
A BILL FOR AN ACT

RELATING TO AGRICULTURAL LAND.

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

1 SECTION 1. The legislature finds that article XI, section
2 3, of the Hawaii State Constitution makes the conservation and
3 protection of Hawaii's agricultural lands a priority. It
4 charges the State to "promote diversified agriculture, increase
5 agricultural self-sufficiency and assure the availability of
6 agriculturally suitable lands." This priority is reflected in
7 the state plan as well, which declares self-sufficiency, social
8 and economic mobility, and community well-being as the values
9 guiding the state plan. The legislature finds that securing
10 agricultural lands and promoting agriculture are essential to
11 meet these goals.

12 The legislature has made attempts to secure agricultural
13 lands by directing the counties to identify important
14 agricultural lands through Act 183, Session Laws of Hawaii 2005,
15 and providing incentives to do so in Act 233, Session Laws of
16 Hawaii 2008. The preservation of important agricultural lands
17 will only be effective if such lands are identified for
18 preservation before large tracts are lost to development. The



1 State has spent thirty years attempting to identify and protect
2 important agricultural lands, but has failed to do so, and no
3 county council has taken up the issue since 2008.

4 One of the goals of the state plan is to achieve a strong,
5 viable economy characterized by stability, diversity, and
6 growth. This goal includes, among other things, objectives of
7 increased and diversified employment opportunities, encouraging
8 entrepreneurship, assuring basic needs of Hawaii's people in the
9 event of overseas transportation disruptions, and encouraging
10 economically satisfying labor-intensive employment for upward
11 mobility. The legislature further finds that all of these
12 objectives can be accomplished through expanded agriculture
13 throughout the islands. Such an expansion would improve the
14 amount of locally grown food, diversify the industries upon
15 which the economy is built, and provide an expanded job market
16 for labor and science.

17 These goals can only be met if large parcels of
18 agricultural lands are preserved. Commercially viable
19 agriculture requires large contiguous parcels for operation.
20 Livestock operations also require large contiguous parcels for
21 pasture, operations, and buffers. The approval of a dairy on



1 the south shore of Kauai has sparked friction with neighboring
2 land owners -- particularly with the nearest hotel, which has
3 concerns about possible runoff, odors, and water pollution that
4 could be produced by the dairy. This clash of interests
5 indicates that buffers must be included between agricultural
6 lands and non-agricultural operations in order to mitigate the
7 concerns produced by large-scale agricultural operations. The
8 need for buffers bolsters the need to maintain large, contiguous
9 parcels of agricultural land.

10 The legislature finds that laws allowing the subdivision of
11 agricultural lands, including through condominium property
12 regimes and other means, must be scrutinized. In Kauai alone,
13 431 agricultural parcels, representing 17,000 acres, have been
14 divided under condominium property regimes since 1993. The
15 intent of this Act is to fill loopholes that have allowed
16 developers to maneuver land use restrictions, rather than
17 following proper channels to rezone, resulting in the
18 urbanization of agricultural lands. Agricultural lands must be
19 protected from such subdivision in order to prevent the
20 fractionalization of agricultural parcels and promote the
21 conservation of large agricultural tracts.



1 The purpose of this Act is to prevent the loss of large-
2 scale agricultural parcels and to ensure that future use of
3 agricultural lands are for bona fide agricultural operations.

4 SECTION 2. Section 205-4.5, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

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

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

14 (2) Game and fish propagation;

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

18 (4) Farm dwellings, employee housing, farm buildings, or
19 activities or uses related to farming and animal
20 husbandry. "Farm dwelling", as used in this
21 paragraph, means a single-family dwelling located on



1 and used in connection with a farm, including clusters
2 of single-family farm dwellings permitted within
3 agricultural parks developed by the State, or where
4 agricultural activity provides income to the family
5 occupying the dwelling; provided that no project
6 consisting of single-family dwellings shall be created
7 as a condominium under chapter 514B or a planned
8 community association under chapter 421J; provided
9 further that this paragraph shall not apply to
10 plantation community subdivisions permitted under
11 paragraph (12);

12 (5) Public institutions and buildings that are necessary
13 for agricultural practices;

