
A BILL FOR AN ACT

RELATING TO AGRICULTURAL LANDS.

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

1 SECTION 1. The legislature finds that the resident
2 population of Hawaii county is approximately 200,000 and that
3 much of the land on the island of Hawaii is located within the
4 agricultural district on lands with soil classified by the land
5 study bureau's detailed land classification as overall (master)
6 productivity rating class C, D, E, or U.

7 The legislature further finds that bed and breakfast
8 accommodations are a type of visitor accommodation that provides
9 much-needed jobs in agricultural districts and is very popular
10 with visitors to the State. The legislature further finds that
11 bed and breakfast accommodations can provide emergency shelter
12 in remoter parts of Hawaii island during times of disaster or
13 emergency.

14 Therefore, the purpose of this Act is to allow bed and
15 breakfast accommodations within the agricultural district on
16 lands with soil classified by the land study bureau's detailed
17 land classification as overall (master) productivity rating



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1 class C, D, E, or U in a county with an area greater than 4,000
2 square miles.

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

5 "(d) Agricultural districts shall include:

- 6 (1) Activities or uses as characterized by the cultivation
7 of crops, crops for bioenergy, orchards, forage, and
8 forestry;
- 9 (2) Farming activities or uses related to animal husbandry
10 and game and fish propagation;
- 11 (3) Aquaculture, which means the production of aquatic
12 plant and animal life within ponds and other bodies of
13 water;
- 14 (4) Wind-generated energy production for public, private,
15 and commercial use;
- 16 (5) Biofuel production, as described in section
17 205-4.5(a)(16), for public, private, and commercial
18 use;
- 19 (6) Solar energy facilities; provided that:
 - 20 (A) This paragraph shall apply only to land with soil
21 classified by the land study bureau's detailed



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1 land classification as overall (master)
2 productivity rating class B, C, D, or E; and
3 (B) Solar energy facilities placed within land with
4 soil classified as overall productivity rating
5 class B or C shall not occupy more than ten per
6 cent of the acreage of the parcel, or twenty
7 acres of land, whichever is lesser, unless a
8 special use permit is granted pursuant to section
9 205-6;
10 (7) Bona fide agricultural services and uses that support
11 the agricultural activities of the fee or leasehold
12 owner of the property and accessory to any of the
13 above activities, regardless of whether conducted on
14 the same premises as the agricultural activities to
15 which they are accessory, including farm dwellings as
16 defined in section 205-4.5(a)(4), employee housing,
17 farm buildings, mills, storage facilities, processing
18 facilities, photovoltaic, biogas, and other small-
19 scale renewable energy systems producing energy solely
20 for use in the agricultural activities of the fee or
21 leasehold owner of the property, agricultural-energy



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1 facilities as defined in section 205-4.5(a)(17),
2 vehicle and equipment storage areas, and plantation
3 community subdivisions as defined in section
4 205-4.5(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 (15) Agricultural-based commercial operations registered in
18 Hawaii, 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



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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;

11 (C) A retail food establishment owned and operated by
12 a producer and permitted under chapter 11-50,
13 Hawaii administrative rules, that prepares and
14 serves food at retail using products grown in
15 Hawaii and value-added products that were
16 produced using agricultural products grown in
17 Hawaii;

18 (D) A farmers' market, which is an outdoor market
19 limited to producers selling agricultural
20 products grown in Hawaii and value-added products



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1 that were produced using agricultural products
2 grown in Hawaii; and

3 (E) A food hub, which is a facility that may contain
4 a commercial kitchen and provides for the
5 storage, processing, distribution, and sale of
6 agricultural products grown in Hawaii and value-
7 added products that were produced using
8 agricultural products grown in Hawaii.

9 The owner of an agricultural-based commercial
10 operation shall certify, upon request of an officer or
11 agent charged with enforcement of this chapter under
12 section 205-12, that the agricultural products
13 displayed or sold by the operation meet the
14 requirements of this paragraph; [~~and~~]

15 (16) Hydroelectric facilities as described in section
16 205-4.5(a)(23) [~~-~~]; and

17 (17) Bed and breakfast accommodations on lands with soil
18 classified by the land study bureau's detailed land
19 classification as overall (master) productivity rating
20 C, D, E, or U; provided that this paragraph shall only



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1 apply to bed and breakfast accommodations in a county
2 with an area greater than 4,000 square miles.

3 As used in this paragraph:

4 "Bed and breakfast accommodations" means a
5 single-family dwelling occupied by an owner or a guest
6 house let for consideration for less than thirty days
7 and in which overnight accommodations and only
8 breakfast meals are provided.

