

EXECUTIVE CHAMBERS HONOLULU

DAVID Y. IGE GOVERNOR

July 10, 2018 GOV. MSG. NO. 12 56

The Honorable Ronald D. Kouchi, President and Members of the Senate Twenty-Ninth State Legislature State Capitol, Room 409 Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki, Speaker and Members of the House of Representatives Twenty-Ninth State Legislature State Capitol, Room 431 Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

I am transmitting herewith SB2524 SD1 HD1 CD1, without my approval and with the statement of objections relating to the measure.

SB2524 SD1 HD1 CD1

RELATING TO COUNTY LAND USE REQUIREMENTS

Sincerely,

And

DAVID X_IGE Governor, State of Hawai'i

EXECUTIVE CHAMBERS HONOLULU July 10, 2018

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 2524

Honorable Members Twenty-Ninth Legislature State of Hawai'i

Pursuant to Section 16 of Article III of the Constitution of the State of Hawai'i, I am returning herewith, without my approval, Senate Bill No. 2524, entitled "A Bill for an Act Relating to County Land Use Requirements."

The purpose of this bill is to require the owner of any parcel of land subdivided as a condominium property regime in agricultural or preservation lands to provide public notice of sale no later than ninety days after the sale of the parcel. This measure also prohibits residential use of sheds or other structures on agricultural lands unless permitted under county ordinances and rules.

This bill is objectionable because the measure could allow, if permitted under county ordinances and rules, residential uses on agricultural land in the City and County of Honolulu that has been subdivided exempt from county subdivision requirements. This could result in the loss of land used for agricultural purposes in contradiction to state land use policy that seeks to preserve agricultural land for agricultural uses.

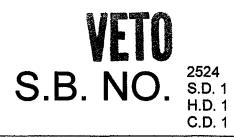
For the foregoing reasons, I am returning Senate Bill No. 2524 without my approval.

Respectfully,

Arrid Md

DAVID Y. TGE Governor of Hawai'i

THE SENATE TWENTY-NINTH LEGISLATURE, 2018 STATE OF HAWAII



A BILL FOR AN ACT

RELATING TO COUNTY LAND USE REQUIREMENTS.

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

SECTION 1. The purpose of this Act is to clarify certain
 requirements for condominium property regimes on agricultural
 lands in a county with a population of seven hundred fifty
 thousand or more, including:

5	(1)	For purposes of planned community associations,
6		requiring the owner of any parcel of land subdivided
7		as a condominium property regime in agricultural or
8		preservation lands to provide public notice of the
9		sale no later than ninety days after the sale of the
10		parcel; and
11	(2)	Providing an option for county participation in the
12		approval of certain major agricultural condominium

13 property regimes.

SECTION 2. Chapter 421J, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

17 "§421J- Proposed land sale; agricultural and

18 preservation lands; public notice. If any parcel of land is 2018-2608 SB2524 CD1 SMA.doc

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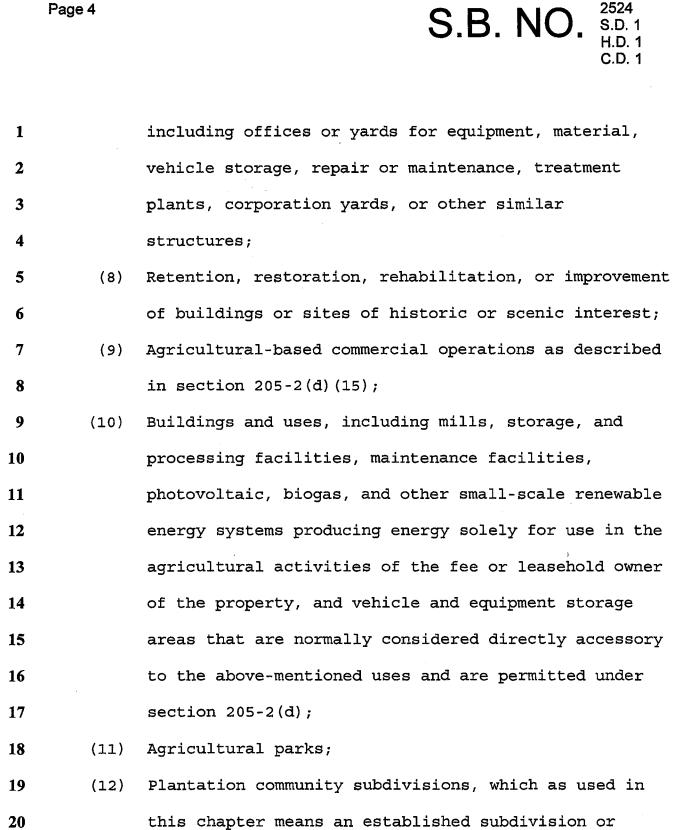


