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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 Constitution of  
2 the State of Hawaii provides, among other things, that "[t]he  
3 State shall conserve and protect agricultural lands, promote  
4 diversified agriculture, increase agricultural self-sufficiency  
5 and assure 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 up-scale housing. The legislature  
9 finds that, in the recent past, hundreds of acres of  
10 agricultural land have been converted into developments that  
11 feature luxury homes and a lack of agricultural activity,  
12 agribusiness, or subsistence farming. While the homeowners may  
13 cultivate a few fruit trees or an herb garden, no meaningful  
14 agricultural activity takes place, even though the developments  
15 are sometimes called "agricultural subdivisions".

16           The legislature further finds that the loss of agricultural  
17 lands to "fake farms" results in the loss of ability of the



1 State to develop sustainable agriculture that could increase  
2 food and fuel self-sufficiency for Hawaii's people.

3 The purpose of this Act is to comply with the requirements  
4 of article XI, section 3, to protect the State's agricultural  
5 land by ensuring that agricultural land is used for agricultural  
6 activities, agribusiness, or subsistence farming and not for  
7 "fake farms".

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

11 "§46- Subdivisions on agricultural land. (a) Except  
12 as provided in this section, each subdivision of land in the  
13 agricultural land use district under chapter 205 that is  
14 approved by any county shall be subject to the following  
15 conditions:

16 (1) Each lot in the subdivision, except roadways, shall be  
17 restricted to agribusiness or subsistence farming  
18 uses; provided that upon receipt of subdivision  
19 approval, the applicant shall record with the bureau  
20 of conveyances or land court, deed restrictions or  
21 covenants requiring that the lot owner or lessee use  
22 the lot solely for agribusiness or subsistence farming



1           and such restrictions or covenants shall run with the  
2           land; and

3           (2) Prior to issuing any building permit for construction  
4           of a farm dwelling, as defined in section 205-4.5, the  
5           county shall require that the applicant for the  
6           building permit:

7           (A) Submit to the appropriate county authority and  
8           obtain approval of a farm plan; and

9           (B) Have substantially established agricultural  
10           activity on the lot for which the building permit  
11           is sought.

12           (b) For the purposes of this section, the following terms  
13           shall have the following meanings:

14           "Agribusiness" means a business licensed for the production  
15           and sale of products from the cultivation of crops, propagation  
16           of fish or game, or raising of livestock, including but not  
17           limited to the processing of farm products or the manufacturing  
18           of farm equipment and fertilizers.

19           "Agricultural activity" means activities involved in the  
20           cultivation of crops, propagation of fish or game, or raising of  
21           livestock.



1       "Approval" means final approval granted for a proposed  
2 subdivision where the actual division of land into small parcels  
3 is sought, approval of a building permit, or approval of a farm  
4 plan, as the context may require.

5       "Subdivision" means the division of improved or unimproved  
6 land or interests in land into two or more lots, parcels, sites,  
7 or other divisions of land, including condominiums under chapter  
8 514A or 514B, and for the purpose, whether immediate or future,  
9 of sale, lease, rental, transfer of title to or interest in, any  
10 or all such lots, parcels, sites, or other divisions of land.  
11 The term may include a consolidation and resubdivision and, when  
12 appropriate to the context, shall relate to the land subdivided.

13       "Subsistence farming" means agricultural activity or  
14 agricultural practices that produce food or products primarily  
15 for consumption by the family working the land, and where the  
16 family is dependent on this activity to meet a significant  
17 portion of the family's nutritional needs. Agriculture that is  
18 insignificant in relation to the actual use of land shall not be  
19 evidence of subsistence farming.

20       (c) This section shall apply to any subdivision or  
21 development application for land within the agricultural



1 district that has not been approved by a county on or before the  
2 effective date of this Act.

3 (d) Notwithstanding anything to the contrary in this  
4 section or section 46-4, county approvals issued pursuant to  
5 this section shall remain valid in the event the land use  
6 district classification of the affected land is reclassified  
7 pursuant to section 205-3.1 or 205-4; provided that the uses  
8 permitted under the approval are permissible uses under the new  
9 land use district classification."

