

# SB2375

RELATING TO AGRICULTURAL-BASED COMMERCIAL OPERATIONS.  
Defines agricultural-based commercial operations and  
authorizes agricultural-based commercial operations in  
agricultural districts. (SD1)

State of Hawaii  
DEPARTMENT OF AGRICULTURE  
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TESTIMONY OF RUSSELL KOKUBUN  
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEE ON WATER, LAND, AND HOUSING  
Thursday, February 23, 2011  
Room 225  
1:30 P.M.

SENATE BILL NO. 2375, SENATE DRAFT 1  
RELATING TO AGRICULTURAL-BASED COMMERCIAL OPERATIONS

Chairperson Dela Cruz and Members of the Committee:

Thank you for this opportunity to provide testimony on Senate Bill No. 2375, Senate Draft 1 which proposes to amend references to roadside stands in Chapter 165, the Hawaii Right-to-Farm Law, and in Sections 205-2 and 4.5, the State Land Use Law with two slightly different types of agricultural-based commercial operations. The Department of Agriculture supports the intent of this measure that proposes to expand the variety of venues from which farmers can sell their agricultural products.

The Department supports efforts to assist farmers in ensuring solvency and profitability provided that these efforts do not have the effect of relegating agricultural activity to a secondary or accessory activity rather than the primary activity on agricultural lands.

Thank you for the opportunity to comment.

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**  
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February 23, 2012

The Honorable Donovan M. Dela Cruz, Chair  
and Members of the Committee on Water, Land,  
and Housing  
State Senate  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Dela Cruz and Committee Members:

Subject: Senate Bill No. 2375, SD1  
Relating to Agricultural-Based Commercial Operations

The Department of Planning and Permitting **opposes Senate Bill No. 2375, SD1**, which would allow agricultural-based commercial operations within the State Agricultural District. The SD1 version of the Bill restricts sales to Hawaii-grown agricultural products and value added products made primarily with raw Hawaii agricultural materials.

We support the agricultural industry and have made changes to our zoning and building codes specifically to support the industry. However, our opposition to this Bill remains. The provisions are virtually unenforceable and may result in unintended consequences. How many operations can be located together on the same property? Self-certification as a means of enforcement is problematic. Perhaps a better enforcement program would be to require annual reports filed with the state, with an auditor or accountant certifying that all products sold were primarily produced in Hawaii with raw agricultural materials.

The provisions could have unintended consequences in that the "producer-operators" could be out-of-state entities that compete with local farmers for quality agricultural lands which are intended for food production. The effect of this could be land speculation, driving up the general price of all agricultural lands. Moreover, as out-of-state companies, their revenues may not stay within the local economy. The rural character of an area could change from green open spaces to paved parking lots supported by traffic congestion.

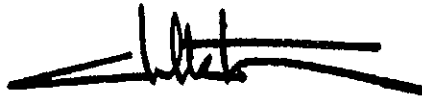
If the intent of the measure is to support local farmers, existing provisions of Chapter 205, HRS, already allows agricultural-based commercial operations as accessory to a working farm. If commercial operations are desired as principal uses, Section 205-6, HRS, allows

The Honorable Donovan M. Dela Cruz, Chair  
and Members of the Committee on Water, Land,  
and Housing  
State Senate  
Subject: Senate Bill 2375, SD1  
February 23, 2012  
Page 2

agricultural producers to explore creative ways to market their products on a case-by-case basis through the special use permit. Not only will this allow for the review of proposals against the intent of the state agricultural district, but also allow infrastructure agencies and the public to comment on the proposal.

Given the above, please hold this Bill. Thank you for this opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. Tanoue', written over a horizontal line.

David K. Tanoue, Director  
Department of Planning and Permitting

DKT:jmf

sb2375.sd1.AgOps-k1



KAMEHAMEHA SCHOOLS®

February 22, 2012

Testimony to the Senate Committee on Water, Land and Housing

By

Kapu Smith, Senior Land Asset Manager  
Kamehameha Schools

Hearing Date: Thursday, February 23, 2012  
1:30 p.m., Conference Room 225

Senator Donovan Dela Cruz, Chair  
Senator Malama Solomon, Vice Chair

**RE: Support of Senate Bill No. 2375 SD1 – Relating to Agricultural Based Commercial Operations**

I am Kapu C. Smith, Senior Land Asset Manager for Kamehameha Schools' Kawaiiloa Plantation in Waialua, Oahu. I am here to testify in support of SB 2375 SD1 because it will have an immediate impact on the farmers' ability to improve their economic feasibility and thus continue to farm. Under the current land use, agricultural based commercial operations are not described as one of the permissible uses. As a result, this has increased permitting, limited the farmers' economic opportunities and placed them at a disadvantage with neighboring landowners. This means that their products can be sold across the street by others but not by the farmer on their own farm lot.

