
A BILL FOR AN ACT

RELATING TO AGRICULTURAL LANDS.

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

1 SECTION 1. Chapter 205, Hawaii Revised Statutes, is
2 amended by adding a new section to part III to be appropriately
3 designated and to read as follows:

4 "§205- Permissible uses on important agricultural lands.

5 (a) Notwithstanding any law to the contrary, lands designated
6 as important agricultural lands pursuant to sections 205-45 and
7 205-49 shall be restricted to the following permitted uses:

8 (1) Cultivation of crops, including crops for bioenergy,
9 flowers, vegetation, foliage, fruits, forage, and
10 timber;

11 (2) Game and fish propagation;

12 (3) Raising of livestock, including poultry, bees, fish,
13 or other animal or aquatic life that are propagated
14 for economic use;

15 (4) Farm dwellings, farm labor, or farm employee housing
16 pursuant to section 205-45.5; provided that "farm
17 dwelling", as used in this paragraph, means a single-
18 family dwelling located on and used in connection with



1 a farm for occupancy by the operator, employees, or
2 laborers of a farming operation as defined in section
3 165-2;

4 (5) Roadside stands for the sale of agricultural products
5 grown on the premises;

6 (6) Buildings and uses, including mills, storage, and
7 processing facilities, maintenance facilities, vehicle
8 and equipment storage areas, irrigation water storage
9 tanks and dams, and appurtenant small buildings such
10 as booster pumping stations that are directly
11 accessory to the uses in paragraph (1);

12 (7) Agricultural parks;

13 (8) Wind energy facilities, including the appurtenances
14 associated with the production and transmission of
15 wind-generated energy; provided that the wind energy
16 facilities and appurtenances are compatible with
17 agricultural uses and cause minimal adverse impact on
18 designated important agricultural lands;

19 (9) Agricultural-energy facilities, including
20 appurtenances necessary for an agricultural-energy
21 enterprise; provided that the primary activity of the
22 agricultural-energy enterprise is agricultural



1 activity. To be considered the primary activity of an
2 agricultural-energy enterprise, the total acreage
3 devoted to agricultural activity shall be not less
4 than ninety per cent of the total acreage of the
5 agricultural-energy enterprise. The agricultural-
6 energy facility shall be limited to lands owned,
7 leased, licensed, or operated by the entity conducting
8 the agricultural activity.

9 As used in this paragraph:

10 "Agricultural activity" means any activity
11 described in paragraph (1).

12 "Agricultural-energy enterprise" means an
13 enterprise that integrally incorporates an
14 agricultural activity with an agricultural-energy
15 facility.

16 "Agricultural-energy facility" means a facility
17 that generates, stores, or distributes renewable
18 energy as defined in section 269-91 or renewable fuel
19 including electrical or thermal energy or liquid or
20 gaseous fuels from products of agricultural activities
21 from agricultural lands located in the State.



1 "Appurtenances" means operational infrastructure
2 of the appropriate type and scale for the economic
3 commercial generation, storage, distribution, and
4 other similar handling of energy, including equipment,
5 feedstock, fuels, and other products of agricultural-
6 energy facilities; and

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

20 (b) Uses not expressly permitted in subsection (a) shall
21 be prohibited, except non-conforming uses pursuant to section
22 205-8, and construction of single-family dwellings on lots of



1 record existing before June 4, 1976. Any other law to the
2 contrary notwithstanding, no subdivision or establishment of a
3 condominium property regime on important agricultural lands
4 shall be approved by the State or counties, or instruments of
5 conveyance recorded with the bureau of conveyances, unless the
6 important agricultural lands are made subject to the restriction
7 on uses and activities as prescribed in this section and to the
8 condition that the uses and activities shall solely be in
9 pursuit of an agricultural business as defined in subsection
10 235-110.93(k)."