1	subdivide	d as a condominium property regime in agricultural or
2	preservat	ion lands within a county with a population of seven
3	hundred f	ifty thousand or more, the owner of the parcel shall
4	provide p	ublic notification of the sale no later than ninety
5	days afte	r the sale of the parcel."
6	SECT	ION 3. Section 205-4.5, Hawaii Revised Statutes, is
7	amended t	o read as follows:
8	"§20	5-4.5 Permissible uses within the agricultural
9	districts	. (a) Within the agricultural district, all lands
10	with soil	classified by the land study bureau's detailed land
11	classific	ation as overall (master) productivity rating class A
12	or B and	for solar energy facilities, class B or C, shall be
13	restricte	d to the following permitted uses:
14	(1)	Cultivation of crops, including crops for bioenergy,
15		flowers, vegetables, foliage, fruits, forage, and
16		timber;
17	(2)	Game and fish propagation;
18	(3)	Raising of livestock, including poultry, bees, fish,
19		or other animal or aquatic life that are propagated
20		for economic or personal use;

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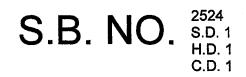
1	(4)	Farm dwellings, employee housing, farm buildings, or
2		activities or uses related to farming and animal
3		husbandry. "Farm dwelling", as used in this
4		paragraph, means a single-family dwelling located on
5		and used in connection with a farm, including clusters
6		of single-family farm dwellings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

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cluster of employee housing, community buildings, and 21

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1		agricultural support buildings on land currently or				
2		formerly owned, leased, or operated by a sugar or				
3		pineapple plantation; provided that the existing				
4		structures may be used or rehabilitated for use, and				
5		new employee housing and agricultural support				
6		buildings may be allowed on land within the				
7		subdivision as follows:				
8		(A) The employee housing is occupied by employees or				
9		former employees of the plantation who have a				
10		property interest in the land;				
11		(B) The employee housing units not owned by their				
12		occupants shall be rented or leased at affordable				
13		rates for agricultural workers; or				
14		(C) The agricultural support buildings shall be				
15		rented or leased to agricultural business				
16		operators or agricultural support services;				
17	(13)	Agricultural tourism conducted on a working farm, or a				
18	ì	farming operation as defined in section 165-2, for the				
19		enjoyment, education, or involvement of visitors;				
20		provided that the agricultural tourism activity is				
21		accessory and secondary to the principal agricultural				

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

6 Agricultural tourism activities, including overnight (14)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

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1		agriculture uses and cause minimal adverse impact on
2		agricultural land;
3	(16)	Biofuel processing facilities, including the
4		appurtenances associated with the production and
5		refining of biofuels that is normally considered
6		directly accessory and secondary to the growing of the
7		energy feedstock; provided that biofuel processing
8		facilities and appurtenances do not adversely impact
9		agricultural land and other agricultural uses in the
10		vicinity.
11		For the purposes of this paragraph:
12		"Appurtenances" means operational infrastructure
13		of the appropriate type and scale for economic
14		commercial storage and distribution, and other similar
15		handling of feedstock, fuels, and other products of
16		biofuel processing facilities.
17		"Biofuel processing facility" means a facility
18		that produces liquid or gaseous fuels from organic
19		sources such as biomass crops, agricultural residues,
20		and oil crops, including palm, canola, soybean, and

waste cooking oils; grease; food wastes; and animal

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1		residues and wastes that can be used to generate
2		energy;
3	(17)	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.





"Agricultural-energy facility" means a facility 1 2 that generates, stores, or distributes renewable energy as defined in section 269-91 or renewable fuel 3 including electrical or thermal energy or liquid or 4 gaseous fuels from products of agricultural activities 5 6 from agricultural lands located in the State. 7 "Appurtenances" means operational infrastructure 8 of the appropriate type and scale for the economic commercial generation, storage, distribution, and 9 other similar handling of energy, including equipment, 10 11 feedstock, fuels, and other products of agricultural-12 energy facilities;

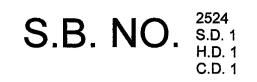
Construction and operation of wireless communication 13 (18) 14 antennas; provided that, for the purposes of this paragraph, "wireless communication antenna" means 15 16 communications equipment that is either freestanding 17 or placed upon or attached to an already existing 18 structure and that transmits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

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be construed to permit the construction of any new 1 2 structure that is not deemed a permitted use under 3 this subsection; 4 Agricultural education programs conducted on a farming (19) 5 operation as defined in section 165-2, for the 6 education and participation of the general public; 7 provided that the agricultural education programs are 8 accessory and secondary to the principal agricultural use of the parcels or lots on which the agricultural 9 10 education programs are to occur and do not interfere 11 with surrounding farm operations. For the purposes of 12 this paragraph, "agricultural education programs" 13 means activities or events designed to promote knowledge and understanding of agricultural activities 14 and practices conducted on a farming operation as 15 defined in section 165-2; 16 Solar energy facilities that do not occupy more than 17 (20)

