

JAN 25 2006

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

3 "(d) Agricultural districts shall include activities or  
4 uses as characterized by the cultivation of crops, orchards,  
5 forage, and forestry; farming activities or uses related to  
6 animal husbandry, aquaculture, and game and fish propagation;  
7 aquaculture, which means the production of aquatic plant and  
8 animal life for food and fiber within ponds and other bodies of  
9 water; wind generated energy production for public, private, and  
10 commercial use; bona fide agricultural services and uses that  
11 support the agricultural activities of the fee or leasehold  
12 owner of the property and accessory to any of the above  
13 activities, whether or not conducted on the same premises as the  
14 agricultural activities to which they are accessory, including  
15 but not limited to farm dwellings [~~as defined in section~~  
16 ~~205-4.5(a)(4), employee housing,~~] and ancillary dwellings  
17 permitted under section 205-4.5(b), farm buildings, mills,  
18 storage facilities, processing facilities, vehicle and equipment



1 storage areas, and roadside stands for the sale of products  
 2 grown on the premises; wind machines and wind farms; small-scale  
 3 meteorological, air quality, noise, and other scientific and  
 4 environmental data collection and monitoring facilities  
 5 occupying less than one-half acre of land, provided that these  
 6 facilities shall not be used as or equipped for use as living  
 7 quarters or dwellings; agricultural parks; and open area  
 8 recreational facilities. For the purposes of this chapter, golf  
 9 courses and golf driving ranges are prohibited in agricultural  
 10 districts, except as provided in section [~~205-4.5(d)~~]  
 11 205-4.5(e).

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

16 SECTION 2. Section 205-4.5, Hawaii Revised Statutes, is  
 17 amended to read as follows:

18 **"§205-4.5 Permissible uses within the agricultural**  
 19 **districts.** (a) Within the agricultural district, all lands  
 20 with soil classified by the land study bureau's detailed land  
 21 classification as overall (master) productivity rating class A  
 22 or B shall be restricted to the following permitted uses:

- 1 (1) Cultivation of crops, including but not limited to  
2 flowers, vegetables, foliage, fruits, forage, and  
3 timber;
- 4 (2) Game and fish propagation;
- 5 (3) Raising of livestock, including but not limited to  
6 poultry, bees, fish, or other animal or aquatic life  
7 that are propagated for economic or personal use;
- 8 (4) Farm [~~dwelling, employee housing, farm~~] buildings, or  
9 activity or uses related to farming and animal  
10 [~~husbandry. Farm dwelling as used in this paragraph~~  
11 ~~means a single-family dwelling located on and used in~~  
12 ~~connection with a farm, including clusters of single-~~  
13 ~~family farm dwellings permitted within agricultural~~  
14 ~~parks developed by the State, or where agricultural~~  
15 ~~activity provides income to the family occupying the~~  
16 ~~dwelling;~~] husbandry;
- 17 (5) Public institutions and buildings that are necessary  
18 for agricultural practices;
- 19 (6) Public and private open area types of recreational  
20 uses including day camps, picnic grounds, parks, and  
21 riding stables, but not including dragstrips,

- 1 airports, drive-in theaters, golf courses, golf  
2 driving ranges, country clubs, and overnight camps;
- 3 (7) Public, private, and quasi-public utility lines and  
4 roadways, transformer stations, communications  
5 equipment buildings, solid waste transfer stations,  
6 major water storage tanks, and appurtenant small  
7 buildings such as booster pumping stations, but not  
8 including offices or yards for equipment, material,  
9 vehicle storage, repair or maintenance, or treatment  
10 plants, or corporation yards, or other like  
11 structures;
- 12 (8) Retention, restoration, rehabilitation, or improvement  
13 of buildings or sites of historic or scenic interest;
- 14 (9) Roadside stands for the sale of agricultural products  
15 grown on the premises;
- 16 (10) Buildings and uses, including but not limited to  
17 mills, storage, and processing facilities, maintenance  
18 facilities, and vehicle and equipment storage areas  
19 that are normally considered directly accessory to the  
20 abovementioned uses and are permitted under section  
21 205-2(d);
- 22 (11) Agricultural parks; or

1 (12) Wind energy facilities, including the appurtenances  
2 associated with the production and transmission of  
3 wind generated energy; provided that such facilities  
4 and appurtenances are compatible with agriculture uses  
5 and cause minimal adverse impact on agricultural land.

6 (b) All dwellings on lands designated as agriculture in  
7 the state classification system pursuant to section 205-2(d)  
8 shall be limited to:

9 (1) One farm dwelling, provided that the land:

10 (A) Is currently used in connection with agricultural  
11 activities;

12 (B) Is at least three contiguous acres;

13 (C) Provides income to the family occupying the  
14 dwelling; and

15 (D) Has produced at least \$10,000 in gross annual  
16 income from the sale of farm products from the  
17 subject parcel, as confirmed by a federal or  
18 state tax filing submitted within the past two  
19 years;

20 (2) Two ancillary dwellings, provided that the land:

21 (A) Is currently used in connection with agricultural  
22 activities;



- 1            (B) Is at least three contiguous acres;
- 2            (C) Provides income to the families occupying the
- 3            dwellings;
- 4            (D) Has produced at least \$10,000 in gross annual
- 5            income from the sale of farm products from the
- 6            subject parcel, as confirmed by a federal or
- 7            state tax filing submitted within the past two
- 8            years; and
- 9            (E) Is designated as important agricultural land
- 10           under this chapter; and

11        (3) Clusters of farm dwellings permitted within  
12        agricultural parks developed by the State.

