

JAN 27 2021

A BILL FOR AN ACT

RELATING TO AGRICULTURE.

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

1 SECTION 1. Section 165-2, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By adding a new definition to be appropriately inserted
4 and to read:

5 "Customary and traditional subsistence farming" means
6 customary and traditional subsistence farming conducted by a
7 native Hawaiian cultural practitioner that is:

8 (1) Used for direct personal or family consumption;

9 (2) Conducted on land that does not contain a dwelling or
10 residence; and

11 (3) Conducted on land on which no person resides."

12 2. By amending the definition of "farming operation" to
13 read:

14 "Farming operation" means a commercial agricultural,
15 silvicultural, or aquacultural facility or pursuit conducted, in
16 whole or in part, including the care and production of livestock
17 and livestock products, poultry and poultry products, apiary



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1 products, and plant and animal production for nonfood uses; the
2 planting, cultivating, harvesting, and processing of crops; and
3 the farming or ranching of any plant or animal species in a
4 controlled salt, brackish, or freshwater environment. "Farming
5 operation" includes but shall not be limited to:

6 (1) Agricultural-based commercial operations as described
7 in section [†]205-2(d)(15)[†];

8 (2) Noises, odors, dust, and fumes emanating from a
9 commercial agricultural or an aquacultural facility or
10 pursuit;

11 (3) Operation of machinery and irrigation pumps;

12 (4) Ground and aerial seeding and spraying;

13 (5) The application of chemical fertilizers, conditioners,
14 insecticides, pesticides, and herbicides; ~~and~~

15 (6) The employment and use of labor~~[+]~~; and

16 (7) Customary and traditional subsistence farming.

17 A farming operation that conducts processing operations or salt,
18 brackish, or freshwater aquaculture operations on land that is
19 zoned for industrial, commercial, or other nonagricultural use
20 shall not, by reason of that zoning, fall beyond the scope of
21 this definition; provided that those processing operations form



1 an integral part of operations that otherwise meet the
2 requirements of this definition."

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[+] for economic use or customary and
9 traditional subsistence farming as defined in section
10 162-2;

11 (2) Farming activities or uses related to animal husbandry
12 and game and fish propagation[+] for economic use or
13 customary and traditional subsistence farming as
14 defined in section 162-2;

15 (3) Aquaculture, which means the production of aquatic
16 plant and animal life within ponds and other bodies of
17 water[+] for economic use or customary and traditional
18 subsistence farming as defined in section 162-2;

19 (4) Wind-generated energy production for public, private,
20 and commercial use;



- 1 (5) Biofuel production, as described in section
2 205-4.5(a)(16), for public, private, and commercial
3 use;
- 4 (6) Solar energy facilities; provided that:
- 5 (A) This paragraph shall apply only to land with soil
6 classified by the land study bureau's detailed
7 land classification as overall (master)
8 productivity rating class B, C, D, or E; and
- 9 (B) Solar energy facilities placed within land with
10 soil classified as overall productivity rating
11 class B or C shall not occupy more than ten per
12 cent of the acreage of the parcel, or twenty
13 acres of land, whichever is lesser, unless a
14 special use permit is granted pursuant to section
15 205-6;
- 16 (7) Bona fide agricultural services and uses that support
17 the agricultural activities of the fee or leasehold
18 owner of the property and accessory to any of the
19 above activities, regardless of whether conducted on
20 the same premises as the agricultural activities to
21 which they are accessory, including farm dwellings as



1 defined in section 205-4.5(a)(4), employee housing,
2 farm buildings, mills, storage facilities, processing
3 facilities, photovoltaic, biogas, and other small-
4 scale renewable energy systems producing energy solely
5 for use in the agricultural activities of the fee or
6 leasehold owner of the property, agricultural-energy
7 facilities as defined in section 205-4.5(a)(17),
8 vehicle and equipment storage areas, and plantation
9 community subdivisions as defined in section
10 205-4.5(a)(12);

11 (8) Wind machines and wind farms;

12 (9) Small-scale meteorological, air quality, noise, and
13 other scientific and environmental data collection and
14 monitoring facilities occupying less than one-half
15 acre of land; provided that these facilities shall not
16 be used as or equipped for use as living quarters or
17 dwellings;

18 (10) Agricultural parks;

19 (11) Agricultural tourism conducted on a working farm, or a
20 farming operation as defined in section 165-2, for the
21 enjoyment, education, or involvement of visitors;



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

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

19 (13) Open area recreational facilities;

