
A BILL FOR AN ACT

RELATING TO COMMON INTEREST AGRICULTURAL COMMUNITIES.

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

PART I. GENERAL PROVISIONS

SECTION 1. PURPOSE. The purpose of this Act is to provide a solution for Hawaii's farmers to farm agricultural land and share agricultural infrastructure and other resources in an economically viable way, while establishing greater accountability to ensure proper land use, by requiring the department of agriculture to establish a five-year leasehold common interest agricultural community pilot program.

SECTION 2. LEASEHOLD COMMON INTEREST AGRICULTURAL COMMUNITY PILOT PROGRAM; ESTABLISHED. (a) There shall be established a five-year leasehold common interest agricultural community pilot program within the department of agriculture.

(b) The department of agriculture shall select state-owned lands under the jurisdiction of the department of agriculture which shall be used to establish the leasehold common interest agricultural community pilot program; provided that, at a



1 minimum, three leasehold common interest agricultural community
2 projects shall be established by the department of agriculture.

3 (c) The leasehold common interest agricultural community
4 pilot program shall cease to exist on June 30, 2023.

5 SECTION 3. DEFINITIONS. As used in this Act and in the
6 declaration and bylaws provided for under this Act, unless
7 specifically provided otherwise or required by the context:

8 "Association" means the farm parcel lessees' association
9 organized under section 22 of this Act.

10 "Board" or "board of directors" means the body, regardless
11 of name, designated in the declaration or bylaws to act on
12 behalf of the association.

13 "Bylaws" means the instruments that contain the procedures
14 for conduct of the affairs of the association regardless of the
15 form in which the association is organized, including any
16 amendments to the instruments.

17 "Chairperson" means the chairperson of the board of
18 agriculture.

19 "Common expenses" means expenditures made by, or financial
20 liabilities of, the association, including any allocations to
21 reserves.



1 "Common infrastructure" means the structures, roads,
2 irrigation systems, power supply, agricultural services, and
3 installations within the leasehold common interest agricultural
4 community that are owned or leased by the association and that
5 are other than a farm parcel.

6 "Common interest" means the percentage of undivided
7 interest in the common infrastructure appurtenant to each
8 parcel, as specified in the declaration.

9 "Coordinating entrepreneur" means the developer or a
10 qualified person capable, under a right-to-till agreement, of
11 organizing, operating, and assuming the risk for the
12 agricultural operation on a parcel that may include:

- 13 (1) Selecting crops;
- 14 (2) Securing capital, labor, and materials;
- 15 (3) Maintaining and operating equipment and
16 infrastructure; and
- 17 (4) Providing for the post-harvest processing and
18 marketing of products.

19 "Declaration" means any instrument that creates a leasehold
20 common interest agricultural community, including any amendments
21 to the instrument.



1 "Developer" means a person or group of persons who
2 undertake to develop a leasehold common interest agricultural
3 community, including a person who succeeds to the interest of
4 the developer by acquiring a controlling interest in the
5 developer or the leasehold common interest agricultural
6 community.

7 "Development rights" means any right or combination of
8 rights reserved by a developer in the declaration to:

- 9 (1) Add real estate to a leasehold common interest
10 agricultural community;
- 11 (2) Create farm parcels, common infrastructure, or limited
12 common infrastructure within a leasehold common
13 interest agricultural community;
- 14 (3) Subdivide parcels, combine parcels, or convert parcels
15 into common infrastructure or limited common
16 infrastructure;
- 17 (4) Withdraw real estate from a leasehold common interest
18 agricultural community;
- 19 (5) Merge projects or increments of a project; or
- 20 (6) Otherwise alter the leasehold common interest
21 agricultural community.



1 "Farm parcel" or "parcel" means a physical portion of the
2 leasehold common interest agricultural community designated for
3 separate lease or occupancy, the boundaries of which are
4 described in the declaration or pursuant to section 12 of this
5 Act.

6 "Farm parcel lessee", "parcel lessee", or "lessee" means a
7 lessee of a farm parcel and its appurtenant common interest in a
8 leasehold common interest agricultural community.

9 "Leasehold common interest agricultural community" means a
10 common interest agricultural community in which all of the real
11 estate is subject to a lease, the expiration or termination of
12 which will terminate the common interest agricultural community.

13 "Leasehold common interest agricultural community plat map"
14 or "plat map" means, however denominated, a map or site plan of
15 the leasehold common interest agricultural community containing
16 the information required by section 12 of this Act.

17 "Limited common infrastructure" means a portion of the
18 common infrastructure designated by the declaration for the
19 exclusive use of one or more but fewer than all of the parcels.



1 "Managing agent" means any person retained, as an
2 independent contractor, for the purpose of managing the
3 operation of the project.

4 "Project" means a leasehold common interest agricultural
5 community project.

6 "Public offering statement" means a statement that fully
7 and accurately discloses the physical characteristics of the
8 leasehold common interest agricultural community offered and all
9 unusual or material circumstances of features affecting the
10 project.

