
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 by adding a new definition to be appropriately inserted
3 and to read as follows:

4 "Subsistence farming" means a farming operation primarily
5 for direct personal or family consumption and not for commercial
6 purposes."

7 SECTION 2. Section 165-2, Hawaii Revised Statutes, is
8 amended by amending the definition of "farming operation" to
9 read as follows:

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) 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 3. 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 or personal use;

7 (2) Farming activities or uses related to animal husbandry
8 and game and fish propagation[+] for economic or
9 personal use;

10 (3) Aquaculture, which means the production of aquatic
11 plant and animal life within ponds and other bodies of
12 water[+] for economic or personal use;

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

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

18 (6) Solar energy facilities; provided that:

19 (A) This paragraph shall apply only to land with soil
20 classified by the land study bureau's detailed



1 land classification as overall (master)
2 productivity rating class B, C, D, or E; and
3 (B) Solar energy facilities placed within land with
4 soil classified as overall productivity rating
5 class B or C shall not occupy more than ten per
6 cent of the acreage of the parcel, or twenty
7 acres of land, whichever is lesser, unless a
8 special use permit is granted pursuant to section
9 205-6;

10 (7) Bona fide agricultural services and uses that support
11 the agricultural activities of the fee or leasehold
12 owner of the property and accessory to any of the
13 above activities, regardless of whether conducted on
14 the same premises as the agricultural activities to
15 which they are accessory, including farm dwellings as
16 defined in section 205-4.5(a)(4), employee housing,
17 farm buildings, mills, storage facilities, processing
18 facilities, photovoltaic, biogas, and other small-
19 scale renewable energy systems producing energy solely
20 for use in the agricultural activities of the fee or
21 leasehold owner of the property, agricultural-energy



1 facilities as defined in section 205-4.5(a) (17),
2 vehicle and equipment storage areas, and plantation
3 community subdivisions as defined in section
4 205-4.5(a) (12);

5 (8) Wind machines and wind farms;

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

12 (10) Agricultural parks;

13 (11) Agricultural tourism conducted on a working farm, or a
14 farming operation as defined in section 165-2, for the
15 enjoyment, education, or involvement of visitors;
16 provided that the agricultural tourism activity is
17 accessory and secondary to the principal agricultural
18 use and does not interfere with surrounding farm
19 operations; and provided further that this paragraph
20 shall apply only to a county that has adopted



1 ordinances regulating agricultural tourism under
2 section 205-5;

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

14 (13) Open area recreational facilities;

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

17 (15) Agricultural-based commercial operations registered in
18 Hawaii, including:

19 (A) A roadside stand that is not an enclosed
20 structure, owned and operated by a producer for
21 the display and sale of agricultural products



1 grown in Hawaii and value-added products that
2 were produced using agricultural products grown
3 in Hawaii;

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

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

18 (D) A farmers' market, which is an outdoor market
19 limited to producers selling agricultural
20 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; and

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

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

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



1 SECTION 4. 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~~[r]~~ for economic or personal use;
- 11 (2) ~~[Game and fish propagation;]~~ Raising and propagation
12 of game and fish for economic or personal use;
- 13 (3) Raising and propagation of livestock, including
14 poultry, bees, fish, or other animal or aquatic life
15 that are propagated for economic or personal use;
- 16 (4) Farm dwellings, employee housing, farm buildings, or
17 activities or uses related to farming and animal
18 husbandry. "Farm dwelling", as used in this
19 paragraph, means a single-family dwelling located on
20 and used in connection with a farm, including clusters
21 of single-family farm dwellings permitted within



- 1 agricultural parks developed by the State, or where
2 agricultural activity provides income to the family
3 occupying the dwelling;
- 4 (5) Public institutions and buildings that are necessary
5 for agricultural practices;
- 6 (6) Public and private open area types of recreational
7 uses, including day camps, picnic grounds, parks, and
8 riding stables, but not including dragstrips,
9 airports, drive-in theaters, golf courses, golf
10 driving ranges, country clubs, and overnight camps;
- 11 (7) Public, private, and quasi-public utility lines and
12 roadways, transformer stations, communications
13 equipment buildings, solid waste transfer stations,
14 major water storage tanks, and appurtenant small
15 buildings such as booster pumping stations, but not
16 including offices or yards for equipment, material,
17 vehicle storage, repair or maintenance, treatment
18 plants, corporation yards, or other similar
19 structures;
- 20 (8) Retention, restoration, rehabilitation, or improvement
21 of buildings or sites of historic or scenic interest;



- 1 (9) Agricultural-based commercial operations as described
- 2 in section 205-2(d) (15);
- 3 (10) Buildings and uses, including mills, storage, and
- 4 processing facilities, maintenance facilities,
- 5 photovoltaic, biogas, and other small-scale renewable
- 6 energy systems producing energy solely for use in the
- 7 agricultural activities of the fee or leasehold owner
- 8 of the property, and vehicle and equipment storage
- 9 areas that are normally considered directly accessory
- 10 to the above-mentioned uses and are permitted under
- 11 section 205-2(d);
- 12 (11) Agricultural parks;
- 13 (12) Plantation community subdivisions, which as used in
- 14 this chapter means an established subdivision or
- 15 cluster of employee housing, community buildings, and
- 16 agricultural support buildings on land currently or
- 17 formerly owned, leased, or operated by a sugar or
- 18 pineapple plantation; provided that the existing
- 19 structures may be used or rehabilitated for use, and
- 20 new employee housing and agricultural support



