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# A BILL FOR AN ACT

RELATING TO OVERNIGHT ACCOMMODATIONS ON AGRICULTURAL LANDS.

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

1           SECTION 1. The purpose of this Act is to establish  
2 agricultural tourism activities, including overnight  
3 accommodations for stays of less than thirty consecutive days as  
4 a permissible use for a bona fide farming operation in state  
5 agricultural districts.

6           The intent of this Act is to ensure that bona fide farming  
7 operations that meet the statutory criteria shall not be  
8 required to obtain a special permit pursuant to section 205-6,  
9 Hawaii Revised Statutes, for accessory agricultural tourism  
10 activities. Thus, depending on the particular county's  
11 ordinances, an applicant may apply for a ministerial permit for  
12 an agricultural tourism use; provided that the applicant  
13 demonstrates that the agricultural income from the farming  
14 operation as defined in section 165-2, Hawaii Revised Statutes,  
15 meets or exceeds the minimum income criteria. Applicants not  
16 meeting the bona fide farming operation criteria will not be  
17 able to conduct agricultural tourism activities, including



1 overnight accommodations, without obtaining a special permit  
2 pursuant to section 205-6, Hawaii Revised Statutes.

3 The counties, pursuant to this Act, are authorized to  
4 further regulate agricultural tourism activities, including  
5 overnight accommodations, under existing or amended county  
6 codes.

7 SECTION 2. Section 141-9, Hawaii Revised Statutes, is  
8 amended by amending subsection (a) to read as follows:

9 "(a) There is established within the department of  
10 agriculture an energy feedstock program that shall:

- 11 (1) Maintain cognizance of actions taken by industry and  
12 by federal, state, county, and private agencies in  
13 activities relating to the production of energy  
14 feedstock, and promote and support worthwhile energy  
15 feedstock production activities in the State;
- 16 (2) Serve as an information clearinghouse for energy  
17 feedstock production activities;
- 18 (3) Coordinate development projects to investigate and  
19 solve biological and technical problems involved in  
20 raising selected species with commercial energy  
21 generating potential;



- 1 (4) Actively seek federal funding for energy feedstock
- 2 production activities;
- 3 (5) Undertake activities required to develop and expand
- 4 the energy feedstock production industry; and
- 5 (6) Perform other functions and activities as may be
- 6 assigned by law, including monitoring the compliance
- 7 provisions under section [~~205-4.5(a)(16).~~] 205-
- 8 4.5(a)(15)."

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

- 11 "(d) Agricultural districts shall include:
- 12 (1) Activities or uses as characterized by the cultivation
- 13 of crops, crops for bioenergy, orchards, forage, and
- 14 forestry;
- 15 (2) Farming activities or uses related to animal husbandry
- 16 and game and fish propagation;
- 17 (3) Aquaculture, which means the production of aquatic
- 18 plant and animal life within ponds and other bodies of
- 19 water;
- 20 (4) Wind generated energy production for public, private,
- 21 and commercial use;



- 1 (5) Biofuel production, as described in section
- 2 [~~205-4.5(a)(16)~~], 205-4.5(a)(15), for public, private,
- 3 and commercial use;
- 4 (6) Solar energy facilities; provided that:
- 5 (A) This paragraph shall apply only to land with soil
- 6 classified by the land study bureau's detailed
- 7 land classification as overall (master)
- 8 productivity rating class B, C, D, or E; and
- 9 (B) Solar energy facilities placed within land with
- 10 soil classified as overall productivity rating
- 11 class B or C shall not occupy more than ten per
- 12 cent of the acreage of the parcel, or twenty
- 13 acres of land, whichever is lesser;
- 14 (7) Bona fide agricultural services and uses that support
- 15 the agricultural activities of the fee or leasehold
- 16 owner of the property and accessory to any of the
- 17 above activities, regardless of whether conducted on
- 18 the same premises as the agricultural activities to
- 19 which they are accessory, including farm dwellings as
- 20 defined in section 205-4.5(a)(4), employee housing,
- 21 farm buildings, mills, storage facilities, processing
- 22 facilities, photovoltaic, biogas, and other small-