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

13 "(a) There shall be four major land use districts in which
14 all lands in the State shall be placed: urban, rural,
15 agricultural, and conservation. The land use commission shall
16 group contiguous land areas suitable for inclusion in one of
17 these four major districts. The commission shall set standards
18 for determining the boundaries of each district, provided that:

19 (1) In the establishment of boundaries of urban districts
20 those lands that are now in urban use and a sufficient
21 reserve area for foreseeable urban growth shall be
22 included;



- 1 (2) In the establishment of boundaries for rural
2 districts, areas of land composed primarily of small
3 farms mixed with very low density residential lots,
4 which may be shown by a minimum density of not more
5 than one house per one-half acre and a minimum lot
6 size of not less than one-half acre shall be included,
7 except as herein provided;
- 8 (3) In the establishment of the boundaries of agricultural
9 districts the greatest possible protection shall be
10 given to those lands with a high capacity for
11 intensive cultivation[~~+~~and] or lands designated as
12 important agricultural lands pursuant to this chapter;
13 and
- 14 (4) In the establishment of the boundaries of conservation
15 districts, the "forest and water reserve zones"
16 provided in Act 234, section 2, Session Laws of Hawaii
17 1957, are renamed "conservation districts" and,
18 effective as of July 11, 1961, the boundaries of the
19 forest and water reserve zones theretofore established
20 pursuant to Act 234, section 2, Session Laws of Hawaii
21 1957, shall constitute the boundaries of the
22 conservation districts; provided that thereafter the



1 power to determine the boundaries of the conservation
2 districts shall be in the commission.

3 In establishing the boundaries of the districts in each county,
4 the commission shall give consideration to the master plan or
5 general plan of the county."

6 SECTION 3. Section 205-4.5, Hawaii Revised Statutes, is
7 amended as follows:

8 1. By amending its title to read:

9 "**§205-4.5 Permissible uses on land within the agricultural**
10 **districts[-] not designated as important agricultural lands.**"

11 2. By amending subsection (a) to read:

12 "(a) Within the agricultural district, excluding important
13 agricultural lands, which shall be governed by section 205- ,
14 all lands with soil classified by the land study bureau's
15 detailed land classification as overall (master) productivity
16 rating class A or B shall be restricted to the following
17 permitted uses:

- 18 (1) Cultivation of crops, including crops for bioenergy,
19 flowers, vegetables, foliage, fruits, forage, and
20 timber;
21 (2) Game and fish propagation;



- 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
22 equipment buildings, solid waste transfer stations,



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

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

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

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

20 (11) Agricultural parks;

21 (12) Plantation community subdivisions, which as used in
22 this chapter means an established subdivision or



1 cluster of employee housing, community buildings, and
2 agricultural support buildings on land currently or
3 formerly owned, leased, or operated by a sugar or
4 pineapple plantation; provided that the existing
5 structures may be used or rehabilitated for use, and
6 new employee housing and agricultural support
7 buildings may be allowed on land within the
8 subdivision as follows:

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

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

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

18 (13) Agricultural tourism conducted on a working farm, or a
19 farming operation as defined in section 165-2, for the
20 enjoyment, education, or involvement of visitors;
21 provided that the agricultural tourism activity is
22 accessory and secondary to the principal agricultural



1 use and does not interfere with surrounding farm
2 operations; and provided further that this paragraph
3 shall apply only to a county that has adopted
4 ordinances regulating agricultural tourism under
5 section 205-5;

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

17 (15) Wind energy facilities, including the appurtenances
18 associated with the production and transmission of
19 wind generated energy; provided that the wind energy
20 facilities and appurtenances are compatible with
21 agriculture uses and cause minimal adverse impact on
22 agricultural land;



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

9 For the purposes of this paragraph:

10 "Appurtenances" means operational infrastructure
11 of the appropriate type and scale for economic
12 commercial storage and distribution, and other similar
13 handling of feedstock, fuels, and other products of
14 biofuel processing facilities.

15 "Biofuel processing facility" means a facility
16 that produces liquid or gaseous fuels from organic
17 sources such as biomass crops, agricultural residues,
18 and oil crops, including palm, canola, soybean, and
19 waste cooking oils; grease; food wastes; and animal
20 residues and wastes that can be used to generate
21 energy;



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

13 As used in this paragraph:

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

16 "Agricultural-energy enterprise" means an
17 enterprise that integrally incorporates an
18 agricultural activity with an agricultural-energy
19 facility.

20 "Agricultural-energy facility" means a facility
21 that generates, stores, or distributes renewable
22 energy as defined in section 269-91 or renewable fuel



1 including electrical or thermal energy or liquid or
2 gaseous fuels from products of agricultural activities
3 from agricultural lands located in the State.

