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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 there has been a  
2 proliferation of residential dwellings within agricultural  
3 districts that may not be occupied in connection with operation  
4 of an actual farm. This Act should reduce the attractiveness of  
5 agricultural land for subdivision and development into "fake  
6 farms" or "gentlemen's estates" on which agricultural activity  
7 is nonexistent, negligible, or inauthentic. The legislature  
8 intends that this Act promote actual agricultural activity on  
9 lots in agricultural districts and make agricultural land more  
10 available and affordable to farmers and agribusinesses.

11           The purpose of this Act is to:

12           (1) Establish a maximum floor area for a farm dwelling on  
13           a lot in an agricultural district; and

14           (2) Increase the minimum lot size in an agricultural  
15           district.

16           SECTION 2. Section 205-4.5, Hawaii Revised Statutes, is  
17 amended by amending subsection (a) to read as follows:



1           "(a) Within the agricultural district, all lands with soil  
2 classified by the land study bureau's detailed land  
3 classification as overall (master) productivity rating class A  
4 or B shall be restricted to the following permitted uses:

5           (1) Cultivation of crops, including crops for bioenergy,  
6           flowers, vegetables, foliage, fruits, forage, and  
7           timber;

8           (2) Game and fish propagation;

9           (3) Raising of livestock, including poultry, bees, fish,  
10           or other animal or aquatic life that are propagated  
11           for economic or personal use;

12           (4) Farm dwellings, employee housing, farm buildings, or  
13           activities or uses related to farming and animal  
14           husbandry. "Farm dwelling", as used in this  
15           paragraph, means a single-family dwelling located on  
16           and used in connection with a farm, including clusters  
17           of single-family farm dwellings permitted within  
18           agricultural parks developed by the State, or where  
19           agricultural activity provides income to the family  
20           occupying the dwelling[?]. A farm dwelling that has  
21           received final governmental approval for construction  
22           after June 30, 2013, shall have a floor area not



1 greater than two thousand square feet. "Floor area"  
2 means the area of all floors under the roof of a farm  
3 dwelling, measured from the exterior faces of the  
4 exterior walls of the dwelling. "Floor area" includes  
5 the area under the roof of any basement or any attic  
6 not less than seven feet in height. The land use  
7 commission may adopt rules pursuant to chapter 91 to  
8 further define "floor area" consistent with this  
9 paragraph;

10 (5) Public institutions and buildings that are necessary  
11 for agricultural practices;

12 (6) Public and private open area types of recreational  
13 uses, including day camps, picnic grounds, parks, and  
14 riding stables, but not including dragstrips,  
15 airports, drive-in theaters, golf courses, golf  
16 driving ranges, country clubs, and overnight camps;

17 (7) Public, private, and quasi-public utility lines and  
18 roadways, transformer stations, communications  
19 equipment buildings, solid waste transfer stations,  
20 major water storage tanks, and appurtenant small  
21 buildings such as booster pumping stations, but not  
22 including offices or yards for equipment, material,



- 1           vehicle storage, repair or maintenance, treatment  
2           plants, corporation yards, or other similar  
3           structures;
- 4           (8) Retention, restoration, rehabilitation, or improvement  
5           of buildings or sites of historic or scenic interest;
- 6           (9) Agricultural-based commercial operations as described  
7           in section [†]205-2(d)(15)[†];
- 8           (10) Buildings and uses, including mills, storage, and  
9           processing facilities, maintenance facilities,  
10          photovoltaic, biogas, and other small-scale renewable  
11          energy systems producing energy solely for use in the  
12          agricultural activities of the fee or leasehold owner  
13          of the property, and vehicle and equipment storage  
14          areas that are normally considered directly accessory  
15          to the above-mentioned uses and are permitted under  
16          section 205-2(d);
- 17          (11) Agricultural parks;
- 18          (12) Plantation community subdivisions, which as used in  
19          this chapter means an established subdivision or  
20          cluster of employee housing, community buildings, and  
21          agricultural support buildings on land currently or  
22          formerly owned, leased, or operated by a sugar or



1 pineapple plantation; provided that the existing  
2 structures may be used or rehabilitated for use, and  
3 new employee housing and agricultural support  
4 buildings may be allowed on land within the  
5 subdivision as follows:

6 (A) The employee housing is occupied by employees or  
7 former employees of the plantation who have a  
8 property interest in the land;

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

12 (C) The agricultural support buildings shall be  
13 rented or leased to agricultural business  
14 operators or agricultural support services;

