

ACT 250

H.B. NO. 2145

A Bill for an Act Relating to Agricultural Tourism.

Be It Enacted by the Legislature of the State of Hawaii:

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

“(d) Agricultural districts shall include [~~activities~~]:

- (1) Activities or uses as characterized by the cultivation of crops, orchards, forage, and forestry; [~~farming~~]
- (2) Farming activities or uses related to animal husbandry, [~~aquaculture,~~] and game and fish propagation; [~~aquaculture,~~]
- (3) Aquaculture, which means the production of aquatic plant and animal life [~~for food and fiber~~] within ponds and other bodies of water; [~~wind~~]

- (4) Wind generated energy production for public, private, and commercial use; [~~bona~~]
- (5) Bona fide agricultural services and uses that support the agricultural activities of the fee or leasehold owner of the property and accessory to any of the above activities, whether or not conducted on the same premises as the agricultural activities to which they are accessory, including but not limited to farm dwellings as defined in section 205-4.5(a)(4), employee housing, farm buildings, mills, storage facilities, processing facilities, vehicle and equipment storage areas, and roadside stands for the sale of products grown on the premises; [~~wind~~]
- (6) Wind machines and wind farms; [~~small-scale~~]
- (7) Small-scale meteorological, air quality, noise, and other scientific and environmental data collection and monitoring facilities occupying less than one-half acre of land[;]; provided that these facilities shall not be used as or equipped for use as living quarters or dwellings; [~~agricultural parks; and open~~]
- (8) Agricultural parks;
- (9) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5; and
- (10) Open area recreational facilities.

[For the purposes of this chapter,] Agricultural districts shall not include golf courses and golf driving ranges [~~are prohibited in agricultural districts,]~~ except as provided in section 205-4.5(d). [~~These~~] Agricultural districts [~~may~~] include areas [~~which~~] that are not used for, or [~~which~~] that are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics.”

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

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

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

- dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps;
- (7) Public, private, and quasi-public utility lines and roadways, transformer stations, communications equipment buildings, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, or treatment plants, or corporation yards, or other like structures;
 - (8) Retention, restoration, rehabilitation, or improvement of buildings or sites of historic or scenic interest;
 - (9) Roadside stands for the sale of agricultural products grown on the premises;
 - (10) Buildings and uses, including but not limited to mills, storage, and processing facilities, maintenance facilities, and vehicle and equipment storage areas that are normally considered directly accessory to the abovementioned uses and are permitted under section 205-2(d);
 - (11) Agricultural parks; [œ]
 - (12) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5; or
 - [12] (13) Wind energy facilities, including the appurtenances associated with the production and transmission of wind generated energy; provided that such facilities and appurtenances are compatible with agriculture uses and cause minimal adverse impact on agricultural land.”

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

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

- (1) Requirements for access to a farm, including road width, road surface, and parking;
- (2) Requirements and restrictions for accessory facilities 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 increase in the number of lots over the number existing prior to consolidation; and provided further that in no event shall a lot, which is equal to or exceeds the minimum lot size of one acre be less than that minimum after the consolidation and resubdivision action. The county may also allow lot sizes of less than the minimum lot size as specified by law for lots created or used for public, private, and quasi-public utility purposes, and for lots resulting from the subdivision of abandoned roadways and railroad easements.”

SECTION 4. Section 343-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as otherwise provided, an environmental assessment shall be required for actions that:

- (1) Propose the use of state or county lands or the use of state or county funds, other than funds to be used for feasibility or planning studies for possible future programs or projects that the agency has not approved, adopted, or funded, or funds to be used for the acquisition of unimproved real property; provided that the agency shall consider environmental factors and available alternatives in its feasibility or planning studies; provided further that an environmental assessment for proposed uses under section 205-2(d)(9) or 205-4.5(a)(12) shall only be required pursuant to section 205-5(b);
- (2) Propose any use within any land classified as a conservation district by the state land use commission under chapter 205;
- (3) Propose any use within a shoreline area as defined in section 205A-41;
- (4) Propose any use within any historic site as designated in the National Register or Hawaii Register, as provided for in the Historic Preservation Act of 1966, Public Law 89-665, or chapter 6E;
- (5) Propose any use within the Waikiki area of Oahu, the boundaries of which are delineated in the land use ordinance as amended, establishing the “Waikiki Special District”;
- (6) Propose any amendments to existing county general plans where the amendment would result in designations other than agriculture, conservation, or preservation, except actions proposing any new county general plan or amendments to any existing county general plan initiated by a county;
- (7) Propose any reclassification of any land classified as a conservation district by the state land use commission under chapter 205;
- (8) Propose the construction of new or the expansion or modification of existing helicopter facilities within the State, that by way of their activities, may affect:
 - (A) Any land classified as a conservation district by the state land use commission under chapter 205;
 - (B) A shoreline area as defined in section 205A-41; or
 - (C) Any historic site as designated in the National Register or Hawaii Register, as provided for in the Historic Preservation Act of 1966,

Public Law 89-665, or chapter 6E; or until the statewide historic places inventory is completed, any historic site that is found by a field reconnaissance of the area affected by the helicopter facility and is under consideration for placement on the National Register or the Hawaii Register of Historic Places; and

- (9) Propose any:
- (A) Wastewater treatment unit, except an individual wastewater system or a wastewater treatment unit serving fewer than fifty single-family dwellings or the equivalent;
 - (B) Waste-to-energy facility;
 - (C) Landfill;
 - (D) Oil refinery; or
 - (E) Power-generating facility.’’

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

SECTION 6. This Act shall take effect upon its approval.

(Approved June 29, 2006.)