



GOV. MSG. NO. 1446

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

July 11, 2012

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin K.Y. Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say, and Members of the Legislature:

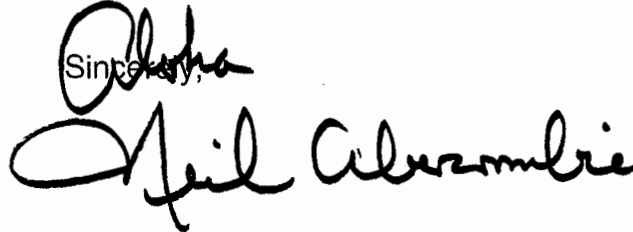
Re: Senate Bill No. 2341, S.D. 2, H.D. 2, C.D. 1

On July 10, 2012, Senate Bill No. 2341, S.D. 2, H.D. 2, C.D. 1, entitled "A Bill for an Act Relating to Land Use" became law as Act 329 without my signature, pursuant to Section 16 of Article III of the Constitution of the State of Hawaii.

The purpose of this bill is to allow overnight accommodations of twenty-one days or less for any one stay as a part of agricultural tourism within any county that includes at least three islands and has adopted ordinances regulating agricultural tourism activities and those tourism activities coexist with a bona fide agricultural activity. This bill will allow agricultural land owners an opportunity to supplement their income from agricultural operations with additional income from tourist accommodations.

Although I support efforts to increase Hawaii's self-sufficiency by encouraging agricultural production in Hawaii, there are legitimate concerns that the term "bona fide agricultural activity" is unnecessarily broad and could allow the unintended and excessive urbanization of agricultural lands. I will be asking the Legislature and the counties to review this new law and propose appropriate restrictions either in statute or ordinance to prevent this law from being abused.

Therefore, notwithstanding my concerns, I have allowed Senate Bill No. 2341, S.D. 2, H.D. 2, C.D. 1, to become law as Act 329, on July 10, 2012, without my signature.

Sincerely,


NEIL ABERCROMBIE
Governor, State of Hawaii

Permitted to become law without the

Governor's signature JUL 10 2012
THE SENATE
TWENTY-SIXTH LEGISLATURE, 2012
STATE OF HAWAII

ACT 329
S.B. NO. 2341
S.D. 2
H.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO LAND USE.

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

1 SECTION 1. The legislature finds that there are many
2 examples across the country of agricultural tourism incorporated
3 within productive farms and ranches. For example, several sites
4 in Napa valley in northern California are well-known
5 agricultural tourism destinations. Agricultural tourism serves
6 as a means to provide not only additional income for farmers and
7 ranchers but also serves as a learning experience for many
8 people who do not have a connection to agriculture.

9 The legislature further finds that there are agricultural
10 tourism opportunities in areas such as the Hamakua coast on the
11 island of Hawaii, upcountry Maui, and the north and west sides
12 of Kauai. Additional economic activity in those areas will also
13 benefit neighboring communities. Although the legislature finds
14 that agricultural tourism can be a profitable marketing tool for
15 the agricultural industry, the legislature recognizes that each
16 county may have differing priorities regarding land use,
17 particularly regarding permissible uses on agricultural lands.
18 The intent of this Act is to enable the counties to make their



1 own determinations regarding the allowance of certain activities
2 on, or uses of, land in agricultural districts.

3 The purpose of this Act is to allow agricultural tourism
4 activities, including certain overnight accommodations of
5 twenty-one days or less, in agricultural districts for any one
6 stay within a county; provided that the county includes at least
7 three islands and has adopted an ordinance specifically allowing
8 for such activity.

9 SECTION 2. Section 141-9, Hawaii Revised Statutes, is
10 amended by amending its title and subsection (a) to read as
11 follows:

12 "[+]§141-9[+] **Energy feedstock program.** (a) There is
13 established within the department of agriculture an energy
14 feedstock program that shall:

15 (1) Maintain cognizance of actions taken by industry and
16 by federal, state, county, and private agencies in
17 activities relating to the production of energy
18 feedstock, and promote and support worthwhile energy
19 feedstock production activities in the State;

20 (2) Serve as an information clearinghouse for energy
21 feedstock production activities;



- 1 (3) Coordinate development projects to investigate and
- 2 solve biological and technical problems involved in
- 3 raising selected species with commercial energy
- 4 generating potential;
- 5 (4) Actively seek federal funding for energy feedstock
- 6 production activities;
- 7 (5) Undertake activities required to develop and expand
- 8 the energy feedstock production industry; and
- 9 (6) Perform other functions and activities as may be
- 10 assigned by law, including monitoring the compliance
- 11 provisions under section [~~205-4.5(a)-(15)-.~~]
- 12 205-4.5(a)(16)."

