of this section, the following terms  
8 shall have the following meanings:

9 "Agribusiness" means a business licensed for the sale of  
10 products in processed or unprocessed form, derived from the uses  
11 permitted in section 205-4.5(a)(1), (2), and (3), and grown or  
12 raised on lands subject to sections 46- and 205-4.5.

13 "Approval" means final approval of a proposed subdivision  
14 where the actual division of land into smaller parcels is  
15 sought, final approval of a building permit, or final approval  
16 of a farm plan, as the context may require.

17 "Subdivision" means the division of improved or unimproved  
18 land or interests in land into two or more lots, parcels, sites,  
19 or other divisions of land, including condominiums under chapter  
20 514A or 514B, for the purpose, whether immediate or future, of  
21 sale, lease, rental, transfer of title to, or interest in, any  
22 or all of the lots, parcels, sites, or other divisions of land.



1 The term may include a consolidation and resubdivision and, when  
2 appropriate to the context, shall relate to the land  
3 subdivided."

4 SECTION 4. Nothing in this Act shall invalidate any county  
5 subdivision approval or building permit granted or issued on or  
6 prior to the effective date of this Act.

7 SECTION 5. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

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



**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. (HB1008 HD1)

