A BILL FOR AN ACT

RELATING TO STATEWIDE COMPOSTING.

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

SECTION 1. The legislature finds that according to the
United States Environmental Protection Agency and United States
Department of Agriculture, food waste is the second largest
component that enters a waste stream and accounts for
twenty-five per cent of all materials sent to landfills. Nearly
fifty per cent of organic materials disposed of in incinerators
and landfills can be diverted for bioconversion, including
composting. Landfills across Hawaii are rapidly reaching
capacity and facing the burden of closure and re-siting, a
process that will cost each county hundreds of millions of
dollars and create community resentment. Recycling organics,
including food waste, into compost has environmental benefits,
such as improving soil health, increasing drought resistance,
and reducing the need for supplemental water, fertilizers, and
pesticides, while also increasing crop yields. Furthermore,
applying compost and organic matter to soil sequesters carbon
from the atmosphere, forming the largest land-based carbon sink,
and mitigates climate change by effectively reducing greenhouse
gas emissions. The legislature believes that food waste
diversion and the creation of multi-scale composting operations
across the State will greatly reduce the burdens on landfills,
lower county waste management costs, and move the State closer
to achieving its sustainability and resiliency goals, which
include:

(1) The Aloha+ Challenge, which is a statewide commitment
to realize the United Nations' Sustainable Development
Goals that sets a goal of seventy per cent waste
reduction before disposal and doubling of local food
production by 2030;

(2) The Hawaii 2050 sustainability plan, which also sets a
mandate for the State to achieve full sustainability
and resilience through increased food production and
dramatic waste reduction via recycling and
bioconversion strategies; and

(3) Increasing the generation of local compost to
sequester more carbon and mitigate climate change
pursuant to the strategy identified by the greenhouse
gas sequestration task force permanently established


The legislature also finds that the regulation of co-
composting in the State is under the purview of the department
of health solid and hazardous waste branch. Existing
regulations have not been updated in over twenty years, and
currently a single application applies to all co-composting
operations regardless of size or scope. The current permitting
process is an onerous and unreasonable barrier to lawful
participation for small to midsize composting operations whose
operations present a much lower risk potential. Reform and
updating of the co-composting regulations and permitting process
will greatly increase the number of operators diverting organics
from landfills and incinerators, thereby aiding the State and
counties in reaching their sustainability, resilience, and
fiscal goals.

Accordingly, the purpose of this Act is to encourage the
production of compost by:

(1) Requiring the department of health to update its solid
waste rules by January 1, 2022, and every five years
thereafter;
(2) Requiring the department of health to establish a multi-tiered registration and permitting system for composting facilities; and
(3) Allowing solid waste composting in agricultural districts.

SECTION 2. Chapter 342G, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§342G—Solid waste; rules. By January 1, 2022, and every five years thereafter, the department shall update its rules regarding solid waste. The department shall adopt rules under chapter 91 as necessary to establish class I, II, III, and IV solid waste composting facilities; provided that the department shall establish a tiered registration and permitting system for all classes of solid waste composting facilities; provided further that the permit standards for class II solid waste composting facilities shall be less stringent than the permit standards for class I solid waste composting facilities."

SECTION 3. Section 205-2, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Agricultural districts shall include:
(1) Activities or uses as characterized by the cultivation of crops, crops for bioenergy, orchards, forage, and forestry;

(2) Farming activities or uses related to animal husbandry and game and fish propagation;

(3) Aquaculture, which means the production of aquatic plant and animal life within ponds and other bodies of water;

(4) Wind-generated energy production for public, private, and commercial use;

(5) Biofuel production, as described in section 205-4.5(a)(16), for public, private, and commercial use;

(6) Solar energy facilities; provided that:

   (A) This paragraph shall apply only to land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class B, C, D, or E; and

   (B) Solar energy facilities placed within land with soil classified as overall productivity rating class B or C shall not occupy more than ten per
cent of the acreage of the parcel, or twenty acres of land, whichever is lesser, unless a special use permit is granted pursuant to section 205-6;

(7) Bona fide agricultural services and uses that support the agricultural activities of the fee or leasehold owner of the property and accessory to any of the above activities, regardless of whether conducted on the same premises as the agricultural activities to which they are accessory, including farm dwellings as defined in section 205-4.5(a)(4), employee housing, farm buildings, mills, storage facilities, processing facilities, photovoltaic, biogas, and other small-scale renewable energy systems producing energy solely for use in the agricultural activities of the fee or leasehold owner of the property, agricultural-energy facilities as defined in section 205-4.5(a)(17), vehicle and equipment storage areas, and plantation community subdivisions as defined in section 205-4.5(a)(12);

(8) Wind machines and wind farms;
(9) Small-scale meteorological, air quality, noise, and
other scientific and environmental data collection and
monitoring facilities occupying less than one-half
acre of land; provided that these facilities shall not
be used as or equipped for use as living quarters or
dwellings;

