

JAN 18 2019

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:



1 "§421J- Proposed land sale; agricultural and
2 preservation lands; public notice. If any parcel of land is
3 subdivided as a condominium property regime in agricultural or
4 preservation lands within a county with a population of seven
5 hundred fifty thousand or more, the owner of the parcel shall
6 provide public notification of the sale no later than ninety
7 days after the sale of the parcel."

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

10 **"§205-4.5 Permissible uses within the agricultural**
11 **districts.** (a) Within the agricultural district, all lands
12 with soil classified by the land study bureau's detailed land
13 classification as overall (master) productivity rating class A
14 or B and for solar energy facilities, class B or C, shall be
15 restricted to the following permitted uses:

16 (1) Cultivation of crops, including crops for bioenergy,
17 flowers, vegetables, foliage, fruits, forage, and
18 timber;

19 (2) Game and fish propagation;



S.B. NO. 975

- 1 (3) Raising of livestock, including poultry, bees, fish,
2 or other animal or aquatic life that are propagated
3 for economic or personal use;
- 4 (4) Farm dwellings, employee housing, farm buildings, or
5 activities or uses related to farming and animal
6 husbandry. "Farm dwelling", as used in this
7 paragraph, means a single-family dwelling located on
8 and used in connection with a farm, including clusters
9 of single-family farm dwellings permitted within
10 agricultural parks developed by the State, or where
11 agricultural activity provides income to the family
12 occupying the dwelling;
- 13 (5) Public institutions and buildings that are necessary
14 for agricultural practices;
- 15 (6) Public and private open area types of recreational
16 uses, including day camps, picnic grounds, parks, and
17 riding stables, but not including dragstrips,
18 airports, drive-in theaters, golf courses, golf
19 driving ranges, country clubs, and overnight camps;
- 20 (7) Public, private, and quasi-public utility lines and
21 roadways, transformer stations, communications



1 equipment buildings, solid waste transfer stations,
2 major water storage tanks, and appurtenant small
3 buildings such as booster pumping stations, but not
4 including offices or yards for equipment, material,
5 vehicle storage, repair or maintenance, treatment
6 plants, corporation yards, or other similar
7 structures;

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

10 (9) Agricultural-based commercial operations as described
11 in section 205-2(d)(15);

12 (10) Buildings and uses, including mills, storage, and
13 processing facilities, maintenance facilities,
14 photovoltaic, biogas, and other small-scale renewable
15 energy systems producing energy solely for use in the
16 agricultural activities of the fee or leasehold owner
17 of the property, and vehicle and equipment storage
18 areas that are normally considered directly accessory
19 to the above-mentioned uses and are permitted under
20 section 205-2(d);

21 (11) Agricultural parks;



1 (12) Plantation community subdivisions, which as used in
2 this chapter means an established subdivision or
3 cluster of employee housing, community buildings, and
4 agricultural support buildings on land currently or
5 formerly owned, leased, or operated by a sugar or
6 pineapple plantation; provided that the existing
7 structures may be used or rehabilitated for use, and
8 new employee housing and agricultural support
9 buildings may be allowed on land within the
10 subdivision as follows:

11 (A) The employee housing is occupied by employees or
12 former employees of the plantation who have a
13 property interest in the land;

14 (B) The employee housing units not owned by their
15 occupants shall be rented or leased at affordable
16 rates for agricultural workers; or

17 (C) The agricultural support buildings shall be
18 rented or leased to agricultural business
19 operators or agricultural support services;

20 (13) Agricultural tourism conducted on a working farm, or a
21 farming operation as defined in section 165-2, for the



1 enjoyment, education, or involvement of visitors;
2 provided that the agricultural tourism activity is
3 accessory and secondary to the principal agricultural
4 use and does not interfere with surrounding farm
5 operations; and provided further that this paragraph
6 shall apply only to a county that has adopted
7 ordinances regulating agricultural tourism under
8 section 205-5;

