

JAN 19 2024

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# A BILL FOR AN ACT

RELATING TO AGRICULTURAL TOURISM.

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

1           SECTION 1. Chapter 205, Hawaii Revised Statutes, is  
2 amended by adding a new section to part I to be appropriately  
3 designated and to read as follows:

4           "§205-           Agricultural tourism. (a) Agricultural tourism  
5 may be conducted on a farming operation, as defined in  
6 section 165-2, for the enjoyment, education, or involvement of  
7 visitors.

8           (b) Agricultural tourism activities:

9           (1) Shall be accessory and secondary to the principal  
10           agricultural use;

11           (2) Shall coexist with a bona fide agricultural activity;

12           and

13           (3) Shall not interfere with surrounding farm operations.

14           (c) Revenue from all agricultural tourism activities on a  
15 farming operation shall not exceed revenue from the bona fide  
16 agricultural activity on the farming operation.



1        (d) Agricultural tourism activities may include overnight  
2 accommodations of twenty-one days or less; provided that no  
3 person shall stay in overnight accommodations included with  
4 agricultural tourism activities for longer than twenty-one days  
5 in total within one county during any one-year period.

6        (e) The commission shall adopt rules under chapter 91  
7 governing agricultural tourism and agricultural tourism  
8 activities. The purpose of the rules shall be to establish  
9 uniform requirements for agricultural tourism and agricultural  
10 tourism activities throughout the State, promote agriculture,  
11 and address community concerns. At a minimum, the rules shall  
12 establish:

13        (1) Requirements for access to a farm, including road  
14 width, road surface, and parking;

15        (2) Requirements and restrictions for accessory facilities  
16 connected with the farming operation, such as gift  
17 shops and restaurants;

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

20        (4) Days and hours of operation; and



1       (5) Automatic termination of authorization for  
2       agricultural tourism activities at a farming operation  
3       upon the cessation of the bona fide agricultural  
4       activity there.

5       (f) Each county may require completion of an environmental  
6       assessment under chapter 343 before authorizing any agricultural  
7       tourism activity at a farming operation.

8       (g) For the purposes of this section, "bona fide  
9       agricultural activity" means a farming operation as defined in  
10      section 165-2."

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

13       "(d) Agricultural districts shall include:

14       (1) Activities or uses as characterized by the cultivation  
15       of crops, crops for bioenergy, orchards, forage, and  
16       forestry;

17       (2) Farming activities or uses related to animal husbandry  
18       and game and fish propagation;

19       (3) Aquaculture, which means the production of aquatic  
20       plant and animal life within ponds and other bodies of  
21       water;



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- 1           (4) Wind-generated energy production for public, private,  
2                   and commercial use;
- 3           (5) Biofuel production, as described in  
4                   section 205-4.5(a)(16), for public, private, and  
5                   commercial use;
- 6           (6) Solar energy facilities; provided that:
- 7                   (A) This paragraph shall apply only to land with soil  
8                           classified by the land study bureau's detailed  
9                           land classification as overall (master)  
10                           productivity rating class B, C, D, or E; and
- 11                   (B) Solar energy facilities placed within land with  
12                           soil classified as overall productivity rating  
13                           class B or C shall not occupy more than ten per  
14                           cent of the acreage of the parcel, or twenty  
15                           acres of land, whichever is lesser, unless a  
16                           special use permit is granted pursuant to section  
17                           205-6;
- 18           (7) Bona fide agricultural services and uses that support  
19                   the agricultural activities of the fee or leasehold  
20                   owner of the property and accessory to any of the  
21                   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, photovoltaic, biogas, and other  
6 small-scale renewable energy systems producing energy  
7 solely for use in the agricultural activities of the  
8 fee or leasehold owner of the property,  
9 agricultural-energy facilities as defined in  
10 section 205-4.5(a)(17), vehicle and equipment storage  
11 areas, and plantation community subdivisions as  
12 defined in section 205-4.5(a)(12);

- 13 (8) Wind machines and wind farms;
- 14 (9) Small-scale meteorological, air quality, noise, and  
15 other scientific and environmental data collection and  
16 monitoring facilities occupying less than one-half  
17 acre of land; provided that these facilities shall not  
18 be used as or equipped for use as living quarters or  
19 dwellings;
- 20 (10) Agricultural parks;



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

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



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- 1           ~~as defined in section 165-2;~~ pursuant to  
2           section 205-     ;
- 3       (13)   Open area recreational facilities;
- 4       (14)   Geothermal resources exploration and geothermal  
5           resources development, as defined under section 182-1;
- 6       (15)   Agricultural-based commercial operations registered in  
7           Hawaii, including:
- 8           (A)   A roadside stand that is not an enclosed  
9                structure, owned and operated by a producer for  
10              the display and sale of agricultural products  
11              grown in Hawaii and value-added products that  
12              were produced using agricultural products grown  
13              in Hawaii;
- 14          (B)   Retail activities in an enclosed structure owned  
15              and operated by a producer for the display and  
16              sale of agricultural products grown in Hawaii,  
17              value-added products that were produced using  
18              agricultural products grown in Hawaii, logo items  
19              related to the producer's agricultural  
20              operations, and other food items;