13 SECTION 3. 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),]~~ 205-4.5(a)(16), for public, private,
8 and commercial 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),~~] 205-4.5(a)(17), vehicle
7 and equipment storage areas, roadside stands for the
8 sale of 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) Agricultural tourism activities, including overnight
8 accommodations of twenty-one days or less, for any one
9 stay within a county; provided that this paragraph
10 shall apply only to a county that includes at least
11 three islands and has adopted ordinances regulating
12 agricultural tourism activities pursuant to section
13 205-5; provided further that the agricultural tourism
14 activities coexist with a bona fide agricultural
15 activity. For the purposes of this paragraph, "bona
16 fide agricultural activity" means a farming operation
17 as defined in section 165-2; and

18 [~~(12)~~] (13) Open area recreational facilities.

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

21 Agricultural districts include areas that are not used for, or



1 that are not suited to, agricultural and ancillary activities by
2 reason of topography, soils, and other related characteristics."

3 SECTION 4. Section 205-4.5, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

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

- 9 (1) Cultivation of crops, including crops for bioenergy,
10 flowers, vegetables, foliage, fruits, forage, and
11 timber;
- 12 (2) Game and fish propagation;
- 13 (3) Raising of livestock, including poultry, bees, fish,
14 or other animal or aquatic life that are propagated
15 for economic or personal use;
- 16 (4) Farm dwellings, employee housing, farm buildings, or
17 activities or uses related to farming and animal
18 husbandry. "Farm dwelling", as used in this
19 paragraph, means a single-family dwelling located on
20 and used in connection with a farm, including clusters
21 of single-family farm dwellings permitted within
22 agricultural parks developed by the State, or where



- 1 agricultural activity provides income to the family
2 occupying the dwelling;
- 3 (5) Public institutions and buildings that are necessary
4 for agricultural practices;
- 5 (6) Public and private open area types of recreational
6 uses, including day camps, picnic grounds, parks, and
7 riding stables, but not including dragstrips,
8 airports, drive-in theaters, golf courses, golf
9 driving ranges, country clubs, and overnight camps;
- 10 (7) Public, private, and quasi-public utility lines and
11 roadways, transformer stations, communications
12 equipment buildings, solid waste transfer stations,
13 major water storage tanks, and appurtenant small
14 buildings such as booster pumping stations, but not
15 including offices or yards for equipment, material,
16 vehicle storage, repair or maintenance, treatment
17 plants, corporation yards, or other similar
18 structures;
- 19 (8) Retention, restoration, rehabilitation, or improvement
20 of buildings or sites of historic or scenic interest;
- 21 (9) Roadside stands for the sale of agricultural products
22 grown on the premises;



1 (10) Buildings and uses, including mills, storage, and
2 processing facilities, maintenance facilities, and
3 vehicle and equipment storage areas that are normally
4 considered directly accessory to the above-mentioned
5 uses and are permitted under section 205-2(d);

6 (11) Agricultural parks;

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

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

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



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

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

14 (14) Agricultural tourism activities, including overnight
15 accommodations of twenty-one days or less, for any one
16 stay within a county; provided that this paragraph
17 shall apply only to a county that includes at least
18 three islands and has adopted ordinances regulating
19 agricultural tourism activities pursuant to section
20 205-5; provided further that the agricultural tourism
21 activities coexist with a bona fide agricultural
22 activity. For the purposes of this paragraph, "bona



1 fide agricultural activity" means a farming operation
2 as defined in section 165-2;

3 [~~14~~] (15) Wind energy facilities, including the
4 appurtenances associated with the production and
5 transmission of wind generated energy; provided that
6 the wind energy facilities and appurtenances are
7 compatible with agriculture uses and cause minimal
8 adverse impact on agricultural land;

9 [~~15~~] (16) Biofuel processing facilities, including the
10 appurtenances associated with the production and
11 refining of biofuels that is normally considered
12 directly accessory and secondary to the growing of the
13 energy feedstock; provided that biofuels processing
14 facilities and appurtenances do not adversely impact
15 agricultural land and other agricultural uses in the
16 vicinity.

