
A BILL FOR AN ACT

RELATING TO AGRICULTURE.

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

1 SECTION 1. Section 165-2, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By adding a new definition to be appropriately inserted
4 and to read:

5 "Customary and traditional subsistence farming" means
6 customary and traditional subsistence farming conducted by a
7 Native Hawaiian cultural practitioner that is:

- 8 (1) Used for direct personal or family consumption;
9 (2) Conducted on land that does not contain a dwelling or
10 residence; and
11 (3) Conducted on land on which no person resides."

12 2. By amending the definition of "farming operation" to
13 read:

14 "Farming operation" means a commercial agricultural,
15 silvicultural, or aquacultural facility or pursuit conducted, in
16 whole or in part, including the care and production of livestock
17 and livestock products, poultry and poultry products, apiary



1 products, and plant and animal production for nonfood uses; the
2 planting, cultivating, harvesting, and processing of crops; and
3 the farming or ranching of any plant or animal species in a
4 controlled salt, brackish, or freshwater environment. "Farming
5 operation" includes but shall not be limited to:

- 6 (1) Agricultural-based commercial operations as described
7 in section [+]205-2(d)(15)[+];
- 8 (2) Noises, odors, dust, and fumes emanating from a
9 commercial agricultural or an aquacultural facility or
10 pursuit;
- 11 (3) Operation of machinery and irrigation pumps;
- 12 (4) Ground and aerial seeding and spraying;
- 13 (5) The application of chemical fertilizers, conditioners,
14 insecticides, pesticides, and herbicides; ~~and~~
- 15 (6) The employment and use of labor[-]; and
- 16 (7) Customary and traditional subsistence farming.

17 A farming operation that conducts processing operations or salt,
18 brackish, or freshwater aquaculture operations on land that is
19 zoned for industrial, commercial, or other nonagricultural use
20 shall not, by reason of that zoning, fall beyond the scope of
21 this definition; provided that those processing operations form



1 an integral part of operations that otherwise meet the
2 requirements of this definition."

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

5 "(d) Agricultural districts shall include:

- 6 (1) Activities or uses as characterized by the cultivation
7 of crops, crops for bioenergy, orchards, forage, and
8 forestry[+] for economic use or customary and
9 traditional subsistence farming as defined in section
10 165-2;
- 11 (2) Farming activities or uses related to animal husbandry
12 and game and fish propagation[+] for economic use or
13 customary and traditional subsistence farming as
14 defined in section 165-2;
- 15 (3) Aquaculture, which means the production of aquatic
16 plant and animal life within ponds and other bodies of
17 water[+] for economic use or customary and traditional
18 subsistence farming as defined in section 165-2;
- 19 (4) Wind-generated energy production for public, private,
20 and commercial use;



- 1 (5) Biofuel production, as described in section 205-
2 4.5(a)(16), for public, private, and commercial use;
3 (6) Solar energy facilities; provided that:
4 (A) This paragraph shall apply only to land with soil
5 classified by the land study bureau's detailed
6 land classification as overall (master)
7 productivity rating class B, C, D, or E; and
8 (B) Solar energy facilities placed within land with
9 soil classified as overall productivity rating
10 class B or C shall not occupy more than ten per
11 cent of the acreage of the parcel, or twenty
12 acres of land, whichever is lesser, unless a
13 special use permit is granted pursuant to section
14 205-6;
15 (7) Bona fide agricultural services and uses that support
16 the agricultural activities of the fee or leasehold
17 owner of the property and accessory to any of the
18 above activities, regardless of whether conducted on
19 the same premises as the agricultural activities to
20 which they are accessory, including farm dwellings as
21 defined in section 205-4.5(a)(4), employee housing,



1 farm buildings, mills, storage facilities, processing
2 facilities, photovoltaic, biogas, and other small-
3 scale renewable energy systems producing energy solely
4 for use in the agricultural activities of the fee or
5 leasehold owner of the property, agricultural-energy
6 facilities as defined in section 205-4.5(a)(17),
7 vehicle and equipment storage areas, and plantation
8 community subdivisions as defined in section 205-
9 4.5(a)(12);

10 (8) Wind machines and wind farms;

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

17 (10) Agricultural parks;

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



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

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

18 (13) Open area recreational facilities;

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



1 (15) Agricultural-based commercial operations registered in
2 Hawaii, including:

3 (A) A roadside stand that is not an enclosed
4 structure, owned and operated by a producer for
5 the display and sale of agricultural products
6 grown in Hawaii and value-added products that
7 were produced using agricultural products grown
8 in Hawaii;

9 (B) Retail activities in an enclosed structure owned
10 and operated by a producer for the display and
11 sale of agricultural products grown in Hawaii,
12 value-added products that were produced using
13 agricultural products grown in Hawaii, logo items
14 related to the producer's agricultural
15 operations, and other food items;

16 (C) A retail food establishment owned and operated by
17 a producer and permitted under chapter 11-50,
18 Hawaii administrative rules, that prepares and
19 serves food at retail using products grown in
20 Hawaii and value-added products that were



1 produced using agricultural products grown in
2 Hawaii;

3 (D) A farmers' market, which is an outdoor market
4 limited to producers selling agricultural
5 products grown in Hawaii and value-added products
6 that were produced using agricultural products
7 grown in Hawaii; and

8 (E) A food hub, which is a facility that may contain
9 a commercial kitchen and provides for the
10 storage, processing, distribution, and sale of
11 agricultural products grown in Hawaii and value-
12 added products that were produced using
13 agricultural products grown in Hawaii.