20 (14) Geothermal resources exploration and geothermal
21 resources development, as defined under section 182-1;



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(15) Agricultural-based commercial operations registered in Hawaii, including:

(A) A roadside stand that is not an enclosed structure, owned and operated by a producer for the display and sale of agricultural products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii;

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

(C) A retail food establishment owned and operated by a producer and permitted under chapter 11-50, Hawaii administrative rules, that prepares and serves food at retail using products grown in Hawaii and value-added products that were



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1 produced using agricultural products grown in
2 Hawaii;

3 (D) A farmers' market, which is an outdoor market
4 limited to producers selling agricultural
5 products grown in Hawaii and value-added products
6 that were produced using agricultural products
7 grown in Hawaii; and

8 (E) A food hub, which is a facility that may contain
9 a commercial kitchen and provides for the
10 storage, processing, distribution, and sale of
11 agricultural products grown in Hawaii and value-
12 added products that were produced using
13 agricultural products grown in Hawaii.

14 The owner of an agricultural-based commercial
15 operation shall certify, upon request of an officer or
16 agent charged with enforcement of this chapter under
17 section 205-12, that the agricultural products
18 displayed or sold by the operation meet the
19 requirements of this paragraph; and

20 (16) Hydroelectric facilities as described in section
21 205-4.5(a)(23).



1 Agricultural districts shall not include golf courses and golf
2 driving ranges, except as provided in section 205-4.5(d).
3 Agricultural districts include areas that are not used for, or
4 that are not suited to, agricultural and ancillary activities by
5 reason of topography, soils, and other related characteristics."

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

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

13 (1) Cultivation of crops, including crops for bioenergy,
14 flowers, vegetables, foliage, fruits, forage, and
15 timber[+] for economic use or customary and
16 traditional subsistence farming as defined in section
17 162-2;

18 (2) [~~Game and fish propagation;~~] Raising and propagation
19 of game and fish for economic use or customary and
20 traditional subsistence farming as defined in section
21 162-2;



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- 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



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equipment buildings, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, treatment plants, corporation yards, or other similar structures;

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

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

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

(11) Agricultural parks;



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

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

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

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

(13) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the



1 enjoyment, education, or involvement of visitors;
2 provided that the agricultural tourism activity is
3 accessory and secondary to the principal agricultural
4 use and does not interfere with surrounding farm
5 operations; and provided further that this paragraph
6 shall apply only to a county that has adopted
7 ordinances regulating agricultural tourism under
8 section 205-5;

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

20 (15) Wind energy facilities, including the appurtenances
21 associated with the production and transmission of



1 wind generated energy; provided that the wind energy
2 facilities and appurtenances are compatible with
3 agriculture uses and cause minimal adverse impact on
4 agricultural land;

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

13 For the purposes of this paragraph:

14 "Appurtenances" means operational infrastructure
15 of the appropriate type and scale for economic
16 commercial storage and distribution, and other similar
17 handling of feedstock, fuels, and other products of
18 biofuel processing facilities.

19 "Biofuel processing facility" means a facility
20 that produces liquid or gaseous fuels from organic
21 sources such as biomass crops, agricultural residues,



1 and oil crops, including palm, canola, soybean, and
2 waste cooking oils; grease; food wastes; and animal
3 residues and wastes that can be used to generate
4 energy;

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

17 As used in this paragraph:

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

20 "Agricultural-energy enterprise" means an
21 enterprise that integrally incorporates an



1 agricultural activity with an agricultural-energy
2 facility.

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

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

15 (18) Construction and operation of wireless communication
16 antennas, including small wireless facilities;
17 provided that, for the purposes of this paragraph,
18 "wireless communication antenna" means communications
19 equipment that is either freestanding or placed upon
20 or attached to an already existing structure and that
21 transmits and receives electromagnetic radio signals



1 used in the provision of all types of wireless
2 communications services; provided further that "small
3 wireless facilities" shall have the same meaning as in
4 section 206N-2; provided further that nothing in this
5 paragraph shall be construed to permit the
6 construction of any new structure that is not deemed a
7 permitted use under this subsection;

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



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

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



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1 hydroelectric energy, subject to section 205-2;
2 provided that the hydroelectric facilities and their
3 appurtenances:

4 (A) Shall consist of a small hydropower facility as
5 defined by the United States Department of
6 Energy, including:

7 (i) Impoundment facilities using a dam to store
8 water in a reservoir;