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

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

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

16 1. By amending subsection (a) to read:

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



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- 1 (1) Cultivation of crops, including crops for bioenergy,
2 flowers, vegetables, foliage, fruits, forage, and
3 timber;
- 4 (2) Game and fish propagation;
- 5 (3) Raising of livestock, including poultry, bees, fish,
6 or other animal or aquatic life that are propagated
7 for economic or personal use;
- 8 (4) Farm dwellings, employee housing, farm buildings, or
9 activities or uses related to farming and animal
10 husbandry. "Farm dwelling", as used in this
11 paragraph, means a single-family dwelling located on
12 and used in connection with a farm, including clusters
13 of single-family farm dwellings permitted within
14 agricultural parks developed by the State, or where
15 agricultural activity provides income to the family
16 occupying the dwelling;
- 17 (5) Public institutions and buildings that are necessary
18 for agricultural practices;
- 19 (6) Public and private open area types of recreational
20 uses, including day camps, picnic grounds, parks, and
21 riding stables, but not including dragstrips,



- 1 airports, drive-in theaters, golf courses, golf
2 driving ranges, country clubs, and overnight camps;
- 3 (7) Public, private, and quasi-public utility lines and
4 roadways, transformer stations, communications
5 equipment buildings, solid waste transfer stations,
6 major water storage tanks, and appurtenant small
7 buildings such as booster pumping stations, but not
8 including offices or yards for equipment, material,
9 vehicle storage, repair or maintenance, treatment
10 plants, corporation yards, or other similar
11 structures;
- 12 (8) Retention, restoration, rehabilitation, or improvement
13 of buildings or sites of historic or scenic interest;
- 14 (9) Agricultural-based commercial operations as described
15 in section 205-2(d)(15);
- 16 (10) Buildings and uses, including mills, storage, and
17 processing facilities, maintenance facilities,
18 photovoltaic, biogas, and other small-scale renewable
19 energy systems producing energy solely for use in the
20 agricultural activities of the fee or leasehold owner
21 of the property, and vehicle and equipment storage



1 areas that are normally considered directly accessory
2 to the above-mentioned uses and are permitted under
3 section 205-2(d);

4 (11) Agricultural parks;

5 (12) Plantation community subdivisions, which as used in
6 this chapter means an established subdivision or
7 cluster of employee housing, community buildings, and
8 agricultural support buildings on land currently or
9 formerly owned, leased, or operated by a sugar or
10 pineapple plantation; provided that the existing
11 structures may be used or rehabilitated for use, and
12 new employee housing and agricultural support
13 buildings may be allowed on land within the
14 subdivision as follows:

15 (A) The employee housing is occupied by employees or
16 former employees of the plantation who have a
17 property interest in the land;

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



1 (C) The agricultural support buildings shall be
2 rented or leased to agricultural business
3 operators or agricultural support services;

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

14 (14) Agricultural tourism activities, including overnight
15 accommodations of twenty-one days or less, for any one
16 stay within a county; provided that this paragraph
17 shall apply only to a county that includes at least
18 three islands and has adopted ordinances regulating
19 agricultural tourism activities pursuant to section
20 205-5; provided further that the agricultural tourism
21 activities coexist with a bona fide agricultural



1 activity. For the purposes of this paragraph, "bona
2 fide agricultural activity" means a farming operation
3 as defined in section 165-2;

4 (15) Wind energy facilities, including the appurtenances
5 associated with the production and transmission of
6 wind generated energy; provided that the wind energy
7 facilities and appurtenances are compatible with
8 agriculture uses and cause minimal adverse impact on
9 agricultural land;

10 (16) Biofuel processing facilities, including the
11 appurtenances associated with the production and
12 refining of biofuels that is normally considered
13 directly accessory and secondary to the growing of the
14 energy feedstock; provided that biofuel processing
15 facilities and appurtenances do not adversely impact
16 agricultural land and other agricultural uses in the
17 vicinity.

18 For the purposes of this paragraph:

19 "Appurtenances" means operational infrastructure
20 of the appropriate type and scale for economic
21 commercial storage and distribution, and other similar



1 handling of feedstock, fuels, and other products of
2 biofuel processing facilities.

3 "Biofuel processing facility" means a facility
4 that produces liquid or gaseous fuels from organic
5 sources such as biomass crops, agricultural residues,
6 and oil crops, including palm, canola, soybean, and
7 waste cooking oils; grease; food wastes; and animal
8 residues and wastes that can be used to generate
9 energy;

10 (17) Agricultural-energy facilities, including
11 appurtenances necessary for an agricultural-energy
12 enterprise; provided that the primary activity of the
13 agricultural-energy enterprise is agricultural
14 activity. To be considered the primary activity of an
15 agricultural-energy enterprise, the total acreage
16 devoted to agricultural activity shall be not less
17 than ninety per cent of the total acreage of the
18 agricultural-energy enterprise. The agricultural-
19 energy facility shall be limited to lands owned,
20 leased, licensed, or operated by the entity conducting
21 the agricultural activity.



1 As used in this paragraph:

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

4 "Agricultural-energy enterprise" means an
5 enterprise that integrally incorporates an
6 agricultural activity with an agricultural-energy
7 facility.

