

---

---

# A BILL FOR AN ACT

RELATING TO AGRICULTURAL LANDS.

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

1 SECTION 1. The purpose of this Act is to:

2 (1) Amend the definition of "farm dwelling" that applies  
3 to allowable uses in the agricultural district; and

4 (2) Amend certain land subdivision and condominium  
5 property regime laws related to agricultural land, as  
6 recommended by the office of planning in its study of  
7 subdivision and condominium property regimes on  
8 agricultural lands on Oahu conducted pursuant to Act  
9 278, Session Laws of Hawaii 2019.

10 SECTION 2. Section 205-4.5, Hawaii Revised Statutes, is  
11 amended as follows:

12 1. By amending subsection (a) to read:

13 "(a) Within the agricultural district, all lands with soil  
14 classified by the land study bureau's detailed land  
15 classification as overall (master) productivity rating class A  
16 or B and for solar energy facilities, class B or C, shall be  
17 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. "Farm dwelling", as used in this  
11          paragraph, means a single-family dwelling located on  
12          and ~~[used in connection with]~~ accessory to a farm,  
13          including clusters of single-family farm dwellings  
14          permitted within agricultural parks developed by the  
15          State, or where agricultural activity provides income  
16          of no less than \$10,000 a year to the family occupying  
17          the dwelling; provided that agricultural activity  
18          income shall be determined by any state general excise  
19          tax return filing or agricultural dedication for the  
20          parcel or lot of record approved by the county in



- 1           which the dwelling and agricultural activity are  
2           located;
- 3           (5) Public institutions and buildings that are necessary  
4           for agricultural practices;
- 5           (6) Public and private open area types of recreational  
6           uses, including day camps, picnic grounds, parks, and  
7           riding stables, but not including dragstrips,  
8           airports, drive-in theaters, golf courses, golf  
9           driving ranges, country clubs, and overnight camps;
- 10          (7) Public, private, and quasi-public utility lines and  
11          roadways, transformer stations, communications  
12          equipment buildings, solid waste transfer stations,  
13          major water storage tanks, and appurtenant small  
14          buildings such as booster pumping stations, but not  
15          including offices or yards for equipment, material,  
16          vehicle storage, repair or maintenance, treatment  
17          plants, corporation yards, or other similar  
18          structures;
- 19          (8) Retention, restoration, rehabilitation, or improvement  
20          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, including small wireless facilities;  
9 provided that, for the purposes of this paragraph,  
10 "wireless communication antenna" means communications  
11 equipment that is either freestanding or placed upon  
12 or attached to an already existing structure and that  
13 transmits and receives electromagnetic radio signals  
14 used in the provision of all types of wireless  
15 communications services; provided further that "small  
16 wireless facilities" shall have the same meaning as in  
17 section 206N-2; provided further that nothing in this  
18 paragraph shall be construed to permit the  
19 construction of any new structure that is not deemed a  
20 permitted use under this subsection;



- 1           (19) Agricultural education programs conducted on a farming  
2                   operation as defined in section 165-2, for the  
3                   education and participation of the general public;  
4                   provided that the agricultural education programs are  
5                   accessory and secondary to the principal agricultural  
6                   use of the parcels or lots on which the agricultural  
7                   education programs are to occur and do not interfere  
8                   with surrounding farm operations. For the purposes of  
9                   this paragraph, "agricultural education programs"  
10                  means activities or events designed to promote  
11                  knowledge and understanding of agricultural activities  
12                  and practices conducted on a farming operation as  
13                  defined in section 165-2;
- 14           (20) Solar energy facilities that do not occupy more than  
15                   ten per cent of the acreage of the parcel, or twenty  
16                   acres of land, whichever is lesser or for which a  
17                   special use permit is granted pursuant to section  
18                   205-6; provided that this use shall not be permitted  
19                   on lands with soil classified by the land study  
20                   bureau's detailed land classification as overall  
21                   (master) productivity rating class A;