14 The owner of an agricultural-based commercial
15 operation shall certify, upon request of an officer or
16 agent charged with enforcement of this chapter under
17 section 205-12, that the agricultural products
18 displayed or sold by the operation meet the
19 requirements of this paragraph;

20 (16) Hydroelectric facilities as described in section 205-
21 4.5(a)(23); and



1 (17) Composting and co-composting operations; provided that
2 operations that process their own green waste and do
3 not require permits from the department of health
4 shall use the finished composting product only on the
5 operation's own premises to minimize the potential
6 spread of invasive species.

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

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

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

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

19 (1) Cultivation of crops, including crops for bioenergy,
20 flowers, vegetables, foliage, fruits, forage, and
21 timber[+] for economic use or customary and



- 1 traditional subsistence farming as defined in section
2 165-2;
- 3 (2) ~~[Game and fish propagation;]~~ Raising and propagation
4 of game and fish for economic use or customary and
5 traditional subsistence farming as defined in section
6 165-2;
- 7 (3) Raising of livestock, including poultry, bees, fish,
8 or other animal or aquatic life that are propagated
9 for economic or personal use;
- 10 (4) Farm dwellings, employee housing, farm buildings, or
11 activities or uses related to farming and animal
12 husbandry. "Farm dwelling", as used in this
13 paragraph, means a single-family dwelling located on
14 and accessory to a farm, including clusters of single-
15 family farm dwellings permitted within agricultural
16 parks developed by the State, or where agricultural
17 activity provides income to the family occupying the
18 dwelling;
- 19 (5) Public institutions and buildings that are necessary
20 for agricultural practices;



- 1 (6) Public and private open area types of recreational
2 uses, including day camps, picnic grounds, parks, and
3 riding stables, but not including dragstrips,
4 airports, drive-in theaters, golf courses, golf
5 driving ranges, country clubs, and overnight camps;
- 6 (7) Public, private, and quasi-public utility lines and
7 roadways, transformer stations, communications
8 equipment buildings, solid waste transfer stations,
9 major water storage tanks, and appurtenant small
10 buildings such as booster pumping stations, but not
11 including offices or yards for equipment, material,
12 vehicle storage, repair or maintenance, treatment
13 plants, corporation yards, or other similar
14 structures;
- 15 (8) Retention, restoration, rehabilitation, or improvement
16 of buildings or sites of historic or scenic interest;
- 17 (9) Agricultural-based commercial operations as described
18 in section 205-2(d)(15);
- 19 (10) Buildings and uses, including mills, storage, and
20 processing facilities, maintenance facilities,
21 photovoltaic, biogas, and other small-scale renewable



1 energy systems producing energy solely for use in the
2 agricultural activities of the fee or leasehold owner
3 of the property, and vehicle and equipment storage
4 areas that are normally considered directly accessory
5 to the above-mentioned uses and are permitted under
6 section 205-2(d);

7 (11) Agricultural parks;

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

18 (A) The employee housing is occupied by employees or
19 former employees of the plantation who have a
20 property interest in the land;



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

4 (C) The agricultural support buildings shall be
5 rented or leased to agricultural business
6 operators or agricultural support services;

7 (13) Agricultural tourism conducted on a working farm, or a
8 farming operation as defined in section 165-2, for the
9 enjoyment, education, or involvement of visitors;
10 provided that the agricultural tourism activity is
11 accessory and secondary to the principal agricultural
12 use and does not interfere with surrounding farm
13 operations; and provided further that this paragraph
14 shall apply only to a county that has adopted
15 ordinances regulating agricultural tourism under
16 section 205-5;

17 (14) Agricultural tourism activities, including overnight
18 accommodations of twenty-one days or less, for any one
19 stay within a county; provided that this paragraph
20 shall apply only to a county that includes at least
21 three islands and has adopted ordinances regulating



1 agricultural tourism activities pursuant to section
2 205-5; provided further that the agricultural tourism
3 activities coexist with a bona fide agricultural
4 activity. For the purposes of this paragraph, "bona
5 fide agricultural activity" means a farming operation
6 as defined in section 165-2;

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

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

21 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
21 agricultural-energy enterprise. The agricultural-



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

4 As used in this paragraph:

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

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

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

17 "Appurtenances" means operational infrastructure
18 of the appropriate type and scale for the economic
19 commercial generation, storage, distribution, and
20 other similar handling of energy, including equipment,



1 feedstock, fuels, and other products of agricultural-
2 energy facilities;