18 ten per cent of the acreage of the parcel, or twenty
19 acres of land, whichever is lesser or for which a
20 special use permit is granted pursuant to section
21 205-6; provided that this use shall not be permitted

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on lands with soil classified by the land study			
bureau's detailed land classification as overall			
(master) productivity rating class A unless the solar			
energy facilities are:			
(A) Located on a paved or unpaved road in existence			
as of December 31, 2013, and the parcel of land			
upon which the paved or unpaved road is located			
has a valid county agriculture tax dedication			
status or a valid agricultural conservation			
easement;			
(B) Placed in a manner that still allows vehicular			
traffic to use the road; and			
(C) Granted a special use permit by the commission			
pursuant to section 205-6;			
Solar energy facilities on lands with soil classified			
by the land study bureau's detailed land			
classification as overall (master) productivity rating			
B or C for which a special use permit is granted			
pursuant to section 205-6; provided that:			
(A) The area occupied by the solar energy facilities			
is also made available for compatible			

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1		agri	cultural activities at a lease rate that is
2		at l	east fifty per cent below the fair market
3		rent	for comparable properties;
4	(B)	Proo	f of financial security to decommission the
5		faci	lity is provided to the satisfaction of the
6		appr	opriate county planning commission prior to
7		date	of commencement of commercial generation;
8		and	
9	(C)	Sola	r energy facilities shall be decommissioned
10		at t	he owner's expense according to the following
11		requ	irements:
12		(i)	Removal of all equipment related to the
13			solar energy facility within twelve months
14			of the conclusion of operation or useful
15			life; and
16		(ii)	Restoration of the disturbed earth to
17			substantially the same physical condition as
18			existed prior to the development of the
19			solar energy facility.

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For the purposes of this paragraph, "agricultural 1 2 activities" means the activities described in 3 paragraphs (1) to (3); 4 Geothermal resources exploration and geothermal (22) 5 resources development, as defined under section 182-1; 6 or 7 (23) Hydroelectric facilities, including the appurtenances associated with the production and transmission of 8 hydroelectric energy, subject to section 205-2; 9 provided that the hydroelectric facilities and their 10 11 appurtenances: Shall consist of a small hydropower facility as 12 (A) defined by the United States Department of 13 14 Energy, including: 15 (i) Impoundment facilities using a dam to store water in a reservoir; 16 17 (ii) A diversion or run-of-river facility that 18 channels a portion of a river through a canal or channel; and 19 (iii) Pumped storage facilities that store energy 20 21 by pumping water uphill to a reservoir at

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1		higher elevation from a reservoir at a lower
2		elevation to be released to turn a turbine
3		to generate electricity;
4	(B)	Comply with the state water code, chapter 174C;
5	(C)	Shall, if over five hundred kilowatts in
6		hydroelectric generating capacity, have the
7		approval of the commission on water resource
8		management, including a new instream flow
9		standard established for any new hydroelectric
10		facility; and
11	(D)	Do not impact or impede the use of agricultural
12		land or the availability of surface or ground
13		water for all uses on all parcels that are served
14		by the ground water sources or streams for which
15		hydroelectric facilities are considered.
16	(b) Uses	not expressly permitted in subsection (a) shall
17	be prohibited,	except the uses permitted as provided in sections
18	205-6 and 205-8	8, and construction of single-family dwellings on
19	lots existing 1	before June 4, 1976. Any other law to the
20	contrary notwi	thstanding, no subdivision of land within the
21	agricultural d	istrict with soil classified by the land study

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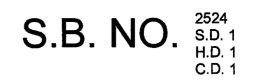
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bureau's detailed land classification as overall (master)
productivity rating class A or B shall be approved by a county
unless those A and B lands within the subdivision are made
subject to the restriction on uses as prescribed in this section
and to the condition that the uses shall be primarily in pursuit
of an agricultural activity.

7 Any deed, lease, agreement of sale, mortgage, or other 8 instrument of conveyance covering any land within the 9 agricultural subdivision shall expressly contain the restriction 10 on uses and the condition, as prescribed in this section that 11 these restrictions and conditions shall be encumbrances running 12 with the land until such time that the land is reclassified to a 13 land use district other than agricultural district.

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

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1 become effective only in the event that the property is 2 subjected to foreclosure proceedings by the mortgage lender. 3 The mortgage lending agencies referred to in the preceding paragraph are the Federal Housing Administration, Federal 4 National Mortgage Association, Department of Veterans Affairs, 5 Small Business Administration, United States Department of 6 7 Agriculture, Federal Land Bank of Berkeley, Federal Intermediate 8 Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and any 9 other federal, state, or private mortgage lending agency qualified to do business in Hawaii, and their respective 10 11 successors and assigns.

