
A BILL FOR AN ACT

RELATING TO HOUSING ON AGRICULTURAL LAND.

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

1 SECTION 1. The legislature finds that the lack of housing
2 on agricultural lands has created hardships for many low-income
3 farmworkers and farm employers. Unable to find housing,
4 agricultural workers may pay higher rents, commute longer
5 distances, and have less opportunity to accumulate assets.
6 Without the ability to provide housing, many employers find it
7 difficult to recruit and retain a viable workforce, causing many
8 small and family-owned farms financial distress.

9 The purpose of this Act is to allow agricultural land
10 owners to develop on-farm and near-farm housing serving the
11 needs of both farmworkers and agricultural employers. The
12 development of secure, safe, efficient, and affordable housing
13 will help support Hawaii's valuable agricultural industry.
14 Further, farmworker housing can be one method to help achieve
15 Hawaii's affordable housing goals by fostering an adequate and
16 diverse supply.



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;

7 (2) Farming activities or uses related to animal husbandry
8 and game and fish propagation;

9 (3) Aquaculture, which means the production of aquatic
10 plant and animal life within ponds and other bodies of
11 water;

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

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

17 (6) Solar energy facilities; provided that:

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



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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),~~] and employee
17 housing[~~]~~ as provided in section 205-4.5(a)(4), farm
18 buildings, mills, storage facilities, processing
19 facilities, photovoltaic, biogas, and other small-
20 scale renewable energy systems producing energy solely



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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 hydroelectric facilities in accordance with section
5 205-4.5(a)(23), vehicle and equipment storage areas,
6 and plantation community subdivisions as defined in
7 section 205-4.5(a)(12);

8 (8) Wind machines and wind farms;

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

15 (10) Agricultural parks;

16 (11) Agricultural tourism conducted on a working farm, or a
17 farming operation as defined in section 165-2, for the
18 enjoyment, education, or involvement of visitors;
19 provided that the agricultural tourism activity is
20 accessory and secondary to the principal agricultural



1 use and does not interfere with surrounding farm
2 operations; and provided further that this paragraph
3 shall apply only to a county that has adopted
4 ordinances regulating agricultural tourism under
5 section 205-5;

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

17 (13) Open area recreational facilities;

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



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



1 were produced using agricultural products grown
2 in Hawaii.

3 The owner of an agricultural-based commercial
4 operation shall certify, upon request of an officer or
5 agent charged with enforcement of this chapter under
6 section 205-12, that the agricultural products
7 displayed or sold by the operation meet the
8 requirements of this paragraph.

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

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

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

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



1 (1) Cultivation of crops, including crops for bioenergy,
2 flowers, vegetables, foliage, fruits, forage, and
3 timber;

4 (2) Game and fish propagation;

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

8 (4) Farm dwellings, employee housing, farm buildings, or
9 activities or uses related to farming and animal
10 husbandry[-]; provided that:

11 (A) The farm dwellings and employee housing units
12 shall be used exclusively by farmers and their
13 immediate family members who actively and
14 currently farm on agricultural land upon which
15 the dwelling is situated; provided further that
16 the immediate family members of the farmer may
17 reside in separate dwelling units situated on the
18 same designated land;

19 (B) Employee housing units shall be used exclusively
20 by employees and their immediate family members



1 who actively and currently work on agricultural
2 land upon which the housing unit is situated;
3 provided further that the immediate family
4 members of the employee shall not reside in
5 separate housing units and shall reside with the
6 employee;

7 (C) The total land area upon which the farm dwellings
8 and employee housing units and all appurtenances
9 are situated shall not occupy more than five per
10 cent of the total agricultural land area
11 controlled by the farmer or the employee's
12 employer or fifty acres, whichever is less;

13 (D) No farm dwelling or employee housing unit shall
14 exceed one dwelling per five acres of lot area.
15 The owner or lessee of the lot shall meet two of
16 the following three criteria:

17 (i) Provide proof of at least \$35,000 of gross
18 sales of agricultural product(s) per year,
19 for the preceding two consecutive years, for
20 each farm labor dwelling on the lot, as



