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## A BILL FOR AN ACT

RELATING TO AGRICULTURAL LANDS.

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

1           SECTION 1. Section 205-4.5, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "§205-4.5 Permissible uses within the agricultural  
4 districts. (a) Within the agricultural district, all lands  
5 with soil classified by the land study bureau's detailed land  
6 classification as overall (master) productivity rating class A  
7 or B and for solar energy facilities, class B or C, shall be  
8 restricted to the following permitted uses:

- 9           (1) Cultivation of crops, including crops for bioenergy,  
10           flowers, vegetables, foliage, fruits, forage, and  
11           timber;
- 12           (2) Game and fish propagation;
- 13           (3) Raising of livestock, including poultry, bees, fish,  
14           or other animal or aquatic life that are propagated  
15           for economic or personal use;
- 16           (4) Farm dwellings, employee housing, farm buildings, or  
17           activities or uses related to farming and animal



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

8 (5) Public institutions and buildings that are necessary  
9 for agricultural practices;

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

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



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



1 shall apply only to a county that has adopted  
2 ordinances regulating agricultural tourism under  
3 section 205-5;

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

15 (15) Wind energy facilities, including the appurtenances  
16 associated with the production and transmission of  
17 wind generated energy; provided that the wind energy  
18 facilities and appurtenances are compatible with  
19 agriculture uses and cause minimal adverse impact on  
20 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 biofuel 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~~  
16                        ~~subsection~~].

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



1            "Agricultural-energy facility" means a facility  
2            that generates, stores, or distributes renewable  
3            energy as defined in section 269-91 or renewable fuel  
4            including electrical or thermal energy or liquid or  
5            gaseous fuels from products of agricultural activities  
6            from agricultural lands located in the State.

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

13        (18) Construction and operation of wireless communication  
14           antennas; provided that, for the purposes of this  
15           paragraph, "wireless communication antenna" means  
16           communications equipment that is either freestanding  
17           or placed upon or attached to an already existing  
18           structure and that transmits and receives  
19           electromagnetic radio signals used in the provision of  
20           all types of wireless communications services;  
21           provided further that nothing in this paragraph shall





1 be construed to permit the construction of any new  
2 structure that is not deemed a permitted use under  
3 this subsection;

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

17 (20) Solar energy facilities that do not occupy more than  
18 ten per cent of the acreage of the parcel, or twenty  
19 acres of land, whichever is lesser or for which a  
20 special use permit is granted pursuant to section 205-  
21 6; provided that this use shall not be permitted on



1 lands with soil classified by the land study bureau's  
2 detailed land classification as overall (master)  
3 productivity rating class A unless the solar energy  
4 facilities are:

5 (A) Located on a paved or unpaved road in existence  
6 as of December 31, 2013, and the parcel of land  
7 upon which the paved or unpaved road is located  
8 has a valid county agriculture tax dedication  
9 status or a valid agricultural conservation  
10 easement;

11 (B) Placed in a manner that still allows vehicular  
12 traffic to use the road; and

13 (C) Granted a special use permit by the commission  
14 pursuant to section 205-6;

15 (21) Solar energy facilities on lands with soil classified  
16 by the land study bureau's detailed land  
17 classification as overall (master) productivity rating  
18 B or C for which a special use permit is granted  
19 pursuant to section 205-6; provided that:

20 (A) The area occupied by the solar energy facilities  
21 is also made available for compatible



1 agricultural activities at a lease rate that is  
2 at least fifty per cent below the fair market  
3 rent for comparable properties;

4 (B) Proof of financial security to decommission the  
5 facility is provided to the satisfaction of the  
6 appropriate county planning commission prior to  
7 date of commencement of commercial generation;  
8 and

9 (C) Solar energy facilities shall be decommissioned  
10 at the owner's expense according to the following  
11 requirements:

12 (i) Removal of all equipment related to the  
13 solar energy facility within twelve months  
14 of the conclusion of operation or useful  
15 life; and

16 (ii) Restoration of the disturbed earth to  
17 substantially the same physical condition as  
18 existed prior to the development of the  
19 solar energy facility.