4 "Appurtenances" means operational infrastructure
5 of the appropriate type and scale for the economic
6 commercial generation, storage, distribution, and
7 other similar handling of energy, including equipment,
8 feedstock, fuels, and other products of agricultural-
9 energy facilities;

10 (18) Construction and operation of wireless communication
11 antennas; provided that, for the purposes of this
12 paragraph, "wireless communication antenna" means
13 communications equipment that is either freestanding
14 or placed upon or attached to an already existing
15 structure and that transmits and receives
16 electromagnetic radio signals used in the provision of
17 all types of wireless communications services;
18 provided further that nothing in this paragraph shall
19 be construed to permit the construction of any new
20 structure that is not deemed a permitted use under
21 this subsection;



- 1 (19) Agricultural education programs conducted on a farming
2 operation as defined in section 165-2, for the
3 education and participation of the general public;
4 provided that the agricultural education programs are
5 accessory and secondary to the principal agricultural
6 use of the parcels or lots on which the agricultural
7 education programs are to occur and do not interfere
8 with surrounding farm operations. For the purposes of
9 this [~~section,~~] paragraph, "agricultural education
10 programs" means activities or events designed to
11 promote knowledge and understanding of agricultural
12 activities and practices conducted on a farming
13 operation as defined in section 165-2;
- 14 (20) Solar energy facilities that do not occupy more than
15 ten per cent of the acreage of the parcel, or twenty
16 acres of land, whichever is lesser; provided that this
17 use shall not be permitted on lands with soil
18 classified by the land study bureau's detailed land
19 classification as overall (master) productivity rating
20 class A; or



1 [+] (21) [+] Geothermal resources exploration and geothermal
2 resources development, as defined under section
3 182-1."

4 3. By amending subsection (c) to read:

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

12 4. By amending subsection (f) to read:

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

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



1 other structures appropriate to the agricultural
2 activity carried on within the lot; 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 subdivided lot 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 SECTION 4. Section 205-4.6, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§205-4.6 Private restrictions on agricultural uses and**
15 **activities; not allowed.** Agricultural uses and activities as
16 defined in sections 205-2(d) [~~and~~], 205-4.5(a), and 205- on
17 lands classified as agricultural or designated as important
18 agricultural lands shall not be restricted by any private
19 agreement contained in any deed, agreement of sale, or other
20 conveyance of land recorded in the bureau of conveyances after
21 July 8, 2003, that subject such agricultural lands to any
22 servitude, including but not limited to covenants, easements, or



1 equitable and reciprocal negative servitudes. Any such private
2 restriction limiting or prohibiting agricultural use or activity
3 shall be voidable, subject to special restrictions enacted by
4 the county ordinance pursuant to section 46-4; except that
5 restrictions taken to protect environmental or cultural
6 resources, agricultural leases, utility easements, and access
7 easements shall not be subject to this section.

8 For purposes of this section, "agricultural leases" means
9 leases where the leased land is primarily utilized for purposes
10 set forth in section 205-4.5(a) [~~-~~] or 205- ."

11 SECTION 5. Section 205-5, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§205-5 Zoning.** (a) Except as herein provided, the
14 powers granted to counties under section 46-4 shall govern the
15 zoning within the districts, other than in conservation
16 districts. Conservation districts shall be governed by the
17 department of land and natural resources pursuant to chapter
18 183C.

19 (b) Within agricultural districts, excluding important
20 agricultural lands, uses compatible to the activities described
21 in section 205-2 as determined by the commission shall be
22 permitted; provided that accessory agricultural uses and



1 services described in sections 205-2 and 205-4.5 may be further
2 defined by each county by zoning ordinance. Each county shall
3 adopt ordinances setting forth procedures and requirements,
4 including provisions for enforcement, penalties, and
5 administrative oversight, for the review and permitting of
6 agricultural tourism uses and activities as an accessory use on
7 a working farm, or farming operation as defined in section
8 165-2. Ordinances shall include but not be limited to:

- 9 (1) Requirements for access to a farm, including road
10 width, road surface, and parking;
- 11 (2) Requirements and restrictions for accessory facilities
12 connected with the farming operation, including gift
13 shops and restaurants;
- 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



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



1 (c) Unless authorized by special permit issued pursuant to
2 this chapter, only the following uses shall be permitted within
3 rural districts:

4 (1) Low density residential uses;

5 (2) Agricultural uses;

6 (3) Golf courses, golf driving ranges, and golf-related
7 facilities;

8 (4) Public, quasi-public, and public utility facilities;
9 and

10 (5) Geothermal resources exploration and geothermal
11 resources development, as defined under section 182-1.

