

JAN 20 2012

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;



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- 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) An unenclosed roadside stand or other structure
10 where agricultural products and value-added
11 products produced using raw Hawaii agricultural
12 materials are displayed and sold;

13 (B) Retail activities in a producer-operated enclosed
14 structure where fresh agricultural products,
15 value-added products produced using raw Hawaii
16 agricultural materials, logo items related to
17 Hawaii agricultural operations, and other food
18 items are offered for sale directly to consumers;
19 and

20 (C) Retail food establishments permitted under the
21 rules of the department of health, title 11,
22 chapter 12, Hawaii Administrative Rules, that



1 prepare and serve food at retail using products
 2 grown on the premises, raw Hawaii agricultural
 3 products, and value-added products produced using
 4 raw Hawaii agricultural materials.

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

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

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

12 "(a) Within the agricultural district, all lands with soil
 13 classified by the land study bureau's detailed land
 14 classification as overall (master) productivity rating class A
 15 or B shall be restricted to the following permitted uses:

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

19 (2) Game and fish propagation;

20 (3) Raising of livestock, including poultry, bees, fish,
 21 or other animal or aquatic life that are propagated
 22 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;
- 10 (5) Public institutions and buildings that are necessary
11 for agricultural practices;
- 12 (6) Public and private open area types of recreational
13 uses, including day camps, picnic grounds, parks, and
14 riding stables, but not including dragstrips,
15 airports, drive-in theaters, golf courses, golf
16 driving ranges, country clubs, and overnight camps;
- 17 (7) Public, private, and quasi-public utility lines and
18 roadways, transformer stations, communications
19 equipment buildings, solid waste transfer stations,
20 major water storage tanks, and appurtenant small
21 buildings such as booster pumping stations, but not
22 including offices or yards for equipment, material,



- 1 vehicle storage, repair or maintenance, treatment
2 plants, corporation yards, or other similar
3 structures;
- 4 (8) Retention, restoration, rehabilitation, or improvement
5 of buildings or sites of historic or scenic interest;
- 6 (9) [~~Roadside stands for the sale of agricultural products~~
7 ~~grown on the premises;~~] Agricultural-based commercial
8 operations as described in section 205-2(d)(13);
- 9 (10) Buildings and uses, including mills, storage, and
10 processing facilities, maintenance facilities, and
11 vehicle and equipment storage areas that are normally
12 considered directly accessory to the above-mentioned
13 uses and are permitted under 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 employee housing, community buildings, and
18 agricultural support buildings on land currently or
19 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
22 new employee housing and agricultural support



1 buildings may be allowed on land within the
2 subdivision as follows:

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

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

9 (C) The agricultural support buildings shall be
10 rented or leased to agricultural business
11 operators or agricultural support services;

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



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

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

15 For the purposes of this paragraph:

16 "Appurtenances" means operational infrastructure
17 of the appropriate type and scale for economic
18 commercial storage and distribution, and other similar
19 handling of feedstock, fuels, and other products of
20 biofuels processing facilities.

21 "Biofuel processing facility" means a facility
22 that produces liquid or gaseous fuels from organic



1 sources such as biomass crops, agricultural residues,
2 and oil crops, including palm, canola, soybean, and
3 waste cooking oils; grease; food wastes; and animal
4 residues and wastes that can be used to generate
5 energy;

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

18 As used in this paragraph:

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

21 "Agricultural-energy enterprise" means an
22 enterprise that integrally incorporates an



1 agricultural activity with an agricultural-energy
2 facility.

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

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

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



1 provided further that nothing in this paragraph shall
2 be construed to permit the construction of any new
3 structure that is not deemed a permitted use under
4 this subsection;

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

18 (19) Solar energy facilities that do not occupy more than
19 ten per cent of the acreage of the parcel, or twenty
20 acres of land, whichever is lesser; provided that this
21 use shall not be permitted on lands with soil
22 classified by the land study bureau's detailed land



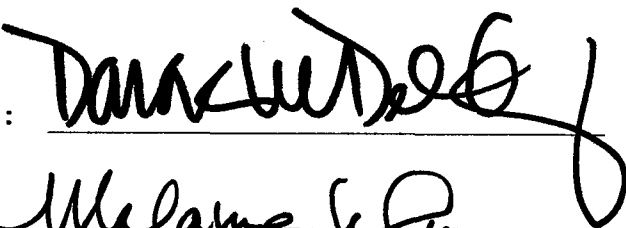
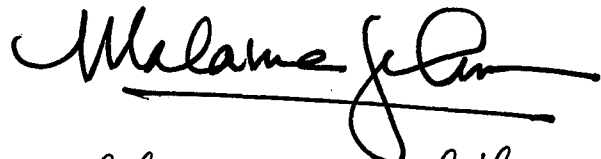
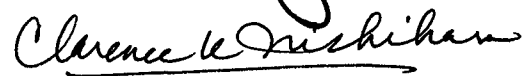
1 classification as overall (master) productivity rating
2 class A."

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

5 SECTION 5. This Act shall take effect upon its approval.

6

INTRODUCED BY:



S.B. NO. 2375

Report Title:

Land Use; Agricultural-Based Commercial Operations

Description:

Defines agricultural-based commercial operations and authorizes agricultural-based commercial operations in agricultural districts.

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

