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# A BILL FOR AN ACT

RELATING TO LAND USE COMMISSION.

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

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

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

- 8           (1) Cultivation of crops, including crops for bioenergy,  
9                 flowers, vegetables, foliage, fruits, forage, and  
10                timber;
- 11           (2) Game and fish propagation;
- 12           (3) Raising of livestock, including poultry, bees, fish,  
13                 or other animal or aquatic life that are propagated  
14                 for economic or personal use;
- 15           (4) Farm dwellings, employee housing, farm buildings, or  
16                 activities or uses related to farming and animal  
17                 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  
3 single-family farm dwellings permitted within  
4 agricultural parks developed by the State, or where  
5 agricultural activity provides income to the family  
6 occupying the 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



- 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~~] has a population of 500,000 or more and  
9 has adopted ordinances regulating agricultural tourism  
10 activities pursuant to section 205-5; provided further  
11 that the agricultural tourism activities coexist with  
12 a bona fide agricultural activity. For the purposes  
13 of this paragraph, "bona fide agricultural activity"  
14 means a farming operation 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  
10          agricultural-energy facility shall be limited to lands  
11          owned, leased, licensed, or operated by the entity  
12          conducting the agricultural activity.

13                   As used in this paragraph:

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

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

20                   "Agricultural-energy facility" means a facility  
21                   that generates, stores, or distributes renewable



1 energy as defined in section 269-91 or renewable fuel  
2 including electrical or thermal energy or liquid or  
3 gaseous fuels from products of agricultural activities  
4 from agricultural lands located in the State.

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

11 (18) Construction and operation of wireless communication  
12 antennas, including small wireless facilities;  
13 provided that, for the purposes of this paragraph,  
14 "wireless communication antenna" means communications  
15 equipment that is either freestanding or placed upon  
16 or attached to an already existing structure and that  
17 transmits and receives electromagnetic radio signals  
18 used in the provision of all types of wireless  
19 communications services; provided further that "small  
20 wireless facilities" shall have the same meaning as in  
21 section 206N-2; provided further that nothing in this





1 paragraph shall be construed to permit the  
2 construction of any new structure that is not deemed a  
3 permitted use under 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 paragraph, "agricultural education programs"  
13 means activities or events designed to promote  
14 knowledge and understanding of agricultural activities  
15 and practices conducted on a farming operation as  
16 defined in section 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  
21 205-6; provided that this use shall not be permitted



1           on lands with soil classified by the land study  
2           bureau's detailed land classification as overall  
3           (master) productivity rating class A;  
4       (21) Solar energy facilities on lands with soil classified  
5           by the land study bureau's detailed land  
6           classification as overall (master) productivity rating  
7           B or C for which a special use permit is granted  
8           pursuant to section 205-6; provided that:  
9           (A) The area occupied by the solar energy facilities  
10           is also made available for compatible  
11           agricultural activities at a lease rate that is  
12           at least fifty per cent below the fair market  
13           rent for comparable properties;  
14           (B) Proof of financial security to decommission the  
15           facility is provided to the satisfaction of the  
16           appropriate county planning commission prior to  
17           date of commencement of commercial generation;  
18           and  
19           (C) Solar energy facilities shall be decommissioned  
20           at the owner's expense according to the following  
21           requirements:



- 1                   (i) Removal of all equipment related to the
- 2                   solar energy facility within twelve months
- 3                   of the conclusion of operation or useful
- 4                   life; and
- 5                   (ii) Restoration of the disturbed earth to
- 6                   substantially the same physical condition as
- 7                   existed prior to the development of the
- 8                   solar energy facility.

9                   For the purposes of this paragraph, "agricultural

10                   activities" means the activities described in

11                   paragraphs (1) to (3);

12               (22) Geothermal resources exploration and geothermal

13               resources development, as defined under section 182-1;

14               (23) Hydroelectric facilities, including the appurtenances

15               associated with the production and transmission of

16               hydroelectric energy, subject to section 205-2;

17               provided that the hydroelectric facilities and their

18               appurtenances:

19               (A) Shall consist of a small hydropower facility as

20               defined by the United States Department of

21               Energy, including:



- 1           (i) Impoundment facilities using a dam to store
- 2           water in a reservoir;
- 3           (ii) A diversion or run-of-river facility that
- 4           channels a portion of a river through a
- 5           canal or channel; and
- 6           (iii) Pumped storage facilities that store energy
- 7           by pumping water uphill to a reservoir at
- 8           higher elevation from a reservoir at a lower
- 9           elevation to be released to turn a turbine
- 10          to generate electricity;
- 11          (B) Comply with the state water code, chapter 174C;
- 12          (C) Shall, if over five hundred kilowatts in
- 13          hydroelectric generating capacity, have the
- 14          approval of the commission on water resource
- 15          management, including a new instream flow
- 16          standard established for any new hydroelectric
- 17          facility; and
- 18          (D) Do not impact or impede the use of agricultural
- 19          land or the availability of surface or ground
- 20          water for all uses on all parcels that are served




1                   by the ground water sources or streams for which  
2                   hydroelectric facilities are considered; or

3         (24) Notwithstanding any other law to the contrary,  
4                   composting and co-composting operations; provided that  
5                   operations that process their own green waste and do  
6                   not require permits from the department of health  
7                   shall use the finished composting product only on the  
8                   operation's own premises to minimize the potential  
9                   spread of invasive species."

10           SECTION 2. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12           SECTION 3. This Act shall take effect on July 1, 2024.

13

INTRODUCED BY:   
By Request

**JAN 18 2024**



# H.B. NO. 1863

**Report Title:**

Hawaii Council of Mayors Package; Land Use Commission;  
Agricultural District

**Description:**

Applies permissible uses within agricultural districts to  
counties having specific population levels.

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