1 scale renewable energy systems producing energy solely  
2 for use in the agricultural activities of the fee or  
3 leasehold owner of the property, agricultural-energy  
4 facilities as defined in section [~~205-4.5(a)(17),~~  
5 205-4.5(a)(16), vehicle and equipment storage areas,  
6 and plantation community subdivisions as defined in  
7 section 205-4.5(a)(12);

8 (8) Wind machines and wind farms;

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

15 (10) Agricultural parks;

16 (11) Agricultural tourism uses or activities, including  
17 overnight accommodations for stays of less than thirty  
18 consecutive days, conducted [~~on a working farm, or~~] in  
19 conjunction with a bona fide farming operation [~~as~~  
20 defined in section 165-2, for the enjoyment,  
21 education, or involvement of visitors]; provided that  
22 the agricultural tourism use or activity is accessory



1 and secondary to the principal agricultural use and  
2 does not interfere with surrounding farm operations;  
3 and provided further that [~~this paragraph shall apply~~  
4 ~~only to a county that has adopted ordinances~~  
5 ~~regulating agricultural tourism under section 205-57,~~  
6 an agricultural tourism use or activity shall not be  
7 permissible in the absence of bona fide farming  
8 operations and the agricultural tourism use or  
9 activity shall terminate upon cessation of the farming  
10 operation's agricultural activity. For the purposes  
11 of this chapter, "bona fide farming operation" means a  
12 farming operation as defined in section 165-2 that  
13 meets any criteria and standards adopted by county  
14 ordinance pursuant to section 205-5(b) and, at  
15 minimum:  
16 (A) Has been in operation for not less than two  
17 years;  
18 (B) Derives the majority of its annual gross income  
19 from the sale of agricultural products grown by  
20 the farming operation on the subject property for  
21 which an agricultural tourism use is proposed;  
22 and



1           (C) For a minimum of two of the preceding five years,  
2           has annual gross sales of agricultural products  
3           grown on the subject property of no less than:

4           (i) \$35,000 if the agricultural tourism uses or  
5           activities require permanent, enclosed  
6           structures or include overnight  
7           accommodations; or

8           (ii) \$10,000 if the agricultural tourism uses or  
9           activities do not require permanent,  
10           enclosed structures and do not include  
11           overnight accommodations.

12       ~~[(12) Agricultural tourism activities, including overnight~~  
13       ~~accommodations of twenty one days or less, for any one~~  
14       ~~stay within a county; provided that this paragraph~~  
15       ~~shall apply only to a county that includes at least~~  
16       ~~three islands and has adopted ordinances regulating~~  
17       ~~agricultural tourism activities pursuant to section~~  
18       ~~205-5; provided further that the agricultural tourism~~  
19       ~~activities coexist with bona fide agricultural~~  
20       ~~activity. For the purposes of this paragraph, "bona~~  
21       ~~fide agricultural activity" means a farming operation~~  
22       ~~as defined in section 165-2;~~



- 1       ~~(13)~~ (12) Open area recreational facilities;
- 2       ~~[(14)]~~ (13) Geothermal resources exploration and geothermal  
3       resources development, as defined under section 182-1;  
4       and
- 5       ~~[(15)]~~ (14) Agricultural-based commercial operations,  
6       including:
- 7           (A) A roadside stand that is not an enclosed  
8           structure, owned and operated by a producer for  
9           the display and sale of agricultural products  
10          grown in Hawaii and value-added products that  
11          were produced using agricultural products grown  
12          in Hawaii;
- 13          (B) Retail activities in an enclosed structure owned  
14          and operated by a producer for the display and  
15          sale of agricultural products grown in Hawaii,  
16          value-added products that were produced using  
17          agricultural products grown in Hawaii, logo items  
18          related to the producer's agricultural  
19          operations, and other food items; and
- 20          (C) A retail food establishment owned and operated by  
21          a producer and permitted under ~~[+]~~title 11, ~~[+]~~  
22          chapter 12 of the rules of the department of





1 health that prepares and serves food at retail  
2 using products grown in Hawaii and value-added  
3 products that were produced using agricultural  
4 products grown in Hawaii.