11 "Real estate" means the leasehold lands, all improvements
12 and all structures thereon, and all easements, rights, and
13 appurtenances intended for use in connection with the leasehold
14 common interest agricultural community.

15 "Record", "recordation", "recorded", or "recording" means
16 to record in the bureau of conveyances in accordance with
17 chapter 502, Hawaii Revised Statutes.

18 "Right-to-till agreement" means a contract between a parcel
19 lessee and a coordinating entrepreneur establishing conditions
20 that specify the crop or crops that are to be grown on the



1 parcel, when the crops are to be grown, and how the crops are to
2 be grown.

3 SECTION 4. SEPARATE TITLES AND TAXATION. (a) Each farm
4 parcel that has been created, together with the common interest
5 appurtenant to each parcel, shall constitute, for all purposes,
6 a separate parcel of real estate.

7 (b) If there is any parcel lessee other than a developer,
8 each parcel shall be separately taxed and assessed, and no
9 separate tax or assessment shall be rendered against any common
10 infrastructure. Without limitation of the foregoing, each farm
11 parcel and its appurtenant common interest shall be deemed to be
12 a "parcel" and shall be subject to separate assessment and
13 taxation for all types of taxes authorized by law.

14 (c) If there is no parcel lessee other than a developer,
15 the real estate comprising the common interest agricultural
16 community may be taxed and assessed in any manner provided by
17 law.

18 SECTION 5. CONFORMANCE WITH STATE BUILDING CODES, ZONING,
19 SUBDIVISION, AND LAND USE LAWS. (a) Any leasehold common
20 interest agricultural community established under this Act shall
21 comply with Hawaii state building codes as defined in section



1 107-21, Hawaii Revised Statutes, as may be amended by the county
2 pursuant to section 107-28, Hawaii Revised Statutes, and county
3 zoning and building ordinances.

4 (b) The permitted uses of each parcel shall be restricted
5 to the uses described in section 205-4.5(a), Hawaii Revised
6 Statutes; provided that a use permitted under section 205-4.5,
7 Hawaii Revised Statutes, may be approved by the board, except
8 that any dwelling that may be used and occupied for human
9 habitation shall be prohibited.

10 SECTION 6. RIGHT TO TILL AGREEMENT. The parcel lessee may
11 enter into a right-to-till agreement with a coordinating
12 entrepreneur to carry out agricultural operations on the parcel.

13 SECTION 7. WATER AGREEMENT. (a) The association shall
14 enter into a water agreement with the farm parcel lessees, which
15 shall describe:

16 (1) The responsibilities of the association for the
17 design, construction, and maintenance of the
18 irrigation water system facilities; and

19 (2) The quantity of water allocated to the farm parcel
20 expressed in gallons-per-acre-per-day.



1 (b) The agreement shall authorize the association to
2 control or limit the delivery of irrigation water when there is
3 an equipment failure, government action, force majeure, or other
4 reason beyond the control of the association. The association
5 shall be authorized to coordinate the withdrawal and delivery of
6 irrigation water when the demand exceeds the capacity of the
7 system.

8 (c) The agreement shall list the production costs of the
9 irrigation system, including the cost of operations, repair,
10 maintenance, metering, pumping, transmission lines, reservoirs,
11 appurtenances and improvements, and administrative costs. The
12 agreement shall identify the pro rata share of the farm parcel
13 lessee and provide for the assessment and payment of the
14 production costs.

15 SECTION 8. EMERGENCY ACCESS AND FIRE SAFETY PLAN. The
16 developer shall collaborate with a county fire department to
17 develop an emergency access and fire safety plan with
18 information including:

19 (1) Available water sources including fire hydrants, water
20 tanks, reservoirs, ditches, streams, and rivers;



(2) Maps to identify buildings, hazardous materials, evacuation routes, locked gates, access points, bridges with weight limits, road widths, turn outs, turn arounds for fire engines, potential staging areas; and

(3) Contact information for farm parcel lessees.

A copy of the plan shall be filed with the county fire department and agency responsible for providing emergency medical services.

SECTION 9. COUNTY REVIEW. (a) The developer shall submit to the appropriate officer or agency charged with the administration of county zoning laws the project's declaration, certified plat map, and bylaws for review of the project and determination of conformance with the:

(1) Permissible uses in section 205-4.5(a), Hawaii Revised Statutes;

(2) Hawaii state building codes as defined in section 107-21, Hawaii Revised Statutes, as may be amended by the county pursuant to section 107-28, Hawaii Revised Statutes;

(3) County zoning and subdivision ordinances; and



1 (4) Requirements of this Act relating to emergency access
2 and fire safety.

3 (b) The appropriate officer or agency charged with the
4 administration of county zoning ordinances shall submit a
5 verified statement to the developer and the chairperson that the
6 officer or agency finds that the project meets the requirements
7 of subsection (a).

