
A BILL FOR AN ACT

RELATING TO HOUSING ON AGRICULTURAL LAND.

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

1 SECTION 1. The legislature finds that the lack of housing
2 on agricultural lands has created hardships for many low-income
3 farmworkers and farm employers. Unable to find housing,
4 agricultural workers may pay higher rents, commute longer
5 distances, and inhibit their opportunity to accumulate assets.
6 Without the ability to provide housing, many employers find it
7 difficult to recruit and retain a viable workforce causing many
8 small and family owned farms financial distress.

9 The purpose of this Act is to allow agricultural land
10 owners to develop on-farm and near-farm housing serving the
11 needs of both farmworkers and agricultural employers. The
12 development of secure, safe, efficient, and affordable housing
13 will help support Hawaii's valuable agricultural industry.
14 Further, farmworker housing can be one method to help achieve
15 Hawaii's affordable housing goals by fostering an adequate and
16 diverse supply.



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

3 "(d) Agricultural districts shall include:

4 (1) Activities or uses as characterized by the cultivation
5 of crops, crops for bioenergy, orchards, forage, and
6 forestry;

7 (2) Farming activities or uses related to animal husbandry
8 and game and fish propagation;

9 (3) Aquaculture, which means the production of aquatic
10 plant and animal life within ponds and other bodies of
11 water;

12 (4) Wind generated energy production for public, private,
13 and commercial use;

14 (5) Biofuel production, as described in section
15 205-4.5(a)(16), for public, private, and commercial
16 use;

17 (6) Solar energy facilities; provided that:

18 (A) This paragraph shall apply only to land with soil
19 classified by the land study bureau's detailed
20 land classification as overall (master)
21 productivity rating class B, C, D, or E; and



H.B. NO. 2752

1 (B) Solar energy facilities placed within land with
2 soil classified as overall productivity rating
3 class B or C shall not occupy more than ten per
4 cent of the acreage of the parcel, or twenty
5 acres of land, whichever is lesser, unless a
6 special use permit is granted pursuant to section
7 205-6;

8 (7) Bona fide agricultural services and uses that support
9 the agricultural activities of the fee or leasehold
10 owner of the property and accessory to any of the
11 above activities, regardless of whether conducted on
12 the same premises as the agricultural activities to
13 which they are accessory, including farm dwellings [~~as~~
14 ~~defined in section 205-4.5(a)(4),~~] and employee
15 housing[~~7~~] as provided in section 205-4.5(a)(4), farm
16 buildings, mills, storage facilities, processing
17 facilities, photovoltaic, biogas, and other small-
18 scale renewable energy systems producing energy solely
19 for use in the agricultural activities of the fee or
20 leasehold owner of the property, agricultural-energy
21 facilities as defined in section 205-4.5(a)(17),



1 hydroelectric facilities in accordance with section
2 205-4.5(a)(23), vehicle and equipment storage areas,
3 and plantation community subdivisions as defined in
4 section 205-4.5(a)(12);
5 (8) Wind machines and wind farms;
6 (9) Small-scale meteorological, air quality, noise, and
7 other scientific and environmental data collection and
8 monitoring facilities occupying less than one-half
9 acre of land; provided that these facilities shall not
10 be used as or equipped for use as living quarters or
11 dwellings;
12 (10) Agricultural parks;
13 (11) Agricultural tourism conducted on a working farm, or a
14 farming operation as defined in section 165-2, for the
15 enjoyment, education, or involvement of visitors;
16 provided that the agricultural tourism activity is
17 accessory and secondary to the principal agricultural
18 use and does not interfere with surrounding farm
19 operations; and provided further that this paragraph
20 shall apply only to a county that has adopted



- 1 ordinances regulating agricultural tourism under
2 section 205-5;
- 3 (12) 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 (13) Open area recreational facilities;
- 15 (14) Geothermal resources exploration and geothermal
16 resources development, as defined under section 182-1;
17 and
- 18 (15) Agricultural-based commercial operations, including:
19 (A) A roadside stand that is not an enclosed
20 structure, owned and operated by a producer for
21 the display and sale of agricultural products