10 SECTION 3. Section 205-2, Hawaii Revised Statutes, is  
11 amended by amending subsection (d) to read as follows:

12 "(d) Agricultural districts shall include:

- 13 (1) Activities or uses as characterized by the cultivation  
14 of crops, orchards, forage, and forestry;
- 15 (2) Farming activities or uses related to animal  
16 husbandry, and game and fish propagation;
- 17 (3) Aquaculture, which means the production of aquatic  
18 plant and animal life within ponds and other bodies of  
19 water;
- 20 (4) Wind generated energy production for public, private,  
21 and commercial use;



- 1 (5) Bona fide agricultural services and uses that support  
2 the agricultural activities of the fee or leasehold  
3 owner of the property and accessory to any of the  
4 above activities, whether or not conducted on the same  
5 premises as the agricultural activities to which they  
6 are accessory, including but not limited to farm  
7 dwellings as defined in section 205-4.5(a)(4),  
8 employee housing, farm buildings, mills, storage  
9 facilities, processing facilities, vehicle and  
10 equipment storage areas, roadside stands for the sale  
11 of products grown on the premises, and plantation  
12 community subdivisions as defined in section 205-  
13 4.5(a)(12);
- 14 (6) Wind machines and wind farms;
- 15 (7) Small-scale meteorological, air quality, noise, and  
16 other scientific and environmental data collection and  
17 monitoring facilities occupying less than one-half  
18 acre of land; provided that these facilities shall not  
19 be used as or equipped for use as living quarters or  
20 dwellings;
- 21 (8) Agricultural parks;



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

11          (10) Open area recreational facilities.  
12   Agricultural districts shall not include golf courses and golf  
13   driving ranges, golf-related facilities, private membership  
14   facilities, or other resort facilities, including hotels and  
15   resort-related commercial uses, time sharing facilities, and  
16   commercial vacation facilities or homes, except as provided in  
17   section 205-4.5(d). Agricultural districts include areas that  
18   are not used for, or that are not suited to, agricultural and  
19   ancillary activities by reason of topography, soils, and other  
20   related characteristics."

21          SECTION 4. Section 205-3.1, Hawaii Revised Statutes, is  
22   amended by amending subsection (d) to read as follows:



1           "(d) The county land use decision-making authority shall  
2 serve a copy of the application for a district boundary  
3 amendment to the land use commission and the department of  
4 business, economic development, and tourism and shall notify the  
5 commission and the department in writing thirty days in advance  
6 of the time and place of the hearing and the proposed amendments  
7 scheduled to be heard at the hearing. No county land use  
8 decision-making authority shall approve a change in the land use  
9 district boundaries pursuant to this section unless the county  
10 land use decision-making authority finds that the proposed  
11 boundary change is reasonable, not violative of section 205-2,  
12 and consistent with the policies and criteria established  
13 pursuant to sections 205-16 and 205-17, and any additional  
14 county requirements not in conflict with those sections. A  
15 change in the state land use district boundaries pursuant to  
16 this subsection shall become effective on the day designated by  
17 the county land use decision-making authority in its decision.  
18 Within sixty days of the effective date of any decision to amend  
19 state land use district boundaries by the county land use  
20 decision-making authority, the decision and the description and  
21 map of the affected property shall be transmitted to the land



1 use commission and the department of business, economic  
2 development, and tourism by the county planning director."

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

5 "**§205-4.5 Permissible uses within the agricultural**  
6 **districts.** (a) Within the agricultural district, all lands  
7 [~~with soil classified by the land study bureau's detailed land~~  
8 ~~classification as overall (master) productivity rating class A~~  
9 ~~or B~~] shall be restricted to the following permitted uses:

- 10 (1) Cultivation of crops, including but not limited to  
11 flowers, vegetables, foliage, fruits, forage, fiber,  
12 and timber;
- 13 (2) Game and fish propagation;
- 14 (3) Raising of livestock, including but not limited to  
15 poultry, bees, fish, or other animal or aquatic life  
16 that are propagated for [~~economic or personal use~~];  
17 agribusiness or subsistence farming 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 and  
2           used in connection with [~~a farm,~~] agricultural  
3           activities, agribusiness, or subsistence farming,  
4           including clusters of single-family farm  
5           dwellings permitted within agricultural parks  
6           developed by the State, or where agricultural  
7           activity provides income to the family occupying  
8           the dwelling; and

9           (B) Excludes:

10           (i) Single-family dwellings in a subdivided  
11           development where the agricultural activity,  
12           agribusiness, or subsistence farming  
13           established is insignificant in relation to  
14           the actual use of the land; and

15           (ii) Guest cottages;

16           (5) Public institutions and buildings that are necessary  
17           for agricultural practices;

18           (6) Public and private open area types of recreational  
19           uses, including day camps, picnic grounds, parks, and  
20           riding stables, but not including dragstrips,  
21           airports, drive-in theaters, golf courses, golf



