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

4           "§46-       Permissible uses, infrastructure standards, and  
5 service levels for the state urban, rural, and agricultural land  
6 use districts. Each county shall establish by ordinance the  
7 permitted uses, standards required for infrastructure systems,  
8 and levels of service for county services for lands within the  
9 urban, rural, and agricultural districts as classified pursuant  
10 to chapter 205. The ordinances shall conform to the policies,  
11 uses, standards, and restrictions set forth in chapter 205 for  
12 the use, subdivision, or development of land in each district  
13 and for land designated as important agricultural land pursuant  
14 to chapter 205; provided that the county may adopt ordinances  
15 that are more restrictive than the provisions in chapter 205  
16 with respect to the maximum density and minimum lot size in the  
17 rural or agricultural districts, and the permissible uses in the  
18 agricultural district."



1 SECTION 2. Chapter 205, Hawaii Revises Statutes, is  
2 amended by adding two new sections to be appropriately  
3 designated and to read as follows:

4 **"§205-A Regional district boundary amendments.** (a) The  
5 commission on its own initiative, the county by petition  
6 submitted to the commission, or the office of planning pursuant  
7 to section 205-18, may propose regional district boundary  
8 amendments to reclassify lands qualifying under section 205-  
9 2(a)(2) as rural lands.

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

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



1 of the commission. The commission shall prepare and submit to  
2 the county and the office of planning copies of the  
3 classification maps showing the district boundaries adopted in  
4 final form.

5 **§205-B Reclassification of certain agricultural lands.**

6 (a) Any landowner who has designated agricultural lands as  
7 important agricultural lands pursuant to part III may petition  
8 the commission for reclassification of agricultural land meeting  
9 the criteria in section 205-2(a)(2) as rural land. The petition  
10 shall be for the reclassification of an area of land not more  
11 than ten per cent of the area of land designated as important  
12 agricultural lands; provided that the land designated as  
13 important agricultural lands be for a period not less than fifty  
14 years. Should any piece of the land designated as important  
15 agricultural lands be reclassified, the reclassification of  
16 lands into rural shall be automatically reverted back into  
17 agriculture land designation.

18 (b) If the commission determines that the land meets the  
19 criteria in section 205-2(a)(2), it shall prepare and submit to  
20 the county and the office of planning copies of the  
21 classification maps showing the boundaries adopted in final  
22 form."



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

4 **"§205-C Uses on and subdivision of lands designated as**  
5 **important agricultural lands.** (a) All lands designated as  
6 important agricultural lands shall be restricted to the  
7 following permitted uses:

- 8 (1) Cultivation of crops, including but not limited to  
9 flowers, vegetables, foliage, fruits, forage, fiber,  
10 and timber;
- 11 (2) Game and fish propagation;
- 12 (3) Raising of livestock, including but not limited to  
13 poultry, bees, fish, or other animal or aquatic life  
14 that are propagated for commercial or subsistence  
15 farming purposes;
- 16 (4) Public institutions and buildings that are necessary  
17 for agricultural practices;
- 18 (5) Public, private, and quasi-public utility lines and  
19 roadways, transformer stations, communications  
20 equipment buildings, solid waste transfer stations,  
21 major water storage tanks, and appurtenant small  
22 buildings such as booster pumping stations, but not



