

JAN 20 2012

S.B. NO. 2341

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# A BILL FOR AN ACT

RELATING TO LAND USE.

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

- 1           SECTION 1. Section 205-2, Hawaii Revised Statutes, is  
2 amended by amending subsection (d) to read as follows:
- 3           "(d) Agricultural districts shall include:
- 4           (1) Activities or uses as characterized by the cultivation  
5           of crops, crops for bioenergy, orchards, forage, and  
6           forestry;
- 7           (2) Farming activities or uses related to animal husbandry  
8           and game and fish propagation;
- 9           (3) Aquaculture, which means the production of aquatic  
10           plant and animal life within ponds and other bodies of  
11           water;
- 12           (4) Wind generated energy production for public, private,  
13           and commercial use;
- 14           (5) Biofuel production, as described in section  
15           205-4.5(a)(15), for public, private, and commercial  
16           use;
- 17           (6) Solar energy facilities; provided that:



1 (A) This paragraph shall apply only to land with soil  
2 classified by the land study bureau's detailed  
3 land classification as overall (master)  
4 productivity rating class B, C, D or E; and  
5 (B) Solar energy facilities placed within land with  
6 soil classified as overall productivity rating  
7 class B or C shall not occupy more than ten per  
8 cent of the acreage of the parcel, or twenty  
9 acres of land, whichever is lesser;

10 (7) Bona fide agricultural services and uses that support  
11 the agricultural activities of the fee or leasehold  
12 owner of the property and accessory to any of the  
13 above activities, regardless of whether conducted on  
14 the same premises as the agricultural activities to  
15 which they are accessory, including farm dwellings as  
16 defined in section 205-4.5(a)(4), employee housing,  
17 farm buildings, mills, storage facilities, processing  
18 facilities, agricultural-energy facilities as defined  
19 in section 205-4.5(a)(16), vehicle and equipment  
20 storage areas, roadside stands for the sale of  
21 products grown on the premises, and plantation



- 1 community subdivisions as defined in section  
2 205-4.5(a)(12);
- 3 (8) Wind machines and wind farms;
- 4 (9) Small-scale meteorological, air quality, noise, and  
5 other scientific and environmental data collection and  
6 monitoring facilities occupying less than one-half  
7 acre of land; provided that these facilities shall not  
8 be used as or equipped for use as living quarters or  
9 dwellings;
- 10 (10) Agricultural parks;
- 11 (11) Agricultural tourism conducted on a working farm, or a  
12 farming operation as defined in section 165-2, for the  
13 enjoyment, education, or involvement of visitors;  
14 provided that the agricultural tourism activity is  
15 accessory and secondary to the principal agricultural  
16 use and does not interfere with surrounding farm  
17 operations; and provided further that this paragraph  
18 shall apply only to a county that has adopted  
19 ordinances regulating agricultural tourism under  
20 section 205-5; ~~and~~
- 21 (12) Open area recreational facilities~~[-]~~; and



1        (13) Activities or uses for short-term rentals of not more  
2        than thirty days' duration for any one stay.

3        Agricultural districts shall not include golf courses and golf  
4        driving ranges, except as provided in section 205-4.5(d).  
5        Agricultural districts include areas that are not used for, or  
6        that are not suited to, agricultural and ancillary activities by  
7        reason of topography, soils, and other related characteristics."

8        SECTION 2. Section 205-4.5, Hawaii Revised Statutes, is  
9        amended by amending subsection (a) to read as follows:

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 shall be restricted to the following permitted uses:

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

17        (2) Game and fish propagation;

18        (3) Raising of livestock, including poultry, bees, fish,  
19        or other animal or aquatic life that are propagated  
20        for economic or personal use;

21        (4) Farm dwellings, employee housing, farm buildings, or  
22        activities or uses related to farming and animal



1 husbandry. "Farm dwelling", as used in this  
2 paragraph, means a single-family dwelling located on  
3 and used in connection with a farm, including clusters  
4 of single-family farm dwellings permitted within  
5 agricultural parks developed by the State, or where  
6 agricultural activity provides income to the family  
7 occupying the dwelling;

8 (5) Public institutions and buildings that are necessary  
9 for agricultural practices;

10 (6) Public and private open area types of recreational  
11 uses, including day camps, picnic grounds, parks, and  
12 riding stables, but not including dragstrips,  
13 airports, drive-in theaters, golf courses, golf  
14 driving ranges, country clubs, and overnight camps;

15 (7) Public, private, and quasi-public utility lines and  
16 roadways, transformer stations, communications  
17 equipment buildings, solid waste transfer stations,  
18 major water storage tanks, and appurtenant small  
19 buildings such as booster pumping stations, but not  
20 including offices or yards for equipment, material,  
21 vehicle storage, repair or maintenance, treatment