9 (14) Agricultural tourism activities, including overnight
10 accommodations of twenty-one days or less, for any one
11 stay within a county; provided that this paragraph
12 shall apply only to a county that includes at least
13 three islands and has adopted ordinances regulating
14 agricultural tourism activities pursuant to section
15 205-5; provided further that the agricultural tourism
16 activities coexist with a bona fide agricultural
17 activity. For the purposes of this paragraph, "bona
18 fide agricultural activity" means a farming operation
19 as defined in section 165-2;

20 (15) Wind energy facilities, including the appurtenances
21 associated with the production and transmission of



1 wind generated energy; provided that the wind energy
2 facilities and appurtenances are compatible with
3 agriculture uses and cause minimal adverse impact on
4 agricultural land;

5 (16) Biofuel processing facilities, including the
6 appurtenances associated with the production and
7 refining of biofuels that is normally considered
8 directly accessory and secondary to the growing of the
9 energy feedstock; provided that biofuel processing
10 facilities and appurtenances do not adversely impact
11 agricultural land and other agricultural uses in the
12 vicinity.

13 For the purposes of this paragraph:

14 "Appurtenances" means operational infrastructure
15 of the appropriate type and scale for economic
16 commercial storage and distribution, and other similar
17 handling of feedstock, fuels, and other products of
18 biofuel processing facilities.

19 "Biofuel processing facility" means a facility
20 that produces liquid or gaseous fuels from organic
21 sources such as biomass crops, agricultural residues,



1 and oil crops, including palm, canola, soybean, and
2 waste cooking oils; grease; food wastes; and animal
3 residues and wastes that can be used to generate
4 energy;

5 (17) Agricultural-energy facilities, including
6 appurtenances necessary for an agricultural-energy
7 enterprise; provided that the primary activity of the
8 agricultural-energy enterprise is agricultural
9 activity. To be considered the primary activity of an
10 agricultural-energy enterprise, the total acreage
11 devoted to agricultural activity shall be not less
12 than ninety per cent of the total acreage of the
13 agricultural-energy enterprise. The agricultural-
14 energy facility shall be limited to lands owned,
15 leased, licensed, or operated by the entity conducting
16 the agricultural activity.

17 As used in this paragraph:

18 "Agricultural activity" means any activity
19 described in paragraphs (1) to (3) of this subsection.

20 "Agricultural-energy enterprise" means an
21 enterprise that integrally incorporates an



1 agricultural activity with an agricultural-energy
2 facility.

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

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

15 (18) Construction and operation of wireless communication
16 antennas, including small wireless facilities;
17 provided that, for the purposes of this paragraph,
18 "wireless communication antenna" means communications
19 equipment that is either freestanding or placed upon
20 or attached to an already existing structure and that
21 transmits and receives electromagnetic radio signals



S.B. NO. 975

1 used in the provision of all types of wireless
2 communications services; provided further that "small
3 wireless facilities" shall have the same meaning as in
4 section 206N-2; provided further that nothing in this
5 paragraph shall be construed to permit the
6 construction of any new structure that is not deemed a
7 permitted use under this subsection;

8 (19) Agricultural education programs conducted on a farming
9 operation as defined in section 165-2, for the
10 education and participation of the general public;
11 provided that the agricultural education programs are
12 accessory and secondary to the principal agricultural
13 use of the parcels or lots on which the agricultural
14 education programs are to occur and do not interfere
15 with surrounding farm operations. For the purposes of
16 this paragraph, "agricultural education programs"
17 means activities or events designed to promote
18 knowledge and understanding of agricultural activities
19 and practices conducted on a farming operation as
20 defined in section 165-2;



S.B. NO. 975

- 1 (20) Solar energy facilities that do not occupy more than
- 2 ten per cent of the acreage of the parcel, or twenty
- 3 acres of land, whichever is lesser or for which a
- 4 special use permit is granted pursuant to section 205-
- 5 6; provided that this use shall not be permitted on
- 6 lands with soil classified by the land study bureau's
- 7 detailed land classification as overall (master)
- 8 productivity rating class A unless the solar energy
- 9 facilities are:
- 10 (A) Located on a paved or unpaved road in existence
- 11 as of December 31, 2013, and the parcel of land
- 12 upon which the paved or unpaved road is located
- 13 has a valid county agriculture tax dedication
- 14 status or a valid agricultural conservation
- 15 easement;
- 16 (B) Placed in a manner that still allows vehicular
- 17 traffic to use the road; and
- 18 (C) Granted a special use permit by the commission
- 19 pursuant to section 205-6;
- 20 (21) Solar energy facilities on lands with soil classified
- 21 by the land study bureau's detailed land