8 **PART II. CREATION**

9 **SECTION 10. CREATION OF A LEASEHOLD COMMON INTEREST**

10 **AGRICULTURAL COMMUNITY.** (a) Upon receipt of the verified
11 statement of county review as provided in section 9 of this Act,
12 a leasehold common interest agricultural community may be
13 created by recording the declaration and bylaws of the
14 association executed in the same manner as a lease conveying the
15 real estate subject to the declaration to the association. Upon
16 recordation of the lease together with the declaration and
17 bylaws, the leasehold common interest agricultural community
18 shall be deemed created.

19 (b) The leasehold common interest agricultural community
20 shall be subject to any right, title, or interest existing when
21 the declaration is recorded if the person who owns the right,



1 title, or interest does not execute or join in the declaration
2 or otherwise subordinate the right, title, or interest. A
3 person with any other right, title, or interest in the land may
4 subordinate that person's interest to the common interest
5 agricultural community by executing the declaration, or by
6 executing and recording a document joining in or subordinating
7 to the declaration.

8 SECTION 11. CONTENTS OF DECLARATION; AMENDMENT. (a) A
9 declaration shall describe or include the following:

- 10 (1) The name and address of the project, and the name,
11 address, telephone number, and electronic mail
12 address, if any, of the developer or the developer's
13 agent;
- 14 (2) The real estate submitted to the leasehold common
15 interest agricultural community;
- 16 (3) The leasehold common interest agricultural community
17 plat map filed concurrently with the declaration;
- 18 (4) The number of farm parcels in the project;
- 19 (5) The farm parcel number or identification designation
20 of each parcel, as described in the leasehold common



1 interest agricultural community plat map, and the
2 common interest appurtenant to each parcel;

3 (6) A statement that the project is in compliance with
4 Hawaii state building codes as defined in section 107-
5 21, Hawaii Revised Statutes, as may be amended by the
6 county pursuant to section 107-28, Hawaii Revised
7 Statutes, county subdivision, zoning, and building
8 ordinances; provided that the permitted uses of each
9 parcel shall be restricted to the uses described in
10 section 205-4.5(a), Hawaii Revised Statutes; provided
11 further that a use permitted under section 205-4.5,
12 Hawaii Revised Statutes, may be approved by the board,
13 except that any dwelling that may be used and occupied
14 for human habitation is prohibited;

15 (7) To the extent not shown on the leasehold common
16 interest agricultural community plat map, a
17 description of the location and dimensions of the
18 boundaries of any parcel;

19 (8) The leasehold common interest agricultural community's
20 common infrastructure, the fraction or percentage of
21 the common infrastructure and common expenses assigned



1 to each parcel, and, if an equal vote is not allocated
2 to each farm parcel, the proportional votes in the
3 association allocated to each farm parcel and the
4 basis for the allocations;

5 (9) The leasehold common interest agricultural community's
6 limited common infrastructure, if any, and the parcel
7 or parcels to which each limited common infrastructure
8 is appurtenant;

9 (10) The total percentage of the parcel lessees of the
10 project that is required to approve rebuilding,
11 repairing, or restoring the leasehold common interest
12 agricultural community if it is damaged or destroyed;

13 (11) The total percentage of the parcel lessees of the
14 project that is required to amend the declaration.
15 Except as otherwise specifically provided in this Act,
16 and except for any amendments made pursuant to
17 reservations set forth in paragraph (12), the approval
18 of the parcel lessees of at least sixty-seven per cent
19 of the common interest shall be required for all
20 amendments to the declaration;



1 (12) Any rights that the developer or others reserve
2 regarding the leasehold common interest agricultural
3 community, including, without limitation, any
4 development rights, and any reservations to modify the
5 declaration or leasehold common interest agricultural
6 community plat map. An amendment to the declaration
7 made pursuant to the exercise of those reserved rights
8 shall require only the consent or approval, if any,
9 specified in the reservation; and

10 (13) The emergency access and fire safety plan developed
11 pursuant to section 8 of this Act.

12 (b) The declaration may provide for a period of developer
13 control of the association, during which a developer, or persons
14 designated by the developer, may appoint and remove the officers
15 and members of the board. The period of developer control shall
16 terminate no later than the earlier of:

17 (1) Sixty days after conveyance of seventy-five per cent
18 of the common infrastructure to parcel lessees other
19 than a developer or affiliate of the developer;



1 (2) Two years after the developer has ceased to offer
2 parcels for lease in the ordinary course of business;
3 or

4 (3) The day the developer, after giving written notice to
5 parcel lessees, records an instrument voluntarily
6 surrendering all rights to control any activities of
7 the association.

8 (c) The declaration may be amended by a vote or written
9 consent of the parcel lessees of at least sixty-seven per cent
10 of the common interest, unless the declaration specifies a
11 different percentage for all amendments or for specific subjects
12 of amendment. Every amendment to the declaration shall be
13 recorded as provided in section 10 of this Act by any officer of
14 the association designated for that purpose or, in the absence
15 of a designation, by the president of the association.

