
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 used for direct
8 personal, family, or community consumption."

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

10 "Farming operation" means a commercial agricultural,
11 silvicultural, or aquacultural facility or pursuit conducted, in
12 whole or in part, including the care and production of livestock
13 and livestock products, poultry and poultry products, apiary
14 products, and plant and animal production for nonfood uses; the
15 planting, cultivating, harvesting, and processing of crops; and
16 the farming or ranching of any plant or animal species in a



1 controlled salt, brackish, or freshwater environment. "Farming
2 operation" includes but shall not be limited to:

- 3 (1) Agricultural-based commercial operations as described
4 in section ~~[+]~~205-2(d)(15) ~~[+]~~;
- 5 (2) Noises, odors, dust, and fumes emanating from a
6 commercial agricultural or an aquacultural facility or
7 pursuit;
- 8 (3) Operation of machinery and irrigation pumps;
- 9 (4) Ground and aerial seeding and spraying;
- 10 (5) The application of chemical fertilizers, conditioners,
11 insecticides, pesticides, and herbicides; ~~[and]~~
- 12 (6) The employment and use of labor~~[-]~~; and
- 13 (7) Customary and traditional subsistence farming.

14 A farming operation that conducts processing operations or salt,
15 brackish, or freshwater aquaculture operations on land that is
16 zoned for industrial, commercial, or other nonagricultural use
17 shall not, by reason of that zoning, fall beyond the scope of
18 this definition; provided that those processing operations form
19 an integral part of operations that otherwise meet the
20 requirements of this definition."



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

3 "(d) Agricultural districts shall include:

4 (1) Activities or uses as characterized by the cultivation
5 of crops, crops for bioenergy, orchards, forage, and
6 forestry[+] for economic use or customary and
7 traditional subsistence farming as defined in section
8 165-2;

9 (2) Farming activities or uses related to animal husbandry
10 and game and fish propagation[+] for economic use or
11 customary and traditional subsistence farming as
12 defined in section 165-2;

13 (3) Aquaculture, which means the production of aquatic
14 plant and animal life within ponds and other bodies of
15 water[+] for economic use or customary and traditional
16 subsistence farming as defined in section 165-2;

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

19 (5) Biofuel production, as described in section 205-
20 4.5(a)(16), for public, private, and commercial use;

21 (6) Solar energy facilities; provided that:



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



1 for use in the agricultural activities of the fee or
2 leasehold owner of the property, agricultural-energy
3 facilities as defined in section 205-4.5(a)(17),
4 vehicle and equipment storage areas, and plantation
5 community subdivisions as defined in section 205-
6 4.5(a)(12);

7 (8) Wind machines and wind farms;

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

14 (10) Agricultural parks;

15 (11) 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 (12) 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 and has adopted ordinances regulating
9 agricultural tourism activities pursuant to section
10 205-5; provided further that the agricultural tourism
11 activities coexist with a bona fide agricultural
12 activity. For the purposes of this paragraph, "bona
13 fide agricultural activity" means a farming operation
14 as defined in section 165-2;
- 15 (13) Open area recreational facilities;
- 16 (14) Geothermal resources exploration and geothermal
17 resources development, as defined under section 182-1;
- 18 (15) Agricultural-based commercial operations registered in
19 Hawaii, including:
- 20 (A) A roadside stand that is not an enclosed
21 structure, owned and operated by a producer for



1 the display and sale of agricultural products
2 grown in Hawaii and value-added products that
3 were produced using agricultural products grown
4 in Hawaii;

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

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

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



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;

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

17 (17) Composting and co-composting operations; provided that
18 operations that process their own green waste and do
19 not require permits from the department of health
20 shall use the finished composting product only on the



1 operation's own premises to minimize the potential
2 spread of invasive species.

