
A BILL FOR AN ACT

RELATING TO AGRICULTURAL LANDS.

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

1 SECTION 1. The legislature finds that the state
2 constitution recognizes the importance of preserving
3 agricultural lands for future generations. The subdivision of
4 lands within the agricultural district, however, has been used
5 to create farms that are used for personal pleasure. This is
6 contrary to the constitutional goal of subdividing lands to
7 allow land to remain in the hands of descendants or successors
8 who intend to continue to farm the land. Further, several
9 recent proposed subdivisions and condominium or horizontal
10 property regime schemes that have been processed by the counties
11 and department of commerce and consumer affairs reflect a lack
12 of consideration of these projects' likely impact on the
13 community, cultural resources, the environment and
14 infrastructure, or the preservation of agricultural lands for
15 future generations and food sustainability.



1 The purpose of this Act is to promote sustainable
2 subdivision of agricultural lands consistent with state
3 constitutional priorities.

4 SECTION 2. Section 205-4.5, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§205-4.5 Permissible uses within the agricultural**
7 **districts.** (a) Within the agricultural district, all lands
8 with soil classified by the land study bureau's detailed land
9 classification as overall (master) productivity rating class A
10 or B and for solar energy facilities, class B or C, shall be
11 restricted to the following permitted uses:

12 (1) Cultivation of crops, including crops for bioenergy,
13 flowers, vegetables, foliage, fruits, forage, and
14 timber;

15 (2) Game and fish propagation;

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

19 (4) Farm dwellings, employee housing, farm buildings, or
20 activities or uses related to farming and animal
21 husbandry. "Farm dwelling", as used in this



1 paragraph, means a single-family dwelling located on
2 and used in connection with a farm, including clusters
3 of 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 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 (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 agricultural-
10 energy facility shall be limited to lands owned,
11 leased, licensed, or operated by the entity conducting
12 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 agricultural-
10 energy facilities;

11 (18) Construction and operation of wireless communication
12 antennas; provided that, for the purposes of this
13 paragraph, "wireless communication antenna" means
14 communications equipment that is either freestanding
15 or placed upon or attached to an already existing
16 structure and that transmits and receives
17 electromagnetic radio signals used in the provision of
18 all types of wireless communications services;
19 provided further that nothing in this paragraph shall
20 be construed to permit the construction of any new



1 structure that is not deemed a permitted use under
2 this subsection;

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

16 (20) Solar energy facilities that do not occupy more than
17 ten per cent of the acreage of the parcel, or twenty
18 acres of land, whichever is lesser or for which a
19 special use permit is granted pursuant to section 205-
20 6; provided that this use shall not be permitted on
21 lands with soil classified by the land study bureau's



1 detailed land classification as overall (master)
2 productivity rating class A unless the solar energy
3 facilities are:

4 (A) Located on a paved or unpaved road in existence
5 as of December 31, 2013, and the parcel of land
6 upon which the paved or unpaved road is located
7 has a valid county agriculture tax dedication
8 status or a valid agricultural conservation
9 easement;

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

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

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

19 (A) The area occupied by the solar energy facilities
20 is also made available for compatible
21 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 date of commencement of commercial generation;
7 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 the development of the
18 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 or

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

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

12 (i) Impoundment facilities using a dam to store
13 water in a reservoir;

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

17 (iii) Pumped storage facilities that store energy
18 by pumping water uphill to a reservoir at
19 higher elevation from a reservoir at a lower
20 elevation to be released to turn a turbine
21 to generate electricity;



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

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

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

13 (b) Uses not expressly permitted in subsection (a) shall
14 be prohibited, except the uses permitted as provided in sections
15 205-6 and 205-8, and construction of single-family dwellings on
16 lots existing before June 4, 1976. Any other law to the
17 contrary notwithstanding, no subdivision of land within the
18 agricultural district with soil classified by the land study
19 bureau's detailed land classification as overall (master)
20 productivity rating class A or B shall be approved by a county
21 unless those A and B lands within the subdivision are made



1 subject to the restriction on uses as prescribed in this section
2 and to the condition that the uses shall be primarily in pursuit
3 of an agricultural activity.

