

JAN 28 2015

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# A BILL FOR AN ACT

RELATING TO AGRICULTURE.

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

1           SECTION 1. The legislature finds that article XI, section  
2 3, of the Hawaii State Constitution makes the conservation and  
3 protection of Hawaii's agricultural lands a priority. It  
4 charges the State to "promote diversified agriculture, increase  
5 agricultural self-sufficiency and assure the availability of  
6 agriculturally suitable lands." This priority is reflected in  
7 the state plan as well, which declares self-sufficiency, social  
8 and economic mobility, and community well-being as the values  
9 guiding the state plan. The legislature finds that securing  
10 agricultural lands and promoting agriculture are essential to  
11 meet these goals.

12           The legislature has made attempts to secure agricultural  
13 lands by directing the counties to identify important  
14 agricultural lands through Act 183, Session Laws of Hawaii 2005,  
15 and providing incentives to do so in Act 233, Session Laws of  
16 Hawaii 2008. The preservation of important agricultural lands  
17 will only be effective if such lands are identified for



1 preservation before large tracts are lost to development. The  
2 State has spent thirty years attempting to identify and protect  
3 important agricultural lands, but has failed to do so, and no  
4 county council has taken up the issue since 2008.

5 One of the goals of the state plan is to achieve a strong,  
6 viable economy characterized by stability, diversity, and  
7 growth. This goal includes, among other things, objectives of  
8 increased and diversified employment opportunities, encouraging  
9 entrepreneurship, assuring basic needs of Hawaii's people in the  
10 event of overseas transportation disruptions, and encouraging  
11 economically satisfying labor-intensive employment for upward  
12 mobility. The legislature further finds that all of these  
13 objectives can be accomplished through expanded agriculture  
14 throughout the islands. Such an expansion would improve the  
15 amount of locally grown food, diversify the industries upon  
16 which the economy is built, and provide an expanded job market  
17 for labor and science.

18 These goals can only be met if large parcels of  
19 agricultural lands are preserved. Commercially viable  
20 agriculture requires large contiguous parcels for operation.  
21 Livestock operations also require large contiguous parcels for



1 pasture, operations, and buffers. The approval of a dairy on  
2 the south shore of Kauai has sparked friction with neighboring  
3 land owners -- particularly with the nearest hotel, which has  
4 concerns about possible runoff, odors, and water pollution that  
5 could be produced by the dairy. This clash of interests proves  
6 that buffers must be included between agricultural lands and  
7 non-agricultural operations in order to mitigate the concerns  
8 produced by large-scale agricultural operations. The need for  
9 buffers bolsters the need to maintain large, contiguous parcels  
10 of agricultural land.

11 The legislature finds that laws allowing the subdivision of  
12 agricultural lands, including through condominium property  
13 regimes and other means, must be scrutinized. In Kauai alone,  
14 431 agricultural parcels, representing 17,000 acres, have been  
15 divided under condominium property regimes since 1993. The  
16 intent of this Act is to fill loopholes that have allowed  
17 developers to maneuver land use restrictions, rather than  
18 following proper channels to rezone, resulting in the  
19 urbanization of agricultural lands. Agricultural lands must be  
20 protected from such subdivision in order to prevent the



1 fractionalization of agricultural parcels and promote the  
2 conservation of large agricultural tracts.

3 The purpose of this Act is to prevent the loss of large-  
4 scale agricultural parcels and to ensure that future use of  
5 agricultural lands are for bona fide agricultural operations.

6 SECTION 2. Chapter 205, Hawaii Revised Statutes, is  
7 amended by adding a new section to be appropriately designated  
8 and to read as follows:

9 **"§205- Subdivision of certain agricultural lands;**  
10 **restrictions, application.** (a) No application for subdivision  
11 of land within the agricultural district greater than one  
12 hundred acres shall be made unless:

13 (1) The owner is a commercial farmer with a record of  
14 annual income from sales of agricultural products, of  
15 which not more than 50 per cent is generated from  
16 accessory agricultural uses, to third parties in the  
17 amount of \$35,000 or greater for at least three of the  
18 five years immediately preceding the application for  
19 subdivision of property;

20 (2) 51 per cent or more of the owner's annual gross income  
21 is revenue from agricultural products, of which not



1 more than 50 per cent is generated from accessory  
2 agricultural uses, in each of the two years  
3 immediately preceding the application for subdivision  
4 of property; or

5 (3) The owner has operated an agricultural enterprise that  
6 has cultivated or operated on agricultural lands of  
7 ten acres or greater to produce farm products for sale  
8 to third parties for each of the two years immediately  
9 preceding the application for subdivision of property.