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

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

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

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

15 (1) Cultivation of crops, including crops for bioenergy,
16 flowers, vegetables, foliage, fruits, forage, and
17 timber[+] for economic use or customary and
18 traditional subsistence farming as defined in section
19 165-2;

20 (2) [~~Game and fish propagation~~] Raising and propagation
21 of game and fish for economic use or customary and



1 traditional subsistence farming as defined in section
2 165-2;

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

6 (4) Farm dwellings, employee housing, farm buildings, or
7 activities or uses related to farming and animal
8 husbandry. "Farm dwelling", as used in this
9 paragraph, means a single-family dwelling located on
10 and accessory to a farm, including clusters of single-
11 family farm dwellings permitted within agricultural
12 parks developed by the State, or where agricultural
13 activity provides income to the family occupying the
14 dwelling;

15 (5) Public institutions and buildings that are necessary
16 for agricultural practices;

17 (6) Public and private open area types of recreational
18 uses, including day camps, picnic grounds, parks, and
19 riding stables, but not including dragstrips,
20 airports, drive-in theaters, golf courses, golf
21 driving ranges, country clubs, and overnight camps;



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



1 to the above-mentioned uses and are permitted under
2 section 205-2(d);
3 (11) Agricultural parks;
4 (12) Plantation community subdivisions, which as used in
5 this chapter means an established subdivision or
6 cluster of employee housing, community buildings, and
7 agricultural support buildings on land currently or
8 formerly owned, leased, or operated by a sugar or
9 pineapple plantation; provided that the existing
10 structures may be used or rehabilitated for use, and
11 new employee housing and agricultural support
12 buildings may be allowed on land within the
13 subdivision as follows:
14 (A) The employee housing is occupied by employees or
15 former employees of the plantation who have a
16 property interest in the land;
17 (B) The employee housing units not owned by their
18 occupants shall be rented or leased at affordable
19 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~~ no
17 less 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 before date of commencement of commercial
7 generation; 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~~] before the development of
18 the 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 (23) Hydroelectric facilities, including the appurtenances
- 4 associated with the production and transmission of
- 5 hydroelectric energy, subject to section 205-2;
- 6 provided that the hydroelectric facilities and their
- 7 appurtenances:
- 8 (A) Shall consist of a small hydropower facility as
- 9 defined by the United States Department of
- 10 Energy, including:
- 11 (i) Impoundment facilities using a dam to store
- 12 water in a reservoir;
- 13 (ii) A diversion or run-of-river facility that
- 14 channels a portion of a river through a
- 15 canal or channel; and
- 16 (iii) Pumped storage facilities that store energy
- 17 by pumping water uphill to a reservoir at
- 18 higher elevation from a reservoir at a lower
- 19 elevation to be released to turn a turbine
- 20 to generate electricity;
- 21 (B) Comply with the state water code, chapter 174C;



- 1 (C) Shall, if over five hundred kilowatts in
- 2 hydroelectric generating capacity, have the
- 3 approval of the commission on water resource
- 4 management, including a new instream flow
- 5 standard established for any new hydroelectric
- 6 facility; and
- 7 (D) Do not impact or impede the use of agricultural
- 8 land or the availability of surface or ground
- 9 water for all uses on all parcels that are served
- 10 by the ground water sources or streams for which
- 11 hydroelectric facilities are considered; or
- 12 (24) Notwithstanding any other law to the contrary,
- 13 composting and co-composting operations; provided that
- 14 operations that process their own green waste and do
- 15 not require permits from the department of health
- 16 shall use the finished composting product only on the
- 17 operation's own premises to minimize the potential
- 18 spread of invasive species."

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



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

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

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

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

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

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

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

19 (7) Strengthen diversified agriculture by developing an
20 effective promotion, marketing, and distribution



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



1 including the increased purchase and use of Hawaii-
2 grown food and food products by residents, businesses,
3 and governmental bodies as defined under section
4 103D-104[~~-~~];

5 (14) Promote and assist in the establishment of sound
6 financial programs for diversified agriculture[~~-~~];

7 (15) Institute and support programs and activities to
8 assist the entry of displaced agricultural workers
9 into alternative agricultural or other employment[~~-~~];

10 (16) Facilitate the transition of agricultural lands in
11 economically nonfeasible agricultural production to
12 economically viable agricultural uses[~~-~~];

13 (17) Perpetuate, promote, and increase use of traditional
14 Hawaiian farming systems, such as the use of loko i`a,
15 māla, and irrigated lo`i, and growth of traditional
16 Hawaiian crops, such as kalo, `uala, and `ulu[~~-~~];

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

18 (19) Perpetuate the practice of customary and traditional
19 subsistence farming as defined in section 165-2."

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



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

2



Report Title:

Native Hawaiian Customary and Traditional Subsistence Farming;
Hawaii Right to Farm Act; Agricultural Districts; Hawaii State
Planning Act; 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 perpetuate the practice of customary and traditional subsistence farming. Effective 7/1/3000. (HD2)

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