- 1           (21) Solar energy facilities on lands with soil classified  
2                   by the land study bureau's detailed land  
3                   classification as overall (master) productivity rating  
4                   B or C for which a special use permit is granted  
5                   pursuant to section 205-6; provided that:
- 6           (A) The area occupied by the solar energy facilities  
7                   is also made available for compatible  
8                   agricultural activities at a lease rate that is  
9                   at least fifty per cent below the fair market  
10                  rent for comparable properties;
- 11          (B) Proof of financial security to decommission the  
12                  facility is provided to the satisfaction of the  
13                  appropriate county planning commission prior to  
14                  date of commencement of commercial generation;  
15                  and
- 16          (C) Solar energy facilities shall be decommissioned  
17                  at the owner's expense according to the following  
18                  requirements:
- 19                  (i) Removal of all equipment related to the  
20                          solar energy facility within twelve months



1 of the conclusion of operation or useful  
2 life; and  
3 (ii) Restoration of the disturbed earth to  
4 substantially the same physical condition as  
5 existed prior to the development of the  
6 solar energy facility.

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

10 (22) Geothermal resources exploration and geothermal  
11 resources development, as defined under section 182-1;  
12 or

13 (23) Hydroelectric facilities, including the appurtenances  
14 associated with the production and transmission of  
15 hydroelectric energy, subject to section 205-2;  
16 provided that the hydroelectric facilities and their  
17 appurtenances:

18 (A) Shall consist of a small hydropower facility as  
19 defined by the United States Department of  
20 Energy, including:



- 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



1                   by the ground water sources or streams for which  
2                   hydroelectric facilities are considered."

3           2.    By amending subsection (f) to read:

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

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

9           (2)   No permanent or temporary dwellings or farm dwellings,  
10           including trailers and campers, are constructed on the  
11           leased area. This restriction shall not prohibit the  
12           construction of storage sheds, equipment sheds, or  
13           other structures appropriate to the agricultural  
14           activity carried on within the lot [~~7~~ and]; provided  
15           that any violation of this paragraph shall be subject  
16           to county enforcement authority and fines pursuant to  
17           sections 46-4, 205-12, and 205-13; and

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



1 (A) The minimum real property tax agricultural  
2 dedication period of the county in which the  
3 subdivided lot is located; or

4 (B) Five years.

5 Lots created and leased pursuant to this section shall be legal  
6 lots of record for mortgage lending purposes and shall be exempt  
7 from county subdivision standards."

8 SECTION 3. Section 514B-52, Hawaii Revised Statutes, is  
9 amended by amending subsection (b) to read as follows:

10 "(b) An application for registration of a project in the  
11 agricultural district classified pursuant to chapter 205 shall  
12 include a verified statement, signed by an appropriate county  
13 official, that the project as described and set forth in the  
14 project's declaration, condominium map, bylaws, and house rules  
15 does not include any restrictions limiting or prohibiting  
16 agricultural uses or activities, in compliance with section  
17 205-4.6. The statement shall also include the applicant's  
18 assessment and county comments regarding the availability of  
19 supportive infrastructure, any potential impact on governmental  
20 plans and resources, sensitive environmental resources, and any  
21 other requirements pursuant to county ordinances and rules. The



1 commission shall not accept the registration of a project where  
2 a county official has not signed a verified statement."

3 SECTION 4. This Act does not affect rights and duties that  
4 matured, penalties that were incurred, and proceedings that were  
5 begun before its effective date.

6 SECTION 5. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 6. This Act shall take effect on July 1, 2050.





**Report Title:**

Agricultural Lands; Farm Dwelling; Land Subdivisions;  
Condominium Property Regime

**Description:**

Amends the definition of "farm dwelling" that applies to allowed uses in the agricultural district. Amends certain land subdivision and condominium property regime laws related to agricultural land, as recommended pursuant to Act 278, Session Laws of Hawaii 2019, to ensure agricultural lands that are organized under a condominium property regime are used for agricultural purposes. Takes effect on 7/1/2050. (HD1)

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