10 (b) Any owner eligible to submit an application for  
11 subdivision under subsection (a) shall submit a farm plan  
12 depicting the agricultural purposes for which the divided lots  
13 shall be dedicated. Plans shall demonstrate that the majority  
14 of the new legal lots of record, if approved, shall be dedicated  
15 to meet one of the following commercial agricultural production  
16 goals:

17 (1) Annual revenue from the sale of agricultural products,  
18 of which not more than 50 per cent is generated from  
19 accessory agricultural uses, of \$35,000 or greater  
20 within five years of property division;



- 1        (2) Sale of agricultural products, of which not more than  
2        50 per cent is generated from accessory agricultural  
3        uses, accounts for at least 51 per cent of the owner's  
4        gross income within five years of property division;  
5        or  
6        (3) At least 51 per cent of the new legal lots of record  
7        are dedicated to cultivation or production of  
8        agricultural products for sale to third parties within  
9        five years of property division.

10    The farm plan submitted pursuant to subsection as part of the  
11    subdivision application shall be part of the subdivision record,  
12    and approval shall be contingent upon implementation of the farm  
13    plan.

14        (c) Any owner whose application for subdivision is  
15    approved shall be restricted from building any house on any of  
16    the subsequent lots until the proposed farm plan or an amended  
17    farm plan approved by the initial authority has been implemented  
18    for a period of at least five consecutive years, and until the  
19    owner can demonstrate that the majority of divided lots meet one  
20    or more of the production goals enumerated in subsection (b).

21        (d) For purposes of this section:



1       "Accessory agricultural uses" includes any use of  
2 agricultural lands incidental to agricultural production,  
3 including for recreation and tourism.

4       "Agricultural products" include floricultural,  
5 horticultural, viticultural, forestry, nut, coffee, dairy,  
6 livestock, poultry, bee, animal, and any other farm, agronomic,  
7 or plantation products.

8       "Subdivision" means any land that is divided or is proposed  
9 to be divided for the purpose of disposition into two or more  
10 lots, parcels, units, or interests and may be accomplished  
11 through a condominium property regime, subdivision, or any other  
12 division of land.

13       (e) This section shall supersede all inconsistent county  
14 ordinances or rules relating to the use, zoning, planning, and  
15 development of land."

16       SECTION 3. Section 205-4.5, Hawaii Revised Statutes, is  
17 amended by amending subsection (f) to read as follows:

18       "[+](f)[+] Notwithstanding any other law to the contrary,  
19 agricultural lands may be subdivided and leased for the  
20 agricultural uses or activities permitted in subsection (a);  
21 provided that:



- 1           (1) The principal use of the leased land is agriculture;
- 2           (2) No permanent or temporary dwellings or farm dwellings,  
3           including trailers and campers, are constructed on the  
4           leased area. This restriction shall not prohibit the  
5           construction of storage sheds, equipment sheds, or  
6           other structures appropriate to the agricultural  
7           activity carried on within the lot; [~~and~~]
- 8           (3) The lease term for a subdivided lot shall be for at  
9           least as long as the greater of:
- 10           (A) The minimum real property tax agricultural  
11           dedication period of the county in which the  
12           subdivided lot is located; or
- 13           (B) Five years~~[-]~~; and
- 14           (4) Agricultural land exceeding one hundred acres in size  
15           shall be subject to section 205- .

16 Lots created and leased pursuant to this section shall be legal  
17 lots of record for mortgage lending purposes and shall be exempt  
18 from county subdivision standards."

