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# 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



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  
10 165-2;
- 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 165-2;
- 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 165-2;
- 19 (4) Wind-generated energy production for public, private,  
20 and commercial use;



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



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

10 (8) Wind machines and wind farms;

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

17 (10) Agricultural parks;

18 (11) 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           (12) 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          (13) Open area recreational facilities;

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



- 1       (15)   Agricultural-based commercial operations registered in  
2            Hawaii, including:
- 3            (A)   A roadside stand that is not an enclosed  
4                    structure, owned and operated by a producer for  
5                    the display and sale of agricultural products  
6                    grown in Hawaii and value-added products that  
7                    were produced using agricultural products grown  
8                    in Hawaii;
- 9            (B)   Retail activities in an enclosed structure owned  
10                   and operated by a producer for the display and  
11                   sale of agricultural products grown in Hawaii,  
12                   value-added products that were produced using  
13                   agricultural products grown in Hawaii, logo items  
14                   related to the producer's agricultural  
15                   operations, and other food items;
- 16           (C)   A retail food establishment owned and operated by  
17                   a producer and permitted under chapter 11-50,  
18                   Hawaii administrative rules, that prepares and  
19                   serves food at retail using products grown in  
20                   Hawaii and value-added products that were



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;

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





1       (17) Composting and co-composting operations; provided that  
2           operations that process their own green waste and do  
3           not require permits from the department of health  
4           shall use the finished composting product only on the  
5           operation's own premises to minimize the potential  
6           spread of invasive species.

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

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

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

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

19       (1) Cultivation of crops, including crops for bioenergy,  
20           flowers, vegetables, foliage, fruits, forage, and  
21           timber[+] for economic use or customary and



- 1            traditional subsistence farming as defined in section  
2            165-2;
- 3            (2) ~~[Game and fish propagation]~~ Raising and propagation  
4            of game and fish for economic use or customary and  
5            traditional subsistence farming as defined in section  
6            165-2;
- 7            (3) Raising of livestock, including poultry, bees, fish,  
8            or other animal or aquatic life that are propagated  
9            for economic or personal use;
- 10           (4) Farm dwellings, employee housing, farm buildings, or  
11           activities or uses related to farming and animal  
12           husbandry. "Farm dwelling", as used in this  
13           paragraph, means a single-family dwelling located on  
14           and accessory to a farm, including clusters of single-  
15           family farm dwellings permitted within agricultural  
16           parks developed by the State, or where agricultural  
17           activity provides income to the family occupying the  
18           dwelling;
- 19           (5) Public institutions and buildings that are necessary  
20           for agricultural practices;



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



1 energy systems producing energy solely for use in the  
2 agricultural activities of the fee or leasehold owner  
3 of the property, and vehicle and equipment storage  
4 areas that are normally considered directly accessory  
5 to the above-mentioned uses and are permitted under  
6 section 205-2(d);

7 (11) Agricultural parks;

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

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



- 1 (B) The employee housing units not owned by their  
2 occupants shall be rented or leased at affordable  
3 rates for agricultural workers; or
- 4 (C) The agricultural support buildings shall be  
5 rented or leased to agricultural business  
6 operators or agricultural support services;
- 7 (13) Agricultural tourism conducted on a working farm, or a  
8 farming operation as defined in section 165-2, for the  
9 enjoyment, education, or involvement of visitors;  
10 provided that the agricultural tourism activity is  
11 accessory and secondary to the principal agricultural  
12 use and does not interfere with surrounding farm  
13 operations; and provided further that this paragraph  
14 shall apply only to a county that has adopted  
15 ordinances regulating agricultural tourism under  
16 section 205-5;
- 17 (14) Agricultural tourism activities, including overnight  
18 accommodations of twenty-one days or less, for any one  
19 stay within a county; provided that this paragraph  
20 shall apply only to a county that includes at least  
21 three islands and has adopted ordinances regulating



1 agricultural tourism activities pursuant to section  
2 205-5; provided further that the agricultural tourism  
3 activities coexist with a bona fide agricultural  
4 activity. For the purposes of this paragraph, "bona  
5 fide agricultural activity" means a farming operation  
6 as defined in section 165-2;

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

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

21 For the purposes of this paragraph:



1 "Appurtenances" means operational infrastructure  
2 of the appropriate type and scale for economic  
3 commercial storage and distribution, and other similar  
4 handling of feedstock, fuels, and other products of  
5 biofuel processing facilities.

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

13 (17) Agricultural-energy facilities, including  
14 appurtenances necessary for an agricultural-energy  
15 enterprise; provided that the primary activity of the  
16 agricultural-energy enterprise is agricultural  
17 activity. To be considered the primary activity of an  
18 agricultural-energy enterprise, the total acreage  
19 devoted to agricultural activity shall be not less  
20 than ninety per cent of the total acreage of the  
21 agricultural-energy enterprise. The agricultural-



1 energy facility shall be limited to lands owned,  
2 leased, licensed, or operated by the entity conducting  
3 the agricultural activity.

4 As used in this paragraph:

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

7 "Agricultural-energy enterprise" means an  
8 enterprise that integrally incorporates an  
9 agricultural activity with an agricultural-energy  
10 facility.