S.B. NO. 975

1 classification as overall (master) productivity rating
2 B or C for which a special use permit is granted
3 pursuant to section 205-6; provided that:

4 (A) The area occupied by the solar energy facilities
5 is also made available for compatible
6 agricultural activities at a lease rate that is
7 at least fifty per cent below the fair market
8 rent for comparable properties;

9 (B) Proof of financial security to decommission the
10 facility is provided to the satisfaction of the
11 appropriate county planning commission prior to
12 date of commencement of commercial generation;
13 and

14 (C) Solar energy facilities shall be decommissioned
15 at the owner's expense according to the following
16 requirements:

17 (i) Removal of all equipment related to the
18 solar energy facility within twelve months
19 of the conclusion of operation or useful
20 life; and



1 (ii) Restoration of the disturbed earth to
2 substantially the same physical condition as
3 existed prior to the development of the
4 solar energy facility.

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

8 (22) Geothermal resources exploration and geothermal
9 resources development, as defined under section 182-1;
10 or

11 (23) Hydroelectric facilities, including the appurtenances
12 associated with the production and transmission of
13 hydroelectric energy, subject to section 205-2;
14 provided that the hydroelectric facilities and their
15 appurtenances:

16 (A) Shall consist of a small hydropower facility as
17 defined by the United States Department of
18 Energy, including:

19 (i) Impoundment facilities using a dam to store
20 water in a reservoir;



- 1 (ii) A diversion or run-of-river facility that
- 2 channels a portion of a river through a
- 3 canal or channel; and
- 4 (iii) Pumped storage facilities that store energy
- 5 by pumping water uphill to a reservoir at
- 6 higher elevation from a reservoir at a lower
- 7 elevation to be released to turn a turbine
- 8 to generate electricity;
- 9 (B) Comply with the state water code, chapter 174C;
- 10 (C) Shall, if over five hundred kilowatts in
- 11 hydroelectric generating capacity, have the
- 12 approval of the commission on water resource
- 13 management, including a new instream flow
- 14 standard established for any new hydroelectric
- 15 facility; and
- 16 (D) Do not impact or impede the use of agricultural
- 17 land or the availability of surface or ground
- 18 water for all uses on all parcels that are served
- 19 by the ground water sources or streams for which
- 20 hydroelectric facilities are considered.



1 (b) Uses not expressly permitted in subsection (a) shall
2 be prohibited, except the uses permitted as provided in sections
3 205-6 and 205-8, and construction of single-family dwellings on
4 lots existing before June 4, 1976. Any other law to the
5 contrary notwithstanding, no subdivision of land within the
6 agricultural district with soil classified by the land study
7 bureau's detailed land classification as overall (master)
8 productivity rating class A or B shall be approved by a county
9 unless those A and B lands within the subdivision are made
10 subject to the restriction on uses as prescribed in this section
11 and to the condition that the uses shall be primarily in pursuit
12 of an agricultural activity.

13 Any deed, lease, agreement of sale, mortgage, or other
14 instrument of conveyance covering any land within the
15 agricultural subdivision shall expressly contain the restriction
16 on uses and the condition, as prescribed in this section that
17 these restrictions and conditions shall be encumbrances running
18 with the land until such time that the land is reclassified to a
19 land use district other than agricultural district.