19           SECTION 4. Section 514B-52, Hawaii Revised Statutes, is  
20 amended to read as follows:





1        **"§514B-52 Application for registration.** (a) An

2 application for registration of a project shall:

3        (1) Be accompanied by nonrefundable fees as provided in  
4            rules adopted by the director of commerce and consumer  
5            affairs pursuant to chapter 91; and

6        (2) Contain the documents and information concerning the  
7            project and the condominium property regime as  
8            required by sections 514B-54, 514B-83, and 514B-84, as  
9            applicable, and as otherwise may be specified by the  
10           commission.

11       (b) An application for registration of a project in the  
12 agricultural district classified pursuant to chapter 205 shall  
13 include a verified statement, signed by an appropriate county  
14 official, that the project as described and set forth in the  
15 project's declaration, condominium map, bylaws, and house rules  
16 does not include any restrictions limiting or prohibiting  
17 agricultural uses or activities, in compliance with section  
18 205-4.6. The commission shall not accept the registration of a  
19 project where a county official has not signed a verified  
20 statement.



1        (c) No application for registration of a project in the  
2 agricultural district classified pursuant to section 205-  
3 shall be made unless:

4        (1) The owner is a commercial farmer with a record of  
5 annual income from sales of agricultural products, of  
6 which not more than 50 per cent is generated from  
7 accessory agricultural uses, to third parties in the  
8 amount of \$35,000 or greater for at least three of the  
9 five years immediately preceding the application for  
10 registration of a project;

11       (2) 51 per cent or more of the owner's annual gross income  
12 is revenue from agricultural products, of which not  
13 more than 50 per cent is generated from accessory  
14 agricultural uses, in each of the two years  
15 immediately preceding the application for registration  
16 of a project; or

17       (3) The owner has operated an agricultural enterprise that  
18 has cultivated or operated on agricultural lands of  
19 ten acres or greater to produce farm products for sale  
20 to third parties for each of the two years immediately



1           preceding the application for registration of a  
2           project.

3           (d) Any owner eligible to submit an application for  
4           registration under subsection (c)(1) shall submit a farm plan  
5           depicting the agricultural purposes for which the condominium  
6           property regime shall be dedicated. Plans shall demonstrate  
7           that the majority of the condominium property regime, if  
8           approved, shall be dedicated to meet one of the following  
9           commercial agricultural production goals:

10           (1) Annual revenue from the sale of agricultural products,  
11           of which not more than 50 per cent is generated from  
12           accessory agricultural uses, of \$35,000 or greater  
13           within five years of project development;

14           (2) Sale of agricultural products, of which not more than  
15           50 per cent is generated from accessory agricultural  
16           uses, accounts for at least 51 per cent of the owner's  
17           gross income within five years of project development;  
18           or

19           (3) At least 51 per cent of the new legal lots of record  
20           are dedicated to cultivation or production of



1           agricultural products for sale to third parties within  
2           five years of project development.

3 The farm plan submitted pursuant to this subsection as part of  
4 the application for registration shall be part of the project  
5 record, and approval shall be contingent upon implementation of  
6 the farm plan.

7           (e) As used in this section:

8           "Accessory agricultural uses" has the same meaning as in  
9 section 205- .

10           "Agricultural products" has the same meaning as in section  
11 205- .

12           ~~(e)~~ (f) The commission need not process any incomplete  
13 application and may return an incomplete application to the  
14 developer and require that the developer submit a new  
15 application, including nonrefundable fees. If an incomplete  
16 application is not completed within six months of the date of  
17 the original submission, it shall be deemed abandoned and  
18 registration of the project shall require the submission of a  
19 new application, including nonrefundable fees.

20           ~~(d)~~ (g) A developer shall promptly file amendments to  
21 report either any actual or expected pertinent or material



1 change, or both, in any document or information contained in the  
2 application."

3 SECTION 5. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY:

*Rama Thiel*



# S.B. NO. 1164

**Report Title:**

Agriculture; Agricultural Lands; Farming; Livestock; Land Use; Zoning; Subdivision

**Description:**

Restricts any subdivision, including by condominium property regime, of parcels of agricultural lands one hundred acres or greater in size. Requires the owner to make and implement a farm plan prior to the construction of any homes on the resulting legal lots of record.

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

