ACT 5 H.B. NO. 1556

A Bill for an Act Relating to Ohana Zoning.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to clarify and correct Hawaii's ohana zoning laws.

Before 1981 section 205-5, Hawaii Revised Statutes, stated that the minimum lot size for construction of a dwelling house in rural districts was one-half acre except as provided in section 205-2. The pertinent part of section 205-2 allowed for construction of a dwelling house on a lot as small as 18,500 feet provided that density requirements were met.

In 1981 the legislature effectively repudiated the restrictions of sections 205-2 and 205-5 by legalizing "ohana zoning," which allowed more flexible use of Hawaii's land for residential purposes. It was believed that ohana zoning would increase the supply of available affordable housing and encourage maintenance of the extended family.

As originally promulgated, the ohana zoning law, section 46-4(c), stated in pertinent part that "Neither this section nor any other law, county ordinance, or rule shall prohibit the construction of two single-family dwelling units on any lot where a residential dwelling unit is permitted." The unequivocal language used in this section made it clear that it superseded all other laws that would otherwise prohibit ohana zoning, including sections 205-2 and 205-5.

Last session the legislature amended section 46-4(c) by replacing the ohana zoning provision quoted above with a new ohana zoning provision that states in pertinent part that "Each county shall adopt reasonable standards to allow the construction of two single-family dwelling units on any lot where a residential dwelling unit is permitted." This amendment was a response to the concerns of some home owners that ohana units were being built in areas where private covenants strictly prohibited such increased density. Aside from this one, rather narrow, exception, the intent of the legislature was that ohana zoning remain an option for Hawaii's people.

An unforeseen and undesired effect of the 1988 amendment, however, was that ohana zoning was arguably again prohibited by sections 205-2 and 205-5 in rural district lands. As the law now stands, even if any county were to adopt "reasonable standards" allowing ohana zoning as mandated by section 46-4(c), sections 205-2 and 205-5 would still supersede those standards and prohibit ohana zoning. This effect is manifestly contrary to legislative intent and is therefore corrected in this Act.

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

"**§205-2 Districting and classification of lands.** (a) There shall be four major land use districts in which all lands in the State shall be placed: urban, rural, agricultural, and conservation. The land use commission shall group contiguous land areas suitable for inclusion in one of these four major districts. The commission shall set standards for determining the boundaries of each district, provided that:

(1) In the establishment of boundaries of urban districts those lands that are now in urban use and a sufficient reserve area for foreseeable urban growth shall be included;
(2) In the establishment of boundaries for rural districts, areas of land composed primarily of small farms mixed with very low density residential lots, which may be shown by a minimum density of not more than one house per one-half acre and a minimum lot size of not less than one-half acre shall be included, except as herein provided;
(3) In the establishment of the boundaries of agricultural districts the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation; and
(4) In the establishment of the boundaries of conservation districts, the "forest and water reserve zones" provided in section 183-41 are renamed "conservation districts" and, effective as of July 11, 1961, the boundaries of the forest and water reserve zones theretofore established pursuant to section 183-41, shall constitute the boundaries of the conservation districts; provided that thereafter the power to determine the boundaries of the conservation districts shall be in the commission.

In establishing the boundaries of the districts in each county, the commission shall give consideration to the master plan or general plan of the county.

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

(c) Rural districts shall include activities or uses as characterized by low density residential lots of not more than one dwelling house per one-half acre, except as provided by county ordinance pursuant to section 46-4(c), in areas where "city-like" concentration of people, structures, streets, and urban level of services are absent, and where small farms are intermixed with low density residential lots except that within a subdivision, as defined in section 484-1, the commission for good cause may allow one lot of less than one-half acre, but not less than 18,500 square feet, or an equivalent residential density, within a rural subdivision and permit the construction of one dwelling on such lot, provided that all other dwellings in the subdivision shall have a minimum lot size of one-half acre or 21,780 square feet. Such petition for variance may be processed under the special permit procedure. These districts may include contiguous areas which are not suited to low density residential lots or small farms by reason of topography, soils, and other related characteristics.

(d) Agricultural districts shall include activities or uses as characterized by the cultivation of crops, orchards, forage, and forestry; farming activities or uses related to animal husbandry, aquaculture, game and fish propagation; aquaculture, which means the production of aquatic plant and animal life for food and fiber within ponds and other bodies of water; wind generated energy production for public, private and commercial use; services and uses accessory to the above activities including but not limited to living quarters or dwellings, mills, storage facilities, processing facilities, and roadside stands for the sale of products grown on the premises; wind machines and wind farms; agricultural parks; and open area recreational facilities, including golf courses and golf driving ranges, provided that they are not located within agricultural district lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B.

These districts may include areas which are not used for, or which are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics.

(e) Conservation districts shall include areas necessary for protecting watersheds and water sources; preserving scenic and historic areas; providing park

lands, wilderness, and beach reserves; conserving indigenous or endemic plants, fish, and wildlife, including those which are threatened or endangered; preventing floods and soil erosion; forestry; open space areas whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding communities, or would maintain or enhance the conservation of natural or scenic resources; areas of value for recreational purposes; other related activities; and other permitted uses not detrimental to a multiple use conservation concept."

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 7, 1989.)