Thank you for the opportunity to testify in support of SB 2375 SD1 .



**Hawaii Farm Bureau**  
F E D E R A T I O N

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FEBRUARY 23, 2012

HEARING BEFORE THE  
SENATE COMMITTEE ON WATER, LAND AND HOUSING

TESTIMONY ON SB 2375, SD1  
RELATING TO AGRICULTURAL BASED COMMERCIAL OPERATIONS

Room 225  
1:30 PM

Chair Dela Cruz, Vice Chair Kahele and Members of the Committees:

I am Brian Miyamoto, Chief Operating Officer and Government Affairs Liaison for the Hawaii Farm Bureau Federation (HFBF). Organized since 1948, the HFBF is comprised of 1,800 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interest of our diverse agricultural community.

Hawaii Farm Bureau Federation supports with amendments SB 2375, SD1, defining the scope of farm stands in the agricultural district.

Farm stands and other retail sales are significant revenue enhancing opportunities for our farmers and ranchers. The existing law has created some challenges for our existing farmers and ranchers who are conducting true farm stands in agricultural areas.

Many of our farmers have multiple lots on different TMKs. The existing law only allows sale of "products grown on the premise". This limits the opportunity of the farm stand as if followed literally, they would not be able to sell all of the products they grow. At the same time, we have many "farm stands" selling product not grown in the County or Hawaii. We do not believe this is the intent of this amendment. Broadening the scope of the language to "raw Hawaii agricultural products" may be too broad, encouraging farm stands that are unrelated to actual agricultural activity. We therefore submit the following suggestions.

- (13) Agricultural-based commercial operations, operated in by the producer-owner or their agent, including:
- (A) A roadside stand, which is not an enclosed structure, where agricultural products and value-added products produced using agricultural materials grown in the County are displayed and sold;
  - (B) Retail activities in a producer-operated enclosed structure where fresh agricultural products, value-added products produced using products made from agricultural materials grown in the County, logo items related to the County's agricultural operations, and other food items are offered for sale directly to consumers; and
  - (C) Retail food establishments permitted under the rules of the department of health, title 11, chapter 12, Hawaii Administrative Rules, that prepare and serve food at retail using products grown on the premises and raw Hawaii agricultural products, and value-added products produced using Hawaii agricultural products; the final perishable product must be wholly or partially manufactured, processed, or produced within the County from raw materials that originate from inside or outside the County and at least fifty-one per cent of the wholesale value of the perishable consumer commodity is added by manufacture, processing, or production within the County.

The language in (c) is modified from the "Made in Hawaii" statute. We modified it to read "county" since it is our intent of this measure is to encourage farm and ranch viability within the county in which the farm stand is located and not to encourage sale of products solely from outside of the county. The use of the producer-owner is to ensure that these operations are done in direct connection with a farm or ranch growing or raising some of the products on sale.

Item c would allow sale of ready to eat foods produced using products grown in the county providing locals and visitors a unique experience while providing an additional revenue source.

Enforcement of these laws is usually the challenge and HFBF is especially concerned about unintended consequences of allowing other types of retail activities. We therefore suggest the following language that requires self-certification of goods sold and provides significant penalties for violation.

The owner of the farm or retail establishment shall certify that the products can be evaluated determine that the raw agricultural products were grown in the County and that information may be requested to verify that the agricultural product meets the minimum specifications under this Chapter. The producer-owner of the retail food establishment shall provide proof of permitting upon request. Under this provision, the producer(s) certifies under penalty of sanctions that the offered agricultural product meets the requirements of this chapter.

We recognize the hesitancy of the counties in passing this measure, as abuses have been known to occur. The amendments are suggested to address their concerns. Allowing "raw Hawaii agricultural materials" will make certification difficult as one will need to demonstrate that the product was truly grown in Hawaii. This certification within the County should be reasonable. New food safety laws may also require that the farm name and address on which the product is grown be on the packaging or in clear display.

