
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



1 preservation before large tracts are lost to development. The
2 State has spent thirty years attempting to identify and protect
3 important agricultural lands, but has failed to do so, and no
4 county council has taken up the issue since 2008.

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

17 However, 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 to mitigate the concerns
7 produced by large-scale agricultural operations. The need for
8 buffers bolsters the need to maintain large, contiguous parcels
9 of agricultural land.

10 The legislature also finds that laws allowing the
11 subdivision of agricultural lands, including through condominium
12 property regimes and other means, must be scrutinized. In Kauai
13 alone, 431 agricultural parcels, representing 17,000 acres, have
14 been 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. The legislature concludes
19 that agricultural lands must be protected from such subdivision
20 in order to prevent the fractionalization of agricultural



1 parcels and promote the conservation of large agricultural
2 tracts.

3 The purpose of this Act is to prevent the loss of large-
4 scale agricultural parcels and to ensure that future use of
5 agricultural lands are for bona fide agricultural operations in
6 any county where one-third or less of the county's land is
7 classified in the state agricultural district.

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

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;
- 18 (2) Game and fish propagation;
- 19 (3) Raising of livestock, including poultry, bees, fish,
20 or other animal or aquatic life that are propagated
21 for economic or personal use;



- 1 (4) Farm dwellings, employee housing, farm buildings, or
2 activities or uses related to farming and animal
3 husbandry. "Farm dwelling", as used in this
4 paragraph, means a single-family dwelling located on
5 and used in connection with a farm, including clusters
6 of single-family farm dwellings permitted within
7 agricultural parks developed by the State, or where
8 agricultural activity provides income to the family
9 occupying the dwelling; provided that in any county
10 where one-third or less of the county's land is
11 classified in the state agricultural district, no
12 project consisting of single-family dwellings shall be
13 created as a condominium under chapter 514B or a
14 planned community association under chapter 421J;
15 provided further that this paragraph shall not apply
16 to plantation community subdivisions permitted under
17 paragraph (12);
- 18 (5) Public institutions and buildings that are necessary
19 for agricultural practices;
- 20 (6) Public and private open area types of recreational
21 uses, including day camps, picnic grounds, parks, and



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



1 of the property, and vehicle and equipment storage
2 areas that are normally considered directly accessory
3 to the above-mentioned uses and are permitted under
4 section 205-2(d);

5 (11) Agricultural parks;

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

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

19 (B) The employee housing units not owned by their
20 occupants shall be rented or leased at affordable
21 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 agricultural-
19 energy facility shall be limited to lands owned,
20 leased, licensed, or operated by the entity conducting
21 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; provided that, for the purposes of this



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

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



1 and practices conducted on a farming operation as
2 defined in section 165-2;

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

12 (A) Located on a paved or unpaved road in existence
13 as of December 31, 2013, and the parcel of land
14 upon which the paved or unpaved road is located
15 has a valid county agriculture tax dedication
16 status or a valid agricultural conservation
17 easement;

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

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



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

5 "(a) To create a condominium property regime, all of the
6 owners of the fee simple interest in land shall execute and
7 record a declaration submitting the land to the condominium
8 property regime. Upon recordation of the master deed together
9 with a declaration, the condominium property regime shall be
10 deemed created[-]; provided that in any county where one-third
11 or less of the county's land is classified in the state
12 agricultural district:

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

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

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



1 SECTION 4. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act shall take effect on July 1, 2050;
4 provided that the amendments made to section 205-4.5(a), Hawaii
5 Revised Statutes, by section 2 of this Act shall not be repealed
6 when that section is repealed and reenacted on June 30, 2019, by
7 section 3 of Act 52, Session Laws of Hawaii 2014.

8



Report Title:

Condominium Property Regime; Agricultural Land

Description:

In any county where one-third or less of the county's land is classified in the state agricultural district, prohibits: the creation of a condominium property regime on agricultural land 25 acres or greater; a condominium property regime on agricultural land from being amended to allow a single-family dwelling; the subdivision of agricultural land 25 acres or greater for the purpose of creating a condominium property regime; and 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. (SD2)

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

