

MAR 06 2012

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# 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) A producer-operated roadside stand that is not an  
10           enclosed structure, for displaying and selling  
11           fresh agricultural products that were grown in  
12           Hawaii and value-added products that were  
13           produced using primarily raw Hawaii agricultural  
14           materials;

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



1           (C) A retail food establishment operated by a  
 2           producer and permitted under chapter 12 of the  
 3           rules of the department of health that prepares  
 4           and serves food at retail using products grown on  
 5           the premises, raw Hawaii agricultural products,  
 6           and value-added products produced using raw  
 7           Hawaii agricultural materials.

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

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, 2050.



**Report Title:**

Land Use; Agricultural-Based Commercial Operations; Farming  
Operation

**Description:**

Defines agricultural-based commercial operations and authorizes agricultural-based commercial operations in agricultural districts. Includes agricultural-based commercial operations under the definition of "farming operation" in chapter 165, Hawaii Revised Statutes. Takes effect 7/1/2050. (SD3)

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