

---

---

# 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 purpose of this Act is to permit agricultural tourism  
10 activities, including overnight accommodations of twenty-one  
11 days or less, in an agricultural district for any one stay in a  
12 county with a population greater than one hundred thousand  
13 people, but less than one hundred fifty thousand people;  
14 provided that the county has adopted an ordinance specifically  
15 allowing for such activity.

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



1 " ~~[+]~~§141-9~~[+]~~ **Energy feedstock program.** (a) There is  
2 established within the department of agriculture an energy  
3 feedstock program that shall:

4 (1) Maintain cognizance of actions taken by industry and  
5 by federal, state, county, and private agencies in  
6 activities relating to the production of energy  
7 feedstock, and promote and support worthwhile energy  
8 feedstock production activities in the State;

9 (2) Serve as an information clearinghouse for energy  
10 feedstock production activities;

11 (3) Coordinate development projects to investigate and  
12 solve biological and technical problems involved in  
13 raising selected species with commercial energy  
14 generating potential;

15 (4) Actively seek federal funding for energy feedstock  
16 production activities;

17 (5) Undertake activities required to develop and expand  
18 the energy feedstock production industry; and

19 (6) Perform other functions and activities as may be  
20 assigned by law, including monitoring the compliance  
21 provisions under section ~~[205-4.5(a)(15)-.]~~ 205-  
22 4.5(a)(16)."



1 SECTION 3. 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)~~], 205-4.5(a)(16), for public, private,  
16 and commercial use;

17 (6) Solar energy facilities; provided that:

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



- 1 (B) Solar energy facilities placed within land with
- 2 soil classified as overall productivity rating
- 3 class B or C shall not occupy more than ten per
- 4 cent of the acreage of the parcel, or twenty
- 5 acres of land, whichever is lesser;
  
- 6 (7) Bona fide agricultural services and uses that support
- 7 the agricultural activities of the fee or leasehold
- 8 owner of the property and accessory to any of the
- 9 above activities, regardless of whether conducted on
- 10 the same premises as the agricultural activities to
- 11 which they are accessory, including farm dwellings as
- 12 defined in section 205-4.5(a)(4), employee housing,
- 13 farm buildings, mills, storage facilities, processing
- 14 facilities, agricultural-energy facilities as defined
- 15 in section [~~205-4.5(a)(16)~~], 205-4.5(a)(17), vehicle
- 16 and equipment storage areas, roadside stands for the
- 17 sale of products grown on the premises, and plantation
- 18 community subdivisions as defined in section
- 19 205-4.5(a)(12);
  
- 20 (8) Wind machines and wind farms;
  
- 21 (9) Small-scale meteorological, air quality, noise, and
- 22 other scientific and environmental data collection and



1 monitoring facilities occupying less than one-half  
2 acre of land; provided that these facilities shall not  
3 be used as or equipped for use as living quarters or  
4 dwellings;

5 (10) Agricultural parks;

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

16 (12) Agricultural tourism activities, including overnight  
17 accommodations of twenty-one days or less, within a  
18 county with a population greater than one hundred  
19 thousand people, but less than one hundred fifty  
20 thousand people; provided that the agricultural  
21 tourism activities coexist with a bona fide  
22 agricultural activity; provided further that this



1 paragraph shall apply only to a county that has  
2 adopted ordinances regulating agricultural tourism  
3 under section 205-5. For purposes of this paragraph,  
4 "bona fide agricultural activity" means a farming  
5 operation:

6 (A) As defined in section 165-2;

7 (B) That has been in operation for not less than two  
8 years;

9 (C) Whose farmer derives a gross income, the majority  
10 portion of which is from farming activities; or

11 (D) That provides a minimum income to the farmer  
12 operator of \$35,000 of gross sales of  
13 agricultural products for each of the preceding  
14 two years as evidenced by state general excise  
15 tax forms and federal forms; and

16 [~~12~~] (13) Open area recreational facilities.

