
A BILL FOR AN ACT

RELATING TO AGRICULTURAL-BASED COMMERCIAL OPERATIONS.

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

1 SECTION 1. Section 165-2, Hawaii Revised Statutes, is
2 amended by amending the definition of "farming operation" to
3 read as follows:

4 "Farming operation" means a commercial agricultural,
5 silvicultural, or aquacultural facility or pursuit conducted, in
6 whole or in part, including the care and production of livestock
7 and livestock products, poultry and poultry products, apiary
8 products, and plant and animal production for nonfood uses; the
9 planting, cultivating, harvesting, and processing of crops; and
10 the farming or ranching of any plant or animal species in a
11 controlled salt, brackish, or freshwater environment. "Farming
12 operation" also includes but shall not be limited to:

13 (1) [~~Marketed produce at roadside stands or farm markets;~~]
14 Agricultural-based commercial operations as described
15 in section 205-2(d)(13);

16 (2) Noises, odors, dust, and fumes emanating from a
17 commercial agricultural or an aquacultural facility or
18 pursuit;



- 1 (3) Operation of machinery and irrigation pumps;
- 2 (4) Ground and aerial seeding and spraying;
- 3 (5) The application of chemical fertilizers, conditioners,
- 4 insecticides, pesticides, and herbicides; and
- 5 (6) The employment and use of labor.

6 A farming operation that conducts processing operations or salt,
 7 brackish, or freshwater aquaculture operations on land that is
 8 zoned for industrial, commercial, or other nonagricultural use
 9 shall not, by reason of that zoning, fall beyond the scope of
 10 this definition; provided that those processing operations form
 11 an integral part of operations that otherwise meet the
 12 requirements of this definition."

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

- 15 "(d) Agricultural districts shall include:
- 16 (1) Activities or uses as characterized by the cultivation
- 17 of crops, crops for bioenergy, orchards, forage, and
- 18 forestry;
- 19 (2) Farming activities or uses related to animal husbandry
- 20 and game and fish propagation;

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



1 the same premises as the agricultural activities to
2 which they are accessory, including farm dwellings as
3 defined in section 205-4.5(a)(4), employee housing,
4 farm buildings, mills, storage facilities, processing
5 facilities, agricultural-energy facilities as defined
6 in section 205-4.5(a)(16), vehicle and equipment
7 storage areas, [~~roadside stands for the sale of~~
8 ~~products grown on the premises,~~] and plantation
9 community subdivisions as defined in section
10 205-4.5(a)(12);

11 (8) Wind machines and wind farms;

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

18 (10) Agricultural parks;

19 (11) Agricultural tourism conducted on a working farm, or a
20 farming operation as defined in section 165-2, for the
21 enjoyment, education, or involvement of visitors;
22 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; [~~and~~]

7 (12) Open area recreational facilities[-]; and

8 (13) Agricultural-based commercial operations, including:

9 (A) Soft-sided nonpermanent roadside stands or other
10 structures where agricultural products and value-
11 added products produced using agricultural
12 materials grown in the county are displayed and
13 sold;

14 (B) Retail activities in a producer-operated enclosed
15 structure where fresh agricultural products,
16 value-added products produced using products made
17 from agricultural materials grown in the county,
18 logo items related to the county's agricultural
19 operations, and other food items are offered for
20 sale directly to consumers; and

21 (C) Retail food establishments permitted under the
22 rules of the department of health, title 11,



1 chapter 12, Hawaii Administrative Rules, that
2 prepare and serve food at retail using products
3 grown on the premises and raw Hawaii agricultural
4 products, and value-added products produced using
5 Hawaii agricultural products; provided that the
6 final perishable product shall be wholly or
7 partially manufactured, processed, or produced
8 within the county from raw materials that
9 originate from inside or outside the county and
10 at least fifty-one per cent of the wholesale
11 value of the perishable consumer commodity is
12 added by manufacture, processing, or production
13 within the county.

