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# A BILL FOR AN ACT

RELATING TO FARM EMPLOYEE HOUSING.

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

1 SECTION 1. 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:



1 (A) This paragraph shall apply only to land with soil  
2 classified by the land study bureau's detailed  
3 land classification as overall (master)  
4 productivity rating class B, C, D, or E; and  
5 (B) Solar energy facilities placed within land with  
6 soil classified as overall productivity rating  
7 class B or C shall not occupy more than ten per  
8 cent of the acreage of the parcel, or twenty  
9 acres of land, whichever is lesser, unless a  
10 special use permit is granted pursuant to section  
11 205-6;

12 (7) Bona fide agricultural services and uses that support  
13 the agricultural activities of the fee or leasehold  
14 owner of the property and accessory to any of the  
15 above activities, regardless of whether conducted on  
16 the same premises as the agricultural activities to  
17 which they are accessory, including farm dwellings and  
18 farm employee housing as defined in section  
19 205-4.5(a)(4), [~~employee housing,~~] farm buildings,  
20 mills, storage facilities, processing 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, agricultural-energy facilities as  
4 defined in section 205-4.5(a)(17), vehicle and  
5 equipment storage areas, and plantation community  
6 subdivisions as defined in section 205-4.5(a)(12);  
7 (8) Wind machines and wind farms;  
8 (9) Small-scale meteorological, air quality, noise, and  
9 other scientific and environmental data collection and  
10 monitoring facilities occupying less than one-half  
11 acre of land; provided that these facilities shall not  
12 be used as or equipped for use as living quarters or  
13 dwellings;  
14 (10) Agricultural parks;  
15 (11) Agricultural tourism conducted on a working farm, or a  
16 farming operation as defined in section 165-2, for the  
17 enjoyment, education, or involvement of visitors;  
18 provided that the agricultural tourism activity is  
19 accessory and secondary to the principal agricultural  
20 use and does not interfere with surrounding farm  
21 operations; provided further that this paragraph shall



1 apply only to a county that has adopted ordinances  
2 regulating agricultural tourism [~~under~~] pursuant to  
3 section 205-5;

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

15 (13) Open area recreational facilities;

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

18 (15) Agricultural-based commercial operations registered in  
19 Hawaii, including:

20 (A) A roadside stand that is not an enclosed  
21 structure, owned and operated by a producer for



1 the display and sale of agricultural products  
2 grown in Hawaii and value-added products that  
3 were produced using agricultural products grown  
4 in Hawaii;

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

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

19 (D) A farmers' market, which is an outdoor market  
20 limited to producers selling agricultural  
21 products grown in Hawaii and value-added products



1 that were produced using agricultural products  
2 grown in Hawaii; and

3 (E) A food hub, which is a facility that may contain  
4 a commercial kitchen and provides for the  
5 storage, processing, distribution, and sale of  
6 agricultural products grown in Hawaii and  
7 value-added products that were produced using  
8 agricultural products grown in Hawaii.

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

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

17 (17) Composting and co-composting operations; provided that  
18 operations that process their own green waste and do  
19 not require permits from the department of health  
20 shall use the finished composting product only on the



1 operation's own premises to minimize the potential  
2 spread of invasive species.  
3 Agricultural districts shall not include golf courses and golf  
4 driving ranges, except as provided in section 205-4.5(d). No  
5 landfill unit, as defined in section 342H-52, shall be located  
6 on land within the agricultural district that has soil  
7 classified by the land study bureau's detailed land  
8 classification as overall (master) productivity rating class A  
9 in a county with a population greater than five hundred  
10 thousand. Agricultural districts include areas that are not  
11 used for, or that are not suited to, agricultural and ancillary  
12 activities by reason of topography, soils, and other related  
13 characteristics."

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

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

17 "(a) Within the agricultural district, all lands with soil  
18 classified by the land study bureau's detailed land  
19 classification as overall (master) productivity rating class A  
20 or B and for solar energy facilities, class B or C, shall be  
21 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, farm employee housing, farm buildings,
- 9 or activities or uses related to farming and animal
- 10 husbandry. For the purposes of this paragraph[~~,"farm~~
- 11 ~~dwelling"]:~~
- 12 (A) "Farm dwelling" means a [~~single-family~~]
- 13 residential dwelling located on and accessory to
- 14 a farm[~~,including~~] where agricultural activity
- 15 is occurring. "Farm dwelling" includes clusters
- 16 of [~~single-family~~] farm dwellings permitted
- 17 within agricultural parks developed by the
- 18 State[~~,or where agricultural activity provides~~
- 19 ~~income to the family occupying the dwelling~~]; and
- 20 (B) "Farm employee housing" means one or more
- 21 residential dwelling units accessory to the farm



