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# A BILL FOR AN ACT

RELATING TO AGRICULTURE.

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

1           SECTION 1. Article XI, section 3, of the state  
2 constitution provides: "The State shall conserve and protect  
3 agricultural lands, promote diversified agriculture, increase  
4 agricultural self-sufficiency and assure the availability of  
5 agriculturally suitable lands. The legislature shall provide  
6 standards and criteria to accomplish the foregoing."

7           The purpose of this Act is to require an agricultural  
8 subdivision or agricultural condominium on land that is in an  
9 agricultural district pursuant to chapter 205, Hawaii Revised  
10 Statutes, to be approved by the relevant county council by  
11 ordinance. The legislature intends that designating the  
12 subdivision or condominium approval as a discretionary  
13 legislative act confers upon a county council the flexibility to  
14 determine whether the agricultural subdivision or agricultural  
15 condominium is in the best interest of the county before  
16 deciding whether to approve or reject an application.



1 SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended  
2 by adding a new section to part I to be appropriately designated  
3 and to read as follows:

4 "§46- Agricultural subdivision and agricultural  
5 condominium; requirement for county council approval. (a) For  
6 the purpose of this section:

7 "Agricultural condominium" means a condominium property  
8 regime on land, any part of which is within an agricultural  
9 district established pursuant to chapter 205.

10 "Agricultural subdivision" means a subdivision of land, any  
11 part of which is within an agricultural district established  
12 pursuant to chapter 205.

13 (b) No building, grading, grubbing, stockpiling, or other  
14 county permit shall be issued for a structure or improvement in  
15 or for an agricultural subdivision or agricultural condominium  
16 prior to approval by the applicable county council of the  
17 agricultural subdivision or agricultural condominium. The  
18 approval shall be expressed by ordinance and shall be deemed a  
19 discretionary legislative act. As part of the ordinance, the  
20 county council may include any term or condition deemed  
21 necessary to ensure:



- 1        (1) The operation of agricultural activity on each lot or  
2        unit created, other than for roadway or utility  
3        purposes, is economically viable; and
- 4        (2) The subdivider, condominium developer, or lot or unit  
5        owners or occupants are in compliance with chapter 205  
6        and any other applicable law or ordinance.
- 7        (c) The county council may establish provisions by  
8        ordinance with respect to the application for, processing of,  
9        and action on a proposed agricultural subdivision or  
10       agricultural condominium. The provisions may include prior  
11       review of the application by the county planning commission."

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

14       "§205-4.5 Permissible uses within the agricultural  
15       districts. (a) Within the agricultural district, all lands  
16       with soil classified by the land study bureau's detailed land  
17       classification as overall (master) productivity rating class A  
18       or B shall be restricted to the following permitted uses:

19       (1) Cultivation of crops, including crops for bioenergy,  
20       flowers, vegetables, foliage, fruits, forage, and  
21       timber;

22       (2) Game and fish propagation;



- 1           (3) Raising of livestock, including poultry, bees, fish,  
2                    or other animal or aquatic life that are propagated  
3                    for economic or personal use;
- 4           (4) Farm dwellings, employee housing, farm buildings, or  
5                    activities or uses related to farming and animal  
6                    husbandry. "Farm dwelling", as used in this  
7                    paragraph, means a single-family dwelling located on  
8                    and used in connection with a farm, including clusters  
9                    of single-family farm dwellings permitted within  
10                  agricultural parks developed by the State, or where  
11                  agricultural activity provides income to the family  
12                  occupying the dwelling;
- 13          (5) Public institutions and buildings that are necessary  
14                  for agricultural practices;
- 15          (6) Public and private open area types of recreational  
16                  uses, including day camps, picnic grounds, parks, and  
17                  riding stables, but not including dragstrips,  
18                  airports, drive-in theaters, golf courses, golf  
19                  driving ranges, country clubs, and overnight camps;
- 20          (7) Public, private, and quasi-public utility lines and  
21                  roadways, transformer stations, communications  
22                  equipment buildings, solid waste transfer stations,



1 major water storage tanks, and appurtenant small  
2 buildings such as booster pumping stations, but not  
3 including offices or yards for equipment, material,  
4 vehicle storage, repair or maintenance, treatment  
5 plants, corporation yards, or other similar  
6 structures;

7 (8) Retention, restoration, rehabilitation, or improvement  
8 of buildings or sites of historic or scenic interest;

9 (9) Roadside stands for the sale of agricultural products  
10 grown on the premises;

11 (10) Buildings and uses, including mills, storage, and  
12 processing facilities, maintenance facilities, and  
13 vehicle and equipment storage areas that are normally  
14 considered directly accessory to the above-mentioned  
15 uses and are permitted under 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~~] are 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;

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; or

7 (18) Agricultural education programs conducted on a farming  
8 operation as defined in section 165-2, for the  
9 education and participation of the general public;  
10 provided that the agricultural education programs are  
11 accessory and secondary to the principal agricultural  
12 use of the parcels or lots on which the agricultural  
13 education programs are to occur and do not interfere  
14 with surrounding farm operations. For the purposes of  
15 this section, "agricultural education programs" means  
16 activities or events designed to promote knowledge and  
17 understanding of agricultural activities and practices  
18 conducted on a farming operation as defined in section  
19 165-2.

