

JAN 22 2007

A BILL FOR AN ACT

RELATING TO AGRICULTURAL 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 housing. The Legislature finds
9 that in the recent past hundreds of acres of agricultural land
10 have been converted into developments that feature homes without
11 agricultural activity, agribusiness, or subsistence farming.
12 Although the homeowners may cultivate a few fruit trees or an
13 herb garden, no meaningful agricultural activity takes place,
14 even though the developments are sometimes called "agricultural
15 subdivisions."

16 The Legislature further finds that loss of agricultural
17 lands to "fake farms" results in loss of the State's ability to

S.B. NO. 1310

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

3 The purpose of this Act is to comply with the mandate of
4 Article XI, section 3 to protect the State's agricultural land
5 by requiring 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 hereinafter provided, each subdivision of land classified in
13 the agricultural district under chapter 205 that is approved by
14 any county shall be subject to the following conditions:

15 (1) Each lot in the subdivision, except roadways, shall
16 be used for agribusiness or subsistence farming;

17 (2) Prior to issuing any building permits for
18 construction of a farm dwelling, as defined in
19 section 205-4.5, the county shall require the
20 applicant for the building permit to submit to and
21 obtain approval from the appropriate county authority
22 a farm plan, and shall have substantially established

S.B. NO. 1310

1 an agricultural activity, agribusiness, or subsistence
2 farm on the lot for which the building permit is
3 sought.

4 (3) Upon receipt of subdivision approval, the applicant
5 shall cause to be recorded with the bureau of
6 conveyances deed covenants running with the land
7 requiring that the lot owner utilize the lot for
8 agribusiness or subsistence farming.

9 (b) For purposes of this section, the following
10 definitions apply:

11 (1) "Approval" means final approval of a proposed
12 subdivision where the actual division of land
13 into small parcels is sought; approval of a
14 building permit; or approval of a farm plan, as the
15 context may require.

16 (2) "Agricultural activity" means any of the permitted
17 uses described in section 205-4.5.

18 (3) "Agribusiness" means a business licensed for the
19 production and sale of products produced from the
20 cultivation, propagation, and raising activities
21 defined as agricultural activity, including the

S.B. NO. 1310

1 manufacturing of farm equipment and fertilizers, and
2 intended for compensation in any form.

3 (4) "Subdivision" means the division of improved or
4 unimproved land into two or more lots, parcels,
5 sites, or other divisions of land for the
6 purpose, whether immediate or future, of sale,
7 lease, rental, transfer of title to, or interest
8 in, any or all such lots, parcels, sites, or other
9 divisions of land. The term includes resubdivision
10 and, when appropriate to the context, shall relate
11 to the land subdivided.

12 (5) "Subsistence farming" means the method of horticulture
13 and/or the agricultural practices described in section
14 205-2(d) in which a parcel of land produces only
15 enough food to feed the family working it. De minimis
16 agriculture is not evidence of subsistence farming.

17 (c) This section shall apply to the plan of any
18 subdivision or development on land within the agricultural
19 district pursuant to chapter 205 which has not been approved by
20 the respective counties as of July 1, 2007."

21 SECTION 3. 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 is reasonable, does not violate section 205-2, and is
12 consistent with the policies and criteria established pursuant
13 to sections 205-16 and 205-17 and any additional county
14 requirements not in conflict therewith. A change in the state
15 land use district boundaries pursuant to this subsection shall
16 become effective on the day designated by the county land use
17 decision-making authority in its decision. Within sixty days of
18 the effective date of any decision to amend state land use
19 district boundaries by the county land use decision-making
20 authority, the decision and the description and map of the
21 affected property shall be transmitted to the land use

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

3 SECTION 4. 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, and
12 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~~]
17 subsistence use;
- 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 a single-family dwelling located on
22 and used in connection with [~~a farm,~~] agricultural

S.B. NO. 1310

1 activities, agribusiness, or subsistence farming,
2 including clusters of single-family farm dwellings
3 permitted within agricultural parks developed by the
4 State, or where agricultural activity provides income
5 to the family occupying the dwelling[+] and excludes
6 single-family dwellings in a subdivided development,
7 where there is little or no agricultural activities,
8 agribusiness, or subsistence farming established, and
9 excludes guest cottages;

