

JAN 18 2024

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:



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- 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



S.B. NO. 2203

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.

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