- 1 including offices or yards for equipment, material,  
2 vehicle storage, repair or maintenance, treatment  
3 plants, corporation yards, or other similar  
4 structures;
- 5 (6) Retention, restoration, rehabilitation, or  
6 improvements of sites of historic or cultural  
7 importance;
- 8 (7) Roadside stands for the sale of agricultural products  
9 grown on the premises and by agricultural producers in  
10 the region;
- 11 (8) Buildings and uses, including but not limited to  
12 mills, storage, and processing facilities, maintenance  
13 facilities, and vehicle and equipment storage areas  
14 that directly support and are accessory to the  
15 agricultural operations and activities permitted in  
16 this section;
- 17 (9) Agricultural parks;
- 18 (10) Agricultural tourism, conducted on a working farm, or  
19 a farming operation as defined in section 165-2, for  
20 the 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; or  
6           (11) Bio-fuels processing facilities; provided that the  
7           majority of the feedstock is grown within the state as  
8           determined by the department of agriculture and after  
9           an initial and non-renewable three-year period  
10           commencing upon final approval to operate such  
11           facilities to allow the importation of feedstock and  
12           fuels, and alternative energy generating facilities,  
13           including the appurtenances associated with the  
14           production and transmission of alternative generated  
15           energy; and provided further that such facilities and  
16           appurtenances are compatible with agricultural uses  
17           and cause minimal adverse impact on important  
18           agricultural lands;  
19           (12) Agricultural worker housing; provided:  
20           (A) The land used for agricultural worker housing  
21           shall not exceed the lesser of two per cent of

1                   the total land area of the lot or           per cent  
2                   of the gross lot area;

3           (B) The agricultural worker housing shall be rented  
4           solely to the agricultural workers working on the  
5           lot and their families;

6           (C) The agricultural worker housing shall be built in  
7           cluster fashion; provided that the cluster shall  
8           not break up contiguous blocks of land designated  
9           important agricultural land and infrastructure  
10           improvements shall be restricted to the minimum  
11           required to meet public health and safety  
12           standards; and

13           (D) The agricultural worker housing shall not be  
14           counted toward the maximum density of one  
15           dwelling unit per fifty acres;

16           or

17           (13) Farm dwellings related to farming and animal  
18           husbandry. "Farm dwelling" as used in this paragraph  
19           means a single-family dwelling located on and used in  
20           connection with a farm where agricultural activity  
21           provides income to the family occupying the dwelling;  
22           provided that:



1           (A) The maximum density shall be one farm dwelling  
2           per fifty acres;

3           (B) Only one farm dwelling on not more than one acre  
4           of land area shall be permitted for the sole use  
5           of the landowner or child of the landowner or for  
6           the use of a lessee on leased land that is used  
7           by the lessee as a working farm or a farming  
8           operation, as defined in section 165-2; provided  
9           further that if a lot designated important  
10           agricultural land is less than fifty acres when  
11           designated important agricultural land, one farm  
12           dwelling shall be permitted on that lot; and

13           (C) Infrastructure improvements shall be restricted  
14           to the minimum required to meet public health and  
15           safety standards.

16           (b) Uses not expressly permitted in subsection (a) shall  
17           be prohibited, except the uses permitted as provided in section  
18           205-8, and construction of single-family dwellings on lots  
19           existing before June 4, 1976. No other uses shall be allowed by  
20           special permit on important agricultural lands.

21           (c) Notwithstanding any other law to the contrary, the  
22           subdivision of land designated as important agricultural lands



1 shall conform to the restrictions contained in this section and  
 2 section 205-4.5. Any deed, lease, agreement of sale, mortgage,  
 3 agricultural easement, or other instrument of conveyance  
 4 covering any land within the subdivision of lands designated  
 5 important agricultural lands shall expressly contain the  
 6 restrictions on uses and the conditions contained in this  
 7 section and the restrictions and conditions shall be  
 8 encumbrances running with the land until such time that the land  
 9 is no longer designated as important agricultural lands."

10 SECTION 4. Section 46-15, Hawaii Revised Statutes, is  
 11 amended by amending subsection (a) to read as follows:

12 "(a) The mayor of each county, after holding a public  
 13 hearing on the matter and receiving the approval of the  
 14 respective council, shall be empowered to designate areas of  
 15 land for experimental and demonstration housing projects, the  
 16 purposes of which are to research and develop ideas that would  
 17 reduce the cost of housing in the State. Except as hereinafter  
 18 provided, the experimental and demonstration housing projects  
 19 shall be exempt from all statutes, ordinances, charter  
 20 provisions, and rules or regulations of any governmental agency  
 21 or public utility relating to planning, zoning, construction  
 22 standards for subdivisions, development and improvement of land,



1 and the construction and sale of homes thereon; provided that  
2 the experimental and demonstration housing projects shall not  
3 affect the safety standards or tariffs approved by the public  
4 utility [~~commissions~~] commission for such public utility.

