

JAN 21 2022

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# A BILL FOR AN ACT

RELATING TO AGRICULTURAL LANDS.

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

SECTION 1. Section 205-4.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

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

(2) Game and fish propagation;

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

(4) Farm dwellings, employee housing, farm buildings, or activities or uses related to farming and animal husbandry. "Farm dwelling", as used in this



1 paragraph, means a single-family dwelling located on  
2 and accessory to a farm, including clusters of single-  
3 family farm dwellings permitted within agricultural  
4 parks developed by the State, or where agricultural  
5 activity provides income to the family occupying the  
6 dwelling;

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

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

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



1           structures; provided that waste disposal facilities  
2           shall not be permitted on lands with soil classified  
3           by the land study bureau's detailed land  
4           classification as overall (master) productivity rating  
5           class A;

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

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

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

19          (11) Agricultural parks;

20          (12) Plantation community subdivisions, which as used in  
21          this chapter means an established subdivision or



1 cluster of employee housing, community buildings, and  
2 agricultural support buildings on land currently or  
3 formerly owned, leased, or operated by a sugar or  
4 pineapple plantation; provided that the existing  
5 structures may be used or rehabilitated for use, and  
6 new employee housing and agricultural support  
7 buildings may be allowed on land within the  
8 subdivision as follows:

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

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

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

18 (13) Agricultural tourism conducted on a working farm, or a  
19 farming operation as defined in section 165-2, for the  
20 enjoyment, education, or involvement of visitors;  
21 provided that the agricultural tourism activity is



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

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

18          (15) Wind energy facilities, including the appurtenances  
19          associated with the production and transmission of  
20          wind generated energy; provided that the wind energy  
21          facilities and appurtenances are compatible with



1 agriculture uses and cause minimal adverse impact on  
2 agricultural land;

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

11 For the purposes of this paragraph:

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

17 "Biofuel processing facility" means a facility  
18 that produces liquid or gaseous fuels from organic  
19 sources such as biomass crops, agricultural residues,  
20 and oil crops, including palm, canola, soybean, and  
21 waste cooking oils; grease; food wastes; and animal



1 residues and wastes that can be used to generate  
2 energy;

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

15 As used in this paragraph:

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

18 "Agricultural-energy enterprise" means an  
19 enterprise that integrally incorporates an  
20 agricultural activity with an agricultural-energy  
21 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, including small wireless facilities;  
15          provided that, for the purposes of this paragraph,  
16          "wireless communication antenna" means communications  
17          equipment that is either freestanding or placed upon  
18          or attached to an already existing structure and that  
19          transmits and receives electromagnetic radio signals  
20          used in the provision of all types of wireless  
21          communications services; provided further that "small





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

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

19 (20) Solar energy facilities that do not occupy more than  
20 ten per cent of the acreage of the parcel, or twenty  
21 acres of land, whichever is lesser or for which a



1 special use permit is granted pursuant to section  
2 205-6; provided that this use shall not be permitted  
3 on lands with soil classified by the land study  
4 bureau's detailed land classification as overall  
5 (master) productivity rating class A;

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

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

16 (B) Proof of financial security to decommission the  
17 facility is provided to the satisfaction of the  
18 appropriate county planning commission prior to  
19 date of commencement of commercial generation;  
20 and



1 (C) Solar energy facilities shall be decommissioned  
2 at the owner's expense according to the following  
3 requirements:

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

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

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

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

18 (23) Hydroelectric facilities, including the appurtenances  
19 associated with the production and transmission of  
20 hydroelectric energy, subject to section 205-2;



1 provided that the hydroelectric facilities and their  
2 appurtenances:

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

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

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

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

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

17 (C) Shall, if over five hundred kilowatts in  
18 hydroelectric generating capacity, have the  
19 approval of the commission on water resource  
20 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 2. Section 205-43, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "[~~§~~205-43~~§~~] **Important agricultural lands; policies.**

11 State and county agricultural policies, tax policies, land use  
12 plans, ordinances, and rules shall promote the long-term  
13 viability of agricultural use of important agricultural lands  
14 and shall be consistent with and implement the following  
15 policies:

16 (1) Promote the retention of important agricultural lands  
17 in blocks of contiguous, intact, and functional land  
18 units large enough to allow flexibility in  
19 agricultural production and management;



(2) Discourage the fragmentation of important agricultural lands and the conversion of these lands to nonagricultural uses;

(3) Direct nonagricultural uses and activities from important agricultural lands to other areas and ensure that uses on important agricultural lands are actually agricultural uses;

(4) Limit physical improvements on important agricultural lands to maintain affordability of these lands for agricultural purposes;

(5) Provide a basic level of infrastructure and services on important agricultural lands limited to the minimum necessary to support agricultural uses and activities;

(6) Facilitate the long-term dedication of important agricultural lands for future agricultural use through the use of incentives;

(7) Facilitate the access of farmers to important agricultural lands for long-term viable agricultural use; [and]



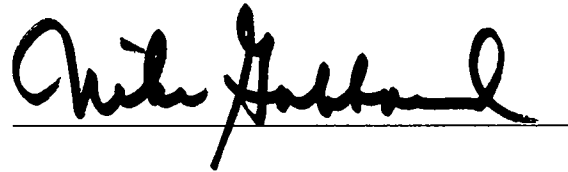
(8) Promote the maintenance of essential agricultural infrastructure systems, including irrigation systems [-]; and

(9) Prohibit the creation of waste disposal sites on important agricultural lands."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

INTRODUCED BY:





# S.B. NO. 2944

**Report Title:**

Waste Disposal; Important Agricultural Lands; Land Bureau  
Detailed Land Classification Study

**Description:**

Prohibits the use of important agricultural lands and lands with  
class A productivity ratings for waste disposal.

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not legislation or evidence of legislative intent.*