5 The owner of an agricultural-based commercial  
6 operation shall certify, upon request of an officer or  
7 agent charged with enforcement of this chapter under  
8 section 205-12, that the agricultural products  
9 displayed or sold by the operation meet the  
10 requirements of this paragraph.

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

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

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

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



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



- 1 airports, drive-in theaters, golf courses, golf  
2 driving ranges, country clubs, and overnight camps;
- 3 (7) Public, private, and quasi-public utility lines and  
4 roadways, transformer stations, communications  
5 equipment buildings, solid waste transfer stations,  
6 major water storage tanks, and appurtenant small  
7 buildings such as booster pumping stations, but not  
8 including offices or yards for equipment, material,  
9 vehicle storage, repair or maintenance, treatment  
10 plants, corporation yards, or other similar  
11 structures;
- 12 (8) Retention, restoration, rehabilitation, or improvement  
13 of buildings or sites of historic or scenic interest;
- 14 (9) Agricultural-based commercial operations as described  
15 in section [~~205-2(d)(15)~~], 205-2(d)(14);
- 16 (10) Buildings and uses, including mills, storage, and  
17 processing facilities, maintenance facilities,  
18 photovoltaic, biogas, and other small-scale renewable  
19 energy systems producing energy solely for use in the  
20 agricultural activities of the fee or leasehold owner  
21 of the property, and vehicle and equipment storage  
22 areas that are normally considered directly accessory



1 to the above-mentioned uses and are permitted under  
2 section 205-2(d);

3 (11) Agricultural parks;

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

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

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

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



1           (13) Agricultural tourism uses or activities, including  
2           overnight accommodations for stays of less than thirty  
3           consecutive days conducted [~~on a working farm, or~~] in  
4           conjunction with a bona fide farming operation [~~as~~  
5           ~~defined in section 165-2, for the enjoyment,~~  
6           ~~education, or involvement of visitors~~]; provided that  
7           the agricultural tourism use or activity is accessory  
8           and secondary to the principal agricultural use and  
9           does not interfere with surrounding farm operations;  
10          and provided further that [~~this paragraph shall apply~~  
11          ~~only to a county that has adopted ordinances~~  
12          ~~regulating agricultural tourism under section 205-5;~~]  
13          an agricultural tourism use or activity shall not be  
14          permissible in the absence of farming operations and  
15          the agricultural tourism use or activity shall  
16          terminate upon cessation of the farming operation's  
17          agricultural activity. For the purposes of this  
18          chapter, "bona fide farming operation" means a farming  
19          operation as defined in section 165-2 that meets any  
20          criteria and standards adopted by county ordinance  
21          pursuant to section 205-5(b) and, at minimum:



- 1           (A) Has been in operation for not less than two
- 2                   years;
- 3           (B) Derives the majority of its annual gross income
- 4                   from the sale of agricultural products grown by
- 5                   the farming operation on the subject property for
- 6                   which an agricultural tourism use is proposed;
- 7                   and
- 8           (C) For a minimum of two of the preceding five years,
- 9                   has annual gross sales of agricultural products
- 10                  grown on the subject property of no less than:
- 11                  (i) \$35,000 if the agricultural tourism uses or
- 12                          activities that require permanent, enclosed
- 13                          structures or include overnight
- 14                          accommodations; or
- 15                  (ii) \$10,000 if the agricultural tourism uses or
- 16                          activities do not require permanent,
- 17                          enclosed structures and do not include
- 18                          overnight accommodations.