4 Any deed, lease, agreement of sale, mortgage, or other
5 instrument of conveyance covering any land within the
6 agricultural subdivision shall expressly contain the restriction
7 on uses and the condition, as prescribed in this section that
8 these restrictions and conditions shall be encumbrances running
9 with the land until such time that the land is reclassified to a
10 land use district other than agricultural district.

11 If the foregoing requirement of encumbrances running with
12 the land jeopardizes the owner or lessee in obtaining mortgage
13 financing from any of the mortgage lending agencies set forth in
14 the following paragraph, and the requirement is the sole reason
15 for failure to obtain mortgage financing, then the requirement
16 of encumbrances shall, insofar as such mortgage financing is
17 jeopardized, be conditionally waived by the appropriate county
18 enforcement officer; provided that the conditional waiver shall
19 become effective only in the event that the property is
20 subjected to foreclosure proceedings by the mortgage lender.



1 The mortgage lending agencies referred to in the preceding
2 paragraph are the Federal Housing Administration, Federal
3 National Mortgage Association, Department of Veterans Affairs,
4 Small Business Administration, United States Department of
5 Agriculture, Federal Land Bank of Berkeley, Federal Intermediate
6 Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and any
7 other federal, state, or private mortgage lending agency
8 qualified to do business in Hawaii, and their respective
9 successors and assigns.

10 (c) 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 C,
13 D, E, or U shall be restricted to the uses permitted for
14 agricultural districts as set forth in section 205-5(b).

15 (d) Notwithstanding any other provision of this chapter to
16 the contrary, golf courses and golf driving ranges approved by a
17 county before July 1, 2005, for development within the
18 agricultural district shall be permitted uses within the
19 agricultural district.

20 (e) Notwithstanding any other provision of this chapter to
21 the contrary, plantation community subdivisions as defined in



1 this section shall be permitted uses within the agricultural
2 district, and section 205-8 shall not apply.

3 [f] Notwithstanding any other law to the contrary,
4 agricultural lands may be subdivided and leased for the
5 agricultural uses or activities permitted in subsection (a);
6 provided that:

7 (1) The principal use of the leased land is agriculture;

8 (2) No permanent or temporary dwellings or farm dwellings,
9 including trailers and campers, are constructed on the
10 leased area. This restriction shall not prohibit the
11 construction of storage sheds, equipment sheds, or
12 other structures appropriate to the agricultural
13 activity carried on within the lot; and

14 (3) The lease term for a subdivided lot shall be for at
15 least as long as the greater of:

16 (A) The minimum real property tax agricultural
17 dedication period of the county in which the
18 subdivided lot is located; or

19 (B) Five years.



1 Lots created and leased pursuant to this section shall be legal
2 lots of record for mortgage lending purposes and shall be exempt
3 from county subdivision standards.

4 (g) Notwithstanding any other law to the contrary, a
5 subdivision of agricultural lands shall be approved by the land
6 use commission if:

7 (1) The subdivision is subdivided into more than five lots
8 and:

9 (A) At least one subdivided lot is two acres or less;
10 or

11 (B) Has been submitted to the department of commerce
12 and consumer affairs for approval for a
13 condominium or horizontal property regime;

14 (2) The entire parcel subject to subdivision will remain
15 in continued agricultural use for a period of not less
16 than twenty years; and

17 (3) Subdivision:

18 (A) Will not result in fragmentation of the
19 agricultural district;

20 (B) Is consistent with relevant county general and
21 community plans;



1 (C) Is consistent with all relevant state
2 agricultural sustainability plans; and

3 (D) Is not done primarily for residential purposes."

4 SECTION 3. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 4. This Act shall take effect on July 31, 2150;
7 provided that the amendments made to section 205-4.5(a), Hawaii
8 Revised Statutes, by section 2 of this Act shall not be repealed
9 when that section is reenacted on June 30, 2019, pursuant to
10 section 3(1) of Act 52, Session Laws of Hawaii 2014.



Report Title:

Preservation; Subdivision; Agricultural Lands

Description:

Establishes criteria for the subdivision of agricultural lands to promote agricultural uses. (HB2020 HD1)

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