1                   operation that may be attached to or detached  
2                   from the primary farm dwelling; provided that:  
3                   (i) Each residential dwelling unit shall not  
4                   exceed eight hundred square feet of  
5                   habitable area under roof; and  
6                   (ii) A county may limit occupancy of each  
7                   residential dwelling unit to agricultural  
8                   employees who are actively engaged in the  
9                   farm operation and their immediate family  
10                   members;  
11                   provided further that no fee owner of the farm  
12                   dwelling shall submit any portion thereof to a  
13                   condominium property regime to separate the ownership  
14                   of the farm employee housing units from the farm  
15                   dwelling pursuant to chapter 514B; provided further  
16                   that agricultural tourism or related activities under  
17                   paragraph (14) may occur on the same parcel as a farm  
18                   dwelling when those activities are secondary and  
19                   incidental to an agricultural activity, do not occur  
20                   within farm employee housing units, and comply with  
21                   county ordinances adopted pursuant to section 205-5.



1                   For the purposes of this paragraph, "agricultural  
2                   activity" means any activity described in paragraphs  
3                   (1) to (3);  
4           (5) Public institutions and buildings that are necessary  
5           for agricultural practices;  
6           (6) Public and private open area types of recreational  
7           uses, including day camps, picnic grounds, parks, and  
8           riding stables, but not including dragstrips,  
9           airports, drive-in theaters, golf courses, golf  
10           driving ranges, country clubs, and overnight camps;  
11           provided that overnight camps in operation before  
12           January 1, 1961, may be approved by special permit;  
13           (7) Public, private, and quasi-public utility lines and  
14           roadways, transformer stations, communications  
15           equipment buildings, solid waste transfer stations,  
16           major water storage tanks, and appurtenant small  
17           buildings such as booster pumping stations, but not  
18           including offices or yards for equipment, material,  
19           vehicle storage, repair or maintenance, treatment  
20           plants, corporation yards, or other similar  
21           structures;



- 1           (8) Retention, restoration, rehabilitation, or improvement
- 2                   of buildings or sites of historic or scenic interest;
- 3           (9) Agricultural-based commercial operations as described
- 4                   in section 205-2(d) (15);
- 5           (10) Buildings and uses, including mills, storage, and
- 6                   processing facilities, maintenance facilities,
- 7                   photovoltaic, biogas, and other small-scale renewable
- 8                   energy systems producing energy solely for use in the
- 9                   agricultural activities of the fee or leasehold owner
- 10                  of the property, and vehicle and equipment storage
- 11                  areas that are normally considered directly accessory
- 12                  to the above-mentioned uses and are permitted under
- 13                  section 205-2(d);
- 14           (11) Agricultural parks;
- 15           (12) Plantation community subdivisions, which as used in
- 16                   this chapter means an established subdivision or
- 17                   cluster of farm employee housing, community buildings,
- 18                   and agricultural support buildings on land currently
- 19                   or formerly owned, leased, or operated by a sugar or
- 20                   pineapple plantation; provided that the existing
- 21                   structures may be used or rehabilitated for use, and



1 new farm employee housing and agricultural support  
2 buildings may be allowed on land within the  
3 subdivision as follows:

4 (A) The farm employee housing is occupied by  
5 employees or former employees of the plantation  
6 who have a property interest in the land;

7 (B) The farm employee housing units not owned by  
8 their occupants shall be rented or leased at  
9 affordable rates for agricultural workers; or

10 (C) The agricultural support buildings shall be  
11 rented or leased to agricultural business  
12 operators or agricultural support services[+].

13 For the purposes of this paragraph, "farm employee  
14 housing" has the same meaning as in paragraph (4) (B);

15 (13) Agricultural tourism conducted on a working farm, or a  
16 farming operation as defined in section 165-2, for the  
17 enjoyment, education, or involvement of visitors;  
18 provided that the agricultural tourism activity is  
19 accessory and secondary to the principal agricultural  
20 use and does not interfere with surrounding farm  
21 operations; provided further that this paragraph shall



1 apply only to a county that has adopted ordinances  
2 regulating agricultural tourism [~~under~~] pursuant to  
3 section 205-5;

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

15 (15) Wind energy facilities, including the appurtenances  
16 associated with the production and transmission of  
17 wind generated energy; provided that the wind energy  
18 facilities and appurtenances are compatible with  
19 agriculture uses and cause minimal adverse impact on  
20 agricultural land;



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

9 For the purposes of this paragraph:

10 "Appurtenances" means operational infrastructure  
11 of the appropriate type and scale for economic  
12 commercial storage and distribution, and other similar  
13 handling of feedstock, fuels, and other products of  
14 biofuel processing facilities.