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- 1 shown by State general excise tax forms and
2 federal form 1040 Schedule F filings;
- 3 (ii) Provide certification by the department of
4 water supply that agricultural water rates
5 are being paid if the subject lot is served
6 by the county water system; or
- 7 (iii) Provide a five year farm plan that
8 demonstrates the feasibility of commercial
9 agricultural production, after which the
10 \$35,000 of gross sales of agricultural
11 product(s) per year requirement must be met;
- 12 (E) The farm dwellings and employee housing units
13 shall meet all applicable building code
14 requirements;
- 15 (F) Notwithstanding section 205-4.5(a)(12), the
16 landowner shall not plan or develop a residential
17 subdivision on the agricultural land;
- 18 (G) Consideration may be given to the cluster
19 development of farm dwellings and employee



1 housing units to maximize the land area available
 2 for agricultural production; and
 3 (H) The plans for farm dwellings and employee housing
 4 units shall be supported by agricultural plans
 5 that are approved by the department of
 6 agriculture.

7 "Farm dwelling", as used in this paragraph, means a
 8 single-family dwelling located on and used in
 9 connection with a farm, including clusters of single-
 10 family farm dwellings permitted within agricultural
 11 parks developed by the State, or where agricultural
 12 activity provides income to the family occupying the
 13 dwelling;

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

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



1 activities coexist with a bona fide agricultural
2 activity. For the purposes of this paragraph, "bona
3 fide agricultural activity" means a farming operation
4 as defined in section 165-2;

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

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

19 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



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

5 As used in this paragraph:

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

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

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

18 "Appurtenances" means operational infrastructure
19 of the appropriate type and scale for the economic
20 commercial generation, storage, distribution, and



1 other similar handling of energy, including equipment,
2 feedstock, fuels, and other products of agricultural-
3 energy facilities;

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

16 (19) Agricultural education programs conducted on a farming
17 operation as defined in section 165-2, for the
18 education and participation of the general public;
19 provided that the agricultural education programs are
20 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 section, "agricultural education programs" means
5 activities or events designed to promote knowledge and
6 understanding of agricultural activities and practices
7 conducted on a farming operation as defined in section
8 165-2;

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 unless the solar energy
17 facilities are:

18 (A) Located on a paved or unpaved road in existence
19 as of December 31, 2013, and the parcel of land
20 upon which the paved or unpaved road is located



1 has a valid county agriculture tax dedication
2 status, or a valid agricultural conservation
3 easement;
4 (B) Placed in a manner that still allows vehicular
5 traffic to use the road; and
6 (C) Granted a special use permit by the commission
7 pursuant to section 205-6;
8 (21) Solar energy facilities on lands with soil classified
9 by the land study bureau's detailed land
10 classification as overall (master) productivity rating
11 B or C for which a special use permit is granted
12 pursuant to section 205-6; provided that:
13 (A) The area occupied by the solar energy facilities
14 is also made available for compatible
15 agricultural activities at a lease rate that is
16 at least fifty per cent below the fair market
17 rent for comparable properties;
18 (B) Proof of financial security to decommission the
19 facility is provided to the satisfaction of the
20 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); or
17 (22) Geothermal resources exploration and geothermal
18 resources development, as defined under section 182-1;
19 or



- 1 (23) Hydroelectric facilities, including the appurtenances
2 associated with the production and transmission of
3 hydroelectric energy, subject to section 205-2;
4 provided that the hydroelectric facilities and their
5 appurtenances:
6 (A) Have a hydroelectric generating capacity of not
7 more than five hundred kilowatts;
8 (B) Comply with the state water code, chapter 174C;
9 (C) Are accessory to agricultural activities on
10 agricultural land for agricultural use only; and
11 (D) Do not adversely impact or impede the use of
12 agricultural land or the availability of surface
13 or ground water for all uses on all parcels that
14 are served by the ground water sources or streams
15 for which hydroelectric facilities are
16 considered."

17 SECTION 4. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 5. This Act shall take effect upon its approval;
20 provided that the amendments made to section 205-4.5(a), Hawaii



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1 Revised Statutes, in section 3 of this Act shall not be repealed
2 when section 205-4.5(a), Hawaii Revised Statutes, is repealed
3 and reenacted on June 30, 2019 pursuant to Act 52, section 3,
4 Session Laws of Hawaii 2014.

5

INTRODUCED BY:

J. Phil. Matus
R. A. ...
...
...

JAN 24 2018



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Report Title:

Agricultural Land; Dwellings; Employee Housing.

Description:

Establishes standards for dwellings and employee housing on agricultural land. Limits dwellings and employee housing on agricultural land to farmers and immediate family members.

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