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

19 (7) Public, private, and quasi-public utility lines and
20 roadways, transformer stations, communications
21 equipment buildings, solid waste transfer stations,



1 major water storage tanks, and appurtenant small
2 buildings such as booster pumping stations, but not
3 including offices or yards for equipment, material,
4 vehicle storage, repair or maintenance, treatment
5 plants, corporation yards, or other similar
6 structures;

7 (8) Retention, restoration, rehabilitation, or improvement
8 of buildings or sites of historic or scenic interest;

9 (9) Agricultural-based commercial operations as described
10 in section 205-2(d)(15);

11 (10) Buildings and uses, including mills, storage, and
12 processing facilities, maintenance facilities,
13 photovoltaic, biogas, and other small-scale renewable
14 energy systems producing energy solely for use in the
15 agricultural activities of the fee or leasehold owner
16 of the property, and vehicle and equipment storage
17 areas that are normally considered directly accessory
18 to the above-mentioned uses and are permitted under
19 section 205-2(d);

20 (11) Agricultural parks;



1 (12) Plantation community subdivisions, which as used in
2 this chapter means an established subdivision or
3 cluster of employee housing, community buildings, and
4 agricultural support buildings on land currently or
5 formerly owned, leased, or operated by a sugar or
6 pineapple plantation; provided that the existing
7 structures may be used or rehabilitated for use, and
8 new employee housing and agricultural support
9 buildings may be allowed on land within the
10 subdivision as follows:

11 (A) The employee housing is occupied by employees or
12 former employees of the plantation who have a
13 property interest in the land;

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

17 (C) The agricultural support buildings shall be
18 rented or leased to agricultural business
19 operators or agricultural support services;

20 (13) Agricultural tourism conducted on a working farm, or a
21 farming operation as defined in section 165-2, for the



1 enjoyment, education, or involvement of visitors;
2 provided that the agricultural tourism activity is
3 accessory and secondary to the principal agricultural
4 use and does not interfere with surrounding farm
5 operations; and provided further that this paragraph
6 shall apply only to a county that has adopted
7 ordinances regulating agricultural tourism under
8 section 205-5;

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

20 (15) Wind energy facilities, including the appurtenances
21 associated with the production and transmission of



1 wind generated energy; provided that the wind energy
2 facilities and appurtenances are compatible with
3 agriculture uses and cause minimal adverse impact on
4 agricultural land;

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

13 For the purposes of this paragraph:

14 "Appurtenances" means operational infrastructure
15 of the appropriate type and scale for economic
16 commercial storage and distribution, and other similar
17 handling of feedstock, fuels, and other products of
18 biofuel processing facilities.

19 "Biofuel processing facility" means a facility
20 that produces liquid or gaseous fuels from organic
21 sources such as biomass crops, agricultural residues,



1 and oil crops, including palm, canola, soybean, and
2 waste cooking oils; grease; food wastes; and animal
3 residues and wastes that can be used to generate
4 energy;

5 (17) Agricultural-energy facilities, including
6 appurtenances necessary for an agricultural-energy
7 enterprise; provided that the primary activity of the
8 agricultural-energy enterprise is agricultural
9 activity. To be considered the primary activity of an
10 agricultural-energy enterprise, the total acreage
11 devoted to agricultural activity shall be not less
12 than ninety per cent of the total acreage of the
13 agricultural-energy enterprise. The agricultural-
14 energy facility shall be limited to lands owned,
15 leased, licensed, or operated by the entity conducting
16 the agricultural activity.

17 As used in this paragraph:

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

20 "Agricultural-energy enterprise" means an
21 enterprise that integrally incorporates an



1 agricultural activity with an agricultural-energy
2 facility.

3 "Agricultural-energy facility" means a facility
4 that generates, stores, or distributes renewable
5 energy as defined in section 269-91 or renewable fuel
6 including electrical or thermal energy or liquid or
7 gaseous fuels from products of agricultural activities
8 from agricultural lands located in the State.

