

JAN 17 2020

A BILL FOR AN ACT

RELATING TO AGRICULTURAL LANDS.

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

1 SECTION 1. The purpose of this Act is to amend certain
2 land subdivision and condominium property regime laws related to
3 agricultural land, as recommended by the office of planning in
4 its study of subdivision and condominium property regimes on
5 agricultural lands on Oahu conducted pursuant to Act 278,
6 Session Laws of Hawaii 2019.

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

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

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;



- 1 (2) Game and fish propagation;
- 2 (3) Raising of livestock, including poultry, bees, fish,
3 or other animal or aquatic life that are propagated
4 for economic or personal use;
- 5 (4) Farm dwellings, employee housing, farm buildings, or
6 activities or uses related to farming and animal
7 husbandry. "Farm dwelling", as used in this
8 paragraph, means a single-family dwelling located on
9 and ~~[used in connection with]~~ accessory to a farm,
10 including clusters of single-family farm dwellings
11 permitted within agricultural parks developed by the
12 State, or where agricultural activity provides income
13 of no less than \$10,000 a year to the family occupying
14 the dwelling; provided that agricultural activity
15 income shall be determined by any state general excise
16 tax return filing or agricultural dedication for the
17 parcel or lot of record approved by the county in
18 which the dwelling and agricultural activity are
19 located;
- 20 (5) Public institutions and buildings that are necessary
21 for agricultural practices;



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- 1 (6) Public and private open area types of recreational
2 uses, including day camps, picnic grounds, parks, and
3 riding stables, but not including dragstrips,
4 airports, drive-in theaters, golf courses, golf
5 driving ranges, country clubs, and overnight camps;
- 6 (7) Public, private, and quasi-public utility lines and
7 roadways, transformer stations, communications
8 equipment buildings, solid waste transfer stations,
9 major water storage tanks, and appurtenant small
10 buildings such as booster pumping stations, but not
11 including offices or yards for equipment, material,
12 vehicle storage, repair or maintenance, treatment
13 plants, corporation yards, or other similar
14 structures;
- 15 (8) Retention, restoration, rehabilitation, or improvement
16 of buildings or sites of historic or scenic interest;
- 17 (9) Agricultural-based commercial operations as described
18 in section 205-2(d)(15);
- 19 (10) Buildings and uses, including mills, storage, and
20 processing facilities, maintenance 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, and vehicle and equipment storage
4 areas that are normally considered directly accessory
5 to the above-mentioned uses and are permitted under
6 section 205-2(d);

7 (11) Agricultural parks;

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

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



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

4 (C) The agricultural support buildings shall be
5 rented or leased to agricultural business
6 operators or agricultural support services;

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

17 (14) Agricultural tourism activities, including overnight
18 accommodations of twenty-one days or less, for any one
19 stay within a county; provided that this paragraph
20 shall apply only to a county that includes at least
21 three islands and has adopted ordinances regulating



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1 agricultural tourism activities pursuant to section
2 205-5; provided further that the agricultural tourism
3 activities coexist with a bona fide agricultural
4 activity. For the purposes of this paragraph, "bona
5 fide agricultural activity" means a farming operation
6 as defined in section 165-2;

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

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

21 For the purposes of this paragraph:



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

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

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



1 feedstock, fuels, and other products of agricultural-
2 energy facilities;

3 (18) Construction and operation of wireless communication
4 antennas, including small wireless facilities;
5 provided that, for the purposes of this paragraph,
6 "wireless communication antenna" means communications
7 equipment that is either freestanding or placed upon
8 or attached to an already existing structure and that
9 transmits and receives electromagnetic radio signals
10 used in the provision of all types of wireless
11 communications services; provided further that "small
12 wireless facilities" shall have the same meaning as in
13 section 206N-2; provided further that nothing in this
14 paragraph shall be construed to permit the
15 construction of any new structure that is not deemed a
16 permitted use under this subsection;

17 (19) Agricultural education programs conducted on a farming
18 operation as defined in section 165-2, for the
19 education and participation of the general public;
20 provided that the agricultural education programs are
21 accessory and secondary to the principal agricultural



1 use of the parcels or lots on which the agricultural
2 education programs are to occur and do not interfere
3 with surrounding farm operations. For the purposes of
4 this paragraph, "agricultural education programs"
5 means activities or events designed to promote
6 knowledge and understanding of agricultural activities
7 and practices conducted on a farming operation as
8 defined in section 165-2;

9 (20) Solar energy facilities that do not occupy more than
10 ten per cent of the acreage of the parcel, or twenty
11 acres of land, whichever is lesser or for which a
12 special use permit is granted pursuant to section
13 205-6; provided that this use shall not be permitted
14 on lands with soil classified by the land study
15 bureau's detailed land classification as overall
16 (master) productivity rating class A;

17 (21) Solar energy facilities on lands with soil classified
18 by the land study bureau's detailed land
19 classification as overall (master) productivity rating
20 B or C for which a special use permit is granted
21 pursuant to section 205-6; provided that:



- 1 (A) The area occupied by the solar energy facilities
- 2 is also made available for compatible
- 3 agricultural activities at a lease rate that is
- 4 at least fifty per cent below the fair market
- 5 rent for comparable properties;
- 6 (B) Proof of financial security to decommission the
- 7 facility is provided to the satisfaction of the
- 8 appropriate county planning commission prior to
- 9 date of commencement of commercial generation;
- 10 and
- 11 (C) Solar energy facilities shall be decommissioned
- 12 at the owner's expense according to the following
- 13 requirements:
- 14 (i) Removal of all equipment related to the
- 15 solar energy facility within twelve months
- 16 of the conclusion of operation or useful
- 17 life; and
- 18 (ii) Restoration of the disturbed earth to
- 19 substantially the same physical condition as
- 20 existed prior to the development of the
- 21 solar energy facility.