19       ~~[(14) Agricultural tourism activities, including overnight~~

20       ~~accommodations of twenty one days or less, for any one~~

21       ~~stay within a county, provided that this paragraph~~

22       ~~shall apply only to a county that includes at least~~



1 ~~three islands and has adopted ordinances regulating~~  
2 ~~agricultural tourism activities pursuant to section~~  
3 ~~205-5; provided further that the agricultural tourism~~  
4 ~~activities coexist with a bona fide agricultural~~  
5 ~~activity. For the purposes of this paragraph, "bona~~  
6 ~~fide agricultural activity" means a farming operation~~  
7 ~~as defined in section 165-2;~~

8 ~~(15)]~~ (14) Wind energy facilities, including the  
9 appurtenances associated with the production and  
10 transmission of wind generated energy; provided that  
11 the wind energy facilities and appurtenances are  
12 compatible with agriculture uses and cause minimal  
13 adverse impact on agricultural land;

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

22 For the purposes of this paragraph:



1 "Appurtenances" means operational infrastructure  
2 of the appropriate type and scale for economic  
3 commercial storage and distribution, and other similar  
4 handling of feedstock, fuels, and other products of  
5 biofuel processing facilities.

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

13 [~~17~~] (16) Agricultural-energy facilities, including  
14 appurtenances necessary for an agricultural-energy  
15 enterprise; provided that the primary activity of the  
16 agricultural-energy enterprise is agricultural  
17 activity. To be considered the primary activity of an  
18 agricultural-energy enterprise, the total acreage  
19 devoted to agricultural activity shall be not less  
20 than ninety per cent of the total acreage of the  
21 agricultural-energy enterprise. The agricultural-  
22 energy facility shall be limited to lands owned,





1 leased, licensed, or operated by the entity conducting  
2 the agricultural activity.

3 As used in this paragraph:

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

6 "Agricultural-energy enterprise" means an  
7 enterprise that integrally incorporates an  
8 agricultural activity with an agricultural-energy  
9 facility.

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

16 "Appurtenances" means operational infrastructure  
17 of the appropriate type and scale for the economic  
18 commercial generation, storage, distribution, and  
19 other similar handling of energy, including equipment,  
20 feedstock, fuels, and other products of agricultural-  
21 energy facilities;



1     ~~[(18)]~~ (17) Construction and operation of wireless  
2             communication antennas; provided that, for the  
3             purposes of this paragraph, "wireless communication  
4             antenna" means communications equipment that is either  
5             freestanding or placed upon or attached to an already  
6             existing structure and that transmits and receives  
7             electromagnetic radio signals used in the provision of  
8             all types of wireless communications services;  
9             provided further that nothing in this paragraph shall  
10            be construed to permit the construction of any new  
11            structure that is not deemed a permitted use under  
12            this subsection;

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



1 understanding of agricultural activities and practices  
2 conducted on a farming operation as defined in section  
3 165-2;

4 ~~[(20)]~~ (19) Solar energy facilities that do not occupy more  
5 than ten per cent of the acreage of the parcel, or  
6 twenty acres of land, whichever is lesser; provided  
7 that this use shall not be permitted on lands with  
8 soil classified by the land study bureau's detailed  
9 land classification as overall (master) productivity  
10 rating class A; or

11 ~~[(21)]~~ (20) Geothermal resources exploration and geothermal  
12 resources development, as defined under section  
13 182-1."

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

16 "(b) Within agricultural districts, uses compatible to the  
17 activities described in section 205-2 as determined by the  
18 commission shall be permitted; provided that accessory  
19 agricultural uses and services described in sections 205-2 and  
20 205-4.5 may be further defined by each county by zoning  
21 ordinance. ~~[Each county shall adopt ordinances setting forth  
22 procedures and requirements, including provisions for~~



1 ~~enforcement, penalties, and administrative oversight, for the~~  
2 ~~review and permitting of agricultural tourism uses and~~  
3 ~~activities as an accessory use on a working farm, or farming~~  
4 ~~operation as defined in section 165-2. Ordinances shall include~~  
5 ~~but not be limited to:~~