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

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



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

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

7 (1) Cultivation of crops, including crops for bioenergy,  
8 flowers, vegetables, foliage, fruits, forage, and  
9 timber;

10 (2) Game and fish propagation;

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

14 (4) Farm dwellings, employee housing, farm buildings, or  
15 activities or uses related to farming and animal  
16 husbandry. "Farm dwelling", as used in this  
17 paragraph, means a single-family dwelling located on  
18 and used in connection with a farm, including clusters  
19 of single-family farm dwellings permitted within  
20 agricultural parks developed by the State, or where  
21 agricultural activity provides income to the family  
22 occupying the dwelling;



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





1 vehicle and equipment storage areas that are normally  
2 considered directly accessory to the above-mentioned  
3 uses and are permitted under section 205-2(d);

4 (11) Agricultural parks;

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

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

18 (B) The employee housing units not owned by their  
19 occupants shall be rented or leased at affordable  
20 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, within a  
16 county with a population greater than one hundred  
17 thousand people, but less than one hundred fifty  
18 thousand people; provided that the agricultural  
19 tourism activities coexist with a bona fide  
20 agricultural activity; provided further that this  
21 paragraph shall apply only to a county that has  
22 adopted ordinances regulating agricultural tourism



1           under section 205-5. For purposes of this paragraph,  
2           "bona fide agricultural activity" means a farming  
3           operation:

4           (A) As defined in section 165-2;

5           (B) That has been in operation for not less than two  
6           years;

7           (C) Whose farmer derives a gross income, the majority  
8           portion of which is from farming activities; or

9           (D) That provides a minimum income to the farmer  
10           operator of \$35,000 of gross sales of  
11           agricultural products for each of the preceding  
12           two years as evidenced by state general excise  
13           tax forms and federal forms;

14       ~~[(14)]~~ (15) Wind energy facilities, including the  
15           appurtenances associated with the production and  
16           transmission of wind generated energy; provided that  
17           the wind energy facilities and appurtenances are  
18           compatible with agriculture uses and cause minimal  
19           adverse impact on agricultural land;

20       ~~[(15)]~~ (16) Biofuel processing facilities, including the  
21           appurtenances associated with the production and  
22           refining of biofuels that is normally considered



1 directly accessory and secondary to the growing of the  
2 energy feedstock; provided that biofuels processing  
3 facilities and appurtenances do not adversely impact  
4 agricultural land and other agricultural uses in the  
5 vicinity.

6 For the purposes of this paragraph:

7 "Appurtenances" means operational infrastructure  
8 of the appropriate type and scale for economic  
9 commercial storage and distribution, and other similar  
10 handling of feedstock, fuels, and other products of  
11 biofuels processing facilities.

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

19 [~~(16)~~] (17) Agricultural-energy facilities, including  
20 appurtenances necessary for an agricultural-energy  
21 enterprise; provided that the primary activity of the  
22 agricultural-energy enterprise is agricultural



1 activity. To be considered the primary activity of an  
2 agricultural-energy enterprise, the total acreage  
3 devoted to agricultural activity shall be not less  
4 than ninety per cent of the total acreage of the  
5 agricultural-energy enterprise. The agricultural-  
6 energy facility shall be limited to lands owned,  
7 leased, licensed, or operated by the entity conducting  
8 the agricultural activity.

9 As used in this paragraph:

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

12 "Agricultural-energy enterprise" means an  
13 enterprise that integrally incorporates an  
14 agricultural activity with an agricultural-energy  
15 facility.

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



1 "Appurtenances" means operational infrastructure  
2 of the appropriate type and scale for the economic  
3 commercial generation, storage, distribution, and  
4 other similar handling of energy, including equipment,  
5 feedstock, fuels, and other products of agricultural-  
6 energy facilities;

7 [~~(17)~~] (18) Construction and operation of wireless  
8 communication antennas; provided that, for the  
9 purposes of this paragraph, "wireless communication  
10 antenna" means communications equipment that is either  
11 freestanding or placed upon or attached to an already  
12 existing structure and that transmits and receives  
13 electromagnetic radio signals used in the provision of  
14 all types of wireless communications services;  
15 provided further that nothing in this paragraph shall  
16 be construed to permit the construction of any new  
17 structure that is not deemed a permitted use under  
18 this subsection;