15 "Biofuel processing facility" means a facility  
16 that produces liquid or gaseous fuels from organic  
17 sources such as biomass crops, agricultural residues,  
18 and oil crops, including palm, canola, soybean, and  
19 waste cooking oils; grease; food wastes; and animal  
20 residues and wastes that can be used to generate  
21 energy;



1           (17) Agricultural-energy facilities, including  
2           appurtenances necessary for an agricultural-energy  
3           enterprise; provided that the primary activity of the  
4           agricultural-energy enterprise is agricultural  
5           activity. To be considered the primary activity of an  
6           agricultural-energy enterprise, the total acreage  
7           devoted to agricultural activity shall be no less than  
8           ninety per cent of the total acreage of the  
9           agricultural-energy enterprise. The  
10          agricultural-energy facility shall be limited to lands  
11          owned, leased, licensed, or operated by the entity  
12          conducting the agricultural activity.

13                   As used in this paragraph:

14                   "Agricultural activity" means any activity  
15                   described in paragraphs (1) to (3) [~~of this~~  
16                   subsection].

17                   "Agricultural-energy enterprise" means an  
18                   enterprise that integrally incorporates an  
19                   agricultural activity with an agricultural-energy  
20                   facility.



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

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

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



1 wireless facilities" [~~shall have~~] has the same meaning  
2 as in section 206N-2; provided further that nothing in  
3 this paragraph shall be construed to permit the  
4 construction of any new structure that is not deemed a  
5 permitted use under 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  
2 205-6; provided that this use shall not be permitted  
3 on lands with soil classified by the land study  
4 bureau's detailed land classification as overall  
5 (master) productivity rating class A;  
6 (21) Solar energy facilities on lands with soil classified  
7 by the land study bureau's detailed land  
8 classification as overall (master) productivity rating  
9 B or C for which a special use permit is granted  
10 pursuant to section 205-6; provided that:  
11 (A) The area occupied by the solar energy facilities  
12 is also made available for compatible  
13 agricultural activities at a lease rate that is  
14 at least fifty per cent below the fair market  
15 rent for comparable properties;  
16 (B) Proof of financial security to decommission the  
17 facility is provided to the satisfaction of the  
18 appropriate county planning commission before the  
19 date of commencement of commercial generation;  
20 and



1 (C) Solar energy facilities shall be decommissioned  
2 at the owner's expense according to the following  
3 requirements:

4 (i) Removal of all equipment related to the  
5 solar energy facility within twelve months  
6 of the conclusion of operation or useful  
7 life; and

8 (ii) Restoration of the disturbed earth to  
9 substantially the same physical condition as  
10 existed before the development of the solar  
11 energy facility.

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

15 (22) Geothermal resources exploration and geothermal  
16 resources development, as defined under section 182-1;

17 (23) Hydroelectric facilities, including the appurtenances  
18 associated with the production and transmission of  
19 hydroelectric energy, subject to section 205-2;  
20 provided that the hydroelectric facilities and their  
21 appurtenances:



- 1 (A) Shall consist of a small hydropower facility as  
2 defined by the United States Department of  
3 Energy, including:  
4 (i) Impoundment facilities using a dam to store  
5 water in a reservoir;  
6 (ii) A diversion or run-of-river facility that  
7 channels a portion of a river through a  
8 canal or channel; and  
9 (iii) Pumped storage facilities that store energy  
10 by pumping water uphill to a reservoir at  
11 higher elevation from a reservoir at a lower  
12 elevation to be released to turn a turbine  
13 to generate electricity;  
14 (B) Comply with the state water code, chapter 174C;  
15 (C) Shall, if over five hundred kilowatts in  
16 hydroelectric generating capacity, have the  
17 approval of the commission on water resource  
18 management, including a new instream flow  
19 standard established for any new hydroelectric  
20 facility; and



1 (D) Do not impact or impede the use of agricultural  
2 land or the availability of surface or ground  
3 water for all uses on all parcels that are served  
4 by the ground water sources or streams for which  
5 hydroelectric facilities are considered; or

6 (24) Notwithstanding any other law to the contrary,  
7 composting and co-composting operations; provided that  
8 operations that process their own green waste and do  
9 not require permits from the department of health  
10 shall use the finished composting product only on the  
11 operation's own premises to minimize the potential  
12 spread of invasive species."

13 2. By amending subsection (c) to read:

14 "(c) 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 C,  
17 D, E, or U shall be restricted to the uses permitted for  
18 agricultural districts as set forth in section 205-5(b) [↔] and  
19 to the uses permitted for farm dwellings and farm employee  
20 housing as set forth in section 205-2(d) (7); provided that  
21 nothing in this section shall be construed to supersede or limit



1 the counties' authority to regulate zoning, density, building  
2 size, setbacks, or other land use requirements within the  
3 agricultural district."

4 SECTION 3. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 4. This Act shall take effect upon its approval.



**Report Title:**

Agriculture; Agricultural Districts; Zoning; Farm Dwelling; Farm Employee Housing

**Description:**

Clarifies the allowable uses within agricultural districts with respect to farm dwellings and farm employee housing. (CD1)

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