
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 approval by the
8 relevant county council by ordinance of an agricultural
9 subdivision or agricultural condominium on land located within
10 an agricultural district established pursuant to chapter 205,
11 Hawaii Revised Statutes. The legislature intends that
12 designating approval of the subdivision or condominium as a
13 discretionary legislative act confers upon a county council the
14 flexibility to determine whether the agricultural subdivision or
15 agricultural condominium is in the best interest of the county
16 before 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 located within an
9 agricultural district established pursuant to chapter 205.

10 "Agricultural subdivision" means a subdivision of land, any
11 part of which is located within an agricultural district
12 established 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 that:



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) Agricultural-based commercial operations as described
10 in section [f]205-2(d)(15)[+];

11 (10) Buildings and uses, including mills, storage, and
12 processing facilities, maintenance facilities,
13 photovoltaic, biogas, and other small-scale renewable
14 energy systems producing energy solely for use in the
15 agricultural activities of the fee or leasehold owner
16 of the property, and vehicle and equipment storage
17 areas that are normally considered directly accessory
18 to the above-mentioned uses and are permitted under
19 section 205-2(d);

20 (11) Agricultural parks;

21 (12) Plantation community subdivisions, which as used in
22 this chapter means an established subdivision or



1 cluster of employee housing, community buildings, and
2 agricultural support buildings on land currently or
3 formerly owned, leased, or operated by a sugar or
4 pineapple plantation; provided that the existing
5 structures may be used or rehabilitated for use, and
6 new employee housing and agricultural support
7 buildings may be allowed on land within the
8 subdivision as follows:

9 (A) The employee housing is occupied by employees or
10 former employees of the plantation who have a
11 property interest in the land;

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

15 (C) The agricultural support buildings shall be
16 rented or leased to agricultural business
17 operators or agricultural support services;

18 (13) Agricultural tourism conducted on a working farm, or a
19 farming operation as defined in section 165-2, for the
20 enjoyment, education, or involvement of visitors;
21 provided that the agricultural tourism activity is
22 accessory and secondary to the principal agricultural



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

6 (14) Agricultural tourism activities, including overnight
7 accommodations of twenty-one days or less, for any one
8 stay within a county; provided that this paragraph
9 shall apply only to a county that includes at least
10 three islands and has adopted ordinances regulating
11 agricultural tourism activities pursuant to section
12 205-5; provided further that the agricultural tourism
13 activities coexist with a bona fide agricultural
14 activity. For the purposes of this paragraph, "bona
15 fide agricultural activity" means a farming operation
16 as defined in section 165-2;

17 (15) Wind energy facilities, including the appurtenances
18 associated with the production and transmission of
19 wind generated energy; provided that the wind energy
20 facilities and appurtenances are compatible with
21 agriculture uses and cause minimal adverse impact on
22 agricultural land;



1 (16) Biofuel processing facilities, including the
2 appurtenances associated with the production and
3 refining of biofuels that [~~is~~] are normally considered
4 directly accessory and secondary to the growing of the
5 energy feedstock; provided that biofuel processing
6 facilities and appurtenances do not adversely impact
7 agricultural land and other agricultural uses in the
8 vicinity.

9 For the purposes of this paragraph:

10 "Appurtenances" means operational infrastructure
11 of the appropriate type and scale for economic
12 commercial storage and distribution, and other similar
13 handling of feedstock, fuels, and other products of
14 biofuel processing facilities.

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



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

13 As used in this paragraph:

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

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

20 "Agricultural-energy facility" means a facility
21 that generates, stores, or distributes renewable
22 energy as defined in section 269-91 or renewable fuel



1 including electrical or thermal energy or liquid or
2 gaseous fuels from products of agricultural activities
3 from agricultural lands located in the State.