17 For the purposes of this paragraph:

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



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

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

20 As used in this paragraph:

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



1 "Agricultural-energy enterprise" means an
2 enterprise that integrally incorporates an
3 agricultural activity with an agricultural-energy
4 facility.

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

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

17 [~~17~~] (18) Construction and operation of wireless
18 communication antennas; provided that, for the
19 purposes of this paragraph, "wireless communication
20 antenna" means communications equipment that is either
21 freestanding or placed upon or attached to an already
22 existing structure and that transmits and receives



1 electromagnetic radio signals used in the provision of
2 all types of wireless communications services;
3 provided further that nothing in this paragraph shall
4 be construed to permit the construction of any new
5 structure that is not deemed a permitted use under
6 this subsection;

7 ~~[(18)]~~ (19) Agricultural education programs conducted on a
8 farming operation as defined in section 165-2, for the
9 education and participation of the general public;
10 provided that the agricultural education programs are
11 accessory and secondary to the principal agricultural
12 use of the parcels or lots on which the agricultural
13 education programs are to occur and do not interfere
14 with surrounding farm operations. For the purposes of
15 this section, "agricultural education programs" means
16 activities or events designed to promote knowledge and
17 understanding of agricultural activities and practices
18 conducted on a farming operation as defined in section
19 165-2; or

20 ~~[(19)]~~ (20) Solar energy facilities that do not occupy more
21 than ten per cent of the acreage of the parcel, or
22 twenty acres of land, whichever is lesser; provided



1 that this use shall not be permitted on lands with
2 soil classified by the land study bureau's detailed
3 land classification as overall (master) productivity
4 rating class A."

5 SECTION 5. Section 205-5, Hawaii Revised Statutes, is
6 amended by amending subsection (b) to read as follows:

7 "(b) Within agricultural districts, uses compatible to the
8 activities described in section 205-2 as determined by the
9 commission shall be permitted; provided that accessory
10 agricultural uses and services described in sections 205-2 and
11 205-4.5 may be further defined by each county by zoning
12 ordinance. Each county shall adopt ordinances setting forth
13 procedures and requirements, including provisions for
14 enforcement, penalties, and administrative oversight, for the
15 review and permitting of agricultural tourism uses and
16 activities as an accessory use on a working farm, or farming
17 operation as defined in section 165-2 [~~provided that~~
18 ~~agricultural tourism activities shall not be permissible in the~~
19 ~~absence of a bona fide farming operation~~]. Ordinances shall
20 include but not be limited to:

21 (1) Requirements for access to a farm, including road
22 width, road surface, and parking;



- 1 (2) Requirements and restrictions for accessory facilities
2 connected with the farming operation, including gift
3 shops and restaurants; [~~provided that overnight~~
4 ~~accommodations shall not be permitted,~~]
- 5 (3) Activities that may be offered by the farming
6 operation for visitors;
- 7 (4) Days and hours of operation; and
- 8 (5) Automatic termination of the accessory use upon the
9 cessation of the farming operation.

10 Each county may require an environmental assessment under
11 chapter 343 as a condition to any agricultural tourism use and
12 activity. Other uses may be allowed by special permits issued
13 pursuant to this chapter. The minimum lot size in agricultural
14 districts shall be determined by each county by zoning
15 ordinance, subdivision ordinance, or other lawful means;
16 provided that the minimum lot size for any agricultural use
17 shall not be less than one acre, except as provided herein. If
18 the county finds that unreasonable economic hardship to the
19 owner or lessee of land cannot otherwise be prevented or where
20 land utilization is improved, the county may allow lot sizes of
21 less than the minimum lot size as specified by law for lots
22 created by a consolidation of existing lots within an



1 agricultural district and the resubdivision thereof; provided
 2 that the consolidation and resubdivision do not result in an
 3 increase in the number of lots over the number existing prior to
 4 consolidation; and provided further that in no event shall a lot
 5 which is equal to or exceeds the minimum lot size of one acre be
 6 less than that minimum after the consolidation and resubdivision
 7 action. The county may also allow lot sizes of less than the
 8 minimum lot size as specified by law for lots created or used
 9 for plantation community subdivisions as defined in section
 10 205-4.5(a)(12), for public, private, and quasi-public utility
 11 purposes, and for lots resulting from the subdivision of
 12 abandoned roadways and railroad easements."

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

15 SECTION 7. This Act shall take effect upon its approval.

APPROVED this day of , 2012

GOVERNOR OF THE STATE OF HAWAII