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,
14 and 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
22 including offices or yards for equipment, material,

S.B. NO. 1310

1 vehicle storage, repair or maintenance, treatment
2 plants, corporation yards, or other similar
3 structures;

4 (8) Retention, restoration, rehabilitation, or improvement
5 of buildings or sites of historic or scenic interest;

6 (9) Roadside stands for the sale of agricultural products
7 grown on the premises;

8 (10) Buildings and uses, including but not limited to
9 mills, storage, and processing facilities, maintenance
10 facilities, and vehicle and equipment storage areas
11 that are normally considered directly accessory to the
12 abovementioned uses and are permitted under section
13 205-2(d);

14 (11) Agricultural parks;

15 (12) Plantation community subdivisions, which as used in
16 this paragraph means a subdivision or cluster of
17 employee housing, community buildings, and acreage
18 established on land currently or formerly owned,
19 leased, or operated by a sugar or pineapple plantation
20 and in residential use by employees or former
21 employees of the plantation; provided that the

S. B. NO. 1310

1 employees or former employees shall have a property
2 interest in the land;

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

13 [+] (14) [+] Wind energy facilities, including the
14 appurtenances associated with the production and
15 transmission of wind generated energy; provided that
16 such facilities and appurtenances are compatible with
17 agriculture uses and cause minimal adverse impact on
18 agricultural land.

19 (b) Uses not expressly permitted in subsection (a) shall
20 be prohibited, except the uses as provided in [~~sections 205-6~~
21 ~~and] section 205-8, and construction of single-family dwellings
22 on lots existing before June 4, 1976. Any other law to the~~

1 contrary notwithstanding, no subdivision of land within the
2 agricultural district [~~with soil classified by the land study~~
3 ~~bureau's detailed land classification as overall (master)~~
4 ~~productivity rating class A or B~~] shall be approved by a county
5 unless those [~~A and B~~] lands within the subdivision are made
6 subject to the restriction on uses as prescribed in this section
7 and to the condition that the uses shall be [~~primarily~~]
8 exclusively in pursuit of [~~an~~] agricultural activity[~~-~~],
9 agribusiness, or subsistence farming.

10 Any deed, lease, agreement of sale, mortgage, or other
11 instrument of conveyance covering any land within the
12 agricultural subdivision shall expressly contain the restriction
13 on uses and the condition, as prescribed in this section; that
14 these restrictions and conditions shall be encumbrances running
15 with the land until such time that the land is reclassified to a
16 land use district other than agricultural district[.], including
17 that the land shall not be subdivided and used for development
18 where the primary purpose of the development is the sale or
19 development of residential homes.

20 If the foregoing requirement of encumbrances running with
21 the land jeopardizes the owner or lessee in obtaining mortgage
22 financing from any of the mortgage lending agencies set forth in

1 the following paragraph, and the requirement is the sole reason
2 for failure to obtain mortgage financing, then the requirement
3 of encumbrances shall, insofar as such mortgage financing is
4 jeopardized, be conditionally waived by the appropriate county
5 enforcement officer; provided that the conditional waiver shall
6 become effective only in the event that the property is
7 subjected to foreclosure proceedings by the mortgage lender.

8 The mortgage lending agencies referred to in the preceding
9 paragraph are the Federal Housing Administration, Federal
10 National Mortgage Association, Veterans Administration, Small
11 Business Administration, United States Department of
12 Agriculture, Federal Land Bank of Berkeley, Federal Intermediate
13 Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and any
14 other federal, state, or private mortgage lending agency
15 qualified to do business in Hawaii, and their respective
16 successors and assigns.

17 ~~[(e) Within the agricultural district, all lands with soil~~
18 ~~classified by the land study bureau's detailed land~~
19 ~~classification as overall (master) productivity rating class C,~~
20 ~~D, E, or U shall be restricted to the uses permitted for~~
21 ~~agricultural districts as set forth in section 205-5(b).~~

S.B. NO. 1310

1 ~~(d)~~ (c) Notwithstanding any other provision of this
2 chapter to the contrary, golf courses and golf driving ranges
3 approved by a county before July 1, 2005, for development within
4 the agricultural district shall be permitted uses within the
5 agricultural district.