1 (C) A retail food establishment owned and operated by  
2 a producer and permitted under chapter 11-50,  
3 Hawaii administrative rules, that prepares and  
4 serves food at retail using products grown in  
5 Hawaii and value-added products that were  
6 produced using agricultural products grown in  
7 Hawaii;

8 (D) A farmers' market, which is an outdoor market  
9 limited to producers selling agricultural  
10 products grown in Hawaii and value-added products  
11 that were produced using agricultural products  
12 grown in Hawaii; and

13 (E) A food hub, which is a facility that may contain  
14 a commercial kitchen and provides for the  
15 storage, processing, distribution, and sale of  
16 agricultural products grown in Hawaii and  
17 value-added products that were produced using  
18 agricultural products grown in Hawaii.

19 The owner of an agricultural-based commercial  
20 operation shall certify, upon request of an officer or  
21 agent charged with enforcement of this chapter under



1 section 205-12, that the agricultural products  
2 displayed or sold by the operation meet the  
3 requirements of this paragraph;

4 (16) Hydroelectric facilities as described in  
5 section 205-4.5(a)(23); and

6 (17) Composting and co-composting operations; provided that  
7 operations that process their own green waste and do  
8 not require permits from the department of health  
9 shall use the finished composting product only on the  
10 operation's own premises to minimize the potential  
11 spread of invasive species.

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

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

17 SECTION 3. Section 205-4.5, Hawaii Revised Statutes, is  
18 amended by amending subsection (a) to read as follows:

19 "(a) Within the agricultural district, all lands with soil  
20 classified by the land study bureau's detailed land  
21 classification as overall (master) productivity rating class A



1 or B and for solar energy facilities, class B or C, shall be  
2 restricted to the following permitted uses:

3 (1) Cultivation of crops, including crops for bioenergy,  
4 flowers, vegetables, foliage, fruits, forage, and  
5 timber;

6 (2) Game and fish propagation;

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

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

19 (5) Public institutions and buildings that are necessary  
20 for agricultural practices;



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- 1           (6) Public and private open area types of recreational  
2           uses, including day camps, picnic grounds, parks, and  
3           riding stables, but not including dragstrips,  
4           airports, drive-in theaters, golf courses, golf  
5           driving ranges, country clubs, and overnight camps;
- 6           (7) Public, private, and quasi-public utility lines and  
7           roadways, transformer stations, communications  
8           equipment buildings, solid waste transfer stations,  
9           major water storage tanks, and appurtenant small  
10          buildings such as booster pumping stations, but not  
11          including offices or yards for equipment, material,  
12          vehicle storage, repair or maintenance, treatment  
13          plants, corporation yards, or other similar  
14          structures;
- 15          (8) Retention, restoration, rehabilitation, or improvement  
16          of buildings or sites of historic or scenic interest;
- 17          (9) Agricultural-based commercial operations as described  
18          in section 205-2(d)(15);
- 19          (10) Buildings and uses, including mills, storage, and  
20          processing facilities, maintenance facilities,  
21          photovoltaic, biogas, and other small-scale renewable



1 energy systems producing energy solely for use in the  
2 agricultural activities of the fee or leasehold owner  
3 of the property, and vehicle and equipment storage  
4 areas that are normally considered directly accessory  
5 to the above-mentioned uses and are permitted under  
6 section 205-2(d);

7 (11) Agricultural parks;

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

18 (A) The employee housing is occupied by employees or  
19 former employees of the plantation who have a  
20 property interest in the land;



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

4 (C) The agricultural support buildings shall be  
5 rented or leased to agricultural business  
6 operators or agricultural support services;

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

17 (14) ~~Agricultural tourism activities [including overnight~~  
18 ~~accommodations of twenty one days or less, for any one~~  
19 ~~stay within a county, provided that this paragraph~~  
20 ~~shall apply only to a county that includes at least~~  
21 ~~three islands and has adopted ordinances regulating~~



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

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

14 (16) 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 biofuel processing  
19 facilities and appurtenances do not adversely impact  
20 agricultural land and other agricultural uses in the  
21 vicinity.



1 For the purposes of this paragraph:

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

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

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



1 agricultural-energy enterprise. The  
2 agricultural-energy facility shall be limited to lands  
3 owned, leased, licensed, or operated by the entity  
4 conducting the agricultural activity.