13        [~~(b)~~] (c) Uses not expressly permitted in subsection (a)  
14 shall be prohibited, except the uses permitted as provided in  
15 sections 205-6 and 205-8, and construction of single-family  
16 dwellings on lots existing before June 4, 1976. Any other law  
17 to the contrary notwithstanding, no subdivision of land within  
18 the agricultural district with soil classified by the land study  
19 bureau's detailed land classification as overall (master)  
20 productivity rating class A or B shall be approved by a county  
21 unless the said A and B lands within the subdivision shall be  
22 made subject to the restriction on uses as prescribed in this

1 section and to the condition that the uses shall be primarily in  
2 pursuit of an agricultural activity.

3 Any deed, lease, agreement of sale, mortgage, or other  
4 instrument of conveyance covering any land within the  
5 agricultural subdivision shall expressly contain the restriction  
6 on uses and the condition, as prescribed in this section, that  
7 [the] restriction and condition shall be encumbrances  
8 running with the land until such time that the land is  
9 reclassified to a land use district other than agricultural  
10 district.

11 If the foregoing requirement of encumbrances running with  
12 the land jeopardizes the owner or lessee from obtaining mortgage  
13 financing from any of the mortgage lending agencies set forth  
14 hereinbelow, and the requirement is the sole reason for failure  
15 to obtain mortgage financing, then such requirement of  
16 encumbrances shall, insofar as the mortgage financing is so  
17 jeopardized, be conditionally waived by the appropriate county  
18 enforcement officer; provided that the conditional waiver shall  
19 thereafter become effective only in the event that the property  
20 is subjected to foreclosure proceedings by the mortgage lender.

21 The mortgage lending agencies mentioned hereinabove are the  
22 Federal Housing Administration, Federal National Mortgage



1 Association, Veterans Administration, Small Business  
2 Administration, United States Department of Agriculture, Federal  
3 Land Bank of Berkeley, Federal Intermediate Credit Bank of  
4 Berkeley, Berkeley Bank for Cooperatives, and any other federal,  
5 state, or private mortgage lending agency qualified to do  
6 business in Hawaii, and their respective successors and assigns.

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

12 ~~(d)~~ (e) Notwithstanding any other provision of this  
13 chapter to the contrary, golf courses and golf driving ranges  
14 approved by a county before July 1, 2005, for development within  
15 the agricultural district shall be permitted uses within the  
16 agricultural district.

17 (f) As used in this section:

18 "Ancillary dwelling" as used in subsection (b)(2) means a  
19 single-family dwelling used for employee housing or for an  
20 immediate family member's family home located on and used in  
21 connection with the farm.





1       "Farm dwelling" as used in subsections (b) (1) and (b) (3)  
 2 means a single-family dwelling located on and used in connection  
 3 with a farm, including clusters of single-family farm dwellings  
 4 permitted within agricultural parks developed by the State, or  
 5 where agricultural activity provides income to the family  
 6 occupying the dwelling.

7       "Immediate family member" means son, son-in-law, daughter,  
 8 daughter-in-law, mother, mother-in-law, father, father-in-law,  
 9 brother, brother-in-law, sister, sister-in-law, grandchild,  
 10 grandparent, or stepchild of the farm owner or lessee."


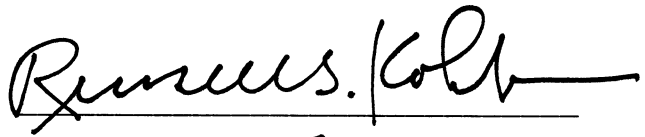
11       SECTION 3. Section 205-5, Hawaii Revised Statutes, is  
 12 amended by amending subsection (b) to read as follows:

13       "(b) Within agricultural districts, uses compatible to the  
 14 activities described in section 205-2 as determined by the  
 15 commission shall be permitted; provided that accessory  
 16 agricultural uses and services described in sections 205-2 and  
 17 205-4.5 may be further defined by each county by zoning  
 18 ordinance. Other uses may be allowed by special permits issued  
 19 pursuant to this chapter. The minimum lot size in agricultural  
 20 districts shall be determined by each county by zoning  
 21 ordinance, subdivision ordinance, or other lawful means;  
 22 provided that the minimum lot size for any agricultural use

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

18 SECTION 4. Statutory material to be repealed is bracketed  
 19 and stricken. New statutory material is underscored.

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

21  INTRODUCED BY:   


**Report Title:**  
Farm Dwelling; Definition

**SB. NO. 3097**

**Description:**  
Creates standards for landowners or lessees of state classified agricultural land to meet in order to build a farm dwelling.