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

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

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 (23) Hydroelectric facilities, including the appurtenances
7 associated with the production and transmission of
8 hydroelectric energy, subject to section 205-2;
9 provided that the hydroelectric facilities and their
10 appurtenances:
11 (A) Shall consist of a small hydropower facility as
12 defined by the United States Department of
13 Energy, including:
14 (i) Impoundment facilities using a dam to store
15 water in a reservoir;
16 (ii) A diversion or run-of-river facility that
17 channels a portion of a river through a
18 canal or channel; and
19 (iii) Pumped storage facilities that store energy
20 by pumping water uphill to a reservoir at
21 higher elevation from a reservoir at a lower



1 elevation to be released to turn a turbine
2 to generate electricity;
3 (B) Comply with the state water code, chapter 174C;
4 (C) Shall, if over five hundred kilowatts in
5 hydroelectric generating capacity, have the
6 approval of the commission on water resource
7 management, including a new instream flow
8 standard established for any new hydroelectric
9 facility; and
10 (D) Do not impact or impede the use of agricultural
11 land or the availability of surface or ground
12 water for all uses on all parcels that are served
13 by the ground water sources or streams for which
14 hydroelectric facilities are considered; or
15 (24) Notwithstanding any other law to the contrary,
16 composting and co-composting operations; provided that
17 operations that process their own green waste and do
18 not require permits from the department of health
19 shall use the finished composting product only on the
20 operation's own premises to minimize the potential
21 spread of invasive species."



1 SECTION 4. Section 226-7, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) To achieve the agriculture objectives, it shall be
4 the policy of this State to:

5 (1) Establish a clear direction for Hawaii's agriculture
6 through stakeholder commitment and advocacy[-];

7 (2) Encourage agriculture by making the best use of
8 natural resources[-];

9 (3) Provide the governor and the legislature with
10 information and options needed for prudent decision-
11 making for the development of agriculture[-];

12 (4) Establish strong relationships between the
13 agricultural and visitor industries for mutual
14 marketing benefits[-];

15 (5) Foster increased public awareness and understanding of
16 the contributions and benefits of agriculture as a
17 major sector of Hawaii's economy[-];

18 (6) Seek the enactment and retention of federal and state
19 legislation that benefits Hawaii's agricultural
20 industries[-];



- 1 (7) Strengthen diversified agriculture by developing an
2 effective promotion, marketing, and distribution
3 system between Hawaii's food producers and consumers
4 in the State, nation, and world[-];
5 (8) Support research and development activities that
6 strengthen economic productivity in agriculture,
7 stimulate greater efficiency, and enhance the
8 development of new products and agricultural by-
9 products[-];
10 (9) Enhance agricultural growth by providing public
11 incentives and encouraging private initiatives[-];
12 (10) Assure the availability of agriculturally suitable
13 lands with adequate water to accommodate present and
14 future needs[-];
15 (11) Increase the attractiveness and opportunities for an
16 agricultural education and livelihood[-];
17 (12) In addition to the State's priority on food, expand
18 Hawaii's agricultural base by promoting growth and
19 development of flowers, tropical fruits and plants,
20 livestock, feed grains, forestry, food crops,
21 aquaculture, and other potential enterprises[-];



- 1 (13) Promote economically competitive activities that
2 increase Hawaii's agricultural self-sufficiency,
3 including the increased purchase and use of Hawaii-
4 grown food and food products by residents, businesses,
5 and governmental bodies as defined under section
6 103D-104[-];
- 7 (14) Promote and assist in the establishment of sound
8 financial programs for diversified agriculture[-];
- 9 (15) Institute and support programs and activities to
10 assist the entry of displaced agricultural workers
11 into alternative agricultural or other employment[-];
- 12 (16) Facilitate the transition of agricultural lands in
13 economically nonfeasible agricultural production to
14 economically viable agricultural uses[-];
- 15 (17) Perpetuate, promote, and increase use of traditional
16 Hawaiian farming systems, such as the use of loko i'a,
17 māla, and irrigated lo'i, and growth of traditional
18 Hawaiian crops, such as kalo, 'uala, and 'ulu[-];
- 19 (18) Increase and develop small-scale farms[-]; and
- 20 (19) Assure the right of customary and traditional
21 subsistence farming as defined in section 165-2."



1 SECTION 5. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act shall take effect on July 1, 2023.

4

INTRODUCED BY: *Lee Ortiz*
JAN 20 2023



H.B. NO. 611

Report Title:

Hawaii Right to Farm Act; Hawaii State Planning Act; Native Hawaiian Customary and Traditional Subsistence Farming; Agricultural Lands

Description:

Clarifies that "customary and traditional subsistence farming", which is customary and traditional subsistence farming conducted by a Native Hawaiian cultural practitioner in certain situations, is included as a protected activity under the Hawaii right to farm act. Clarifies that the cultivation of crops and activities related to game, fish, and livestock in the agricultural district may be for economic use or customary and traditional subsistence farming. Provides that one of the State's policies under the Hawaii State Planning Act's agricultural objectives is to assure the right of customary and traditional subsistence farming.

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

