

GOV. MSG. NO. 1179

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

June 24, 2021

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirty First State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirty First State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on June 24, 2021, the following bill was signed into law:

HB0247 SD2

RELATING TO AGRICULTURAL LANDS
ACT 077 (21)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

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

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

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

10 "(a) 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 A
13 or B and for solar energy facilities, class B or C, shall be
14 restricted to the following permitted uses:

- 15 (1) Cultivation of crops, including crops for bioenergy,
16 flowers, vegetables, foliage, fruits, forage, and
17 timber;



- 1 (2) Game and fish propagation;
- 2 (3) Raising of livestock, including poultry, bees, fish,
- 3 or other animal or aquatic life that are propagated
- 4 for economic or personal use;
- 5 (4) Farm dwellings, employee housing, farm buildings, or
- 6 activities or uses related to farming and animal
- 7 husbandry. "Farm dwelling", as used in this
- 8 paragraph, means a single-family dwelling located on
- 9 and ~~[used in connection with]~~ accessory to a farm,
- 10 including clusters of single-family farm dwellings
- 11 permitted within agricultural parks developed by the
- 12 State, or where agricultural activity provides income
- 13 to the family occupying the 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
21 activities coexist with a bona fide agricultural



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

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

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

18 For the purposes of this paragraph:

19 "Appurtenances" means operational infrastructure
20 of the appropriate type and scale for economic
21 commercial storage and distribution, and other similar



1 handling of feedstock, fuels, and other products of
2 biofuel processing facilities.

3 "Biofuel processing facility" means a facility
4 that produces liquid or gaseous fuels from organic
5 sources such as biomass crops, agricultural residues,
6 and oil crops, including palm, canola, soybean, and
7 waste cooking oils; grease; food wastes; and animal
8 residues and wastes that can be used to generate
9 energy;

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



1 As used in this paragraph:

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

4 "Agricultural-energy enterprise" means an
5 enterprise that integrally incorporates an
6 agricultural activity with an agricultural-energy
7 facility.

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

14 "Appurtenances" means operational infrastructure
15 of the appropriate type and scale for the economic
16 commercial generation, storage, distribution, and
17 other similar handling of energy, including equipment,
18 feedstock, fuels, and other products of agricultural-
19 energy facilities;

20 (18) Construction and operation of wireless communication
21 antennas, including small wireless facilities;



1 provided that, for the purposes of this paragraph,
2 "wireless communication antenna" means communications
3 equipment that is either freestanding or placed upon
4 or attached to an already existing structure and that
5 transmits and receives electromagnetic radio signals
6 used in the provision of all types of wireless
7 communications services; provided further that "small
8 wireless facilities" shall have the same meaning as in
9 section 206N-2; provided further that nothing in this
10 paragraph shall be construed to permit the
11 construction of any new structure that is not deemed a
12 permitted use under this subsection;

13 (19) Agricultural education programs conducted on a farming
14 operation as defined in section 165-2, for the
15 education and participation of the general public;
16 provided that the agricultural education programs are
17 accessory and secondary to the principal agricultural
18 use of the parcels or lots on which the agricultural
19 education programs are to occur and do not interfere
20 with surrounding farm operations. For the purposes of
21 this paragraph, "agricultural education programs"



1 means activities or events designed to promote
2 knowledge and understanding of agricultural activities
3 and practices conducted on a farming operation as
4 defined in section 165-2;

5 (20) Solar energy facilities that do not occupy more than
6 ten per cent of the acreage of the parcel, or twenty
7 acres of land, whichever is lesser or for which a
8 special use permit is granted pursuant to section
9 205-6; provided that this use shall not be permitted
10 on lands with soil classified by the land study
11 bureau's detailed land classification as overall
12 (master) productivity rating class A;

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

18 (A) The area occupied by the solar energy facilities
19 is also made available for compatible
20 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 2. By amending subsection (f) to read:

14 "[+] (f) [>] Notwithstanding any other law to the contrary,

15 agricultural lands may be subdivided and leased for the

16 agricultural uses or activities permitted in subsection (a);

17 provided that:

- 18 (1) The principal use of the leased land is agriculture;
- 19 (2) No permanent or temporary dwellings or farm dwellings,
- 20 including trailers and campers, are constructed on the
- 21 leased area. This restriction shall not prohibit the



1 construction of storage sheds, equipment sheds, or
2 other structures appropriate to the agricultural
3 activity carried on within the lot; [~~and~~] provided
4 that any violation of this paragraph shall be subject
5 to county enforcement authority and fines pursuant to
6 sections 46-4, 205-12, and 205-13; and

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

9 (A) The minimum real property tax agricultural
10 dedication period of the county in which the
11 subdivided lot is located; or

12 (B) Five years.

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

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

18 "(b) An application for registration of a project in the
19 agricultural district classified pursuant to chapter 205 shall
20 include a verified statement, signed by an appropriate county
21 official, that the project as described and set forth in the



1 project's declaration, condominium map, bylaws, and house rules
2 does not include any restrictions limiting or prohibiting
3 agricultural uses or activities, in compliance with section
4 205-4.6. For projects containing greater than five units, the
5 statement shall also include the applicant's assessment and
6 county comments regarding the availability of supportive
7 infrastructure, any potential impact on governmental plans and
8 resources, sensitive environmental resources, and any other
9 requirements pursuant to county ordinances and rules. The
10 developer's public report shall include the verified statement
11 in addition to the information required by section 514B-83. The
12 commission shall not accept the registration of a project where
13 a county official has not signed a verified statement."

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

17 SECTION 5. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 6. This Act shall take effect on July 1, 2021.



H.B. NO. 247
S.D. 2

APPROVED this 24 day of JUN , 2021

A handwritten signature in black ink, appearing to read "David Ige". The signature is fluid and cursive, with a large, sweeping flourish at the end.

GOVERNOR OF THE STATE OF HAWAII

HB No. 247, SD 2

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 22, 2021
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-First Legislature of the State of Hawaii, Regular Session of 2021.



Scott K. Saiki
Speaker
House of Representatives




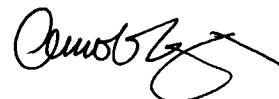
Brian L. Takeshita
Chief Clerk
House of Representatives

THE SENATE OF THE STATE OF HAWAI'I

Date: April 13, 2021
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Third Reading in the Senate of the Thirty-First Legislature of the State of Hawai'i, Regular Session of 2021.


President of the Senate


Clerk of the Senate