5 As used in this paragraph:

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

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

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

18 "Appurtenances" means operational infrastructure  
19 of the appropriate type and scale for the economic  
20 commercial generation, storage, distribution, and  
21 other similar handling of energy, including equipment,



1 feedstock, fuels, and other products of  
2 agricultural-energy facilities;  
3 (18) Construction and operation of wireless communication  
4 antennas, including small wireless facilities;  
5 provided that, for the purposes of this paragraph,  
6 "wireless communication antenna" means communications  
7 equipment that is either freestanding or placed upon  
8 or attached to an already existing structure and that  
9 transmits and receives electromagnetic radio signals  
10 used in the provision of all types of wireless  
11 communications services; provided further that "small  
12 wireless facilities" shall have the same meaning as in  
13 section 206N-2; provided further that nothing in this  
14 paragraph shall be construed to permit the  
15 construction of any new structure that is not deemed a  
16 permitted use under this subsection;  
17 (19) Agricultural education programs conducted on a farming  
18 operation as defined in section 165-2, for the  
19 education and participation of the general public;  
20 provided that the agricultural education programs are  
21 accessory and secondary to the principal agricultural



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

9 (20) Solar energy facilities that do not occupy more than  
10 ten per cent of the acreage of the parcel, or twenty  
11 acres of land, whichever is lesser or for which a  
12 special use permit is granted pursuant to  
13 section 205-6; provided that this use shall not be  
14 permitted on lands with soil classified by the land  
15 study bureau's detailed land classification as overall  
16 (master) productivity rating class A;

17 (21) Solar energy facilities on lands with soil classified  
18 by the land study bureau's detailed land  
19 classification as overall (master) productivity rating  
20 B or C for which a special use permit is granted  
21 pursuant to section 205-6; provided that:



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- 1           (A) The area occupied by the solar energy facilities
- 2                   is also made available for compatible
- 3                   agricultural activities at a lease rate that is
- 4                   at least fifty per cent below the fair market
- 5                   rent for comparable properties;
- 6           (B) Proof of financial security to decommission the
- 7                   facility is provided to the satisfaction of the
- 8                   appropriate county planning commission prior to
- 9                   date of commencement of commercial generation;
- 10                  and
- 11          (C) Solar energy facilities shall be decommissioned
- 12                   at the owner's expense according to the following
- 13                   requirements:
- 14                   (i) Removal of all equipment related to the
- 15                               solar energy facility within twelve months
- 16                               of the conclusion of operation or useful
- 17                               life; and
- 18                   (ii) Restoration of the disturbed earth to
- 19                               substantially the same physical condition as
- 20                               existed prior to the development of the
- 21                               solar energy facility.



1 For the purposes of this paragraph, "agricultural  
2 activities" means the activities described in  
3 paragraphs (1) to (3);

4 (22) Geothermal resources exploration and geothermal  
5 resources development, as defined under section 182-1;

6 (23) Hydroelectric facilities, including the appurtenances  
7 associated with the production and transmission of  
8 hydroelectric energy, subject to section 205-2;  
9 provided that the hydroelectric facilities and their  
10 appurtenances:

11 (A) Shall consist of a small hydropower facility as  
12 defined by the United States Department of  
13 Energy, including:

14 (i) Impoundment facilities using a dam to store  
15 water in a reservoir;

16 (ii) A diversion or run-of-river facility that  
17 channels a portion of a river through a  
18 canal or channel; and

19 (iii) Pumped storage facilities that store energy  
20 by pumping water uphill to a reservoir at  
21 higher elevation from a reservoir at a lower



1                   elevation to be released to turn a turbine  
2                   to generate electricity;

3           (B) Comply with the state water code, chapter 174C;

4           (C) Shall, if over five hundred kilowatts in  
5           hydroelectric generating capacity, have the  
6           approval of the commission on water resource  
7           management, including a new instream flow  
8           standard established for any new hydroelectric  
9           facility; and

10          (D) Do not impact or impede the use of agricultural  
11          land or the availability of surface or ground  
12          water for all uses on all parcels that are served  
13          by the ground water sources or streams for which  
14          hydroelectric facilities are considered; or

15          (24) Notwithstanding any other law to the contrary,  
16          composting and co-composting operations; provided that  
17          operations that process their own green waste and do  
18          not require permits from the department of health  
19          shall use the finished composting product only on the  
20          operation's own premises to minimize the potential  
21          spread of invasive species."



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

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

- 15 ~~(1) Requirements for access to a farm, including road  
16 width, road surface, and parking;~~
- 17 ~~(2) Requirements and restrictions for accessory facilities  
18 connected with the farming operation, including gift  
19 shops and restaurants;~~
- 20 ~~(3) Activities that may be offered by the farming  
21 operation for visitors;~~



1       ~~(4) Days and hours of operation; and~~  
2       ~~(5) Automatic termination of the accessory use upon the~~  
3           ~~cessation of the farming operation.~~

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



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1 less than that minimum after the consolidation and resubdivision  
2 action. The county may also allow lot sizes of less than the  
3 minimum lot size as specified by law for lots created or used  
4 for plantation community subdivisions as defined in section  
5 205-4.5(a)(12), for public, private, and quasi-public utility  
6 purposes, and for lots resulting from the subdivision of  
7 abandoned roadways and railroad easements."

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

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

11

INTRODUCED BY: *Shirley M. Rector* 



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**Report Title:**

Agricultural Tourism; Land Use Commission; Uniform Statewide Standards

**Description:**

Makes state agricultural tourism requirements applicable to all counties, instead of only counties that have adopted an agricultural tourism ordinance. Requires Land Use Commission to adopt rules that establish requirements applicable to all farms implementing agricultural tourism.

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

