
A BILL FOR AN ACT

RELATING TO AGRICULTURE.

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

1 SECTION 1. The legislature finds that article XI, section
2 3, of the Hawaii State Constitution makes the conservation and
3 protection of Hawaii's agricultural lands a priority. It
4 charges the State to "promote diversified agriculture, increase
5 agricultural self-sufficiency and assure the availability of
6 agriculturally suitable lands." This priority is reflected in
7 the state plan as well, which declares self-sufficiency, social
8 and economic mobility, and community well-being as the values
9 guiding the state plan. The legislature finds that securing
10 agricultural lands and promoting agriculture are essential to
11 meet these goals.

12 The legislature has made attempts to secure agricultural
13 lands by directing the counties to identify important
14 agricultural lands through Act 183, Session Laws of Hawaii 2005,
15 and providing incentives to do so in Act 233, Session Laws of
16 Hawaii 2008. The preservation of important agricultural lands
17 will only be effective if such lands are identified for
18 preservation before large tracts are lost to development. The



1 State has spent thirty years attempting to identify and protect
2 important agricultural lands, but has failed to do so, and no
3 county council has taken up the issue since 2008.

4 One of the goals of the state plan is to achieve a strong,
5 viable economy characterized by stability, diversity, and
6 growth. This goal includes, among other things, objectives of
7 increased and diversified employment opportunities, encouraging
8 entrepreneurship, assuring basic needs of Hawaii's people in the
9 event of overseas transportation disruptions, and encouraging
10 economically satisfying labor-intensive employment for upward
11 mobility. The legislature further finds that all of these
12 objectives can be accomplished through expanded agriculture
13 throughout the islands. Such an expansion would improve the
14 amount of locally grown food, diversify the industries upon
15 which the economy is built, and provide an expanded job market
16 for labor and science.

17 These goals can only be met if large parcels of
18 agricultural lands are preserved. Commercially viable
19 agriculture requires large contiguous parcels for operation.
20 Livestock operations also require large contiguous parcels for
21 pasture, operations, and buffers. The approval of a dairy on



1 the south shore of Kauai has sparked friction with neighboring
2 land owners -- particularly with the nearest hotel, which has
3 concerns about possible runoff, odors, and water pollution that
4 could be produced by the dairy. This clash of interests proves
5 that buffers must be included between agricultural lands and
6 non-agricultural operations in order to mitigate the concerns
7 produced by large-scale agricultural operations. The need for
8 buffers bolsters the need to maintain large, contiguous parcels
9 of agricultural land.

10 The legislature finds that laws allowing the subdivision of
11 agricultural lands, including through condominium property
12 regimes and other means, must be scrutinized. In Kauai alone,
13 431 agricultural parcels, representing 17,000 acres, have been
14 divided under condominium property regimes since 1993. The
15 intent of this Act is to fill loopholes that have allowed
16 developers to maneuver land use restrictions, rather than
17 following proper channels to rezone, resulting in the
18 urbanization of agricultural lands. Agricultural lands must be
19 protected from subdivisions that result in essentially non-
20 agricultural residential uses in order to prevent the



1 fractionalization of agricultural parcels and promote the
2 conservation of large agricultural tracts.

3 The purpose of this Act is to prevent the loss of large-
4 scale agricultural parcels and to ensure that future use of
5 agricultural lands is for bona fide agricultural operations.

6 SECTION 2. Chapter 205, Hawaii Revised Statutes, is
7 amended by adding a new section to be appropriately designated
8 and to read as follows:

9 "§205- Subdivision of certain agricultural lands
10 prohibited. (a) Subdivision of an agricultural parcel one
11 hundred acres or greater in size shall be prohibited if at least
12 fifty per cent of the parcel has soil classified by the land
13 study bureau's detailed land classification as overall (master)
14 productivity rating class A or B, except if the landowner
15 applicant is:

16 (1) The department of agriculture;
17 (2) The agribusiness development corporation; or
18 (3) A bona fide commercial farmer.