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

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

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

21 "(a) Within the agricultural district, all lands with soil
22 classified by the land study bureau's detailed land



1 classification as overall (master) productivity rating class A
2 or B shall be restricted to the following permitted uses:

3 (1) Cultivation of crops, including crops for bioenergy,
4 flowers, vegetables, foliage, fruits, forage, and
5 timber;

6 (2) Game and fish propagation;

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 used in connection with a farm, including clusters
15 of single-family farm dwellings permitted within
16 agricultural parks developed by the State, or where
17 agricultural activity provides income to the family
18 occupying the dwelling;

19 (5) Public institutions and buildings that are necessary
20 for agricultural practices;

21 (6) Public and private open area types of recreational
22 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) [~~Roadside stands for the sale of agricultural products~~
16 ~~grown on the premises;~~] Agricultural-based commercial
17 operations as described in section 205-2(d)(13);

18 (10) Buildings and uses, including mills, storage, and
19 processing facilities, maintenance facilities, and
20 vehicle and equipment storage areas that are normally
21 considered directly accessory to the above-mentioned
22 uses and are permitted under section 205-2(d);



- 1 (11) Agricultural parks;
- 2 (12) Plantation community subdivisions, which as used in
3 this chapter means an established subdivision or
4 cluster of employee housing, community buildings, and
5 agricultural support buildings on land currently or
6 formerly owned, leased, or operated by a sugar or
7 pineapple plantation; provided that the existing
8 structures may be used or rehabilitated for use, and
9 new employee housing and agricultural support
10 buildings may be allowed on land within the
11 subdivision as follows:
- 12 (A) The employee housing is occupied by employees or
13 former employees of the plantation who have a
14 property interest in the land;
- 15 (B) The employee housing units not owned by their
16 occupants shall be rented or leased at affordable
17 rates for agricultural workers; or
- 18 (C) The agricultural support buildings shall be
19 rented or leased to agricultural business
20 operators or agricultural support services;
- 21 (13) Agricultural tourism conducted on a working farm, or a
22 farming operation as defined in section 165-2, for the



1 enjoyment, education, or involvement of visitors;
2 provided that the agricultural tourism activity is
3 accessory and secondary to the principal agricultural
4 use and does not interfere with surrounding farm
5 operations; and provided further that this paragraph
6 shall apply only to a county that has adopted
7 ordinances regulating agricultural tourism under
8 section 205-5;

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

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



1 For the purposes of this paragraph:

2 "Appurtenances" means operational infrastructure
3 of the appropriate type and scale for economic
4 commercial storage and distribution, and other similar
5 handling of feedstock, fuels, and other products of
6 biofuels processing facilities.

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

14 (16) Agricultural-energy facilities, including
15 appurtenances necessary for an agricultural-energy
16 enterprise; provided that the primary activity of the
17 agricultural-energy enterprise is agricultural
18 activity. To be considered the primary activity of an
19 agricultural-energy enterprise, the total acreage
20 devoted to agricultural activity shall be not less
21 than ninety per cent of the total acreage of the
22 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,
21 feedstock, fuels, and other products of agricultural-
22 energy facilities;



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

13 (18) 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 section, "agricultural education programs" means
22 activities or events designed to promote knowledge and



1 understanding of agricultural activities and practices
2 conducted on a farming operation as defined in section
3 165-2; or

4 (19) Solar energy facilities that do not occupy more than
5 ten per cent of the acreage of the parcel, or twenty
6 acres of land, whichever is lesser; provided that this
7 use shall not be permitted on lands with soil
8 classified by the land study bureau's detailed land
9 classification as overall (master) productivity rating
10 class A."

11 SECTION 4. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 5. This Act shall take effect on July 1, 2012;
14 provided that on June 30, 2015, this Act shall be repealed and
15 sections 165-2, 205-2, and 205-4.5, Hawaii Revised Statutes,
16 shall be reenacted in the form in which they read on the day
17 prior to the effective date of this Act.



Report Title:

Land Use; Agricultural-Based Commercial Operations

Description:

Defines agricultural-based commercial operations and authorizes agricultural-based commercial operations in agricultural districts. Effective July 1, 2012. Sunsets June 30, 2015.
(HB2151 HD1)

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