16 (d) The declaration may contain any additional provisions
17 that are consistent with this Act.

18 SECTION 12. LEASEHOLD COMMON INTEREST AGRICULTURAL PLAT
19 MAP; CERTIFICATION. (a) A leasehold common interest
20 agricultural community plat map shall be recorded with the
21 declaration. The plat map shall contain the following:



1 (1) The metes and bounds of the leasehold common interest
2 agricultural community and a depiction of the layout,
3 location, boundaries, farm parcel numbers, and
4 dimensions of the farm parcels;
5 (2) A depiction of the location, layout, and access to the
6 common infrastructure included or anticipated to be
7 included in the project, and a depiction of access for
8 farm parcels to a public road or to a common
9 infrastructure road leading to a public road;
10 (3) Unless specifically described in the declaration, the
11 layout, location, and identifying information of the
12 common infrastructure; and
13 (4) Unless specifically described in the declaration, the
14 layout, location, and identifying information of the
15 limited common infrastructure.
16 (b) The leasehold common interest agricultural community
17 plat map shall bear the statement of a licensed architect,
18 engineer, or surveyor certifying that the plat map is consistent
19 with the plans of the project filed or to be filed with the
20 government agency having jurisdiction over the issuance of
21 permits for the construction of buildings in the county in which



1 the project is located. If any building or buildings exist on
2 the project at the time the plat map is recorded, the
3 certification shall state that, to the best of the architect's,
4 engineer's, or surveyor's knowledge, the plat map depicts the
5 layout, location, dimensions, and numbers of the buildings
6 substantially as built.

7 (c) The leasehold common interest agricultural community
8 plat map may contain any additional information that is
9 consistent with this Act.

10 SECTION 13. COMMON INFRASTRUCTURE. Each parcel lessee may
11 use the common infrastructure in accordance with the purposes
12 permitted under the declaration, subject to:

- 13 (1) The rights of other parcel lessees to use the common
14 infrastructure;
- 15 (2) Any lessee's exclusive right to use of the limited
16 common infrastructure as provided in the declaration;
- 17 (3) The right of the parcel lessees to amend the
18 declaration to change the permitted uses of the common
19 infrastructure; provided that nonmaterial additions or
20 alterations of the common infrastructure or minor
21 additions to or alterations of the common



1 infrastructure for the benefit of individual parcels
2 shall be permitted if the additions or alterations can
3 be accomplished without substantial impact on the
4 interests of other parcel lessees in the common
5 infrastructure, as reasonably determined by the board;

6 (4) Any rights reserved in the declaration to amend the
7 declaration to change the permitted uses of the common
8 infrastructure; and

9 (5) The right of the board, on behalf of the association,
10 to lease or otherwise use for the benefit of the
11 association common infrastructure that the board
12 determines is actually used by one or more parcel
13 lessees for a purpose permitted in the declaration.
14 The lease or use shall be approved by the parcel
15 lessees of at least sixty-seven per cent of the
16 project, including all directly affected parcel
17 lessees that the board reasonably determines actually
18 use the common infrastructure.

19 SECTION 14. LIMITED COMMON INFRASTRUCTURE. (a) The
20 limited common infrastructure designated in the declaration
21 shall be subject to the exclusive use of the lessee or lessees



1 of the parcel or parcels to which the limited common
2 infrastructure is appurtenant, subject to the declaration and
3 bylaws of the association. No amendment of the declaration
4 affecting any of the limited common infrastructure shall be
5 effective without the consent of the lessee or lessees of the
6 parcel or parcels to which the limited common infrastructure is
7 appurtenant.

8 (b) Except as provided in the declaration, any parcel
9 lessee may transfer or exchange designation of limited common
10 infrastructure that is designated to the lessee's parcel to
11 another parcel. Any transfer shall be executed and recorded as
12 an amendment to the declaration. The amendment shall be
13 executed by the parcel lessee of the parcel whose designation of
14 limited common infrastructure is being transferred and the
15 parcel lessee of the parcel receiving the designation of limited
16 common infrastructure; provided that parcel leases may also
17 require the consent of lessors, respectively, of the parcels
18 involved. A copy of the executed and recorded amendment shall
19 be delivered to the association.

20 SECTION 15. CONTENTS OF LEASES OF PARCELS. (a) Leases of
21 farm parcels shall contain:



- 1 (1) The title and date of the declaration and the
2 declaration's bureau of conveyances or land court
3 document number or liber and page numbers;
4 (2) The farm parcel number of the parcel leased;
5 (3) The common interest appurtenant to the farm parcel
6 leased as assigned in the declaration;
7 (4) For a farm parcel, title to which is registered in the
8 land court, the land court certificate of title number
9 for the parcel, if available; and
10 (5) For a farm parcel, title to which is not registered in
11 the land court, the bureau of conveyances document
12 number or liber and page numbers for the instrument by
13 which the grantor acquired title.
14 (b) Leases of parcels may contain additional information
15 and details that are consistent with the declaration and this
16 Act.