(10) Agricultural parks;

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

(12) Agricultural tourism activities, including overnight
accommodations of twenty-one days or less, for any one
stay within a county; provided that this paragraph
shall apply only to a county that includes at least
three islands and has adopted ordinances regulating agricultural tourism activities pursuant to section 205-5; provided further that the agricultural tourism activities coexist with a bona fide agricultural activity. For the purposes of this paragraph, "bona fide agricultural activity" means a farming operation as defined in section 165-2;

(13) Open area recreational facilities;

(14) Geothermal resources exploration and geothermal resources development, as defined under section 182-1;

(15) Agricultural-based commercial operations registered in Hawaii, including:

(A) A roadside stand that is not an enclosed structure, owned and operated by a producer for the display and sale of agricultural products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii;

(B) Retail activities in an enclosed structure owned and operated by a producer for the display and sale of agricultural products grown in Hawaii,
value-added products that were produced using
agricultural products grown in Hawaii, logo items
related to the producer's agricultural
operations, and other food items;
(C) A retail food establishment owned and operated by
a producer and permitted under chapter 11-50,
Hawaii administrative rules, that prepares and
serves food at retail using products grown in
Hawaii and value-added products that were
produced using agricultural products grown in
Hawaii;
(D) A farmers' market, which is an outdoor market
limited to producers selling agricultural
products grown in Hawaii and value-added products
that were produced using agricultural products
grown in Hawaii; and
(E) A food hub, which is a facility that may contain
a commercial kitchen and provides for the
storage, processing, distribution, and sale of
agricultural products grown in Hawaii and
value-added products that were produced using agricultural products grown in Hawaii.

The owner of an agricultural-based commercial operation shall certify, upon request of an officer or agent charged with enforcement of this chapter under section 205-12, that the agricultural products displayed or sold by the operation meet the requirements of this paragraph; [and]

(16) Hydroelectric facilities as described in section 205-4.5(a)(23) [-] ; and

(17) Solid waste composting operations.

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

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

SECTION 4. Section 205-4.5, Hawaii Revised Statutes, is amended to read as follows:

"§205-4.5 Permissible uses within the agricultural districts. (a) Within the agricultural district, all lands with soil classified by the land study bureau's detailed land
classification as overall (master) productivity rating class A
or B and for solar energy facilities, class B or C, shall be
restricted to the following permitted uses:

(1) Cultivation of crops, including crops for bioenergy,
    flowers, vegetables, foliage, fruits, forage, and
    timber;
(2) Game and fish propagation;
(3) Raising of livestock, including poultry, bees, fish,
    or other animal or aquatic life that are propagated
    for economic or personal use;
(4) Farm dwellings, employee housing, farm buildings, or
    activities or uses related to farming and animal
    husbandry. "Farm dwelling", as used in this
    paragraph, means a single-family dwelling located on
    and used in connection with a farm, including clusters
    of single-family farm dwellings permitted within
    agricultural parks developed by the State, or where
    agricultural activity provides income to the family
    occupying the dwelling;
(5) Public institutions and buildings that are necessary
    for agricultural practices;
(6) Public and private open area types of recreational uses, including day camps, picnic grounds, parks, and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps;

(7) Public, private, and quasi-public utility lines and roadways, transformer stations, communications equipment buildings, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, treatment plants, corporation yards, or other similar structures;

(8) Retention, restoration, rehabilitation, or improvement of buildings or sites of historic or scenic interest;

(9) Agricultural-based commercial operations as described in section 205-2(d)(15);

(10) Buildings and uses, including mills, storage, and processing facilities, maintenance facilities, photovoltaic, biogas, and other small-scale renewable
energy systems producing energy solely for use in the agricultural activities of the fee or leasehold owner of the property, and vehicle and equipment storage areas that are normally considered directly accessory to the above-mentioned uses and are permitted under section 205-2(d);

(11) Agricultural parks;

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

(A) The employee housing is occupied by employees or former employees of the plantation who have a property interest in the land;
(B) The employee housing units not owned by their occupants shall be rented or leased at affordable rates for agricultural workers; or

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

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

(14) Agricultural tourism activities, including overnight accommodations of twenty-one days or less, for any one stay within a county; provided that this paragraph shall apply only to a county that includes at least three islands and has adopted ordinances regulating
agricultural tourism activities pursuant to section 205-5; provided further that the agricultural tourism activities coexist with a bona fide agricultural activity. For the purposes of this paragraph, "bona fide agricultural activity" means a farming operation as defined in section 165-2;

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

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

For the purposes of this paragraph:
"Appurtenances" means operational infrastructure of the appropriate type and scale for economic commercial storage and distribution, and other similar handling of feedstock, fuels, and other products of biofuel processing facilities.

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

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

As used in this paragraph:

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

"Agricultural-energy enterprise" means an enterprise that integrally incorporates an agricultural activity with an agricultural-energy facility.