1 For the purposes of this paragraph, "agricultural  
2 activities" means the activities described in  
3 paragraphs (1) to (3);

4 (22) Geothermal resources exploration and geothermal  
5 resources development, as defined under section 182-1;  
6 or

7 (23) Hydroelectric facilities, including the appurtenances  
8 associated with the production and transmission of  
9 hydroelectric energy, subject to section 205-2;  
10 provided that the hydroelectric facilities and their  
11 appurtenances:

12 (A) Have a hydroelectric generating capacity of not  
13 more than five hundred kilowatts;

14 (B) Comply with the state water code, chapter 174C;

15 (C) Are accessory to agricultural activities on  
16 agricultural land for agricultural use only; and

17 (D) Do not adversely impact or impede the use of  
18 agricultural land or the availability of surface  
19 or ground water for all uses on all parcels that  
20 are served by the ground water sources or streams



1                   for which hydroelectric facilities are  
2                   considered.

3           (b) Uses not expressly permitted in subsection (a) shall  
4 be prohibited, except the uses permitted as provided in sections  
5 205-6 and 205-8, and construction of single-family dwellings on  
6 lots existing before June 4, 1976. Any other law to the  
7 contrary notwithstanding, no subdivision of land within the  
8 agricultural district with soil classified by the land study  
9 bureau's detailed land classification as overall (master)  
10 productivity rating class A or B shall be approved by a county  
11 unless those A and B lands within the subdivision are made  
12 subject to the restriction on uses as prescribed in this section  
13 and to the condition that the uses shall be primarily in pursuit  
14 of an agricultural activity.

15           Any deed, lease, agreement of sale, mortgage, or other  
16 instrument of conveyance covering any land within the  
17 agricultural subdivision shall expressly contain the restriction  
18 on uses and the condition, as prescribed in this section that  
19 these restrictions and conditions shall be encumbrances running  
20 with the land until such time that the land is reclassified to a  
21 land use district other than agricultural district.



1           If the foregoing requirement of encumbrances running with  
2 the land jeopardizes the owner or lessee in obtaining mortgage  
3 financing from any of the mortgage lending agencies set forth in  
4 the following paragraph, and the requirement is the sole reason  
5 for failure to obtain mortgage financing, then the requirement  
6 of encumbrances shall, insofar as such mortgage financing is  
7 jeopardized, be conditionally waived by the appropriate county  
8 enforcement officer; provided that the conditional waiver shall  
9 become effective only in the event that the property is  
10 subjected to foreclosure proceedings by the mortgage lender.

11           The mortgage lending agencies referred to in the preceding  
12 paragraph are the Federal Housing Administration, Federal  
13 National Mortgage Association, Veterans Administration, Small  
14 Business Administration, United States Department of  
15 Agriculture, Federal Land Bank of Berkeley, Federal Intermediate  
16 Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and any  
17 other federal, state, or private mortgage lending agency  
18 qualified to do business in Hawaii, and their respective  
19 successors and assigns.

20           (c) Within the agricultural district, all lands with soil  
21 classified by the land study bureau's detailed land



1 classification as overall (master) productivity rating class C,  
2 D, E, or U shall be restricted to the uses permitted for  
3 agricultural districts as set forth in section 205-5(b).

4 (d) Notwithstanding any other provision of this chapter to  
5 the contrary, golf courses and golf driving ranges approved by a  
6 county before July 1, 2005, for development within the  
7 agricultural district shall be permitted uses within the  
8 agricultural district.

9 (e) Notwithstanding any other provision of this chapter to  
10 the contrary, plantation community subdivisions as defined in  
11 this section shall be permitted uses within the agricultural  
12 district, and section 205-8 shall not apply.

13 [f] (f) [f] Notwithstanding any other law to the contrary,  
14 agricultural lands may be subdivided and leased for the  
15 agricultural uses or activities permitted in subsection (a);  
16 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 (g) Lands within the agricultural district, regardless of  
13 acreage, may be subdivided into no more than five lots for each  
14 subdivision if for the purpose of selling or otherwise assigning  
15 the fee simple interest in any of the lots; provided that the  
16 limitation in this subsection shall not apply to the sale or  
17 other assignment of the fee simple interest in all of the  
18 resulting lots to a family member within the second degree of  
19 consanguinity of the landowner."

20 SECTION 2. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.





# H.B. NO. 2045

1 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY:

*[Signature]*  
*Cindy Evans*  
~~*[Signature]*~~  
*[Signature]*  
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*[Signature]*  
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JAN 22 2016



# H.B. NO. 2015

**Report Title:**

Land Use; Agricultural District Lands; Subdivisions

**Description:**

Limits subdivisions of agricultural district lands to no more than five lots if the fee simple interest in any of the lots is being sold or otherwise transferred to anyone within the second degree of consanguinity of the landowner.

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