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

10 ~~(f)~~ (e) Notwithstanding any other law to the contrary,
11 agricultural lands may be subdivided and leased for the
12 agricultural uses or activities permitted in subsection (a);
13 provided that:

- 14 (1) The principal use of the leased land is
15 ~~agricultural;~~ for agricultural activities,
16 agribusiness, or subsistence farming;
- 17 (2) No permanent or temporary dwellings or farm
18 dwellings, including trailers and campers, are
19 constructed on the leased area. This restriction
20 shall not prohibit the construction of storage sheds,
21 equipment sheds, or other structures appropriate to

S.B. NO. 1310

1 the agricultural activity carried on within the lot;
2 and

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

5 (A) The minimum real property tax agricultural
6 dedication period of the county in which the
7 subdivision is located; or

8 (B) Five years.

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

12 (f) For the purposes of this section, the following shall
13 apply:

14 (1) "Agricultural activity" means any of the permitted
15 uses described in section 205-4.5.

16 (2) "Agribusiness" means a business licensed for the
17 production and sale of products produced from the
18 cultivation, propagation, and raising activities
19 defined as agricultural activity, including the
20 manufacturing of farm equipment and fertilizers, and
21 intended for compensation in any form.

22 (3) "Subdivision" means the division of improved or

S.B. NO. 1310

1 unimproved land into two or more lots, parcels,
2 sites, or other divisions of land for the purpose,
3 whether immediate or future, of sale, lease, rental,
4 transfer of title to, or interest in, any or all such
5 lots, parcels, sites, or other divisions of land. The
6 term includes resubdivision and, when appropriate to
7 the context, shall relate to the land subdivided.

8 (4) "Subsistence farming" means the method of horticulture
9 and/or the agricultural practices described in section
10 205-2(d) in which a parcel of land produces only
11 enough food to feed the family working it. De minimis
12 agriculture is not evidence of subsistence farming."

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

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

S.B. NO. 1310

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

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

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

S.B. NO. 1310

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

S.B. NO. 1310

1 SECTION 6. Section 205-6, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

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

18 SECTION 7. Section 205-6, Hawaii Revised Statutes, is
19 amended by amending subsection (c) to read as follows:

20 "(c) The county planning commission may, under such
21 protective restrictions as may be deemed necessary, permit the
22 desired use, but only when the use would promote the

S.B. NO. 1310

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

7 SECTION 8. Section 205-6, Hawaii Revised Statutes, is
8 amended by amending subsection (d) to read as follows:

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

16 SECTION 9. The lawful use of land or buildings on the
17 effective date of this Act may be continued although the use
18 does not conform to this Act; provided that no nonconforming use
19 of land shall be expanded or changed to another nonconforming
20 use. If any nonconforming use of land is discontinued, then the
21 provisions of this Act shall apply.

S.B. NO. 1310

1 SECTION 10. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

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

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INTRODUCED BY: _____

~~_____~~
~~_____~~
BY REQUEST

JUSTIFICATION SHEET

DEPARTMENT: Agriculture

TITLE: A BILL FOR AN ACT RELATING TO AGRICULTURAL LAND USE.

PURPOSE: The purpose of this bill is to protect Hawaii's agricultural land for agricultural use and to prevent agricultural land from being used for "fake farms," or upscale residential development.

MEANS: Add a new section to chapter 46 and amend sections 205-3.1(d), 205-4.5(b), 205-5, 205-6(a), (c), and (d), Hawaii Revised Statutes.

JUSTIFICATION: Article XI, section 3, of the State Constitution provides, among other things, that "[t]he State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands." Some of the best agricultural lands in the State are also the most desirable for upscale residential development. Loss of agricultural lands to these developments or "fake farms" results in loss of the ability of the State to develop sustainable agriculture that could increase food and fuel self-sufficiency for Hawaii's people.

Impact on the public: Protection of agricultural lands so that they can be farmed will enhance the well-being of the public inasmuch as it may increase food and fuel self-sufficiency for the State.

Impact on the department and other agencies: Gives direction to the counties on how to protect agricultural lands. The Land Use Commission may see an increase in the number of petitions for district boundary amendments.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: Land Use Commission, Office of Planning.

EFFECTIVE DATE: Upon approval.