1 grown in Hawaii and value-added products that
2 were produced using agricultural products grown
3 in Hawaii;

4 (B) Retail activities in an enclosed structure owned
5 and operated by a producer for the display and
6 sale of agricultural products grown in Hawaii,
7 value-added products that were produced using
8 agricultural products grown in Hawaii, logo items
9 related to the producer's agricultural
10 operations, and other food items; and

11 (C) A retail food establishment owned and operated by
12 a producer and permitted under title 11, chapter
13 12 of the rules of the department of health that
14 prepares and serves food at retail using products
15 grown in Hawaii and value-added products that
16 were produced using agricultural products grown
17 in Hawaii.

18 The owner of an agricultural-based commercial
19 operation shall certify, upon request of an officer or
20 agent charged with enforcement of this chapter under
21 section 205-12, that the agricultural products



1 displayed or sold by the operation meet the
2 requirements of this paragraph.

3 Agricultural districts shall not include golf courses and golf
4 driving ranges, except as provided in section 205-4.5(d).

5 Agricultural districts include areas that are not used for, or
6 that are not suited to, agricultural and ancillary activities by
7 reason of topography, soils, and other related characteristics."

8 SECTION 3. Section 205-4.5, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

10 "(a) Within the agricultural district, all lands with soil
11 classified by the land study bureau's detailed land
12 classification as overall (master) productivity rating class A
13 or B and for solar energy facilities, class B or C, shall be
14 restricted to the following permitted uses:

- 15 (1) Cultivation of crops, including crops for bioenergy,
16 flowers, vegetables, foliage, fruits, forage, and
17 timber;
- 18 (2) Game and fish propagation;
- 19 (3) Raising of livestock, including poultry, bees, fish,
20 or other animal or aquatic life that are propagated
21 for economic or personal use;



1 (4) Farm dwellings, employee housing, farm buildings, or
2 activities or uses related to farming and animal
3 husbandry[-]; provided that:

4 (A) The farm dwellings and employee housing units
5 shall be used exclusively by farmers and their
6 immediate family members who actively and
7 currently farm on agricultural land upon which
8 the dwelling is situated; provided further that
9 the immediate family members of the farmer may
10 reside in separate dwelling units situated on the
11 same designated land;

12 (B) Employee housing units shall be used exclusively
13 by employees and their immediate family members
14 who actively and currently work on agricultural
15 land upon which the housing unit is situated;
16 provided further that the immediate family
17 members of the employee shall not reside in
18 separate housing units and shall reside with the
19 employee;

20 (C) The total land area upon which the farm dwellings
21 and employee housing units and all appurtenances



1 are situated shall not occupy more than five per
2 cent of the total agricultural land area
3 controlled by the farmer or the employee's
4 employer or fifty acres, whichever is less;

5 (D) No farm dwelling or employee housing unit shall
6 exceed one dwelling per five acres of lot area.

7 The owner or lessee of the lot shall meet two of
8 the following three criteria:

9 (1) Provide proof of at least \$35,000 of gross sales
10 of agricultural product(s) per year, for the
11 preceding two consecutive years, for each farm
12 labor dwelling on the lot, as shown by State
13 general excise tax forms and federal form 1040
14 Schedule F filings;

15 (2) Provide certification by the department of water
16 supply that agricultural water rates are being
17 paid if the subject lot is served by the county
18 water system; or

19 (3) Provide a five year farm plan that demonstrates
20 the feasibility of commercial agricultural
21 production, after which the \$35,000 of gross