20 (b) Uses not expressly permitted in subsection (a) shall  
21 be prohibited, except the uses permitted as provided in sections  
22 205-6 and 205-8, and construction of single-family dwellings on



1 lots existing before June 4, 1976. Any other law to the  
2 contrary notwithstanding, no subdivision of land within the  
3 agricultural district with soil classified by the land study  
4 bureau's detailed land classification as overall (master)  
5 productivity rating class A or B shall be approved by a county  
6 unless those A and B lands within the subdivision are made  
7 subject to the restriction on uses as prescribed in this section  
8 and to the condition that the uses shall be primarily in pursuit  
9 of an agricultural activity.

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

17 If the foregoing requirement of encumbrances running with  
18 the land jeopardizes the owner or lessee in obtaining mortgage  
19 financing from any of the mortgage lending agencies set forth in  
20 the following paragraph, and the requirement is the sole reason  
21 for failure to obtain mortgage financing, then the requirement  
22 of encumbrances shall, insofar as such mortgage financing is



1 jeopardized, be conditionally waived by the appropriate county  
2 enforcement officer; provided that the conditional waiver shall  
3 become effective only in the event that the property is  
4 subjected to foreclosure proceedings by the mortgage lender.

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

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

19 (d) Notwithstanding any other provision of this chapter to  
20 the contrary, golf courses and golf driving ranges approved by a  
21 county before July 1, 2005, for development within the



1 agricultural district shall be permitted uses within the  
2 agricultural district.

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

7 [F] (f) [F] Notwithstanding any other law to the contrary,  
8 agricultural lands may be subdivided and leased for the  
9 agricultural uses or activities permitted in subsection (a);  
10 provided that:

11 (1) The principal use of the leased land is agriculture;

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

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

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



1 (B) Five years.

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

5 (g) Each unit of a condominium property regime in an  
6 agricultural district shall be in compliance with the minimum  
7 size, farm dwelling restrictions, agricultural activity  
8 requirements, and other terms and conditions applicable to a  
9 subdivided lot on that agricultural land."

10 SECTION 4. Section 514B-5, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "[+]§514B-5[+] Conformance with county land use laws. Any  
13 condominium property regime established under this chapter shall  
14 conform to the existing underlying county zoning for the  
15 property and all applicable county permitting requirements  
16 adopted by the county in which the property is located,  
17 including any terms and conditions adopted pursuant to section  
18 46- and any supplemental rules adopted by the county, pursuant  
19 to section 514B-6, to ensure the conformance of condominium  
20 property regimes to the purposes and provisions of county zoning  
21 and development ordinances and chapter 205. In the case of a  
22 property [~~which~~] that includes one or more existing structures



1 being converted to condominium status, the condominium property  
2 regime shall comply with section 514B-32(a)(13) or 514B-84(a)."

3 SECTION 5. Section 514B-31, Hawaii Revised Statutes, is  
4 amended by amending its title and subsection (a) to read as  
5 follows:

6 "[~~§~~514B-31~~]~~ Creation~~[-]~~; agricultural district. (a)

7 To create a condominium property regime, all of the owners of  
8 the fee simple interest in land shall execute and record a  
9 declaration submitting the land to the condominium property  
10 regime. If the condominium property regime is on land, any part  
11 of which is within an agricultural district established pursuant  
12 to chapter 205, the declaration shall not be recorded until  
13 after the condominium property regime has been approved by the  
14 applicable county council pursuant to section 46- . Upon  
15 recordation of the master deed together with a declaration, the  
16 condominium property regime shall be deemed created."

17 SECTION 6. This Act shall not apply to:

- 18 (1) Any application for the subdivision of land within the  
19 state agricultural district that is pending before, or  
20 was approved by, a county on June 30, 2011; and  
21 (2) Any declaration of a condominium property regime  
22 recorded before June 30, 2011.







**Report Title:**

Agriculture; Subdivision; Condominium

**Description:**

Requires an agricultural subdivision or agricultural condominium in an agricultural district to be approved by the relevant county council by ordinance.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