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

10 (18) Construction and operation of wireless communication
11 antennas; provided that, for the purposes of this
12 paragraph, "wireless communication antenna" means
13 communications equipment that is either freestanding
14 or placed upon or attached to an already existing
15 structure and that transmits and receives
16 electromagnetic radio signals used in the provision of
17 all types of wireless communications services;
18 provided further that nothing in this paragraph shall
19 be construed to permit the construction of any new
20 structure that is not deemed a permitted use under
21 this subsection;



- 1 (19) Agricultural education programs conducted on a farming
2 operation as defined in section 165-2, for the
3 education and participation of the general public;
4 provided that the agricultural education programs are
5 accessory and secondary to the principal agricultural
6 use of the parcels or lots on which the agricultural
7 education programs are to occur and do not interfere
8 with surrounding farm operations. For the purposes of
9 this section, "agricultural education programs" means
10 activities or events designed to promote knowledge and
11 understanding of agricultural activities and practices
12 conducted on a farming operation as defined in section
13 165-2;
- 14 (20) Solar energy facilities that do not occupy more than
15 ten per cent of the acreage of the parcel, or twenty
16 acres of land, whichever is lesser; provided that this
17 use shall not be permitted on lands with soil
18 classified by the land study bureau's detailed land
19 classification as overall (master) productivity rating
20 class A; or
- 21 [+] (21) [+] Geothermal resources exploration and geothermal
22 resources development, as defined under section 182-1.



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

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

20 If the foregoing requirement of encumbrances running with
21 the land jeopardizes the owner or lessee in obtaining mortgage
22 financing from any of the mortgage lending agencies set forth in



1 the following paragraph, and the requirement is the sole reason
2 for failure to obtain mortgage financing, then the requirement
3 of encumbrances shall, insofar as such mortgage financing is
4 jeopardized, be conditionally waived by the appropriate county
5 enforcement officer; provided that the conditional waiver shall
6 become effective only in the event that the property is
7 subjected to foreclosure proceedings by the mortgage lender.

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

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



H.B. NO. 630

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

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

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

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

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

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



1 (A) The minimum real property tax agricultural
2 dedication period of the county in which the
3 subdivided lot is located; or

4 (B) Five years.

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

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

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

15 "~~§~~**514B-5** **Conformance with county land use laws.** Any
16 condominium property regime established under this chapter shall
17 conform to the existing underlying county zoning for the
18 property and all applicable county permitting requirements
19 adopted by the county in which the property is located,
20 including any terms and conditions adopted pursuant to section
21 46- and any supplemental rules adopted by the county,
22 pursuant to section 514B-6, to ensure the conformance of



1 condominium property regimes to the purposes and provisions of
2 county zoning and development ordinances and chapter 205. In
3 the case of a property [~~which~~] that includes one or more
4 existing structures being converted to condominium status, the
5 condominium property regime shall comply with section
6 514B-32(a)(13) or 514B-84(a)."

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

10 "[~~f~~]~~§~~514B-31[~~f~~] Creation[-]; agricultural district. (a)
11 To create a condominium property regime, all of the owners of
12 the fee simple interest in land shall execute and record a
13 declaration submitting the land to the condominium property
14 regime. If the condominium property regime is on land, any part
15 of which is located within an agricultural district established
16 pursuant to chapter 205, the declaration shall not be recorded
17 until after the condominium property regime has been approved by
18 the applicable county council pursuant to section 46- . Upon
19 recordation of the master deed together with a declaration, the
20 condominium property regime shall be deemed created."

21 SECTION 6. This Act shall not apply to:



H.B. NO. 630

- 1 (1) Any application for the subdivision of land within the
- 2 state agricultural district that is pending before, or
- 3 was approved by, a county on June 30, 2013; and
- 4 (2) Any declaration of a condominium property regime
- 5 recorded before June 30, 2013.

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

8 SECTION 8. This Act shall take effect upon its approval.

9

INTRODUCED BY:

A collection of handwritten signatures in black ink. The signatures are arranged in two columns. The top signature is a large, stylized one. Below it are two columns of smaller signatures. Some signatures are written over horizontal lines. The names 'James W. Day', 'Calvin H. Day', 'Linda Lehmann', and 'Zach' are partially legible among the signatures.



H.B. NO. 630

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.