9 (ii) A diversion or run-of-river facility that
10 channels a portion of a river through a
11 canal or channel; and

12 (iii) Pumped storage facilities that store energy
13 by pumping water uphill to a reservoir at
14 higher elevation from a reservoir at a lower
15 elevation to be released to turn a turbine
16 to generate electricity;

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

18 (C) Shall, if over five hundred kilowatts in
19 hydroelectric generating capacity, have the
20 approval of the commission on water resource
21 management, including a new instream flow



1 standard established for any new hydroelectric
2 facility; and

3 (D) Do not impact or impede the use of agricultural
4 land or the availability of surface or ground
5 water for all uses on all parcels that are served
6 by the ground water sources or streams for which
7 hydroelectric facilities are considered."

8 SECTION 4. Section 226-7, Hawaii Revised Statutes, is
9 amended by amending subsection (b) to read as follows:

10 "(b) To achieve the agriculture objectives, it shall be
11 the policy of this State to:

12 (1) Establish a clear direction for Hawaii's agriculture
13 through stakeholder commitment and advocacy[~~-~~];

14 (2) Encourage agriculture by making the best use of
15 natural resources[~~-~~];

16 (3) Provide the governor and the legislature with
17 information and options needed for prudent decision-
18 making for the development of agriculture[~~-~~];

19 (4) Establish strong relationships between the
20 agricultural and visitor industries for mutual
21 marketing benefits[~~-~~];



(5) Foster increased public awareness and understanding of the contributions and benefits of agriculture as a major sector of Hawaii's economy[~~-~~];

(6) Seek the enactment and retention of federal and state legislation that benefits Hawaii's agricultural industries[~~-~~];

(7) Strengthen diversified agriculture by developing an effective promotion, marketing, and distribution system between Hawaii's food producers and consumers in the State, nation, and world[~~-~~];

(8) Support research and development activities that strengthen economic productivity in agriculture, stimulate greater efficiency, and enhance the development of new products and agricultural by-products[~~-~~];

(9) Enhance agricultural growth by providing public incentives and encouraging private initiatives[~~-~~];

(10) Assure the availability of agriculturally suitable lands with adequate water to accommodate present and future needs[~~-~~];



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- 1 (11) Increase the attractiveness and opportunities for an
2 agricultural education and livelihood[+];
- 3 (12) In addition to the State's priority on food, expand
4 Hawaii's agricultural base by promoting growth and
5 development of flowers, tropical fruits and plants,
6 livestock, feed grains, forestry, food crops,
7 aquaculture, and other potential enterprises[+];
- 8 (13) Promote economically competitive activities that
9 increase Hawaii's agricultural self-sufficiency,
10 including the increased purchase and use of Hawaii-
11 grown food and food products by residents, businesses,
12 and governmental bodies as defined under section
13 103D-104[+];
- 14 (14) Promote and assist in the establishment of sound
15 financial programs for diversified agriculture[+];
- 16 (15) Institute and support programs and activities to
17 assist the entry of displaced agricultural workers
18 into alternative agricultural or other employment[+];
- 19 (16) Facilitate the transition of agricultural lands in
20 economically nonfeasible agricultural production to
21 economically viable agricultural uses[+];



(17) Perpetuate, promote, and increase use of traditional Hawaiian farming systems, such as the use of loko i'a, māla, and irrigated lo'i, and growth of traditional Hawaiian crops, such as kalo, 'uala, and 'ulu[+];


(18) Increase and develop small-scale farms[+]; and

(19) Assure the right of customary and traditional subsistence farming by native Hawaiian cultural practitioners for direct personal or family consumption."

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

SECTION 6. This Act shall take effect on July 1, 2060.

INTRODUCED BY: _____



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Report Title:

Hawaii Right to Farm Act; Hawaii State Planning Act; Native Hawaiian Customary and Traditional Practices; Subsistence Farming; Agricultural Lands

Description:

Clarifies that "customary and traditional subsistence farming", which is customary and traditional subsistence farming conducted by a native Hawaiian cultural practitioner in certain situations, is included as a protected activity under the Hawaii Right to Farm Act. Clarifies that the cultivation of crops and activities related to game, fish, and livestock on agricultural lands may be for economic use or customary and traditional subsistence farming. Provides that one of the State's policies under the Hawaii State Planning Act's agricultural objectives is to assure the right of native Hawaiian cultural practitioners to engage in customary and traditional subsistence farming for direct personal or family consumption. Effective 7/1/2060.

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