- 1 driving ranges, golf-related facilities, country  
2 clubs, and overnight camps;
- 3 (7) Public, private, and quasi-public utility lines and  
4 roadways, transformer stations, communications  
5 equipment buildings, solid waste transfer stations,  
6 major water storage tanks, and appurtenant small  
7 buildings such as booster pumping stations, but not  
8 including offices or yards for equipment, material,  
9 vehicle storage, repair or maintenance, treatment  
10 plants, corporation yards, or other similar  
11 structures;
- 12 (8) Retention, restoration, rehabilitation, or improvement  
13 of buildings or sites of historic, cultural, or scenic  
14 interest;
- 15 (9) Roadside stands for the sale of agricultural products  
16 grown on the premises;
- 17 (10) Buildings and uses, including but not limited to mills,  
18 storage, and processing facilities, maintenance  
19 facilities, and vehicle and equipment storage areas  
20 that are [~~normally considered~~] directly accessory to  
21 the [~~above mentioned uses and are~~] agricultural  
22 activities, agribusiness, or subsistence farming



1 permitted [~~under~~] in this section and section 205-  
2 2(d);

3 (11) Agricultural parks;

4 (12) Plantation community subdivisions, which as used in  
5 this paragraph means a subdivision or cluster of  
6 employee housing, community buildings, and acreage  
7 established on land currently or formerly owned,  
8 leased, or operated by a sugar or pineapple plantation  
9 and in residential use by employees or former  
10 employees of the plantation; provided that the  
11 employees or former employees shall have a property  
12 interest in the land;

13 [+](13)[+] Agricultural tourism conducted on a working  
14 farm, or a farming operation as defined in section  
15 165-2, for the enjoyment, education, or involvement of  
16 visitors; provided that the agricultural tourism  
17 activity is accessory and secondary to the principal  
18 agricultural use and does not interfere with  
19 surrounding farm operations; and provided further that  
20 this paragraph shall apply only to a county that has  
21 adopted ordinances regulating agricultural tourism  
22 under section 205-5; or



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

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~~]  
20          solely in pursuit of an agricultural activity~~[+]~~,  
21          agribusiness, or subsistence farming; 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 [~~7~~] be conditionally waived, insofar as  
19 such mortgage financing is jeopardized, [~~be conditionally~~  
20 ~~waived~~] by the appropriate county enforcement officer; provided  
21 that the conditional waiver shall become effective only in the



1 event that the property is subjected to foreclosure proceedings  
2 by the mortgage lender.

3 The mortgage lending agencies referred to in the preceding  
4 paragraph are the Federal Housing Administration, Federal  
5 National Mortgage Association, Veterans Administration, Small  
6 Business Administration, United States Department of  
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  
10 qualified to do business in Hawaii, and their respective  
11 successors and assigns.

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

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



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

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

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

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

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

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

22           (B) Five years.



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

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

6           "Agribusiness" means a business licensed for the production  
7 and sale of products from the cultivation of crops, propagation  
8 of fish or game, or raising of livestock, including but not  
9 limited to the processing of farm products or the manufacturing  
10 of farm equipment and fertilizers.

11           "Agricultural activity" means activities involved in the  
12 cultivation of crops, propagation of fish or game, or raising of  
13 livestock.

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

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



1 any or all of the lots, parcels, sites, or other divisions of  
2 land. The term may include a consolidation and resubdivision  
3 and, when appropriate to the context, shall relate to the land  
4 subdivided.

5 "Subsistence farming" means agricultural activity or  
6 agricultural practices that produce food or products primarily  
7 for consumption by the family working the land, and where the  
8 family is dependent on this activity to meet a significant  
9 portion of the family's nutritional needs. Agriculture that is  
10 insignificant in relation to the actual use of land shall not be  
11 evidence of subsistence farming.

12 SECTION 6. Section 205-5, Hawaii Revised Statutes, is  
13 amended by amending subsection (b) to read as follows:

14 "(b) Within agricultural districts, uses compatible to the  
15 activities described in [~~section~~] sections 205-2 and 205-4.5 as  
16 determined by the commission shall be permitted[~~;~~ ~~provided that~~  
17 ~~accessory agricultural uses and services described in sections~~  
18 ~~205-2 and 205-4.5 may be further defined by each county by~~  
19 ~~zoning ordinance~~]. Each county within eighteen months of the  
20 effective date of this Act shall adopt ordinances setting forth  
21 procedures and requirements, including provisions for  
22 enforcement, penalties, and administrative oversight, for the



1 review and permitting of agricultural tourism uses and  
2 activities as an accessory use on a working farm[7] or farming  
3 operation as defined in section 165-2; provided that  
4 agricultural tourism activities shall not be permissible in the  
5 absence of a bona fide farming operation. Ordinances shall  
6 include but not be limited to:

- 7 (1) Requirements for access to a farm, including road  
8 width, road surface, and parking;
- 9 (2) Requirements and restrictions for accessory facilities  
10 connected with the farming operation, including gift  
11 shops and restaurants; provided that overnight  
12 accommodations shall not be permitted;
- 13 (3) Activities that may be offered by the farming  
14 operation for visitors;
- 15 (4) Days and hours of operation; and
- 16 (5) Automatic termination of the accessory use upon the  
17 cessation of the farming operation.