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

"Appurtenances" means operational infrastructure of the appropriate type and scale for the economic commercial generation, storage, distribution, and 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
use of the parcels or lots on which the agricultural
education programs are to occur and do not interfere
with surrounding farm operations. For the purposes of
this paragraph, "agricultural education programs"
means activities or events designed to promote
knowledge and understanding of agricultural activities
and practices conducted on a farming operation as
defined in section 165-2;

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

(21) Solar energy facilities on lands with soil classified
by the land study bureau's detailed land
classification as overall (master) productivity rating
B or C for which a special use permit is granted
pursuant to section 205-6; provided that:
(A) The area occupied by the solar energy facilities is also made available for compatible agricultural activities at a lease rate that is at least fifty per cent below the fair market rent for comparable properties;

(B) Proof of financial security to decommission the facility is provided to the satisfaction of the appropriate county planning commission prior to date of commencement of commercial generation;

and

(C) Solar energy facilities shall be decommissioned at the owner's expense according to the following requirements:

(i) Removal of all equipment related to the solar energy facility within twelve months of the conclusion of operation or useful life; and

(ii) Restoration of the disturbed earth to substantially the same physical condition as existed prior to the development of the solar energy facility.
For the purposes of this paragraph, "agricultural activities" means the activities described in paragraphs (1) to (3);

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

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

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

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

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

(iii) Pumped storage facilities that store energy by pumping water uphill to a reservoir at
higher elevation from a reservoir at a lower
elevation to be released to turn a turbine
to generate electricity;

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

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

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

(b) Uses not expressly permitted in subsection (a) shall
be prohibited, except the uses permitted as provided in sections
205-6 and 205-8, and construction of single-family dwellings on
lots existing before June 4, 1976. Any other law to the
contrary notwithstanding, no subdivision of land within the
agricultural district with soil classified by the land study
bureau's detailed land classification as overall (master) productivity rating class A or B shall be approved by a county unless those A and B lands within the subdivision are made subject to the restriction on uses as prescribed in this section and to the condition that the uses shall be primarily in pursuit of an agricultural activity.

Any deed, lease, agreement of sale, mortgage, or other instrument of conveyance covering any land within the agricultural subdivision shall expressly contain the restriction on uses and the condition, as prescribed in this section that these restrictions and conditions shall be encumbrances running with the land until such time that the land is reclassified to a land use district other than agricultural district.

If the foregoing requirement of encumbrances running with the land jeopardizes the owner or lessee in obtaining mortgage financing from any of the mortgage lending agencies set forth in the following paragraph, and the requirement is the sole reason for failure to obtain mortgage financing, then the requirement of encumbrances shall, insofar as such mortgage financing is jeopardized, be conditionally waived by the appropriate county enforcement officer; provided that the conditional waiver shall
become effective only in the event that the property is
subjected to foreclosure proceedings by the mortgage lender.
The mortgage lending agencies referred to in the preceding
paragraph are the Federal Housing Administration, Federal
National Mortgage Association, Department of Veterans Affairs,
Small Business Administration, United States Department of
Agriculture, Federal Land Bank of Berkeley, Federal Intermediate
Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and any
other federal, state, or private mortgage lending agency
qualified to do business in Hawaii, and their respective
successors and assigns.

(c) Within the agricultural district, all lands with soil
classified by the land study bureau's detailed land
classification as overall (master) productivity rating class C,
D, E, or U shall be restricted to the uses permitted for
agricultural districts as set forth in section 205-5(b).

(d) Notwithstanding any other provision of this chapter to
the contrary, golf courses and golf driving ranges approved by a
county before July 1, 2005, for development within the
agricultural district shall be permitted uses within the
agricultural district.
(e) Notwithstanding any other provision of this chapter to the contrary, plantation community subdivisions as defined in this section shall be permitted uses within the agricultural district, and section 205-8 shall not apply.

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

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

(2) No permanent or temporary dwellings or farm dwellings, including trailers and campers, are constructed on the leased area. This restriction shall not prohibit the construction of storage sheds, equipment sheds, or other structures appropriate to the agricultural activity carried on within the lot; and

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

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

(B) Five years.
Lots created and leased pursuant to this section shall be legal lots of record for mortgage lending purposes and shall be exempt from county subdivision standards.

(g) Notwithstanding any other law to the contrary, solid waste composting operations shall be permitted uses within the agricultural district."

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of $ or so much thereof as may be necessary for fiscal year 2020-2021 for one full-time equivalent (1.0 FTE) program specialist position in the solid and hazardous waste branch of the department of health.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.
Report Title:
Composting; Solid Waste; Department of Health; Rules; Agricultural Districts; Appropriation

Description:
Requires DOH to periodically update its solid waste rules. Requires DOH to establish a multi-tiered registration and permitting system for composting facilities. Allows solid waste composting in agricultural districts. Establishes and appropriates funds for a program specialist position. (SD1)

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