5 The mayor of each county with the approval of the  
6 respective council may designate a county agency or official who  
7 shall have the power to review all plans and specifications for  
8 the subdivisions, development and improvement of the land  
9 involved, and the construction and sale of homes thereon. The  
10 county agency or official shall have the power to approve or  
11 disapprove or to make modifications to all or any portion of the  
12 plans and specifications.

13 The county agency or official shall submit preliminary  
14 plans and specifications to the legislative body of the  
15 respective county for its approval or disapproval. The final  
16 plans and specifications for the project shall be deemed  
17 approved by the legislative body if the final plans and  
18 specifications do not substantially deviate from the approved  
19 preliminary plans and specifications. The final plans and  
20 specifications shall constitute the standards for the particular  
21 project.



1 No action shall be prosecuted or maintained against any  
2 county, its officials or employees, on account of actions taken  
3 in reviewing, approving, or disapproving such plans and  
4 specifications.

5 Any experimental or demonstration housing project for the  
6 purposes hereinabove mentioned may be sponsored by any state or  
7 county agency or any persons defined in section 1-19.

8 The county agency or official shall apply to the state land  
9 use commission for an appropriate land use district  
10 classification change, except where the proposed project is  
11 located on land within an urban or rural district established by  
12 the state land use commission. Notwithstanding any law, rule,  
13 or regulation to the contrary, the state land use commission may  
14 approve the application at any time after a public hearing held  
15 in the county where the land is located upon notice of the time  
16 and place of the hearing being published in the same manner as  
17 the notice required for a public hearing by the planning  
18 commission of the appropriate county."

19 SECTION 5. Section 205-2, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 "**§205-2 Districting and classification of lands.** (a)

22 There shall be four major land use districts in which all lands



1 in the State shall be placed: urban, rural, agricultural, and  
2 conservation. The land use commission shall group contiguous  
3 land areas suitable for inclusion in one of these four major  
4 districts. The commission shall set standards for determining  
5 the boundaries of each district[7]; provided that:

6 (1) In the establishment of boundaries of urban districts,  
7 those lands that are now in urban use and a sufficient  
8 reserve area for foreseeable urban growth shall be  
9 included;

10 (2) In the establishment of boundaries for rural  
11 districts, areas of land composed primarily of small  
12 farms mixed with very low density residential lots,  
13 which may be shown by a minimum density of not more  
14 than one house per one-half acre and a minimum lot  
15 size of not less than one-half acre shall be included,  
16 except as herein provided; provided further that the  
17 land use commission shall give consideration to:

18 (A) Contiguous land areas with soil classified by the  
19 land study bureau's detailed land classification  
20 as overall (master) productivity rating class C,  
21 D, E, or U, not included in the agricultural



1 district by the land use commission by January 1,  
2 2009;

3 (B) Agricultural lands with residential subdivisions  
4 existing before January 1, 2007;

5 (C) Areas not suited to agricultural and ancillary  
6 activities by reason of topography and other  
7 related characteristics; and

8 (D) Areas suitable to other uses requiring limited  
9 physical infrastructure development and services,  
10 including low density residential uses, outdoor  
11 recreational uses, and passive open space uses.

12 Rural districts may also include compact, small mixed  
13 use rural towns and service centers;

14 (3) In the establishment of the boundaries of agricultural  
15 districts, the greatest possible protection shall be  
16 given to those lands with a high capacity for  
17 intensive cultivation~~[, and]~~, including:

18 (A) Lands with soils classified by the land study  
19 bureau's detailed land classification as overall  
20 (master) productivity rating class A or B; and

21 (B) Lands in active agricultural production on  
22 January 1, 2007, with soil classified by the land