HFBF respectfully requests passage of this measure with the amendments as suggested. We strongly believe farm stands and other on farm retail opportunities will increase the viability of our farmers and ranchers but also realize there is great opportunity of abuse. We feel, however, with adequate self-certification requirements that do not overly burden the County of enforcement responsibilities, the intended goal of this measure can be accomplished without significant unintended consequences.



Testimony of  
Jon Okudara  
on  
**S.B. 2375, S.D. 1**  
**Relating to Agricultural-based Commercial Operations**  
Committee on Water, Land and Housing  
Thursday, February 23, 2012  
1:30 p.m.  
Conference Room 225

Thank you for the opportunity to testify in support of S.B. 2375, S.D. 1, with some amendments.

The objective of S.B. 2375, as originally introduced, was to provide more profit-making opportunities for agricultural producers and to preserve agriculture by making it profitable.

The land use law describes as primary permissible uses on class A and B agricultural lands: open area recreational uses, transformer stations, communications equipment buildings, solid waste transfer stations, wind energy facilities, biofuel processing facilities, and wireless communication antennas. The only direct sales allowed on agricultural lands are “roadside stands for the sale of products grown on the premises.”

Section 165-2, HRS, the Hawaii Right to Farm Act, describes a “farming operation” as including but not limited to “[m]arketed produce at roadside stands or *farm markets*.” “Farm market” is not defined, and is not described as a permissible use on agricultural lands in the Land Use Law.

The Land Use Ordinance of the City and County of Honolulu, allows “*agribusiness activities*” in an agriculture zone, including “*retail activities in an enclosed structure ...limited to a structure not exceeding 500 square feet*”. “Agribusiness activities” is not defined in the Land Use Ordinance,” and is not listed as a permissible use on agricultural lands in the Land Use Law.

Under section 166-3.5, HRS, the Agricultural Parks law, the Department of Agriculture allows “*agricultural-based commercial venture operations*” on lots leased and operated by an agricultural park lessee. “Agricultural-based commercial venture operations” is not define in Chapter 166 or in the rules of the Department, and “agricultural-based commercial venture operations” is not listed as a permissible use on agricultural lands in the Land Use Law.

These uses, however, may be allowed with a special permit from the county planning commission. The special permit process can be an expensive alternative. In 2008, the Hawaiian Vanilla Company on the island of Hawaii spent over \$30,000 to get a special permit to operate a retail establishment and retail food establishment for sale and tasting of its vanilla products. (Board of Appeals, County of Hawaii, Hearing transcript, February 8, 2008).

## S.B. 2375

S.B. 2375, as originally introduced, defined “agricultural-based commercial operations” as a permissible use on agricultural lands. This will include:

- Roadside stands *for displaying and selling of agricultural products and value-added products produced from Hawaii agricultural materials*. It removed the restriction that products be grown on the premises. In many instances, producers do not have the roadside exposure to set up a roadside stand, have multiple farm lots, or do not have sufficient manpower to operate a stand. This will encourage synergy among agricultural producers.
- Retail activities such as farm markets *to allow direct sales of fresh agricultural products, value-added products, logo items related to the agricultural operations, and food items*.
- Retail food establishments permitted under the rules of the Department of Health, that *prepare and serve food using products grown on the premises and other Hawaii agricultural products*.

## Other testimony

The Department of Planning and Permitting testified that:

“...The proposal is too broad and ***the requirement that vendors primarily use raw Hawaii agricultural materials is very difficult to monitor and thus, unenforceable***. In addition, the proposal ***would open up lands that have the greatest crop production ratings for commercial operations that include the retailing of imported logo products and the sale and service of food products produced out-of-state***. As there is no language to limit the amount of non-Hawaii based raw materials used or sold, the commercial operators could primarily market or use out-of-state materials. Moreover, the bill would allow commercial operators to establish operations on any farm lot thereby competing with farmers who supplement their income with onsite sales of products grown on the premises and could drive up the price of good quality farm land. ... Existing provisions of Chapter 205, HRS, already allow agricultural-based commercial operations as accessory to a working farm, and thus, protects farm land primarily for food production.