17 **PART III. REGISTRATION AND ADMINISTRATION**

18 **SECTION 16 REGISTRATION; PUBLIC OFFERING STATEMENT;**
19 **APPLICATION.** (a) A developer shall not offer for lease any
20 farm parcels in a project unless the project is registered in
21 accordance with this Act and rules adopted by the chairperson.



1 (b) An application for registration of a project shall
2 include:

3 (1) The developer's name, telephone number, address, and
4 electronic mail address; or if a corporation or
5 partnership, the telephone number, address, and
6 electronic mail address of each of the developer's
7 offices in the State;

8 (2) The leasehold common interest agricultural community
9 plat map prepared pursuant to section 12 of this Act;

10 (3) A copy of the master lease, or other evidence that the
11 developer holds the leasehold interest in the project;

12 (4) A statement of all liens or encumbrances, if any, upon
13 the developer's title to the project's real estate;

14 (5) A copy of the proposed contract of lease for farm
15 parcels;

16 (6) A copy of a receipt for a written notice advising the
17 lessee of the lessee's right to rescind a contract
18 within seven days after signing the contract, without
19 penalty to the lessee;

20 (7) An executed copy of an escrow agreement with a third
21 party escrow depository authorized to do business in



1 the State that provides for the retention and
2 disposition of funds from lessees or prospective
3 lessees in accordance with rules adopted by the
4 chairperson;

5 (8) A project budget showing all costs required to
6 complete the project, and evidence of the availability
7 of sufficient funds to pay all costs required to
8 complete the project;

9 (9) A declaration by the developer that the permitted uses
10 of the parcels in the project shall be restricted to
11 the uses described in section 205-4.5(a), Hawaii
12 Revised Statutes; provided that a use permitted under
13 section 205-4.5, Hawaii Revised Statutes, may be
14 approved by the board, except that any dwelling that
15 may be used and occupied for human habitation is
16 prohibited;

17 (10) A description of the promotional plan for the
18 disposition of the farm parcels together with copies
19 of all advertising material that has been prepared for
20 public distribution by any means of communication, or



1 a statement that no such advertising material has been
2 produced as of the date of application;

3 (11) The proposed public offering statement;

4 (12) A statement that the developer has not, or if a
5 corporation, the officers, directors, and principals,
6 or if a partnership, general partners, have not been
7 convicted of a crime involving land dispositions or
8 any aspect of the land-sales business in this State,
9 the United States, or any foreign country within the
10 past ten years, and have not been subject to any
11 injunction or administrative order within the past ten
12 years involving land dispositions;

13 (13) A copy of the verified statement that a project has
14 been reviewed by the county and conforms with the
15 requirements of section 9 of this Act; and

16 (14) Any other information that the chairperson may require
17 to assure full and fair disclosure to prospective
18 lessors.

19 (c) The application for registration shall be accompanied
20 by nonrefundable fees as provided in rules adopted by the
21 chairperson pursuant to chapter 91.



1 (d) The developer shall immediately report to the
2 chairperson any material changes in the information contained in
3 any application for registration.

4 SECTION 17. REGISTRATION; INQUIRY AND EXAMINATION. Upon
5 receipt of an application for lease in the proper form
6 prescribed by the chairperson, and the payment of appropriate
7 registration, inspection, or consultant fees, the chairperson
8 shall issue a notice of filing to the applicant, and initiate an
9 examination to determine that:

10 (1) The developer can convey or cause to be conveyed the
11 interest in the leasehold common interest agricultural
12 community offered for disposition if the lessee
13 complies with the terms of the offer, and when
14 appropriate, the release clauses, conveyances in
15 trust, or other safeguards provided;

16 (2) There is reasonable assurance that all of the proposed
17 improvements will be completed as represented;

18 (3) The advertising material and the general promotional
19 plan are not false or misleading and comply with the
20 standards prescribed by the rules adopted by the
21 chairperson and afford full and fair disclosure;



- 1 (4) The developer has not, or if a corporation, the
2 officers, directors, and principals, or if a
3 partnership, general partners, have not been convicted
4 of a crime involving land dispositions or any aspect
5 of the land-sales business in this State, the United
6 States, or any foreign country within the past ten
7 years, and have not been subject to any injunction or
8 administrative order within the past ten years; and
9 (5) Preliminary or required approvals have been granted by
10 the county in which the land is situated.

11 SECTION 18. ORDERS OF REGISTRATION AND REJECTION. (a)

12 Within forty-five days from the date of notice of filing, the
13 chairperson shall enter a preliminary or final order registering
14 the project or rejecting the registration.

15 (b) The chairperson may return an incomplete application
16 to the developer and require the developer to submit an amended
17 application.

18 (c) If the chairperson determines, upon inquiry and
19 examination, that the project meets the requirements for
20 registration under section 17 of this Act, the chairperson shall



1 enter a final order registering the project and approving the
2 form of the public offering statement.