1                   study bureau's detailed land classification as  
2                   overall (master) productivity rating class C, D,  
3                   E, or U; and  
4           (4) In the establishment of the boundaries of conservation  
5           districts, the greatest possible protection shall be  
6           given to valuable natural resources, including but not  
7           limited to:  
8           (A) Watersheds and water sources;  
9           (B) Indigenous or endemic plants, fish, and wildlife,  
10           including those which are threatened or  
11           endangered;  
12           (C) Park lands, wilderness, and beach reserves;  
13           (D) Shoreline and coastal resources;  
14           (E) Native forests and other forested areas;  
15           (F) Wetlands, natural streams, and lakes;  
16           (G) Scenic, historic, archaeological, and cultural  
17           areas; and  
18           (H) Recreational resources and areas highly  
19           susceptible to erosion, landslides, flooding,  
20           volcanic hazards, and other conditions which may  
21           threaten lives or property.

22           The "forest and water reserve zones" provided in Act

1           234, section 2, Session Laws of Hawaii 1957, are  
2           renamed "conservation districts" and, effective as of  
3           July 11, 1961, the boundaries of the forest and water  
4           reserve zones theretofore established pursuant to Act  
5           234, section 2, Session Laws of Hawaii 1957, shall  
6           constitute the boundaries of the conservation  
7           districts; provided that thereafter the power to  
8           determine the boundaries of the conservation districts  
9           shall be in the commission.

10           In establishing the boundaries of the districts in each  
11           county, the commission shall give consideration to the [~~master~~  
12           ~~plan or~~] general plan [~~of~~] or community and development plans  
13           adopted by the county.

14           (b) Urban districts shall include activities or uses as  
15           provided by ordinances or regulations of the county within which  
16           the urban district is situated.

17           (c) Rural districts shall include [~~activities or uses as~~  
18           ~~characterized by low density residential lots of not more than~~  
19           ~~one dwelling house per one half acre, except as provided by~~  
20           ~~county ordinance pursuant to section 46-4(c), in areas where~~  
21           ~~"city like" concentration of people, structures, streets, and~~  
22           ~~urban level of services are absent, and where small farms are~~



1 ~~intermixed with low density residential lots except that within~~  
2 ~~a subdivision, as defined in section 484-1, the commission for~~  
3 ~~good cause may allow one lot of less than one half acre, but not~~  
4 ~~less than 18,500 square feet, or an equivalent residential~~  
5 ~~density, within a rural subdivision and permit the construction~~  
6 ~~of one dwelling on such lot, provided that all other dwellings~~  
7 ~~in the subdivision shall have a minimum lot size of one half~~  
8 ~~acre or 21,780 square feet. Such petition for variance may be~~  
9 ~~processed under the special permit procedure. These districts~~  
10 ~~may include contiguous areas which are not suited to low density~~  
11 ~~residential lots or small farms by reason of topography, soils,~~  
12 ~~and other related characteristics. Rural districts shall also~~  
13 ~~include golf courses, golf driving ranges, and golf related~~  
14 ~~facilities.]:~~

- 15       (1) Small agricultural or farming operations;
- 16       (2) Public institutions and buildings;
- 17       (3) Public and private open area types of recreational  
18           uses, including campgrounds, picnic grounds, overnight  
19           camp, parks, riding stables, golf courses, golf  
20           driving ranges, golf-related facilities and country  
21           clubs;
- 22       (4) Educational institutions;

- 1        (5) Public utilities;
- 2        (6) Small mixed use retail and commercial facilities; and
- 3        (7) Low density residential uses, including cluster
- 4                housing developments;
- 5        provided that the permissible uses described in this
- 6        subsection may be further defined by each county by zoning
- 7        ordinance.
- 8        (d) Agricultural districts shall include:
- 9        (1) All lands with soil classified by the land study
- 10                bureau's detailed land classification as overall
- 11                (master) productivity rating class A or B;
- 12        (2) Important agricultural lands designated pursuant to
- 13                part III;
- 14        (3) Lands classified by the land use commission as
- 15                agricultural by January 1, 2009, with soil classified
- 16                by the land study bureau's detailed land
- 17                classification as overall (master) productivity rating
- 18                class C, D, E, or U;
- 19        [~~1~~] (4) Activities or uses as characterized by the
- 20                cultivation of crops, orchards, forage, and forestry;
- 21        [~~2~~] (5) Farming activities or uses related to animal
- 22                husbandry, and game and fish propagation;



