



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 10, 2018

GOV. MSG. NO. 1256

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,

DAVID Y. 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,



DAVID Y. IGE
Governor of Hawai'i

A BILL FOR AN ACT

RELATING TO COUNTY LAND USE REQUIREMENTS.

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

1 SECTION 1. The purpose of this Act is to clarify certain
2 requirements for condominium property regimes on agricultural
3 lands in a county with a population of seven hundred fifty
4 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.

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

17 "§421J- Proposed land sale; agricultural and
18 preservation lands; public notice. If any parcel of land is



1 subdivided as a condominium property regime in agricultural or
2 preservation lands within a county with a population of seven
3 hundred fifty thousand or more, the owner of the parcel shall
4 provide public notification of the sale no later than ninety
5 days after the sale of the parcel."

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

8 "§205-4.5 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 classification as overall (master) productivity rating class A
12 or B and for solar energy facilities, class B or C, shall be
13 restricted 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;



- 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



- 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 (8) Retention, restoration, rehabilitation, or improvement
6 of buildings or sites of historic or scenic interest;
- 7 (9) Agricultural-based commercial operations as described
8 in section 205-2(d)(15);
- 9 (10) Buildings and uses, including mills, storage, and
10 processing facilities, maintenance facilities,
11 photovoltaic, biogas, and other small-scale renewable
12 energy systems producing energy solely for use in the
13 agricultural activities of the fee or leasehold owner
14 of the property, and vehicle and equipment storage
15 areas that are normally considered directly accessory
16 to the above-mentioned uses and are permitted under
17 section 205-2(d);
- 18 (11) Agricultural parks;
- 19 (12) Plantation community subdivisions, which as used in
20 this chapter means an established subdivision or
21 cluster of employee housing, community buildings, and



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 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



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



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
21 waste cooking oils; grease; food wastes; and animal



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.



1 "Agricultural-energy facility" means a facility
2 that generates, stores, or distributes renewable
3 energy as defined in section 269-91 or renewable fuel
4 including electrical or thermal energy or liquid or
5 gaseous fuels from products of agricultural activities
6 from agricultural lands located in the State.

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

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



1 be construed to permit the construction of any new
2 structure that is not deemed a permitted use under
3 this subsection;

4 (19) Agricultural education programs conducted on a farming
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
9 use of the parcels or lots on which the agricultural
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
14 knowledge and understanding of agricultural activities
15 and practices conducted on a farming operation as
16 defined in section 165-2;

17 (20) Solar energy facilities that do not occupy more than
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



1 on lands with soil classified by the land study
2 bureau's detailed land classification as overall
3 (master) productivity rating class A unless the solar
4 energy facilities are:

5 (A) Located on a paved or unpaved road in existence
6 as of December 31, 2013, and the parcel of land
7 upon which the paved or unpaved road is located
8 has a valid county agriculture tax dedication
9 status or a valid agricultural conservation
10 easement;

11 (B) Placed in a manner that still allows vehicular
12 traffic to use the road; and

13 (C) Granted a special use permit by the commission
14 pursuant to section 205-6;

15 (21) Solar energy facilities on lands with soil classified
16 by the land study bureau's detailed land
17 classification as overall (master) productivity rating
18 B or C for which a special use permit is granted
19 pursuant to section 205-6; provided that:

20 (A) The area occupied by the solar energy facilities
21 is also made available for compatible



1 agricultural activities at a lease rate that is
2 at least fifty per cent below the fair market
3 rent for comparable properties;

4 (B) Proof of financial security to decommission the
5 facility is provided to the satisfaction of the
6 appropriate county planning commission prior to
7 date of commencement of commercial generation;
8 and

9 (C) Solar energy facilities shall be decommissioned
10 at the owner's expense according to the following
11 requirements:

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.



1 For the purposes of this paragraph, "agricultural
2 activities" means the activities described in
3 paragraphs (1) to (3);

4 (22) Geothermal resources exploration and geothermal
5 resources development, as defined under section 182-1;
6 or

7 (23) Hydroelectric facilities, including the appurtenances
8 associated with the production and transmission of
9 hydroelectric energy, subject to section 205-2;
10 provided that the hydroelectric facilities and their
11 appurtenances:

12 (A) Shall consist of a small hydropower facility as
13 defined by the United States Department of
14 Energy, including:

15 (i) Impoundment facilities using a dam to store
16 water in a reservoir;

17 (ii) A diversion or run-of-river facility that
18 channels a portion of a river through a
19 canal or channel; and

20 (iii) Pumped storage facilities that store energy
21 by pumping water uphill to a reservoir at



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, and construction of single-family dwellings on
19 lots existing before June 4, 1976. Any other law to the
20 contrary notwithstanding, no subdivision of land within the
21 agricultural district with soil classified by the land study



1 bureau's detailed land classification as overall (master)
2 productivity rating class A or B shall be approved by a county
3 unless those A and B lands within the subdivision are made
4 subject to the restriction on uses as prescribed in this section
5 and to the condition that the uses shall be primarily in pursuit
6 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
19 of encumbrances shall, insofar as such mortgage financing is
20 jeopardized, be conditionally waived by the appropriate county
21 enforcement officer; provided that the conditional waiver shall



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
4 paragraph are the Federal Housing Administration, Federal
5 National Mortgage Association, Department of Veterans Affairs,
6 Small 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) 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.



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

5 [f] (f) [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~~ 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



1 authority and fines pursuant to sections 46-4, 205-12,
2 and 205-13;

3 (3) 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 created and leased pursuant to this section shall be legal
14 lots of record for mortgage lending purposes and shall be exempt
15 from county subdivision standards.

16 (g) 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 subsection (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



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 " [old]§514B-6 [old] 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 "(b) An application for registration of a project in the
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 (1) Does not include any restrictions limiting or
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
20 and stricken. New statutory material is underscored.

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

S.B. NO. 2524
S.D. 1
H.D. 1
C.D. 1

APPROVED this day of , 2018

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


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



Brian L. Takeshita
Chief Clerk
House of Representatives