- 6       ~~(1) Requirements for access to a farm, including road~~  
7           ~~width, road surface, and parking;~~
- 8       ~~(2) Requirements and restrictions for accessory facilities~~  
9           ~~connected with the farming operation, including gift~~  
10          ~~shops and restaurants;~~
- 11       ~~(3) Activities that may be offered by the farming~~  
12           ~~operation for visitors;~~
- 13       ~~(4) Days and hours of operation; and~~
- 14       ~~(5) Automatic termination of the accessory use upon the~~  
15           ~~cessation of the farming operation.]~~

16 Each county may adopt ordinances setting forth procedures,  
17 standards, and requirements for the purposes of regulating  
18 agricultural tourism uses and activities as an accessory use on  
19 a bona fide farming operation pursuant to sections 205-2(d)(11)  
20 and 205-4.5(a)(13); provided that:

- 21       (1) Proof of bona fide farming operation income should be  
22           evidenced by, at a minimum:



1           (A) Federal tax forms that show profit or loss from  
2           farming and state general excise tax forms for  
3           each year of agricultural income as required by  
4           sections 205-2(d)(11) and 205-4.5(a)(13); or  
5           (B) A notarized affidavit attesting that the income  
6           from the sale of agricultural products grown on  
7           the subject property meets or exceeds the minimum  
8           income requirements in sections 205-2(d)(11) and  
9           205-4.5(a)(13), or county ordinance, whichever is  
10           more; and

11           (2) A county may adopt more restrictive standards and  
12           requirements for permitting and regulating  
13           agricultural tourism uses, including more restrictive  
14           income criteria and proof of bona fide farming  
15           operations.

16 Each county may require an environmental assessment under  
17 chapter 343 as a condition to any agricultural tourism use and  
18 activity. Other uses may be allowed by special permits issued  
19 pursuant to this chapter. The minimum lot size in agricultural  
20 districts shall be determined by each county by zoning  
21 ordinance, subdivision ordinance, or other lawful means;  
22 provided that the minimum lot size for any agricultural use



1 shall not be less than one acre, except as provided herein. If  
2 the county finds that unreasonable economic hardship to the  
3 owner or lessee of land cannot otherwise be prevented or where  
4 land utilization is improved, the county may allow lot sizes of  
5 less than the minimum lot size as specified by law for lots  
6 created by a consolidation of existing lots within an  
7 agricultural district and the resubdivision thereof; provided  
8 that the consolidation and resubdivision do not result in an  
9 increase in the number of lots over the number existing prior to  
10 consolidation; and provided further that in no event shall a lot  
11 which is equal to or exceeds the minimum lot size of one acre be  
12 less than that minimum after the consolidation and resubdivision  
13 action. The county may also allow lot sizes of less than the  
14 minimum lot size as specified by law for lots created or used  
15 for plantation community subdivisions as defined in section  
16 205-4.5(a)(12), for public, private, and quasi-public utility  
17 purposes, and for lots resulting from the subdivision of  
18 abandoned roadways and railroad easements."

19 SECTION 6. Each county may adopt interim rules or  
20 ordinances to regulate agricultural tourism uses; to remain in  
21 effect until the county has adopted or amended applicable county  
22 codes to conform to this Act.



1 SECTION 7. This Act shall not invalidate a lawful permit  
2 for an agricultural tourism use or activity, including overnight  
3 accommodations, on lands in an agricultural district in effect  
4 on or before the effective date of this Act.

5 SECTION 8. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

7 SECTION 9. This Act, upon its approval, shall take effect  
8 on July 1, 2014.



**Report Title:**

Agricultural Lands; Agricultural Tourism; Bona Fide Farming  
Operation

**Description:**

Allows for agricultural tourism including overnight  
accommodations coextensive with bona fide farming operations.  
Authorizes counties to adopt rules and ordinances. (HB1266 HD1)

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