Response: S.B. 2375 would allow: sale of agricultural products and value-added products produced using raw Hawaii agricultural materials at a roadside stand; ***producer-operated*** retail activities to sell fresh agricultural products, value-added products, logo items ***related to Hawaii agricultural operations***, and other food items; and retail food establishments licensed by the Department of Health preparing and serving food ***using products grown on the premises, raw Hawaii agricultural products, and value-added products produced using raw Hawaii agricultural products***.

DPP testifies that the provisions of S.B. 2375 will be unenforceable, but section 21-5.10A of the Land Use Ordinance of the City and County of Honolulu, permits “Agribusiness activities,” described as “retail activities in an enclosed structure ...not exceeding 500 square feet of floor area, and all products for sale therein shall be (i) agricultural products grown on the parcel, (ii)

agricultural products grown in the City and County of Honolulu, or (iii) jams, jellies, candies and pickled or dried products made from those products.” The Land Use Law does not describe “agribusiness activities” as a permissible use on agricultural lands. The Land Use Ordinance describes “agribusiness activities” in section 21-5.10A, which are allowed under a special permit from DPP.

Russell Kokubun, Chair, Board of Agriculture testified that:

The Department is agreeable to allowing roadside stands to sell agricultural products grown in Hawaii and value-added products produced using raw Hawaii agricultural materials, understanding that this would also require Department of Health (DOH) oversight. However, ***other proposed retail activities are more difficult to align with the Department’s goal to perpetuate agriculture and therefore difficult to enforce compliance.*** Also, retail food establishments go beyond the purview of the Department of Agriculture and would necessitate the involvement of DOH.

*Response:* S.B. 2375 proposes to perpetuate agriculture by making agriculture profitable. An agricultural operation that is profitable will continue in agriculture. S.B. 2375 attempts to provide agricultural operators a means to increase their profits by expanding the market for their products.

*The Farm Bureau testified:*

“...it is our intent of this measure is to encourage farm and ranch viability ***within the county in which the farm stand is located and not to encourage sale of products solely from outside of the county.***”

Enforcement of these laws is usually the challenge and HFBF is especially concerned about unintended consequences of allowing other types of retail activities. We therefore suggest the following language that requires self-certification of goods sold and provides significant penalties for violation.

The owner of the farm or retail establishment shall certify that the products being displayed or sold can be evaluated to determine that the products were grown in the County and that information may be requested to verify that the agricultural product meets the minimum specifications under this Chapter. Under this provision, the producer(s) certifies under penalty of sanctions that the offered agricultural product meets the requirements of this chapter.

*Response:* S.B. 2375 proposes to support all agriculture in Hawaii. It requires use of raw Hawaii agricultural products and value-added products made from Hawaii agricultural materials. Restricting sales to products grown in a county prohibits the development of a statewide synergy among agricultural producers. S.B. 2375 requires that the operations be producer-operated.

The Farm Bureau requirement that the owner certify that the agricultural product meet minimum specifications places an additional burden on the operator. The Department of Agriculture and the Department of Planning and Permitting testified on the difficulty of enforcing the provisions being proposed. If the owner is required to certify compliance, who will check the compliance certification?

Proposed Amendment

Amend in SECTION 2, section 205-2(d)(13) to read:

“(13) Agricultural-based commercial operations; including:

- (i) A roadside stand, which is not an enclosed structure, for displaying and selling of agricultural products and value-added products produced using raw Hawaii agricultural materials;
- (ii) Retail activities in a producer-operated enclosed structure where fresh agricultural products, value-added products produced using raw Hawaii agricultural materials, logo items related to the producer’s agricultural operations, and other food items are offered for sale directly to consumers; and
- (iii) A retail food establishment operated by a producer that is permitted under chapter 12 of the rules of the department of health that prepares and serves food at retail using products grown on the premises, raw Hawaii agricultural products, and value-added products produced using raw Hawaii agricultural materials.

The operator of an agricultural-based commercial operation, shall certify, upon request of an officer or agent charged with enforcement of this chapter under section 205-12, that the agricultural products used in the operation meet the requirements of this paragraph.”

With these amendments, S.B. 2375 will expand an agricultural producers opportunity for increasing the profits from an agricultural operation.

Thank you for the opportunity to offer these comments in support of S.B. 2375.