3 SECTION 19. PUBLIC OFFERING STATEMENT. (a) A public
4 offering statement shall disclose fully and accurately to
5 prospective lessees all the unusual and material circumstances
6 or features affecting the project, including but not limited to:

- 7 (1) The name and address of the project, and the name,
8 address, telephone number, and electronic mail
9 address, if any, of the developer or the developer's
10 agent;
- 11 (2) A general description of the leasehold common interest
12 agricultural community, other than any plats and
13 plans, and any recorded covenants, conditions,
14 restrictions, and reservations affecting the project;
- 15 (3) The total number of farm parcels, the common
16 infrastructure, and the limited common infrastructure
17 in the project;
- 18 (4) The contract for leasing the parcel with a statement
19 that the lessee has a seven-day period after signing a
20 contract to rescind the contract;



- 1 (5) The annual maintenance fees and the monthly estimated
2 cost for each parcel and when the lessee becomes
3 obligated to start paying the common expenses charged
4 to the parcel;
- 5 (6) A description of all warranties, if any, for a parcel
6 and the common infrastructure;
- 7 (7) The declaration, bylaws, and any rules of the
8 association; any contracts and leases to be signed by
9 lessees at closing; and any other covenants,
10 conditions, restrictions, and reservations affecting
11 the leasehold common interest agricultural community;
- 12 (8) A description of any development rights reserved to
13 the developer;
- 14 (9) The permitted uses and prohibitions on the farm
15 parcels, and a declaration that the project complies
16 with all land use laws and county zoning and building
17 ordinances; and
- 18 (10) Any other information as may be required by the
19 chairperson.
- 20 (b) The chairperson may require the developer to alter or
21 amend the proposed public offering statement in order to assure



1 full and fair disclosure to prospective lessees, and no change
2 in the substance of the promotional plan or plan of disposition
3 or development of the project may be made after registration
4 without notifying the chairperson and without making appropriate
5 amendment of the public offering statement.

6 SECTION 20. ENFORCEMENT; INSPECTION; PENALTY. (a) After
7 giving appropriate notification, the county agency charged with
8 the administration of land use and county zoning ordinances may
9 conduct an inspection of a project or a farm parcel or parcels
10 for conformance with this Act.

11 (b) When an inspection is made, the developer or farm
12 parcel lessee shall be required to pay an amount necessary to
13 cover the actual expenses of the inspection not to exceed \$500.

14 (c) The penalties and fees for expenses collected by a
15 county agency to enforce this section shall be realizations of
16 the county enforcing this section and shall be deemed to satisfy
17 article VIII, section 5, of the Constitution of the State of
18 Hawaii.

19 SECTION 21. PENALTIES. Any person who wilfully violates
20 this Act or a rule adopted pursuant to this Act shall be guilty
21 of a misdemeanor punishable by a fine of not less than \$10,000



1 and not more than \$, or imprisonment for a term not
2 exceeding one year, or both.

3 **PART IV. MANAGEMENT AND GOVERNANCE**

4 **SECTION 22. FARM PARCEL LESSEES' ASSOCIATION; MEMBERSHIP**
5 **AND ORGANIZATION.** (a) The membership of the farm parcel
6 lessees' association shall consist exclusively of all the farm
7 parcel lessees.

8 (b) The farm parcel lessees' association shall meet and
9 organize no later than one hundred eighty days after recordation
10 of the first parcel conveyance; provided that forty per cent or
11 more of the project has been leased and recorded.

12 **SECTION 23. FARM PARCEL LESSEES' ASSOCIATION;**
13 **REGISTRATION.** (a) Within thirty days of the association's
14 first meeting, the farm parcel lessees' association shall
15 register with the chairperson by:

16 (1) Submitting a completed registration application as
17 determined by the chairperson;

18 (2) Paying the fees established by the chairperson by
19 rule;

20 (3) Submitting the names and positions of the officers of
21 the association;



(4) Submitting the name of the association's managing agent, if any;

(5) Providing the street and the postal address of the leasehold interest agricultural community, and the name and current address where a designated officer of the association can be contacted; and

(6) Any other additional information required by the chairperson.

(b) The association shall notify the chairperson, within thirty days, of any changes to the information contained in the registration information of the association.