12 In addition, the minimum lot size for any low density
13 residential use shall be one-half acre and there shall be but
14 one dwelling house per one-half acre, except as provided for in
15 section 205-2.

16 (d) Uses and activities on important agricultural lands
17 shall be restricted to those permitted in section 205- . The
18 minimum lot size on important agricultural lands shall be not
19 less than ten acres, and no more than one farm dwelling shall be
20 permitted per lot of record."

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



1 "(a) Subject to this section, the county planning
2 commission may permit certain unusual and reasonable uses within
3 agricultural and rural districts other than those for which the
4 district is classified[-]; provided that special permits shall
5 be prohibited on lands designated as important agricultural
6 lands. Any person who desires to use the person's land within
7 an agricultural or rural district other than for an agricultural
8 or rural use, as the case may be, may petition the planning
9 commission of the county within which the person's land is
10 located for permission to use the person's land in the manner
11 desired. Each county may establish the appropriate fee for
12 processing the special permit petition. Copies of the special
13 permit petition shall be forwarded to the land use commission,
14 the office of planning, and the department of agriculture for
15 their review and comment."

16 SECTION 7. Section 205-8, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§205-8 Nonconforming uses.** (a) The lawful use of land
19 or buildings existing on the date of establishment of any
20 interim agricultural district and rural district in final form
21 may be continued although the use, including lot size, does not
22 conform to this chapter; provided that no nonconforming building



1 shall be replaced, reconstructed, or enlarged or changed to
2 another nonconforming use and no nonconforming use of land shall
3 be expanded or changed to another nonconforming use. In
4 addition, if any nonconforming use of land or building is
5 discontinued or held in abeyance for a period of one year, the
6 further continuation of such use shall be prohibited.

7 (b) The lawful use of land or buildings existing on July
8 1, 2014, on land designated as important agricultural lands that
9 do not conform to the uses in section 205- may be continued;
10 provided that no nonconforming use of land or buildings shall be
11 replaced, reconstructed, or enlarged or changed to another
12 nonconforming use. Any use of land or buildings without a
13 lawful permit shall be terminated within two years of
14 designation of the land as important agricultural land. Lots of
15 record on July 1, 2014, that do not conform to the minimum lot
16 size for lands designated as important agricultural lands may be
17 continued."

18 SECTION 8. Section 205-12, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§205-12 Enforcement.** The appropriate officer or agency
21 charged with the administration of county zoning laws shall
22 enforce within each county the use classification districts



1 adopted by the land use commission and the [~~restriction~~]
2 restrictions on use and the [~~condition~~] conditions relating to
3 agricultural districts under section 205-4.5 and important
4 agricultural lands under section 205- and shall report to the
5 commission all violations."

6 SECTION 9. Section 205-13, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§205-13 Penalty for violation.** Any person who violates
9 any provision under section 205-4.5[~~7~~] or section 205- , or any
10 [~~regulation established~~] rule adopted relating thereto, shall be
11 fined not more than \$5,000, and any person who violates any
12 other provision of this chapter, or any [~~regulation established~~]
13 rule adopted relating thereto, shall be fined not more than
14 \$1,000.

15 If any person cited for a violation under this chapter
16 fails to remove such violation within six months of such
17 citation and the violation continues to exist, such person shall
18 be subject to a citation for a new and separate violation.
19 There shall be a fine of not more than \$5,000 for any additional
20 violation.

21 Prior to the issuance of any citation for a violation, the
22 appropriate enforcement officer or agency shall notify the

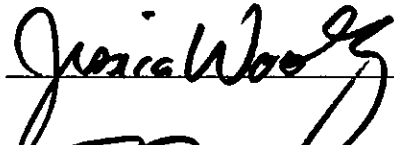

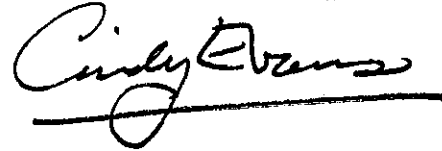


1 violator and the mortgagee, if any, of such violation, and the
2 violator or the mortgagee, if any, shall have not more than
3 sixty days to cure the violation before citation for a violation
4 is issued."

5 SECTION 10. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 11. This Act shall take effect upon its approval.
8

INTRODUCED BY:

JAN 23 2014



H.B. NO. 2629

Report Title:

Important Agricultural Lands; Permitted Uses

Description:

Supports agriculture in the State by clarifying and specifying permitted uses on Important Agricultural Lands.

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