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

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

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1	(e)	Notwithstanding any other provision of this chapter to
2	the contr	ary, plantation community subdivisions as defined in
3	this sect	ion shall be permitted uses within the agricultural
4	district,	and section 205-8 shall not apply.
5	[+] (f)[]] Notwithstanding any other law to the contrary,
6	agricultu	ral lands may be subdivided and leased for the
. 7	agricultu	ral uses or activities permitted in subsection (a);
8	provided	that:
9	(1)	The principal use of the leased land is agriculture;
10	(2)	No permanent or temporary dwellings or farm dwellings,
11		including trailers and campers, are constructed on the
12		leased area. This restriction shall not prohibit the
13		construction of storage sheds, equipment sheds, or
14		other structures appropriate to the agricultural
15		activity carried on within the lot; [and] provided
16		that in a county with a population of seven hundred
17		fifty thousand or more, no residential use of such
18		sheds or other structures for any length of time shall
19		be permitted unless such use is permitted under county
20		ordinances and rules, and any violation of this
21		paragraph shall be subject to county enforcement

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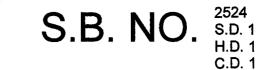
1		authority and fines pursuant to sections 46-4, 205-12,
2		and 205-13;
3	<u>(3)</u>	No residential development is constructed on lands
4		that are currently in a preservation zoning district
5		in a county with a population of seven hundred fifty
6		thousand or more; and
7	[(3)]	(4) The lease term for a subdivided lot shall be for
8		at least as long as the greater of:
9		(A) The minimum real property tax agricultural
10		dedication period of the county in which the
11		subdivided lot is located; or
12		(B) Five years.
13	Lots crea	ted and leased pursuant to this section shall be legal
14	lots of r	ecord for mortgage lending purposes and shall be exempt
15	from coun	ty subdivision standards.
16	<u>(g)</u>	In a county with a population of seven hundred fifty
17	thousand	or more, any person owning property in the community
18	adjacent	to agricultural lands may report in writing a violation
19	of subsec	tion (f) to the respective county enforcement
20	authority	, which the enforcement authority shall have thirty
21	days from	receipt of the written report to investigate the

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1	complaint. Any agricultural lands found to be in violation of
2	subsection (f) shall be subject to enforcement by the county in
3	which the agricultural lands are located and fines pursuant to
4	sections 46-4, 205-12, and 205-13; provided that the county
5	shall provide a report to the department of agriculture on an
6	annual basis that includes a summary of all written violations,
7	the results of the county's investigation, and any fines levied
8	pursuant to this subsection."
9	SECTION 4. Section 514B-6, Hawaii Revised Statutes, is
10	amended to read as follows:
11	"[+]§514B-6[+] Supplemental county ordinances and rules
12	governing a condominium property regime. Whenever any county
13	deems it proper, the county may adopt supplemental rules, and in
14	a county with a population of seven hundred fifty thousand or
15	more, ordinances, governing condominium property regimes
16	established under this chapter in order to implement this
17	program; provided that any of the supplemental rules adopted
18	shall not conflict with this chapter or with any of the rules
19	adopted by the commission to implement this chapter."
20	SECTION 5. Section 514B-52, Hawaii Revised Statutes, is
21	amended by amending subsection (b) to read as follows:





1 An application for registration of a project in the "(b) 2 agricultural district classified pursuant to chapter 205 shall 3 include a verified statement, signed by an appropriate county 4 official, that the project as described and set forth in the 5 project's declaration, condominium map, bylaws, and house rules 6 [does] : 7 Does not include any restrictions limiting or (1) 8 prohibiting agricultural uses or activities, in 9 compliance with section 205-4.6[-]; and 10 (2) For an application for registration of a project in 11 the agricultural district classified pursuant to 12 chapter 205 in a county with a population of seven 13 hundred fifty thousand or more, may include comments 14 on the availability of supportive infrastructure, the 15 potential impact on environmental resources, and other 16 requirements of county ordinances and rules. 17 The commission shall not accept the registration of a project 18 where a county official has not signed a verified statement." 19 SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored. 20

21 SECTION 7. This Act shall take effect on July 1, 2018.

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APPROVED this

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day of

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GOVERNOR OF THE STATE OF HAWAII

THE SENATE OF THE STATE OF HAWAI'I

Date: May 1, 2018 Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the

Senate of the Twenty-ninth Legislature of the State of Hawai'i, Regular Session of 2018.

President of the Senate

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Clerk of the Senate

SB No. 2524, SD 1, HD 1, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 1, 2018 Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Twenty-Ninth Legislature of the State of Hawaii, Regular Session of 2018.

Scott K. Saiki Speaker House of Representatives

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Brian L. Takeshita Chief Clerk House of Representatives