20 If the foregoing requirement of encumbrances running with
21 the land jeopardizes the owner or lessee in obtaining mortgage



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

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

18 (c) Within the agricultural district, all lands with soil
19 classified by the land study bureau's detailed land
20 classification as overall (master) productivity rating class C,



1 D, E, or U shall be restricted to the uses permitted for
2 agricultural districts as set forth in section 205-5(b).

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

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

12 [†] (f) [†] Notwithstanding any other law to the contrary,
13 agricultural lands may be subdivided and leased for the
14 agricultural uses or activities permitted in subsection (a);
15 provided that:

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



1 activity carried on within the lot; ~~[and]~~ provided
2 that in a county with a population of seven hundred
3 fifty thousand or more, no residential use of such
4 sheds or other structures for any length of time shall
5 be permitted unless such use is permitted under county
6 ordinances and rules, and any violation of this
7 paragraph shall be subject to county enforcement
8 authority and fines pursuant to sections 46-4, 205-12,
9 and 205-13;

10 (3) No residential development is constructed on lands
11 that are currently in a preservation zoning district
12 in a county with a population of seven hundred fifty
13 thousand or more; and

14 ~~[(3)]~~ (4) The lease term for a subdivided lot shall be for
15 at least as long as the greater of:

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

19 (B) Five years.



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

4 (g) In a county with a population of seven hundred fifty
5 thousand or more, any person owning property in the community
6 adjacent to agricultural lands may report in writing a violation
7 of subsection (f) to the respective county enforcement
8 authority, which the enforcement authority shall have thirty
9 days from receipt of the written report to investigate the
10 complaint. Any agricultural lands found to be in violation of
11 subsection (f) shall be subject to enforcement by the county in
12 which the agricultural lands are located and fines pursuant to
13 sections 46-4, 205-12, and 205-13; provided that the county
14 shall provide a report to the department of agriculture on an
15 annual basis that includes a summary of all written reports of
16 violations, the results of the county's investigation, and any
17 fines levied pursuant to this subsection."

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

20 "[+]§514B-6[+] Supplemental county ordinances and rules
21 governing a condominium property regime. Whenever any county



S.B. NO. 975

1 deems it proper, the county may adopt supplemental rules, and in
 2 a county with a population of seven hundred fifty thousand or
 3 more, ordinances, governing condominium property regimes
 4 established under this chapter in order to implement this
 5 program; provided that any of the supplemental rules adopted
 6 shall not conflict with this chapter or with any of the rules
 7 adopted by the commission to implement this chapter."

8 SECTION 5. Section 514B-52, Hawaii Revised Statutes, is
 9 amended by amending subsection (b) to read as follows:

10 "(b) An application for registration of a project in the
 11 agricultural district classified pursuant to chapter 205 shall
 12 include a verified statement, signed by an appropriate county
 13 official, that the project as described and set forth in the
 14 project's declaration, condominium map, bylaws, and house rules
 15 [~~does~~]:

16 (1) Does not include any restrictions limiting or
 17 prohibiting agricultural uses or activities, in
 18 compliance with section 205-4.6 [~~-~~]; and

19 (2) For an application for registration of a project in
 20 the agricultural district classified pursuant to
 21 chapter 205 in a county with a population of seven



S.B. NO. 975

1 hundred fifty thousand or more, may include comments
 2 on the availability of supportive infrastructure, the
 3 potential impact on environmental resources, and other
 4 requirements of county ordinances and rules.

5 The commission shall not accept the registration of a project
 6 where a county official has not signed a verified statement."

7 SECTION 6. Statutory material to be repealed is bracketed
 8 and stricken. New statutory material is underscored.

9 SECTION 7. This Act shall take effect on June 29, 2019;
 10 provided that the amendments made to section 205-4.5, Hawaii
 11 Revised Statutes, by this Act shall not be repealed when section
 12 205-4.5, Hawaii Revised Statutes, is reenacted on June 30, 2019,
 13 by section 3 of Act 52, Session Laws of Hawaii 2014.

14

INTRODUCED BY: Michelle Ikeni

D. J. [Signature] Hulthood
 [Signature] [Signature]



S.B. NO. 975

Report Title:

Condominium Property Regimes; Planned Community Associations;
Agricultural Lands; County Subdivision Requirements

Description:

Requires public notice of sale of agricultural property in a planned community association within 90 days of subdivision and sale. Prohibits any residential use for any period of structures on agricultural and preservation land. Allows for county enforcement of state and county requirements on subdivided agricultural land based on community reports of suspected violations. Permits consideration of infrastructure and environmental impacts on applications for condominium projects on agricultural land. Applies to counties with a population of at least 750,000.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