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

4 (22) Geothermal resources exploration and geothermal
5 resources development, as defined under section 182-1;
6 or

7 (23) Hydroelectric facilities, including the appurtenances
8 associated with the production and transmission of
9 hydroelectric energy, subject to section 205-2;
10 provided that the hydroelectric facilities and their
11 appurtenances:

12 (A) Shall consist of a small hydropower facility as
13 defined by the United States Department of
14 Energy, including:

15 (i) Impoundment facilities using a dam to store
16 water in a reservoir;

17 (ii) A diversion or run-of-river facility that
18 channels a portion of a river through a
19 canal or channel; and

20 (iii) Pumped storage facilities that store energy
21 by pumping water uphill to a reservoir at



1 higher elevation from a reservoir at a lower
2 elevation to be released to turn a turbine
3 to generate electricity;

4 (B) Comply with the state water code, chapter 174C;

5 (C) Shall, if over five hundred kilowatts in
6 hydroelectric generating capacity, have the
7 approval of the commission on water resource
8 management, including a new instream flow
9 standard established for any new hydroelectric
10 facility; and

11 (D) Do not impact or impede the use of agricultural
12 land or the availability of surface or ground
13 water for all uses on all parcels that are served
14 by the ground water sources or streams for which
15 hydroelectric facilities are considered."

16 2. By amending subsection (f) to read:

17 "[+](f)[+] Notwithstanding any other law to the contrary,
18 agricultural lands may be subdivided and leased for the
19 agricultural uses or activities permitted in subsection (a);
20 provided that:

21 (1) The principal use of the leased land is agriculture;



1 (2) No permanent or temporary dwellings or farm dwellings,
2 including trailers and campers, are constructed on the
3 leased area. This restriction shall not prohibit the
4 construction of storage sheds, equipment sheds, or
5 other structures appropriate to the agricultural
6 activity carried on within the lot[~~+~~and]; provided
7 that any violation of this paragraph shall be subject
8 to county enforcement authority and fines pursuant to
9 sections 46-4, 205-12, and 205-13; and

10 (3) The lease term for a subdivided lot shall be for at
11 least as long as the greater of:

12 (A) The minimum real property tax agricultural
13 dedication period of the county in which the
14 subdivided lot is located; or

15 (B) Five years.

16 Lots created and leased pursuant to this section shall be legal
17 lots of record for mortgage lending purposes and shall be exempt
18 from county subdivision standards."

19 SECTION 3. Section 514B-52, Hawaii Revised Statutes, is
20 amended by amending subsection (b) to read as follows:



1 "(b) An application for registration of a project in the
2 agricultural district classified pursuant to chapter 205 shall
3 include a verified statement, signed by an appropriate county
4 official, that the project as described and set forth in the
5 project's declaration, condominium map, bylaws, and house rules
6 does not include any restrictions limiting or prohibiting
7 agricultural uses or activities, in compliance with section
8 205-4.6. The statement shall also include the applicant's
9 assessment and county comments regarding the availability of
10 supportive infrastructure, any potential impact on governmental
11 plans and resources, sensitive environmental resources, and any
12 other requirements pursuant to county ordinances and rules. The
13 commission shall not accept the registration of a project where
14 a county official has not signed a verified statement."

15 SECTION 4. This Act does not affect rights and duties that
16 matured, penalties that were incurred, and proceedings that were
17 begun before its effective date.

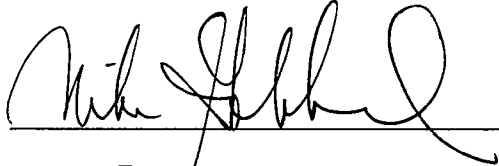
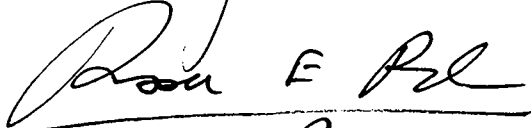

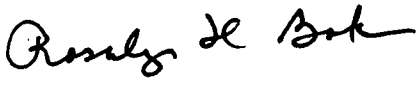

18 SECTION 5. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.



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

2

INTRODUCED BY:



S.B. NO. 2706

Report Title:

Agricultural Lands; Land Subdivisions; Condominium Property Regime

Description:

Amends certain land subdivision and condominium property regime laws related to agricultural land, as recommended pursuant to Act 278, Session Laws of Hawaii 2019, to ensure agricultural lands that are organized under a condominium property regime are used for agricultural purposes.

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