9 "Appurtenances" means operational infrastructure
10 of the appropriate type and scale for the economic
11 commercial generation, storage, distribution, and
12 other similar handling of energy, including equipment,
13 feedstock, fuels, and other products of agricultural-
14 energy facilities;

15 (18) Construction and operation of wireless communication
16 antennas; provided that, for the purposes of this
17 paragraph, "wireless communication antenna" means
18 communications equipment that is either freestanding
19 or placed upon or attached to an already existing
20 structure and that transmits and receives
21 electromagnetic radio signals used in the provision of



1 all types of wireless communications services;
2 provided further that nothing in this paragraph shall
3 be construed to permit the construction of any new
4 structure that is not deemed a permitted use under
5 this subsection;

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

19 (20) Solar energy facilities that do not occupy more than
20 ten per cent of the acreage of the parcel, or twenty
21 acres of land, whichever is lesser or for which a



1 special use permit is granted pursuant to section 205-
2 6; provided that this use shall not be permitted on
3 lands with soil classified by the land study bureau's
4 detailed land classification as overall (master)
5 productivity rating class A unless the solar energy
6 facilities are:

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

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

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

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



- 1 (A) The area occupied by the solar energy facilities
- 2 is also made available for compatible
- 3 agricultural activities at a lease rate that is
- 4 at least fifty per cent below the fair market
- 5 rent for comparable properties;
- 6 (B) Proof of financial security to decommission the
- 7 facility is provided to the satisfaction of the
- 8 appropriate county planning commission prior to
- 9 date of commencement of commercial generation;
- 10 and
- 11 (C) Solar energy facilities shall be decommissioned
- 12 at the owner's expense according to the following
- 13 requirements:
- 14 (i) Removal of all equipment related to the
- 15 solar energy facility within twelve months
- 16 of the conclusion of operation or useful
- 17 life; and
- 18 (ii) Restoration of the disturbed earth to
- 19 substantially the same physical condition as
- 20 existed prior to the development of the
- 21 solar energy facility.



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

4 (22) Geothermal resources exploration and geothermal
5 resources development, as defined under section 182-1;
6 or

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

12 (A) Shall consist of a small hydropower facility as
13 defined by the United States Department of
14 Energy, including:

15 (i) Impoundment facilities using a dam to store
16 water in a reservoir;

17 (ii) A diversion or run-of-river facility that
18 channels a portion of a river through a
19 canal or channel; and

20 (iii) Pumped storage facilities that store energy
21 by pumping water uphill to a reservoir at



1 higher elevation from a reservoir at a lower
2 elevation to be released to turn a turbine
3 to generate electricity;

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

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

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

16 SECTION 3. Section 514B-31, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) To create a condominium property regime, all of the
19 owners of the fee simple interest in land shall execute and
20 record a declaration submitting the land to the condominium
21 property regime. Upon recordation of the master deed together



1 with a declaration, the condominium property regime shall be
2 deemed created[-]; provided that:

3 (1) No condominium property regime shall be created on any
4 parcel of agricultural land consisting of twenty-five
5 or more acres;

6 (2) No condominium property regime created on any parcel
7 of agricultural land shall be later amended to allow
8 for a single-family dwelling; and

9 (3) No parcel of agricultural land consisting of twenty-
10 five or more acres shall be subdivided for the purpose
11 of creating a condominium property regime."

12 SECTION 4. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 5. This Act shall take effect on July 1, 2050;
15 provided that the amendments made to section 205-4.5(a), Hawaii
16 Revised Statutes, by section 1 of this Act shall not be repealed
17 when that section is repealed and reenacted on June 30, 2019, by
18 section 3 of Act 52, Session Laws of Hawaii 2014.

19



Report Title:

Condominium Property Regime; Agricultural Land

Description:

Prohibits the creation of a condominium property regime on agricultural land 25 acres or greater. Prohibits a condominium property regime on agricultural land from being amended to allow a single-family dwelling. Prohibits the subdivision of agricultural land 25 acres or greater for the purpose of creating a condominium property regime. Prohibits any project consisting of single-family dwellings created as a condominium under chapter 514B, HRS, or a planned community association under chapter 421J, HRS, in class A or B agricultural lands. Takes effect 7/1/2050. (SD1)

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