18 Each county may require an environmental assessment under  
19 chapter 343 as a condition to any agricultural tourism use and  
20 activity. Other uses may be allowed by special permits issued  
21 pursuant to this chapter. The minimum lot size in agricultural  
22 districts shall be determined by each county by zoning



1 ordinance, subdivision ordinance, or other lawful means;  
2 provided that the minimum lot size for any agricultural use  
3 shall not be less than [~~one acre,~~] five acres, except as  
4 provided herein. If the county finds that unreasonable economic  
5 hardship to the owner or lessee of land cannot otherwise be  
6 prevented or where land utilization is improved, the county may  
7 allow lot sizes of less than the minimum lot size as specified  
8 by law for lots created by a consolidation of existing lots  
9 within an agricultural district and the resubdivision thereof;  
10 provided that the consolidation and resubdivision do not result  
11 in an increase in the number of lots over the number existing  
12 prior to consolidation; and provided further that in no event  
13 shall a lot [~~which~~] that is equal to or exceeds the minimum lot  
14 size of [~~one acre~~] five acres be less than that minimum after  
15 the consolidation and resubdivision action. The county may also  
16 allow lot sizes of less than the minimum lot size as specified  
17 by law for lots created or used for plantation community  
18 subdivisions as defined in section 205-4.5(a)(12), for public,  
19 private, and quasi-public utility purposes, and for lots  
20 resulting from the subdivision of abandoned roadways and  
21 railroad easements."



1 SECTION 7. Section 205-6, Hawaii Revised Statutes, is  
2 amended as follows:

3 1. By amending subsection (a) to read:

4 "(a) Subject to this section, the county planning  
5 commission may permit certain unusual and reasonable uses within  
6 agricultural and rural districts other than those for which the  
7 district is classified[~~-~~]; provided that the use is not  
8 prohibited in sections 205-2 and 205-4.5. Any person who  
9 desires to use the person's land within an agricultural or rural  
10 district other than for an agricultural or rural use, as the  
11 case may be, may petition the planning commission of the county  
12 within which the person's land is located for permission to use  
13 the person's land in the manner desired. Each county may  
14 establish the appropriate fee for processing the special permit  
15 petition. Copies of the special permit petition shall be  
16 forwarded to the land use commission, the office of planning,  
17 and the department of agriculture for their review and comment."

18 2. By amending subsection (c) to read:

19 "(c) The county planning commission [~~may~~], under such  
20 protective restrictions as may be deemed necessary, may permit  
21 the desired use, but only when the use would promote the  
22 effectiveness and objectives of this chapter; provided that a



1 use proposed for lands in an agricultural district or designated  
2 important agricultural lands shall not conflict with any part of  
3 this chapter. A decision in favor of the applicant shall  
4 require a majority vote of the total membership of the county  
5 planning commission."

6 3. By amending subsection (d) to read:

7 "(d) Special permits for land in the rural district, the  
8 area of which is greater than fifteen acres or [~~for~~] land in the  
9 agricultural district and lands designated as important  
10 agricultural lands shall be subject to approval by the land use  
11 commission. The land use commission may impose additional  
12 restrictions as may be necessary or appropriate in granting the  
13 approval, including the adherence to representations made by the  
14 applicant."

15 SECTION 8. The lawful use of land or improvements on the  
16 effective date of this Act may be continued although the use  
17 does not conform to this Act; provided that no nonconforming use  
18 of land shall be expanded or changed to another nonconforming  
19 use. If any nonconforming use of land is discontinued, then the  
20 provisions of this Act shall apply.

21 SECTION 9. Statutory material to be repealed is bracketed  
22 and stricken. New statutory material is underscored.



1 SECTION 10. This Act shall take effect on July 1, 2007.



**Report Title:**

Land Use; Agricultural District; Uses

**Description:**

Imposes conditions on the use of lands in the agricultural district, including limiting county zoning power in agricultural districts, providing that county special permits for rural district lands greater than 15 acres and agricultural district lands are subject to approval of the Land Use Commission.

(SB1236 HD1)