- 1 plants, corporation yards, or other similar
- 2 structures;
- 3 (8) Retention, restoration, rehabilitation, or improvement
- 4 of buildings or sites of historic or scenic interest;
- 5 (9) Roadside stands for the sale of agricultural products
- 6 grown on the premises;
- 7 (10) Buildings and uses, including mills, storage, and
- 8 processing facilities, maintenance facilities, and
- 9 vehicle and equipment storage areas that are normally
- 10 considered directly accessory to the above-mentioned
- 11 uses and are permitted under section 205-2(d);
- 12 (11) Agricultural parks;
- 13 (12) Plantation community subdivisions, which as used in
- 14 this chapter means an established subdivision or
- 15 cluster of employee housing, community buildings, and
- 16 agricultural support buildings on land currently or
- 17 formerly owned, leased, or operated by a sugar or
- 18 pineapple plantation; provided that the existing
- 19 structures may be used or rehabilitated for use, and
- 20 new employee housing and agricultural support
- 21 buildings may be allowed on land within the
- 22 subdivision as follows:



- 1           (A) The employee housing is occupied by employees or
- 2                   former employees of the plantation who have a
- 3                   property interest in the land;
- 4           (B) The employee housing units not owned by their
- 5                   occupants shall be rented or leased at affordable
- 6                   rates for agricultural workers; or
- 7           (C) The agricultural support buildings shall be
- 8                   rented or leased to agricultural business
- 9                   operators or agricultural support services;
- 10       (13) Agricultural tourism conducted on a working farm, or a
- 11                   farming operation as defined in section 165-2, for the
- 12                   enjoyment, education, or involvement of visitors;
- 13                   provided that the agricultural tourism activity is
- 14                   accessory and secondary to the principal agricultural
- 15                   use and does not interfere with surrounding farm
- 16                   operations; and provided further that this paragraph
- 17                   shall apply only to a county that has adopted
- 18                   ordinances regulating agricultural tourism under
- 19                   section 205-5;
- 20       (14) Wind energy facilities, including the appurtenances
- 21                   associated with the production and transmission of
- 22                   wind generated energy; provided that the wind energy

1 facilities and appurtenances are compatible with  
2 agriculture uses and cause minimal adverse impact on  
3 agricultural land;

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

12 For the purposes of this paragraph:

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

18 "Biofuel processing facility" means a facility  
19 that produces liquid or gaseous fuels from organic  
20 sources such as biomass crops, agricultural residues,  
21 and oil crops, including palm, canola, soybean, and  
22 waste cooking oils; grease; food wastes; and animal





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

15 As used in this paragraph:

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

18 "Agricultural-energy enterprise" means an  
19 enterprise that integrally incorporates an  
20 agricultural activity with an agricultural-energy  
21 facility.



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

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

13 (17) Construction and operation of wireless communication  
14 antennas; provided that, for the purposes of this  
15 paragraph, "wireless communication antenna" means  
16 communications equipment that is either freestanding  
17 or placed upon or attached to an already existing  
18 structure and that transmits and receives  
19 electromagnetic radio signals used in the provision of  
20 all types of wireless communications services;  
21 provided further that nothing in this paragraph shall  
22 be construed to permit the construction of any new



1 structure that is not deemed a permitted use under  
2 this subsection;

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

16 (19) Solar energy facilities that do not occupy more than  
17 ten per cent of the acreage of the parcel, or twenty  
18 acres of land, whichever is lesser; provided that this  
19 use shall not be permitted on lands with soil  
20 classified by the land study bureau's detailed land  
21 classification as overall (master) productivity rating  
22 class A[~~-~~]; or



1        (20) Short-term rentals of not more than thirty days'  
2                    duration for any one stay."

3            SECTION 3. Section 205-5, Hawaii Revised Statutes, is  
4 amended by amending subsection (b) to read as follows:

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

- 19            (1) Requirements for access to a farm, including road  
20                    width, road surface, and parking;
- 21            (2) Requirements and restrictions for accessory facilities  
22                    connected with the farming operation, including gift



shops and restaurants; [~~provided that overnight accommodations shall not be permitted;~~]

(3) Activities that may be offered by the farming operation for visitors;

(4) Days and hours of operation; and

(5) Automatic termination of the accessory use upon the cessation of the farming operation.

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



1 increase in the number of lots over the number existing prior to  
 2 consolidation; and provided further that in no event shall a lot  
 3 which is equal to or exceeds the minimum lot size of one acre be  
 4 less than that minimum after the consolidation and resubdivision  
 5 action. The county may also allow lot sizes of less than the  
 6 minimum lot size as specified by law for lots created or used  
 7 for plantation community subdivisions as defined in section  
 8 205-4.5(a)(12), for public, private, and quasi-public utility  
 9 purposes, and for lots resulting from the subdivision of  
 10 abandoned roadways and railroad easements."

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 upon its approval.

14

INTRODUCED BY:

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# S.B. NO. 2341

**Report Title:**

Zoning; Agricultural Tourism

**Description:**

Repeals the prohibition on overnight accommodations at accessory facilities that are connected with a farming operation.  
Authorizes short-term rentals 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.*

