

---

---

# 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.



**Report Title:**

Zoning; Agricultural Tourism

**Description:**

Authorizes, within an agricultural district, agricultural tourism activities, including overnight accommodations of twenty-one days or less, for any one stay within a county; provided that the activities coexist with a bona fide agricultural activity and the county includes at least three islands and has adopted ordinances regulating agricultural tourism activities. (CD1)

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