19 (b) For purposes of this section:

20 "Bona fide commercial farmer" means:



1 (1) A commercial farmer with a record of annual income
2 from sales of agricultural products, of which not more
3 than fifty per cent is generated from accessory
4 agricultural uses, to third parties in the amount of
5 \$35,000 or greater for at least three of the five
6 years immediately preceding the application for
7 subdivision of property;

8 (2) A farmer for whom fifty-one per cent or more of the
9 farmer's annual gross income is revenue from
10 agricultural products, of which not more than fifty
11 per cent is generated from accessory agricultural
12 uses, in each of the two years immediately preceding
13 the application for subdivision of property; or

14 (3) A farmer who has operated an agricultural enterprise
15 that has cultivated or operated on agricultural lands
16 of ten acres or greater to produce farm products for
17 sale to third parties for each of the two years
18 immediately preceding the application for subdivision
19 of property.

20 "Subdivision" means any division or proposed division of
21 land for the purpose of disposition into two or more lots,



1 parcels, units, or interests that may be accomplished through
2 means of dividing land into smaller legal lots of record."

3 SECTION 3. Section 205-4.5, Hawaii Revised Statutes, is
4 amended by amending subsection (f) to read as follows:

5 "[+] (f) [+] 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 (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]

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

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

21 (B) Five years[-]; and



1 (4) Agricultural land one hundred acres or greater in size
2 shall be subject to section 205- .

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

6 SECTION 4. Section 514B-52, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§514B-52 Application for registration.** (a) An
9 application for registration of a project shall:

10 (1) Be accompanied by nonrefundable fees as provided in
11 rules adopted by the director of commerce and consumer
12 affairs pursuant to chapter 91; and

13 (2) Contain the documents and information concerning the
14 project and the condominium property regime as
15 required by sections 514B-54, 514B-83, and 514B-84, as
16 applicable, and as otherwise may be specified by the
17 commission.

18 (b) An application for registration of a project in the
19 agricultural district classified pursuant to chapter 205 shall
20 include a verified statement, signed by an appropriate county
21 official, that the project as described and set forth in the



1 project's declaration, condominium map, bylaws, and house rules
2 does not include any restrictions limiting or prohibiting
3 agricultural uses or activities, in compliance with section
4 205-4.6. The commission shall not accept the registration of a
5 project where a county official has not signed a verified
6 statement.

7 (c) An application for registration of a project in the
8 agricultural district upon a parcel one hundred acres or greater
9 in size shall be prohibited if at least fifty per cent of the
10 parcel has soil classified by the land study bureau's detailed
11 land classification as overall (master) productivity rating
12 class A or B, except if the landowner applicant is:

- 13 (1) The department of agriculture;
14 (2) The agribusiness development corporation; or
15 (3) A bona fide commercial farmer.

16 For purposes of this section, "bona fide commercial farmer"
17 shall have the same meaning as in section 205- .

18 ~~[-e-]~~ (d) The commission need not process any incomplete
19 application and may return an incomplete application to the
20 developer and require that the developer submit a new
21 application, including nonrefundable fees. If an incomplete



1 application is not completed within six months of the date of
2 the original submission, it shall be deemed abandoned and
3 registration of the project shall require the submission of a
4 new application, including nonrefundable fees.

5 ~~[(d)]~~ (e) A developer shall promptly file amendments to
6 report either any actual or expected pertinent or material
7 change, or both, in any document or information contained in the
8 application."

9 SECTION 5. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 6. This Act shall take effect upon its approval.



Report Title:

Agriculture; Agricultural Lands; Farming; Livestock; Land Use;
Zoning; Subdivision; Condominium Property Regime; Bona Fide
Commercial Farmer

Description:

Prohibits any subdivision, including by condominium property regime, of parcels of agricultural lands one hundred acres or greater in size if at least fifty per cent of the parcel has soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B. Exempts a landowner applicant who is the department of agriculture, the agribusiness development corporation, or a bona fide commercial farmer from this prohibition. (SD1)

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