8 "Agricultural-energy facility" means a facility
9 that generates, stores, or distributes renewable
10 energy as defined in section 269-91 or renewable fuel
11 including electrical or thermal energy or liquid or
12 gaseous fuels from products of agricultural activities
13 from agricultural lands located in the State.

14 "Appurtenances" means operational infrastructure
15 of the appropriate type and scale for the economic
16 commercial generation, storage, distribution, and
17 other similar handling of energy, including equipment,
18 feedstock, fuels, and other products of agricultural-
19 energy facilities;

20 (18) Construction and operation of wireless communication
21 antennas, including small wireless facilities;



1 provided that, for the purposes of this paragraph,
2 "wireless communication antenna" means communications
3 equipment that is either freestanding or placed upon
4 or attached to an already existing structure and that
5 transmits and receives electromagnetic radio signals
6 used in the provision of all types of wireless
7 communications services; provided further that "small
8 wireless facilities" shall have the same meaning as in
9 section 206N-2; provided further that nothing in this
10 paragraph shall be construed to permit the
11 construction of any new structure that is not deemed a
12 permitted use under this subsection;

13 (19) Agricultural education programs conducted on a farming
14 operation as defined in section 165-2, for the
15 education and participation of the general public;
16 provided that the agricultural education programs are
17 accessory and secondary to the principal agricultural
18 use of the parcels or lots on which the agricultural
19 education programs are to occur and do not interfere
20 with surrounding farm operations. For the purposes of
21 this paragraph, "agricultural education programs"



1 means activities or events designed to promote
2 knowledge and understanding of agricultural activities
3 and practices conducted on a farming operation as
4 defined in section 165-2;

5 (20) Solar energy facilities that do not occupy more than
6 ten per cent of the acreage of the parcel, or twenty
7 acres of land, whichever is lesser or for which a
8 special use permit is granted pursuant to section 205-
9 6; provided that this use shall not be permitted on
10 lands with soil classified by the land study bureau's
11 detailed land classification as overall (master)
12 productivity rating class A;

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

18 (A) The area occupied by the solar energy facilities
19 is also made available for compatible
20 agricultural activities at a lease rate that is



1 at least fifty per cent below the fair market
2 rent for comparable properties;

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

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

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

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

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



- 1 (22) Geothermal resources exploration and geothermal
2 resources development, as defined under section 182-1;
3 ~~[or]~~
- 4 (23) Hydroelectric facilities, including the appurtenances
5 associated with the production and transmission of
6 hydroelectric energy, subject to section 205-2;
7 provided that the hydroelectric facilities and their
8 appurtenances:
- 9 (A) Shall consist of a small hydropower facility as
10 defined by the United States Department of
11 Energy, including:
- 12 (i) Impoundment facilities using a dam to store
13 water in a reservoir;
- 14 (ii) A diversion or run-of-river facility that
15 channels a portion of a river through a
16 canal or channel; and
- 17 (iii) Pumped storage facilities that store energy
18 by pumping water uphill to a reservoir at
19 higher elevation from a reservoir at a lower
20 elevation to be released to turn a turbine
21 to generate electricity;



- 1 (B) Comply with the state water code, chapter 174C;
- 2 (C) Shall, if over five hundred kilowatts in
- 3 hydroelectric generating capacity, have the
- 4 approval of the commission on water resource
- 5 management, including a new instream flow
- 6 standard established for any new hydroelectric
- 7 facility; and
- 8 (D) Do not impact or impede the use of agricultural
- 9 land or the availability of surface or ground
- 10 water for all uses on all parcels that are served
- 11 by the ground water sources or streams for which
- 12 hydroelectric facilities are considered~~[-]~~; or
- 13 (24) Bed and breakfast accommodations, as defined under
- 14 section 205-2(d)(17), on lands with soil classified by
- 15 the land study bureau's detailed land classification
- 16 as overall (master) productivity rating C, D, E, or U;
- 17 provided that this paragraph shall only apply to bed
- 18 and breakfast accommodations in a county with an area
- 19 greater than 4,000 square miles."
- 20 2. By amending subsection (c) to read:



1 "(c) ~~[Within]~~ Except as provided in subsection (a) and
2 section 205-2(d)(17), within the agricultural district, all
3 lands with soil classified by the land study bureau's detailed
4 land classification as overall (master) productivity rating
5 class C, D, E, or U shall be restricted to the uses permitted
6 for agricultural districts as set forth in section 205-5(b)."

7 SECTION 4. This Act does not affect rights and duties that
8 matured, penalties that were incurred, and proceedings that were
9 begun before its effective date.

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

12 SECTION 6. This Act shall take effect upon its approval.

13

INTRODUCED BY: Richard Gray
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JAN 21 2020



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Report Title:

Agricultural Lands; Bed and Breakfast Accommodations; Land Classification; Land Use

Description:

Allows bed and breakfast accommodations on class C, D, E, or U agricultural lands in a county with an area greater than 4,000 square miles.

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HB HMS 2020-0363