1 buildings may be allowed on land within the
2 subdivision as follows:

3 (A) The employee housing is occupied by employees or
4 former employees of the plantation who have a
5 property interest in the land;

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

9 (C) The agricultural support buildings shall be
10 rented or leased to agricultural business
11 operators or agricultural support services;

12 (13) Agricultural tourism conducted on a working farm, or a
13 farming operation as defined in section 165-2, for the
14 enjoyment, education, or involvement of visitors;
15 provided that the agricultural tourism activity is
16 accessory and secondary to the principal agricultural
17 use and does not interfere with surrounding farm
18 operations; and provided further that this paragraph
19 shall apply only to a county that has adopted
20 ordinances regulating agricultural tourism under
21 section 205-5;



- 1 (14) Agricultural tourism activities, including overnight
2 accommodations of twenty-one days or less, for any one
3 stay within a county; provided that this paragraph
4 shall apply only to a county that includes at least
5 three islands and has adopted ordinances regulating
6 agricultural tourism activities pursuant to section
7 205-5; provided further that the agricultural tourism
8 activities coexist with a bona fide agricultural
9 activity. For the purposes of this paragraph, "bona
10 fide agricultural activity" means a farming operation
11 as defined in section 165-2;
- 12 (15) Wind energy facilities, including the appurtenances
13 associated with the production and transmission of
14 wind generated energy; provided that the wind energy
15 facilities and appurtenances are compatible with
16 agriculture uses and cause minimal adverse impact on
17 agricultural land;
- 18 (16) Biofuel processing facilities, including the
19 appurtenances associated with the production and
20 refining of biofuels that is normally considered
21 directly accessory and secondary to the growing of the



1 energy feedstock; provided that biofuel processing
2 facilities and appurtenances do not adversely impact
3 agricultural land and other agricultural uses in the
4 vicinity.

5 For the purposes of this paragraph:

6 "Appurtenances" means operational infrastructure
7 of the appropriate type and scale for economic
8 commercial storage and distribution, and other similar
9 handling of feedstock, fuels, and other products of
10 biofuel processing facilities.

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

18 (17) Agricultural-energy facilities, including
19 appurtenances necessary for an agricultural-energy
20 enterprise; provided that the primary activity of the
21 agricultural-energy enterprise is agricultural



1 activity. To be considered the primary activity of an
2 agricultural-energy enterprise, the total acreage
3 devoted to agricultural activity shall be not less
4 than ninety per cent of the total acreage of the
5 agricultural-energy enterprise. The agricultural-
6 energy facility shall be limited to lands owned,
7 leased, licensed, or operated by the entity conducting
8 the agricultural activity.

9 As used in this paragraph:

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

12 "Agricultural-energy enterprise" means an
13 enterprise that integrally incorporates an
14 agricultural activity with an agricultural-energy
15 facility.

16 "Agricultural-energy facility" means a facility
17 that generates, stores, or distributes renewable
18 energy as defined in section 269-91 or renewable fuel
19 including electrical or thermal energy or liquid or
20 gaseous fuels from products of agricultural activities
21 from agricultural lands located in the State.



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

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

19 (19) Agricultural education programs conducted on a farming
20 operation as defined in section 165-2, for the
21 education and participation of the general public;



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

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

20 (A) Located on a paved or unpaved road in existence
21 as of December 31, 2013, and the parcel of land



1 upon which the paved or unpaved road is located
2 has a valid county agriculture tax dedication
3 status or a valid agricultural conservation
4 easement;

5 (B) Placed in a manner that still allows vehicular
6 traffic to use the road; and

7 (C) Granted a special use permit by the commission
8 pursuant to section 205-6;

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

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

19 (B) Proof of financial security to decommission the
20 facility is provided to the satisfaction of the
21 appropriate county planning commission prior to



1 date of commencement of commercial generation;
2 and
3 (C) Solar energy facilities shall be decommissioned
4 at the owner's expense according to the following
5 requirements:

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

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

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

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

20 (23) Hydroelectric facilities, including the appurtenances
21 associated with the production and transmission of



1 hydroelectric energy, subject to section 205-2;
2 provided that the hydroelectric facilities and their
3 appurtenances:

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

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

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

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

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

18 (C) Shall, if over five hundred kilowatts in
19 hydroelectric generating capacity, have the
20 approval of the commission on water resource
21 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 5. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 6. This Act shall take effect upon its approval;
11 provided that the amendments made to section 205-4.5(a), Hawaii
12 Revised Statutes, in section 4 of this Act shall not be repealed
13 when section 205-4.5, Hawaii Revised Statutes, is repealed and
14 reenacted on June 30, 2019, pursuant to section 3(1) of Act 52,
15 Session Laws of Hawaii 2014.



Report Title:

Hawaii Right to Farm Act; Subsistence Farming; Agricultural
Lands

Description:

Clarifies that "subsistence farming" 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 on agricultural lands may be for economic or personal use. (HB1884 HD1 PROPOSED)

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