SECTION 24. ASSOCIATION POWERS AND DUTIES. (a) Except as provided in the declaration, the bylaws, and this Act, the association may:

(1) Adopt and amend the declaration, bylaws, and rules of the association;

(2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from parcel lessees;

(3) Hire and discharge managing agents and other independent contractors, agents, and employees;



- 1 (4) Institute, defend, or intervene in litigation or
2 administrative proceedings in its own name on behalf
3 of itself or two or more parcel lessees on matters
4 affecting the leasehold common interest agricultural
5 community;
- 6 (5) Make contracts and incur liabilities;
- 7 (6) Regulate the use, maintenance, repair, replacement,
8 and modification of common infrastructure;
- 9 (7) Cause improvements to the common infrastructure;
- 10 (8) Acquire, hold, encumber, and convey in its own name
11 any right, title, or interest to real estate or
12 personal property; provided that any conveyance of or
13 security interest in any common infrastructure shall
14 be subject to section 13 of this Act;
- 15 (9) Subject to section 14 of this Act, grant easements,
16 leases, licenses, and concessions through or over the
17 limited common infrastructure;
- 18 (10) Impose and receive any payments, fees, or charges for
19 the use, rental, or operation of the common
20 infrastructure, other than limited common



1 infrastructure, and for services provided for parcel
2 lessees;

3 (11) Impose charges and penalties for any late payment of
4 assessments after notice and opportunity to be heard,
5 and levy reasonable fines for violations of the
6 declaration, bylaws, and rules of the association;

7 (12) Impose reasonable charges for the preparation and
8 recordation of amendments to the declaration,
9 documents requested for the re-leasing of parcels, or
10 statements of unpaid assessments;

11 (13) Provide for indemnification of its officers and board
12 and maintain directors' and officers' liability
13 insurance;

14 (14) Assign its right to future income subject to the
15 limitations in the declaration or bylaws;

16 (15) With the written approval of parcel lessees
17 representing fifty per cent of the common interest,
18 authorize the board to borrow money for the repair,
19 replacement, maintenance, operation, or administration
20 of the common infrastructure and personal property of
21 the project;



1 (16) Require that disputes between the association and
2 parcel lessees or between two or more parcel lessees
3 regarding the leasehold common interest agricultural
4 community be submitted to nonbinding alternative
5 dispute resolution as a prerequisite to commencement
6 of a judicial proceeding; and

7 (17) Exercise any other powers necessary and proper for the
8 governance and operation of the association.

9 (b) A parcel lessee and the tenant of the parcel lessee
10 shall be jointly and severally responsible and liable for any
11 violation of the declaration, bylaws, or rules of the
12 association by the tenant, including any reasonable fines levied
13 by the association and any reasonable attorney's fees and costs
14 incurred by the association relating to the violations. The
15 association shall provide the violators with notice of the
16 violations and a hearing prior to levying any fines therefor.

17 SECTION 25. ASSOCIATION ANNUAL MEETING AND NOTICE. (a)

18 An annual meeting of farm parcel lessees shall be held by the
19 association at a time, date, and place stated in the bylaws.
20 Special meetings of the association may be called by the
21 president, a majority of the board, or by a petition to the



1 board signed by not less than the percentage of the parcel
2 lessees specified in the bylaws.

3 (b) The notice for each annual and special meeting of the
4 association shall be:

5 (1) Hand delivered;

6 (2) Sent postage prepaid by United States mail to the
7 mailing address designated by the parcel lessee; or

8 (3) Sent by electronic mail to the electronic mail address
9 designated by the parcel lessee.

10 The time, date, place of the meeting, and items on the agenda
11 shall be set by the board in accordance with the requirements
12 established in the bylaws.

13 SECTION 26. ASSOCIATION MEETINGS, VOTING AND PROXIES. (a)

14 Farm parcel lessees may vote:

15 (1) At a meeting in person;

16 (2) By absentee ballot without being present at the
17 meeting by requesting an absentee ballot from the
18 association at least days before the scheduled
19 meeting; provided that the association shall verify
20 that the ballot is cast by the parcel lessee having
21 the right to do so; or



1 (3) By proxy pursuant to subsection (c).

2 (b) At a meeting of the association:

3 (1) Parcel lessees who are present in person may vote by
4 voice vote, show of hands, standing, or any other
5 method for determining the votes of parcel lessees, as
6 designated by the person presiding at the meeting; and

7 (2) Unless a greater number of the votes of the members of
8 the association is required by this Act or the
9 declaration, a majority of the votes cast shall
10 determine the outcome of any action of the
11 association.

12 (c) Unless otherwise provided in the declaration or
13 bylaws, proxy voting shall require that:

14 (1) The vote allocated to a parcel to be cast pursuant to
15 a directed proxy be dated, valid only for the meeting
16 to which it pertains, and duly executed by the parcel
17 lessee; and

18 (2) A parcel lessee may revoke a proxy given pursuant to
19 this section only by giving an actual notice of
20 revocation to the person presiding over a meeting of
21 the association.



1 SECTION 27. BOARD OF DIRECTORS; OFFICERS, POWERS, AND
2 MEETINGS. (a) The board of directors of the association shall
3 act on behalf of the association. Upon the termination of the
4 developer's control of the board as provided in the declaration,
5 parcel lessees shall elect a board of directors of at least
6 members, who shall be farm parcel lessees. The officers of the
7 board shall be elected by the members of the board from among
8 its members.