19 [~~(18)~~] (19) Agricultural education programs conducted on a  
20 farming operation as defined in section 165-2, for the  
21 education and participation of the general public;  
22 provided that the agricultural education programs are



1           accessory and secondary to the principal agricultural  
 2           use of the parcels or lots on which the agricultural  
 3           education programs are to occur and do not interfere  
 4           with surrounding farm operations. For the purposes of  
 5           this section, "agricultural education programs" means  
 6           activities or events designed to promote knowledge and  
 7           understanding of agricultural activities and practices  
 8           conducted on a farming operation as defined in section  
 9           165-2; or

10        ~~[(19)]~~ (20) Solar energy facilities that do not occupy more  
 11        than ten per cent of the acreage of the parcel, or  
 12        twenty acres of land, whichever is lesser; provided  
 13        that this use shall not be permitted on lands with  
 14        soil classified by the land study bureau's detailed  
 15        land classification as overall (master) productivity  
 16        rating class A."

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

19        "(b) Within agricultural districts, uses compatible to the  
 20        activities described in section 205-2 as determined by the  
 21        commission shall be permitted; provided that accessory  
 22        agricultural uses and services described in sections 205-2 and



1 205-4.5 may be further defined by each county by zoning  
2 ordinance. Each county shall adopt ordinances setting forth  
3 procedures and requirements, including provisions for  
4 enforcement, penalties, and administrative oversight, for the  
5 review and permitting of agricultural tourism uses and  
6 activities as an accessory use on a working farm, or farming  
7 operation as defined in section 165-2; provided that  
8 agricultural tourism activities shall not be permissible in the  
9 absence of a bona fide farming operation. Ordinances shall  
10 include but not be limited to:

- 11 (1) Requirements for access to a farm, including road  
12 width, road surface, and parking;
- 13 (2) Requirements and restrictions for accessory facilities  
14 connected with the farming operation, including gift  
15 shops and restaurants; [~~provided that overnight  
16 accommodations shall not be permitted;~~]
- 17 (3) Activities that may be offered by the farming  
18 operation for visitors;
- 19 (4) Days and hours of operation; and
- 20 (5) Automatic termination of the accessory use upon the  
21 cessation of the farming operation.





1 Each county may require an environmental assessment under  
2 chapter 343 as a condition to any agricultural tourism use and  
3 activity. Other uses may be allowed by special permits issued  
4 pursuant to this chapter. The minimum lot size in agricultural  
5 districts shall be determined by each county by zoning  
6 ordinance, subdivision ordinance, or other lawful means;  
7 provided that the minimum lot size for any agricultural use  
8 shall not be less than one acre, except as provided herein. If  
9 the county finds that unreasonable economic hardship to the  
10 owner or lessee of land cannot otherwise be prevented or where  
11 land utilization is improved, the county may allow lot sizes of  
12 less than the minimum lot size as specified by law for lots  
13 created by a consolidation of existing lots within an  
14 agricultural district and the resubdivision thereof; provided  
15 that the consolidation and resubdivision do not result in an  
16 increase in the number of lots over the number existing prior to  
17 consolidation; and provided further that in no event shall a lot  
18 which is equal to or exceeds the minimum lot size of one acre be  
19 less than that minimum after the consolidation and resubdivision  
20 action. The county may also allow lot sizes of less than the  
21 minimum lot size as specified by law for lots created or used  
22 for plantation community subdivisions as defined in section



1 205-4.5(a)(12), for public, private, and quasi-public utility  
2 purposes, and for lots resulting from the subdivision of  
3 abandoned roadways and railroad easements."

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

6 SECTION 7. This Act shall take effect on July 1, 2112.



**Report Title:**

Zoning; Agricultural Tourism

**Description:**

Repeals the prohibition on ordinances that allow overnight accommodations in agricultural districts. Authorizes agricultural tourism activities, including overnight accommodations of twenty-one days or less, within a county with a population greater than one hundred thousand people, but less than one hundred fifty thousand people; provided that the county has adopted ordinances regulating agricultural tourism. Effective July 1, 2112. (SB2341 HD2)

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