15 (13) Agricultural tourism conducted on a working farm, or a  
16 farming operation as defined in section 165-2, for the  
17 enjoyment, education, or involvement of visitors;  
18 provided that the agricultural tourism activity is  
19 accessory and secondary to the principal agricultural  
20 use and does not interfere with surrounding farm  
21 operations; and provided further that this paragraph  
22 shall apply only to a county that has adopted



1           ordinances regulating agricultural tourism under  
2           section 205-5;

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

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

20          (16) Biofuel processing facilities, including the  
21          appurtenances associated with the production and  
22          refining of biofuels that [~~is~~] are normally considered



1 directly accessory and secondary to the growing of the  
2 energy feedstock; provided that biofuel processing  
3 facilities and appurtenances do not adversely impact  
4 agricultural land and other agricultural uses in the  
5 vicinity.

6 For the purposes of this paragraph:

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

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

19 (17) 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 paragraphs (1) to (3) of this subsection.

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;

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

19 (19) Agricultural education programs conducted on a farming  
20 operation as defined in section 165-2, for the  
21 education and participation of the general public;  
22 provided that the agricultural education programs are



1           accessory and secondary to the principal agricultural  
2           use of the parcels or lots on which the agricultural  
3           education programs are to occur and do not interfere  
4           with surrounding farm operations. For the purposes of  
5           this section, "agricultural education programs" means  
6           activities or events designed to promote knowledge and  
7           understanding of agricultural activities and practices  
8           conducted on a farming operation as defined in section  
9           165-2;

10       (20) Solar energy facilities that do not occupy more than  
11       ten per cent of the acreage of the parcel, or twenty  
12       acres of land, whichever is lesser; provided that this  
13       use shall not be permitted on lands with soil  
14       classified by the land study bureau's detailed land  
15       classification as overall (master) productivity rating  
16       class A; or

17       [+] (21) [+] Geothermal resources exploration and geothermal  
18       resources development, as defined under section 182-  
19       1."

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



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

- 13           (1) Requirements for access to a farm, including road  
14           width, road surface, and parking;
- 15           (2) Requirements and restrictions for accessory facilities  
16           connected with the farming operation, including gift  
17           shops and restaurants;
- 18           (3) Activities that may be offered by the farming  
19           operation for visitors;
- 20           (4) Days and hours of operation; and
- 21           (5) Automatic termination of the accessory use upon the  
22           cessation of the farming operation.



1 Each county may require an environmental assessment under  
2 chapter 343 as a condition to any agricultural tourism use and  
3 activity. Other uses may be allowed by special permits issued  
4 pursuant to this chapter. The minimum lot size in agricultural  
5 districts shall be determined by each county by zoning  
6 ordinance, subdivision ordinance, or other lawful means;  
7 provided that the minimum lot size for any lot in the  
8 agricultural ~~[use]~~ district shall ~~[not]~~ be not less than ~~[one~~  
9 ~~aere,~~ five acres, except as provided herein. If the county  
10 finds that unreasonable economic hardship to the owner or lessee  
11 of land cannot otherwise be prevented or where land  
12 ~~[utilization]~~ use is improved, the county may allow lot sizes of  
13 less than the minimum lot size as specified by law for lots  
14 created by a consolidation of existing lots within an  
15 agricultural district and the resubdivision thereof; provided  
16 that the consolidation and resubdivision do not result in an  
17 increase in the number of lots over the number existing prior to  
18 consolidation; and provided further that in no event shall a lot  
19 ~~[which]~~ that is equal to or exceeds the minimum lot size of ~~[one~~  
20 ~~aere]~~ five acres be less than that minimum after the  
21 consolidation and resubdivision action. The county may also  
22 allow lot sizes of less than the minimum lot size as specified



1 by law for lots created or used for plantation community  
 2 subdivisions as defined in section 205-4.5(a)(12), for public,  
 3 private, and quasi-public utility purposes, and for lots  
 4 resulting from the subdivision of abandoned roadways and  
 5 railroad easements."

6 SECTION 4. Statutory material to be repealed is bracketed  
 7 and stricken. New statutory material is underscored.

8 SECTION 5. This Act shall take effect on July 1, 2013.  
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INTRODUCED BY:

*[Handwritten signatures and names]*  
 Calvin H. Day  
 Linda Schizone  
 [Signature]

JAN 18 2013



**Report Title:**

Agriculture; Farm Dwelling

**Description:**

Establishes maximum floor area of 2,000 square feet for a farm dwelling in the agricultural district and increases the minimum lot size in the agricultural district to five acres.

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