- 1       ~~[(3)]~~ (6) Aquaculture, which means the production of  
2           aquatic plant and animal life within ponds and other  
3           bodies of water;
- 4       ~~[(4)]~~ (7) Wind generated energy production for public,  
5           private, and commercial use;
- 6       ~~[(5)]~~ (8) Bona fide agricultural services and uses that  
7           support the agricultural activities of the fee or  
8           leasehold owner of the property and accessory to any  
9           of the above activities, whether or not conducted on  
10          the same premises as the agricultural activities to  
11          which they are accessory, including but not limited to  
12          farm dwellings as defined in section 205-4.5(a)(4),  
13          employee housing, farm buildings, mills, storage  
14          facilities, processing facilities, vehicle and  
15          equipment storage areas, roadside stands for the sale  
16          of products grown on the premises, and plantation  
17          community subdivisions as defined in section 205-  
18          4.5(a)(12);
- 19       ~~[(6)]~~ (9) Wind machines and wind farms;
- 20       ~~[(7)]~~ (10) Small-scale meteorological, air quality, noise,  
21           and other scientific and environmental data collection  
22           and monitoring facilities occupying less than one-half



1 acre of land; provided that these facilities shall not  
2 be used as or equipped for use as living quarters or  
3 dwellings;

4 ~~[(8)]~~ (11) Agricultural parks; and

5 ~~[(9)]~~ (12) Agricultural tourism conducted on a working  
6 farm, or a farming operation as defined in section  
7 165-2, for the enjoyment, education, or involvement of  
8 visitors; provided that the agricultural tourism  
9 activity is accessory and secondary to the principal  
10 agricultural use and does not interfere with  
11 surrounding farm operations; and provided further that  
12 this paragraph shall apply only to a county that has  
13 adopted ordinances regulating agricultural tourism  
14 under section 205-5 ~~[, and~~

15 ~~(10) Open area recreational facilities]~~.

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

18 Lands designated as important agricultural lands pursuant  
19 to part III shall be used for the permissible uses specified in  
20 section 205-C. Agricultural districts may include areas that  
21 are not used for or that are not suited to, agricultural and



1 ancillary activities by reason of topography, soils, and other  
2 related characteristics.

3 (e) Conservation districts shall include areas necessary  
4 [~~for protecting~~] to:

5 (1) Protect watersheds and water sources; [~~preserving~~]

6 (2) Preserve scenic and historic areas; [~~providing~~]

7 (3) Provide park lands, wilderness, and beach reserves;  
8 [~~conserving~~]

9 (4) Conserve indigenous or endemic plants, fish, and  
10 wildlife, including those which are threatened or  
11 endangered; [~~preventing~~]

12 (5) Prevent floods and soil erosion;

13 (6) Provide forestry;

14 (7) Retain open space areas whose existing openness,  
15 natural condition, or present state of use, if  
16 retained, would enhance the present or potential value  
17 of abutting or surrounding communities, or would  
18 maintain or enhance the conservation of natural or  
19 scenic resources;

20 (8) Provide areas of value for recreational purposes;  
21 other related activities; and other permitted uses not  
22 detrimental to a multiple use conservation concept."



1           SECTION 6. In codifying the new sections added by sections  
2 2 and 3 and referenced in section 5 of this Act, the revisor of  
3 statutes shall substitute appropriate section numbers for the  
4 letters used in designating the new sections in this Act.

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

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



**Report Title:**

Land use

**Description:**

(1) Sets forth permissible uses on important agricultural lands;  
(2) Requires counties to adopt by ordinance permissible uses and infrastructure standards within rural and urban districts; and  
(3) Makes comprehensive amendments to land use law to improve use of rural and agricultural lands. (HB1901 HD1)