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

17 "Appurtenances" means operational infrastructure  
18 of the appropriate type and scale for the economic  
19 commercial generation, storage, distribution, and  
20 other similar handling of energy, including equipment,





1 feedstock, fuels, and other products of agricultural-  
2 energy facilities;

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

17 (19) Agricultural education programs conducted on a farming  
18 operation as defined in section 165-2, for the  
19 education and participation of the general public;  
20 provided that the agricultural education programs are  
21 accessory and secondary to the principal agricultural



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

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

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



- 1           (A) The area occupied by the solar energy facilities
- 2                   is also made available for compatible
- 3                   agricultural activities at a lease rate that is
- 4                   at least fifty per cent below the fair market
- 5                   rent for comparable properties;
- 6           (B) Proof of financial security to decommission the
- 7                   facility is provided to the satisfaction of the
- 8                   appropriate county planning commission prior to
- 9                   date of commencement of commercial generation;
- 10                  and
- 11          (C) Solar energy facilities shall be decommissioned
- 12                   at the owner's expense according to the following
- 13                   requirements:
- 14                   (i) Removal of all equipment related to the
- 15                               solar energy facility within twelve months
- 16                               of the conclusion of operation or useful
- 17                               life; and
- 18                   (ii) Restoration of the disturbed earth to
- 19                               substantially the same physical condition as
- 20                               existed prior to the development of the
- 21                               solar energy facility.



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

4 (22) Geothermal resources exploration and geothermal  
5 resources development, as defined under section 182-1;

6 (23) Hydroelectric facilities, including the appurtenances  
7 associated with the production and transmission of  
8 hydroelectric energy, subject to section 205-2;  
9 provided that the hydroelectric facilities and their  
10 appurtenances:

11 (A) Shall consist of a small hydropower facility as  
12 defined by the United States Department of  
13 Energy, including:

14 (i) Impoundment facilities using a dam to store  
15 water in a reservoir;

16 (ii) A diversion or run-of-river facility that  
17 channels a portion of a river through a  
18 canal or channel; and

19 (iii) Pumped storage facilities that store energy  
20 by pumping water uphill to a reservoir at  
21 higher elevation from a reservoir at a lower



1                   elevation to be released to turn a turbine  
2                   to generate electricity;

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

4           (C) Shall, if over five hundred kilowatts in  
5               hydroelectric generating capacity, have the  
6               approval of the commission on water resource  
7               management, including a new instream flow  
8               standard established for any new hydroelectric  
9               facility; and

10          (D) Do not impact or impede the use of agricultural  
11             land or the availability of surface or ground  
12             water for all uses on all parcels that are served  
13             by the ground water sources or streams for which  
14             hydroelectric facilities are considered; or

15          (24) Notwithstanding any other law to the contrary,  
16             composting and co-composting operations; provided that  
17             operations that process their own green waste and do  
18             not require permits from the department of health  
19             shall use the finished composting product only on the  
20             operation's own premises to minimize the potential  
21             spread of invasive species."



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

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

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

7 (2) Encourage agriculture by making the best use of  
8 natural resources[-];

9 (3) Provide the governor and the legislature with  
10 information and options needed for prudent decision-  
11 making for the development of agriculture[-];

12 (4) Establish strong relationships between the  
13 agricultural and visitor industries for mutual  
14 marketing benefits[-];

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

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



- 1           (7) Strengthen diversified agriculture by developing an  
2           effective promotion, marketing, and distribution  
3           system between Hawaii's food producers and consumers  
4           in the State, nation, and world[-];
- 5           (8) Support research and development activities that  
6           strengthen economic productivity in agriculture,  
7           stimulate greater efficiency, and enhance the  
8           development of new products and agricultural by-  
9           products[-];
- 10          (9) Enhance agricultural growth by providing public  
11          incentives and encouraging private initiatives[-];
- 12          (10) Assure the availability of agriculturally suitable  
13          lands with adequate water to accommodate present and  
14          future needs[-];
- 15          (11) Increase the attractiveness and opportunities for an  
16          agricultural education and livelihood[-];
- 17          (12) In addition to the State's priority on food, expand  
18          Hawaii's agricultural base by promoting growth and  
19          development of flowers, tropical fruits and plants,  
20          livestock, feed grains, forestry, food crops,  
21          aquaculture, and other potential enterprises[-];



- 1 (13) Promote economically competitive activities that  
2 increase Hawaii's agricultural self-sufficiency,  
3 including the increased purchase and use of Hawaii-  
4 grown food and food products by residents, businesses,  
5 and governmental bodies as defined under section  
6 103D-104[-];  
7 (14) Promote and assist in the establishment of sound  
8 financial programs for diversified agriculture[-];  
9 (15) Institute and support programs and activities to  
10 assist the entry of displaced agricultural workers  
11 into alternative agricultural or other employment[-];  
12 (16) Facilitate the transition of agricultural lands in  
13 economically nonfeasible agricultural production to  
14 economically viable agricultural uses[-];  
15 (17) Perpetuate, promote, and increase use of traditional  
16 Hawaiian farming systems, such as the use of loko i'a,  
17 māla, and irrigated lo'i, and growth of traditional  
18 Hawaiian crops, such as kalo, 'uala, and 'ulu[-];  
19 (18) Increase and develop small-scale farms[-]; and  
20 (19) Assure the right of customary and traditional  
21 subsistence farming as defined in section 165-2."





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

3 SECTION 6. This Act shall take effect on July 1, 3000.

4



**Report Title:**

Hawaii Right to Farm Act; Hawaii State Planning Act; Native Hawaiian Customary and Traditional 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 in the agricultural district 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 customary and traditional subsistence farming. Effective 7/1/3000. (HD1)

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