H.B. NO. 2752

1 sales of agricultural product(s) per year
2 requirement must be met.
3 (E) The farm dwellings and employee housing units
4 shall meet all applicable building code
5 requirements;
6 (F) Notwithstanding section 205-4.5(a)(12), the
7 landowner shall not plan or develop a residential
8 subdivision on the agricultural land;
9 (G) Consideration may be given to the cluster
10 development of farm dwellings and employee
11 housing units to maximize the land area available
12 for agricultural production; and
13 (H) The plans for farm dwellings and employee housing
14 units shall be supported by agricultural plans
15 that are approved by the department of
16 agriculture.
17 "Farm dwelling", as used in this paragraph, means a
18 single-family dwelling located on and used in
19 connection with a farm, including clusters of single-
20 family farm dwellings permitted within agricultural
21 parks developed by the State, or where agricultural



- 1 activity provides income to the family occupying the
2 dwelling;
- 3 (5) Public institutions and buildings that are necessary
4 for agricultural practices;
- 5 (6) Public and private open area types of recreational
6 uses, including day camps, picnic grounds, parks, and
7 riding stables, but not including dragstrips,
8 airports, drive-in theaters, golf courses, golf
9 driving ranges, country clubs, and overnight camps;
- 10 (7) Public, private, and quasi-public utility lines and
11 roadways, transformer stations, communications
12 equipment buildings, solid waste transfer stations,
13 major water storage tanks, and appurtenant small
14 buildings such as booster pumping stations, but not
15 including offices or yards for equipment, material,
16 vehicle storage, repair or maintenance, treatment
17 plants, corporation yards, or other similar
18 structures;
- 19 (8) Retention, restoration, rehabilitation, or improvement
20 of buildings or sites of historic or scenic interest;



- 1 (9) Agricultural-based commercial operations as described
- 2 in section 205-2(d)(15);
- 3 (10) Buildings and uses, including mills, storage, and
- 4 processing facilities, maintenance facilities,
- 5 photovoltaic, biogas, and other small-scale renewable
- 6 energy systems producing energy solely for use in the
- 7 agricultural activities of the fee or leasehold owner
- 8 of the property, and vehicle and equipment storage
- 9 areas that are normally considered directly accessory
- 10 to the above-mentioned uses and are permitted under
- 11 section 205-2(d);
- 12 (11) Agricultural parks;
- 13 (12) Plantation community subdivisions, which as used in
- 14 this chapter means an established subdivision or
- 15 cluster of employee housing, community buildings, and
- 16 agricultural support buildings on land currently or
- 17 formerly owned, leased, or operated by a sugar or
- 18 pineapple plantation; provided that the existing
- 19 structures may be used or rehabilitated for use, and
- 20 new employee housing and agricultural support



1 buildings may be allowed on land within the
2 subdivision as follows:

3 (A) The employee housing is occupied by employees or
4 former employees of the plantation who have a
5 property interest in the land;

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

9 (C) The agricultural support buildings shall be
10 rented or leased to agricultural business
11 operators or agricultural support services;

12 (13) Agricultural tourism conducted on a working farm, or a
13 farming operation as defined in section 165-2, for the
14 enjoyment, education, or involvement of visitors;
15 provided that the agricultural tourism activity is
16 accessory and secondary to the principal agricultural
17 use and does not interfere with surrounding farm
18 operations; and provided further that this paragraph
19 shall apply only to a county that has adopted
20 ordinances regulating agricultural tourism under
21 section 205-5;



- 1 (14) Agricultural tourism activities, including overnight
2 accommodations of twenty-one days or less, for any one
3 stay within a county; provided that this paragraph
4 shall apply only to a county that includes at least
5 three islands and has adopted ordinances regulating
6 agricultural tourism activities pursuant to section
7 205-5; provided further that the agricultural tourism
8 activities coexist with a bona fide agricultural
9 activity. For the purposes of this paragraph, "bona
10 fide agricultural activity" means a farming operation
11 as defined in section 165-2;
- 12 (15) Wind energy facilities, including the appurtenances
13 associated with the production and transmission of
14 wind generated energy; provided that the wind energy
15 facilities and appurtenances are compatible with
16 agriculture uses and cause minimal adverse impact on
17 agricultural land;
- 18 (16) Biofuel processing facilities, including the
19 appurtenances associated with the production and
20 refining of biofuels that is normally considered
21 directly accessory and secondary to the growing of the



1 energy feedstock; provided that biofuel processing
2 facilities and appurtenances do not adversely impact
3 agricultural land and other agricultural uses in the
4 vicinity.