9 (b) The board, as provided in the bylaws, shall:

10 (1) Develop the policies, procedures, and rules necessary
11 and appropriate for the operation and management of
12 the association; and

13 (2) Enter into contracts and agreements necessary for the
14 performance and responsibilities of the association.

15 (c) Meetings of the board shall be open to the parcel
16 lessees, except during executive sessions. An executive session
17 may be held only to:

18 (1) Consult with the association's attorney concerning
19 legal matters;

20 (2) Discuss existing or potential litigation or mediation,
21 arbitration, or administrative proceedings;



- 1 (3) Discuss labor or personnel matters;
- 2 (4) Discuss contracts, leases, and other commercial
- 3 transactions to purchase or provide goods or services
- 4 currently being negotiated; or
- 5 (5) Prevent public knowledge of the matter to be discussed
- 6 if the board determines that public knowledge would
- 7 violate the privacy of any person.

8 SECTION 28. BYLAWS. (a) The bylaws of the association

9 shall provide:

10 (1) For:

11 (A) The number of members of the board of directors

12 and the titles of the officers of the

13 association; and

14 (B) The qualifications, powers and duties, terms of

15 office, the manner of electing and removing of

16 directors and officers, and filing of vacancies;

17 (2) Requirements for the meetings, quorums, voting, and

18 other activities of the association;

19 (3) The process for the preparation, execution,

20 certification, and recordation of amendments to the

21 declaration of the association;



1 (4) The amendment of the bylaws by the association;

2 (5) The process for the preparation, amendment, and
3 execution of the association's budget; and

4 (6) Any other matters the association deems necessary and
5 appropriate.

6 (b) The bylaws may be amended by a vote or written consent
7 of parcel lessees representing at least sixty-seven per cent of
8 the common interest. Every amendment to the bylaws shall be
9 recorded as provided in section 10 of this Act by any officer of
10 the association designated for that purpose or, in the absence
11 of a designation, by the president of the association.

12 PART IV

13 SECTION 29. Section 484-3, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) Unless the method of disposition is adopted for the
16 purpose of evasion of this chapter, or unless the subdivider
17 files in writing with the director that this chapter shall apply
18 to the subdivider's subdivision, this chapter shall not apply to
19 offers or dispositions of an interest in land:

20 (1) By a purchaser of subdivided lands for the purchaser's
21 own account in a single or isolated transaction;



1 (2) If fewer than twenty separate lots, parcels, units, or
2 interests in subdivided lands are offered by a person
3 in a period of twelve months;

4 (3) Where the division of lands is a leasehold
5 agricultural lot within state agricultural districts
6 on which no dwelling structures are constructed as
7 provided in section 205-4.5(f);

8 (4) On which there is a residential, commercial, or
9 industrial building, or as to which there is a legal
10 obligation on the part of the seller to construct a
11 building on the land within two years from the date of
12 disposition; provided that the obligation to construct
13 shall not be, directly or indirectly, transferred to
14 or otherwise imposed upon the purchaser;

15 (5) To persons who are engaged in, and are duly licensed
16 to engage in, the business of construction of
17 buildings for resale, or to persons who acquire an
18 interest in subdivided lands for the purpose of
19 engaging, and do engage in, and are duly licensed to
20 engage in, the business of construction of buildings
21 for resale;



(6) Pursuant to court order;

(7) By any government or government agency;

(8) As cemetery lots or interests;

(9) Registered as a condominium property regime pursuant to chapter 514B; ~~[or]~~

(10) Registered as a leasehold common interest agricultural community pursuant to Act , Session Laws of Hawaii 2018; or

~~[(10)]~~ (11) Registered as a time share plan pursuant to chapter 514E."

PART V

SECTION 30. The department of agriculture shall submit a report of the progress made on establishing the leasehold common interest agricultural communities under the leasehold common interest agricultural community pilot project established by this Act, including any necessary proposed legislation, no later than twenty days before the convening of each legislative session beginning with the regular session of 2019.

The department of agriculture shall submit a final report on the leasehold common interest agricultural community pilot project established by this Act, including any issues or



1 difficulties faced in establishing the leasehold common interest
2 agricultural communities, successes and failures of the
3 leasehold common interest agricultural community pilot project,
4 the effects, if any, on the growth of the agricultural industry
5 and agricultural sustainability, and any other recommendations,
6 including recommendations on whether the pilot project should be
7 made permanent, and any proposed legislation no later than
8 twenty days prior to the convening of the regular session of
9 2023.

10 SECTION 31. This Act shall take effect on July 1, 2112,
11 and shall be repealed on June 30, 2023; provided that section
12 484-3, Hawaii Revised Statutes, shall be reenacted in the form
13 in which it read on January 1, 2019.



Report Title:

Common Interest Agricultural Communities; Pilot Project

Description:

Establishes the leasehold common interest agricultural community pilot program under the jurisdiction of the Department of Agriculture. Requires the Department to authorize a minimum of three leasehold common interest agricultural community projects. Requires report. Repealed on June 30, 2023. (SB1177 HD1)

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