5 For the purposes of this paragraph:

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

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

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



1 provided that the agricultural education programs are
2 accessory and secondary to the principal agricultural
3 use of the parcels or lots on which the agricultural
4 education programs are to occur and do not interfere
5 with surrounding farm operations. For the purposes of
6 this section, "agricultural education programs" means
7 activities or events designed to promote knowledge and
8 understanding of agricultural activities and practices
9 conducted on a farming operation as defined in section
10 165-2;

11 (20) Solar energy facilities that do not occupy more than
12 ten per cent of the acreage of the parcel, or twenty
13 acres of land, whichever is lesser or for which a
14 special use permit is granted pursuant to section 205-
15 6; provided that this use shall not be permitted on
16 lands with soil classified by the land study bureau's
17 detailed land classification as overall (master)
18 productivity rating class A unless the solar energy
19 facilities are:

20 (A) Located on a paved or unpaved road in existence
21 as of December 31, 2013, and the parcel of land



1 upon which the paved or unpaved road is located
2 has a valid county agriculture tax dedication
3 status or a valid agricultural conservation
4 easement;

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

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

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

14 (A) The area occupied by the solar energy facilities
15 is also made available for compatible
16 agricultural activities at a lease rate that is
17 at least fifty per cent below the fair market
18 rent for comparable properties;

19 (B) Proof of financial security to decommission the
20 facility is provided to the satisfaction of the
21 appropriate county planning commission prior to



1 date of commencement of commercial generation;
2 and
3 (C) Solar energy facilities shall be decommissioned
4 at the owner's expense according to the following
5 requirements:

6 (i) Removal of all equipment related to the
7 solar energy facility within twelve months
8 of the conclusion of operation or useful
9 life; and

10 (ii) Restoration of the disturbed earth to
11 substantially the same physical condition as
12 existed prior to the development of the
13 solar energy facility.

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

17 (22) Geothermal resources exploration and geothermal
18 resources development, as defined under section 182-1;
19 or

20 (23) Hydroelectric facilities, including the appurtenances
21 associated with the production and transmission of



H.B. NO. 2752

1 hydroelectric energy, subject to section 205-2;
 2 provided that the hydroelectric facilities and their
 3 appurtenances:
 4 (A) Have a hydroelectric generating capacity of not
 5 more than five hundred kilowatts;
 6 (B) Comply with the state water code, chapter 174C;
 7 (C) Are accessory to agricultural activities on
 8 agricultural land for agricultural use only; and
 9 (D) Do not adversely impact or impede the use of
 10 agricultural land or the availability of surface
 11 or ground water for all uses on all parcels that
 12 are served by the ground water sources or streams
 13 for which hydroelectric facilities are
 14 considered."

15 SECTION 4. Statutory material to be repealed is bracketed
 16 and stricken. New statutory material is underscored.

17 SECTION 5. This Act shall take effect upon its approval.
 18

INTRODUCED BY:

Tou Bar Ka Lf J. Phil. Mats
Lyn DeLoite Romy M. Lamb
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H.B. NO. 2752

A handwritten signature in black ink, appearing to be "A. J. ...", written in a cursive style.

JAN 27 2016



H.B. NO. 2752

Report Title:

Agricultural Land; Dwellings; Employee Housing.

Description:

Limits dwellings and employee housing on agricultural land to farmers and immediate family members. Establishes standards for dwellings and employee housing on agricultural land.

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

